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## Recent Trial Court Decisions

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book called "Progress and Poverty" in which he advocated the maintenance of government by a "single tax," namely the confiscation of the "unearned increment" upon land—meaning the growth in value of land simply by the growth of population. The citizens of this city and state have repudiated Mr. George's ideas at the polls a number of times; yet even so that gentleman must be smiling in his tomb. Though Denver's population has nearly doubled since 1910 and multiplied nearly ten times since 1880, in many sections of Denver, sections by no means in the backwash, land is worth no more than it was in 1910; in yet others it is worth no more than it was in 1880, and in some even less. Society has taken the unearned in-

crement with a vengeance. Yet were it suggested that Colorado was operated on a single tax policy it would be indignantly denied.

In Bill Nye's fourth-reader story, the "Grammatical Boy," his seven year old hero is made to say:

"In yonder cottage near the glen my widowed mother and her thirteen children dwell with me and I provide for them by digging wells. I toil, oh, so hard, sir, for we are very, very poor, and since my elder sister, Ann, was married and brought her husband home to live with us, I have to toil more assiduously than heretofore. But, oh, sir, should my other sisters marry, I fear that some of my brother-in-laws would have to suffer."

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## *Recent Trial Court Decisions*

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(*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.)

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### *United States District Court*

JUDGE SYMES

**Libel—Judge and Jury—Conformity Act**  
**Facts:** Motion for new trial. Upon trial the Court refused to instruct.

"The Court instructs the jury that under the constitution of the State

of Colorado, in this case, the jury are the sole judges of both the law and the facts."

It did instruct.

"The Court has a certain duty in this case to perform, which cannot be avoided, and has decided and instructs you that the article is libelous *Per se*. That is, as a matter of law it was libel, and the question left for you to decide in what damages, if any, the plaintiff, Frank Seested, is entitled to."

**Held:** Correct as to former, erroneous as to latter. New trial allowed.

**Reasoning:** A Federal Court is not, by the conformity act, required to follow the Colorado Constitutional provision referred to. Nor is that provision declaratory of the Common Law, by which, in libel as in other cases, the Court, not the Jury, is Judge of the Law. But the question as to whether certain publication is or is not libelous where, as in this case, the language is

susceptible of more than one meaning is a question of fact for the Jury.

Seested vs. Post Co., et al, No. 7323.

### *Denver District Court*

DIV. V JUDGE SACKMAN  
Chattel Mortgages—Foreclosure—Tender  
of Payment—Private Sale

Facts: Suit in equity for an injunction to restrain foreclosure sale of a chattel mortgage and to compel its return. After default but before seizure of the chattel (an automobile) plaintiff offered payment to the chattel mortgagee who had theretofore, but subsequent to maturity, assigned to defendant. Defendant was notified of such offer but nevertheless seized the car and purported to sell the same by a private sale found to be collusive.

Held: For plaintiff. Car to be returned and mortgage cancelled upon payment of principal, interest, and de-

fault penalties by plaintiff. Costs to devolve upon defendant.

Reasoning: In Colorado legal title to a mortgage vests in the mortgagee on default notwithstanding offer of payment before seizure. But mortgagor has an equity of redemption which is not barred by private sale except the same be bona fide and for a full consideration. Tender or equivalent will warrant the taxing of costs of suit to redeem to the mortgagee tenderee.

Alden Trading Co., vs. Wharfield,  
No. 95035

### *International Debate*

Cambridge vs. Denver University.

Subject: Resolved that Democracy  
Has Failed.

Trinity Methodist Church at 8 P. M.,  
Wednesday evening, Dec. 15.

Of particular interest to attorneys.  
Public invited.

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