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Recent Trial Court Decisions

Denver Bar Association Record

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refused to pay. The consequence was, that his landlord had for a few months declined even his five dollars monthly rent until the arrears amounted to about seventeen dollars, for which he was sued. I told him we would undertake his case, of which I took notes, and a fee of five dollars in advance, and in due order I placed the notes in the hands of McCook, and thought no more of it.

"A month or so after, our client rushed into the office and said his case had been called at Judge Gardner's (I think), and he wanted his lawyer right away. I sent up to the Circuit Court, Judge Pettit's, for McCook, but he soon returned, saying he could not find McCook, and accordingly I hurried with him up to Judge Gardner's office, intending to ask a continuance, but I found our antagonist there, with his lawyer and witnesses, and Judge Gardner would not grant a continu-

ance, so of necessity I had to act, hoping that at every minute McCook would come. But the trial proceeded regularly to its end; we were beaten, and judgment was entered against our client for the amount claimed, and costs. As soon as the matter was explained to McCook, he said "execution" could not be taken for ten days, and, as our client was poor, and had nothing on which the landlord could levy but his house, McCook advised him to get his neighbors together, to pick up the house, and carry it on to another vacant lot, belonging to a non-resident, so that even the house could not be taken in execution. Thus the grasping landlord, though successful in his judgment, failed in the execution, and our client was abundantly satisfied."

Reported by W. J. McPherson of the Denver Bar, 1927.

Recent Trial Court Decisions

(Editor's Note.—It is intended in each issue of the Record to note interesting current decisions of all local Trial Courts, including the United States District Court, State District Courts, the County Court, and the Justice Courts. The co-operation of the members of the Bar is solicited in making this department a success. Any attorney having knowledge of such a decision is requested to phone or mail the title of the case to Victor Arthur Miller, who will digest the decision for this department. The names of the Courts having no material for the current month will be omitted, due to lack of space.)

Denver District Court

DIVISION 4

JUDGE HENRY BRAY

*Illinois Building Corporation vs.
The Guardian Trust Company.*

Facts: General demurrer. Complaint upon lease and rental guarantee of cigar stand executed by President of bank in corporate name without formality of seal or secretarial attestation or recitation of resolution of Board of Directors or Stockholders. Complaint alleged execution by bank in general

terms and temporary possession. Upon contention that guarantee contract was ultra vires the bank and ultra vires the President.

Held: Demurrer over-ruled.

Reasoning: Recitation of agency and agent's authority not essential as against a general demurrer. Act of officers as ultra vires is a defense and is not available on demurrer, unless the facts set up preclude any other possibility as ratification, etc. The facts in this Complaint held not to preclude the intra vires execution either as to the corporation or the officers.

Denver District Court

DIVISION 4

JUDGE HENRY BRAY

*City and County of Denver vs.
Stoddard, et al.*

Facts: Hearing on objections to statutory petition of City for appointment of commissioners in eminent domain proceedings. Petition sets up two separate improvements authorized by two ordinances of City Council on streets separated by the width of the city and prays appointment of only one set of commissioners to appraise damages and injuries for both. Upon statutory objection for misjoinder analogous to special demurrer.

Held: Objection over-ruled.

Reasoning: The present eminent domain statute and particularly the provision for the condemnation of non-contiguous parcels of land authorize such a joinder.

In the United States District Court

JUDGE J. FOSTER SYMES

*T. T. Lackey vs. The Hope Mining,
Milling & Leasing Company.*

Facts: Two suits in ejectment to recover possession of a group of mining claims. Plaintiff, as permitted by the code, seeks to recover possession of all of the properties, although claiming title to undivided fractional interests only of a part of the claims involved. Defendant sets up numerous defenses in law and also pleads certain equitable defenses. The prayer is that the plaintiff be enjoined from asserting his technical legal titles. For the purpose of discussion only defendants concedes the plaintiff has a technical legal title to fractional parts and that its own legal title is defective, but asserts plaintiff should be enjoined from asserting his legal title because he has

been guilty of laches, dishonest and fraudulent conduct, and that to permit him to recover at law would be to countenance unjust enrichment as a result of alleged carefully planned purchases of legal titles for the purposes of litigation. It is brought out that the Hope Company was a public enterprise to try and develop these mining properties during a long period of depression. It is urged that plaintiff stood by and permitted this laudable public enterprise to proceed and that he is now estopped. Defendant says it acquired tax titles because the owners had left the county and could not be found.

Question: The sufficiency of the equitable defenses.

Held: Inadequate.

Reasoning: The tax sales were perfectly proper and owner of property need not pay any attention to void tax proceedings. The title to real property depends primarily on the strength of the legal title. The laws in regard to tax titles are highly technical and depend upon a strict compliance with all statutory requirements and decisions. Good intentions, expenditures of money, etc., cannot cure statutory defects. Equity follows the law. A party dealing in tax titles is bound by the maxim, "*Caveat Emptor, Qui Ignorare Non Debit Quod Alienum Emit*".

All He Had

Judge—The policeman says you offered resistance when he arrested you.

Prisoner—Well, your honor, that was all I had. Maybe I'd have been more successful if it had been a \$10 bill.

Hereditary Job

First Burglar's Wife—"Wot's yer little kid goin' to be when he grows up?"

Second Burglar's Wife—"Guess he's goin' to foller in the finger-prints of his old man."—*Judge.*

Whoa!

The Accused—"I was not going forty miles an hour—not twenty—not even ten—in fact, when the officer came up I was almost at a standstill."

The Judge—"I must stop this or you will be backing into something. Forty shillings."—*Tattler (London)*.

The Pedestrian Overzigged

A negro taxi-driver, charged with running a man down, was lectured by the judge, who told him that when in danger of hitting some person he should "zigzag his car."

"I did zigzag, your honor," was the reply, "but dat man was zigzaggin,' too, and he zigged so much faster dan I could zag dat it just nacherly give me swimmin' in de head, and dat's how I come to hit him."

A Clairvoyant

Judge (to convicted burglar): Have you anything to say before sentence is passed?

Burglar: The only thing I'm kicking about is bein' identified by a man who kept his head under the bedclothes the whole time!

—*Dry Goods Economist*.

Force of Habit

"I never knew Jones had twins."

"My Dear! He married a telephone girl and, of course, she gave him the wrong number."—*Kansas City Star*.

Indisputable

"If your client hadn't felonious intention how comes it that the policeman saw him hiding behind a tree?"

"Because the tree wasn't big enough!"

—*Journal Amusant, Paris*.

Must Be Truthful

"What is the defendant's reputation for veracity?" asked the judge.

"Excellent, your Honor," said the witness. "I've known him to admit that he had been fishing all day and hadn't got a single bite."—*Philadelphia Public Ledger*.

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RECORD

P U B L I S H E D M O N T H L Y

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No. 12

Next Regular Meeting

Monday, December 5, 1927, at 12:15
P.M., at the Chamber of
Commerce Dining
Room.

This meeting will be held under the
auspices of the Committee on Crimi-
nal Jurisprudence of the Denver Bar
Association.

Harry S. Silverstein, Chairman,
will preside.

Philip S. Van Cise will speak on
The National Crime
Commission.

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