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Recent Trial Court Decisions

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be increased. This should be accompanied by the complete abolition of the fee system.

4. The jury system should be changed so that the jury panel for the District and County Courts could be used in Justice Courts whenever required.

5. Adequate quarters should be provided for the Justice Courts so that they may preserve insofar as possible a semblance of American courts. It is assumed that adequate quarters will be planned and provided in the new Court House.

Respectfully submitted,

COMMITTEE ON CITY COUNCIL AND GOVERNMENT.

Luke J. Kavanaugh,
Harold H. Healy,
Robert Ryland Bowles,
Jas. Herbert Wilkins, Jr.
C. C. Johnson,
Chester E. Smedley,
O. A. Weller,
W. E. Martin,
I. I. Boak,
C. E. Muehlberg,
John Pershing,
Earl W. Jones.

Recent Trial Court Decisions

(Editors' Note.—It is intended in each issue of the Record to print decisions of all the local Trial Courts decided within the preceding thirty days upon novel questions of law or upon points as to which there is no Colorado Supreme Court decision. 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 the Secretary of this Association, who will digest the decision for this department.)

DIVISION I. JUDGE MOORE

None.

DIVISION II. JUDGE DUNKLEE

None.

DIVISION III. JUDGE BUTLER

Corporations — Amending Articles— Co-operative Marketing Act.

The Colorado Wheat Growers Association was incorporated in 1922. The Supreme Court, in Atkinson vs. Colorado Wheat Growers Association, 238 P. 1117, held that the contracts entered into between that association and its members prior to the enactment of the co-operative marketing act (approved April 13, 1923) are void as against public policy. Dec. 6, 1923, the plaintiff and the defendant entered into the contract in suit. The co-operative marketing act provides for the incorporation of co-operative associations.

Section 27 (a) provides:

"Where any association may be incorporated under this Act, all contracts heretofore made by or on behalf of same by the promoters thereof in anticipation of such associations becoming incorporated under the laws of this state, whether such contracts be made by or in the name of some corporation organized elsewhere, and when same would have been valid if entered into subsequent to the passage of this Act, are hereby validated as if made after the passage of this Act."

Section 29 provides:

"No association organized hereunder and complying with the terms hereof shall be deemed to be a conspiracy or a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or to fix prices arbitrarily nor shall the marketing contracts and agreements authorized in this Act be considered illegal as such or in unlawful restraint of trade or as part of a conspiracy or combination to accomplish an improper or illegal purpose."

Held, that the contract in suit is void; that it was not validated by the co-operative marketing act.

In May, 1924, there was filed a paper entitled "Amended Articles of Incorporation of The Colorado Wheat Growers Association," which changed and greatly enlarged the objects and purposes of the association. It was an attempt to bring the association within the Co-operative Marketing Act. The defendant did not participate in the attempt to amend the articles of incorporation. Held, that under Section 2276 of the Compiled Laws, the attempted amendment is void as to defendant, and did not validate the contract in suit.

Colorado Wheat Growers Association vs. Thede. No. 88678.

Depositions — Subpoenas. The court having held that Section 6570

of the Compiled Laws has no application to the taking of depositions, plaintiff sought under the Code to take the deposition of the defendant. Held.

1. Under Section 376 of the Code of 1921 either party is entitled to take the deposition of the adverse party.

2. A subpoena commanding the witness (defendant) to appear before the notary, "then and there to testify and give your deposition * * * as a witness in said cause of an adverse party is void, and, on motion, it was quashed.

Lednum vs. Lednum. No. 90503.

DIVISION IV.

JUDGE STARKWEATHER.

Judgments—Assignment of As Satisfaction Of.

Attachment suit and money garnisheed. Redelivery bond given and money returned. Judgment for plaintiff entered for amount of money. Writ of error sued out. Supersedeas bond ordered and given. Judgment affirmed by Supreme Court. Surety on re-delivery bond paid judgment debtor and received assignment of judgment and asks writ of sci fa directed to surety on supersedeas bond to show cause why execution should not issue against surety on supersedeas bond, on judgment now held by surety on re-delivery bond by virtue of above assignment. Held: A surety on a re-delivery bond being liable for the payment of a judgment for the return of the money redelivered on execution of re-delivery bond was performing its legal obligation in paying judgment debtor as far as surety on supersedeas bond was concerned and the assignment of the judgment gave the surety on the re-delivery bond as the assignee of the plaintiff no right to proceed against the surety on the supersedeas bond, his remedy being against the defendants against whom judgment was entered.

Allen vs. Liggett. No. 81326. (Written opinion.)

DIVISION V. JUDGE SACKMAN

None.

COUNTY COURT. JUDGE LUXFORD

None.

JUVENILE COURT.
JUDGE LINDSEY.

None.

IN THE JUSTICE COURT.
WALTER E. WHITE, J. P.

Jurisdiction, Forcible Entry and Det. —Rend.:

In a forcible entry and detainer action brought before a Justice of the Peace under Subdivision 4 of Section 6369, Colo. C. L. 1921, the ordinary jurisdictional limitation of $300 does not apply to the amount of rent which may be recovered in said Justice Court as incidental to said forcible entry and detainer action, the recovery of the possession of real property being the primary object of the action and the recovery of rent being merely incidental to the principal relief sought.

Porter vs. Ferguson (Brief filed).
A. T. ORAHOOD, J. P.

We are authorized to state that Justice Orahood concurs in the above decision and such will be the rule in the Justice Courts hereafter.

IN RE WHITMAN

There's no lawyer who will quarrel
With the Whitman speech or moral,
For we recognize he knows whereof
he speaks,
And we need a frank expression
Of the ills of our profession—
It's a thing that every honest lawyer
seeks.

He reminds us of the danger
From the legal money-changer;
How the specialist may specialize too
far;
How the vogue for arbitration
Circumvents adjudication;
And these things demand attention
from the Bar.

Then he shows how delegation
May result in usurpation
Of the powers that to government
belong;
He proclaims state independence
As a question of transcendence
And the centralizing tendency as
wrong.

In this masterful recital,
Every point he makes is vital,
And the questions that remain for
lawyers are:
Will they heed the solemn warning
And, all difficulties scorning,
Let the nation see the power of the
Bar?

—J. C. S.