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Recent Trial Court Decisions

Denver Bar Association Record

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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 cooperation 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

Assignment for Benefit of Creditors: Effect of Federal Bankruptcy Act on Attempted Discharge of Assignor from Liability.

Our general assignment act of 1897 (Comp. Laws, Sec. 6241 et seq.) has two distinct features:

(1) It provides for administering the estate of the assignor for the benefit of creditors. This provision of the act is not ipso facto suspended and superseded by the Federal Bankruptcy act. The making of such an assignment, however, is an act of bankruptcy; and if the assignor is adjudged a bankrupt, in proceedings brought within the statutory time, the state court is thereby deprived of further jurisdiction over the assigned estate.

(2) It provides for the assignor's discharge from liability. This provision is suspended and superseded by

the Federal Bankruptcy act; and an order of discharge, at least as to creditors who have not participated in the assignment proceedings, is void; and this is so even though no bankruptcy proceedings have been instituted.

Weisen v. White, No. 93423.

DIVISION IV.

JUDGE STARKWEATHER

Summons—Issuance by Attorney— Validity:

Where, on motion to vacate judgment for attorney's fee and costs rendered for defendant on motion to dismiss action for failure to file complaint within ten days under Sec. 34, Code 1921, it appeared that plaintiff's attorney had not been admitted to practice law in the State of Colorado and had purported to issue and sign a summons and caused the same to be served upon the defendant and no complaint having been filed by the plaintiff.

Held; Under authority of Bennie v. Triangle Ranch Co., 73 Colo. 586, that defendant's judgment was void; that no action was ever commenced by the plaintiff and therefore defendant could not dismiss an action which had never been instituted and predicate a valid judgment for attorney's fees and costs thereon.

Held further; That plaintiff was not estopped to show that his supposed attorney was without authority of law since the defect was jurisdictional, the court never having acquired jurisdiction over the plaintiff or the subject matter.

Ronaldson v. Lappan, No. 90649.

REPORT OF AUDITING COMMITTEE

Denver, Colo., May 26, 1926.

To The Denver Bar Association:

We, your Committee, appointed to examine the books and accounts of Mr. Albert J. Gould, Jr., the Treasurer of The Denver Bar Association, have this day made a complete and exhaustive examination of his books and accounts and find them correct, and herewith hand you on separate sheets a complete statement of the figures showing the amount of money receiv-

ed by him as Treasurer of the Association and the amount of money disbursed by him in his official capacity.

The Committee wishes to direct your attention to the fact that the Association in the eleven months period covered by the report of the Treasurer has been compelled to pay out and expend something over \$1,000 for the upkeep of the library in the Court House. We feel that this is an unjust and unnecessary drain upon the funds of the organization for the reason that the library is used almost exclusively by the courts and the public generally