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## Recent Trial Court Decisions

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## Recent Trial Court Decisions

## *Recent Trial Court Decisions*

(Editor's 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. The names of the Courts having no material for the current month will be omitted, due to lack of space.)

### DIVISION III. JUDGE BUTLER

#### **Eminent Domain. Procedure before Commissioners.**

Commissioners appointed under Eminent Domain Act of 1911 (Comp. L. Sec. 9076, et seq.) held informal hearings, at which no oath was administered; they obtained information from various sources, not under oath; but they gave objector every reasonable opportunity to be heard and to present testimony. He appeared and made oral statements, and afterward filed a written statement relative to his property. Held, that under the act of 1911, unlike the general Eminent Domain act (Comp. L. Sec. 6311, et seq.), the proceedings before the commissioners are preliminary, and are not strictly judicial; that a full hearing upon the merits before a judge or a jury may be had at the option of the objector, and that the informal character of the proceedings before the commissioners does not necessitate the setting aside of their report. *Routt County Development Co. v. Johnson*, 23 Colo. App. 511, and *Pueblo v. Shutt Inv. Co.*, 28 Colo. 524 construed the general Eminent Domain act, and have no application to this case.

*Denver v. Potter et al.*, No. 86801.

### DIVISION IV. JUDGE STARKWEATHER

#### **Corporations—Funds Misapplied by Officer Impressed with Trust in Hands of Other Corporation with Knowledge:**

President of A and B corporations diverted money from A corporation to B corporation, which was used to purchase property for B corporation. Diversion of funds made A corporation insolvent and

trustee in bankruptcy brings suit to impress property of B corporation with trust to the amount of diverted funds.

Shown that president controlled both Boards of Directors and had diverted funds by creating a large personal credit on books of A corporation as salary for himself, contrary to the by-law provisions for no salaries, and had set off diversions to other corporation against so-called claim for salaries.

Held: The knowledge of the president of the A and B corporations of the diversion of said funds was the knowledge of the B corporation and the property of said corporation thereby became impressed with the trust to the amount thereof and trustee granted a lien on the property of B corporation to the extent of said diversions.

*Bailey, Trustee vs. Riant*, No. 89209.

### DIVISION V. JUDGE SACKMAN

#### **Banks in Liquidation—Sale of Assets**

Deputy Bank Commissioner granted authority to sell certain assets of the bank at public auction. Attorney authorized to bid up to \$20,000 for client; failed to bid when Deputy Bank Commissioner announced \$25,000 minimum bid. No bidders appearing for that sum, Deputy Bank Commissioner asked and received authority to sell same at private sale, subject to confirmation by court. "A" offered \$18,000 for assets. Deputy Bank Commissioner tentatively accepted offer and petitioned the court for leave to sell accordingly. Day before hearing "B," whose attorney had failed to bid at public auction, offered to buy for \$18,500 and at hearing submitted written offer and tendered certified check therefor. "A" maintained tentative acceptance of smaller offer by Deputy Bank Commissioner should be recognized by court. At hearing, Deputy Bank Commissioner testified that in his opinion, the smaller offer should be accepted as a matter of precedent.

Held: The interests of the depositors are the primary interests to be protected and the sale of the assets of a bank in the hands of the Deputy Bank Commissioner, being subject to confirmation by the court, any tentative acceptance by Deputy Bank Commissioner of offer to buy said assets is subject to confirmation by the court. The tentative acceptance of an offer by the Deputy Bank Commissioner gives the offeror no vested rights. The court is solely interested in obtaining the greatest

possible amount for distribution among the depositors, and ordered that another public auction be held, at which both of said parties and others might bid and any bids or offers received thereat to be subject to confirmation by the court.

Id. Following said order, "A" requested five and twenty-five days stay of execution pending appeal.

Held: No stay proper under the facts, and stay of execution denied.

In re Bank of Commerce.

#### COUNTY COURT JUDGE LUXFORD

##### Widow's Allowance—Separate Maintenance Agreement as Waiver of:

Widow, alleged to have been absent from Colorado during the year of administration of estate of deceased husband, files application for widow's allowance shortly before closing of estate and elects to take \$2,000 cash in lieu of personalty. Administrator, as a bar to said application, presents separation agreement dated 1920, executed by respective parties following institution of separate maintenance suit, whereby deceased husband gave wife \$1500 alleged to have been all the property then owned by him, the agreement providing that the execution thereof and acceptance of said sum by widow should bar any further claim against husband or his estate, etc., and that presentation of agreement in any court, wherein such claim might be made, should constitute bar to any such suit. Widow's allowance not specifically mentioned.

Held: Widow entitled to widow's allowance.

In re Estate of William E. Gray No. 36024 (Above matter appealed to District Court, No. 93417. Will be reported here when decided there.)

(In this connection, see *Wilson vs. Wilson*, 55 Colo. 70, holding, "An antenuptial agreement wherein the wife relinquished all interest in the husband's estate with a provision, however, for her support should she survive him, would not bar her widow's allowance or would not waive her right to it."

#### JUSTICE COURT

JUDGE A. T. ORAHOOD

##### Justice of the Peace—Power to Amend Process:

Paul Smith was served with summons in which name of defendant read "B. Smith" by mistake. Plaintiff asked leave of Court to amend summons to insert correct name of defendant at time of trial.

Held: The Justice of the Peace has power to amend process after service to state the true facts and a person served with process out of Justice Court wherein his name is misspelled is put upon notice, and must appear and defend and if he does not do so, process may be amended to state correct facts, or if judgment against defendant under erroneous name is entered, the property of the defendant will be bound as if name were correct, the rights of third party not intervening.

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## *A Municipal Court for Denver?*

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Suggestions for the remedy of the overcrowded conditions in the justice of the peace and police courts of Denver have so far consisted in the advocacy of the addition of one or more justices of the peace, to operate under the same methods as are now in vogue. It is believed that a more fundamental reorganization can be made—and sooner or later will have to be made—which will provide not only for the present overcrowding, but correct apparent defects in procedure and also relieve the county court of its civil and criminal cases—leaving it as a probate court. The county court is one of the most efficiently administered public offices we have, but probate work is given preference, and it is thought that should the civil and criminal cases now coming within its jurisdiction be

heard in some other court an all around improvement would be made.

Creation of municipal courts, which would be courts of record, replacing entirely the present justice of the peace courts, and with jurisdiction over all cases except probate now brought in the county court is the remedy suggested. An outline of the practice in municipal courts of two other cities may assist in a determination as to whether or not such a system of courts would be desirable or practicable in Denver.

The municipal courts of Chicago and Cleveland are the most recently organized, and the most modern of their kind functioning in the United States at this time.

Chicago's municipal court is more elaborately organized, and has a greater range