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Recent Trial Court Decisions

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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.)

United States District Court for Colorado

HON. J. FOSTER SYMES, JUDGE

Banks and Banking—National—Receivers—Preferred Claim

Facts: The plaintiff delivered to the D. National Bank a check of Prey Brothers for twelve thousand eight hundred and forty-two dollars and five cents (\$12,842.05) taking back a check for two thousand nine hundred and one dollars and twenty-six cents (\$2,901.26) as change. The D. Bank retained the difference for the purpose and on the understanding that it would be used to pay plaintiff's notes which he understood or assumed were in possession of the D. Bank. The D. Bank had already discounted these notes elsewhere but did not so inform the plaintiff. The D. Bank closed and defendant is its receiver. At the time it closed and at all times after the transaction there was an amount equal or greater than the sum claimed and such amount actually came into the hands of the Controller of the Cur-

rency and the receiver. Upon motion to dismiss a complaint in equity stating the above facts:

Held: The motion to dismiss overruled.

Reasoning: The allegations are sufficient and the Court can assume in the absence of contrary allegation that the check first mentioned was in fact paid to the D. Bank in ordinary course of business.

Bartholf vs. Millett, in equity, No. 8145

Denver District Court

DIVISION I

HON. JULIAN H. MOORE, JUDGE

Replevin—Fraud—Necessity for Demand:

Facts: Plaintiff seeks to recover by replevin a certain picture alleged to be of great value sold by plaintiff to defendant, as plaintiff alleges, upon fraudulent representations of the latter that it was of little or no value. There was no showing of a demand upon defendant for return of the chattel prior to suit brought. Defendant testifies that he would not have complied with such demand had it been made.

Held: For Defendant.

Reasoning: A sale, though fraudulent, where the fraud is collateral and not in esse, passes common law title and right of possession. To maintain replevin therefore, plaintiff must have initially revested title and right of possession in himself by demand and other proper prerequisites stricti juris. Demand was not waived by defendant's subsequent testimony that it would not have been acceded to; nor was the institution of suit in itself sufficient technical demand.

Scott vs. Bohe, No. 93017

DIVISION IV.

HON. JAMES C. STARKWEATHER

Agency—Real Estate Commission—Undisclosed Principle:

Facts: Plaintiff alleges that the defendants employed the Van Sickle Realty Company as an agent to sell certain real estate of defendant's; that defendant as employee of the said company made the sale and the Company assigned the commission to him. Defendants denied the employment of the Company and it appeared in evidence that plaintiff represented that he was in business for himself and that after he had shown the place to the prospect he later told the defendants that he was representing the Van Sickle Company; that the defendants then refused to deal with the Van Sickle Company.

Jury Instructed: That if plaintiff represented that he was in business for himself when in fact he was an employee of a real estate firm and even if defendants had no knowledge that plaintiff was employed by such firm, defendants nevertheless were liable to that firm for the commission if the latter's employee made the sale.

Reasoning: The case is an ordinary case of undisclosed principle. The character of employment was not such as to entitle defendants to insist upon a delectus personae as regards the ultimate principal employee. Boston Ice Company vs. Potter, 25 A. R. 9. Distinguished on the ground that in the instant case defendants entertained no prior affirmative antipathy towards dealing with the Van Sickle Company but refused to do so simply because the latter was unknown to them.

Medary vs. Damon, No. 92024.

(Courtesy of Mr. A. L. Vogl)

Quid Pro Quo

What's the proper "Quid pro quo"?

How is it arrived at?

Fee-committees want to know;
Schedules they've connived at.

But the brave man's fee is won
While the timid tarries.

Here's his rule—the trick is
done—

"All the traffic carries!"

—J. C. S.

Surplus

The local Finance Committee of the American Bar Association Meeting, advises us that there is a surplus in its hands of approximately \$15,000, which will permit of a dividend of approximately thirty per cent to the subscribers to that fund. This dividend will be paid within the next sixty days.

Many subscribers have assigned their share in this dividend to the Judicial Salaries Committee to be used for defraying the expenses of that Committee incurred in connection with advertising, etc.

Qualified

What profession is your boy Josh going to select?

I am going to educate him to be a lawyer. He's naturally argumentative and bent on mixing into other people's troubles and he might just as well get paid for his time.

—Exchange

Tamed Him

Jackson: "Did Duffy's widow succeed in breaking his will?"

Johnson: "Yes, long before he died."

Stragglers and Strugglers

Can the Bar Association, Acting as a "Middleman," Help to Solve the Problem?

The Association performs many altruistic services, not only for its members but for the public at large.

Organized "not for profit" but for usefulness, it is the means of maintaining high ethical standards in the local Bar, providing legal aid for the poor, establishing a "scale" of minimum fees for timid barristers or for those lacking in monetary judgment, and of doing many other unselfish or self-protective acts which add much to its glory.

To extend this collective usefulness is, of course, its primary purpose and one of the problems which has, in the past, received perhaps too little attention is that of extending organized and effective help to the stragglers and strugglers of the profession.

It is unquestionably true, as stated in the twenty-seventh canon of the American Bar Association's Code of Ethics that "a lawyer's best advertisement is a well-merited reputation for professional capacity and fidelity to trust" but that truism applies no less to the butcher, the baker, the candlestick maker, and to the candy man who invented the phrase "a satisfied customer is the best advertisement." Moreover, without clients, there is no reputation and how is the legal straggler or struggler, without capital, influential friends, or a lot of sheer luck, going to establish a reputation?

It may well be that many a potential Daniel Webster with a genuine love and rare aptitude for his profession, waiting in vain for clients, is obliged to desert it prematurely, and it is by no means always a case of the survival of the fittest. Every day some legal light winks out, unwept, unhonored, and unsung.

A man may have courage, integrity, and professional ability, but to succeed at the Bar he must also be blessed with either a private fortune, rare good luck, or influential friends who are sufficiently interested in his getting on to lend him a helping hand, else his qualifications avail him nothing.

Thus, many of the stragglers and strugglers perish by the wayside, and it is the purpose here to suggest a means by which the most desirable of these may be saved to the profession through intelligent and coordinated effort on the part of the association.

The courts are continually confronted with the problem of appointing suitable lawyers for the various tasks to which they are obliged to assign counsel.

Likewise, occasionally, practicing lawyers, unable to take worthy cases either because of some personal or professional relationship to the parties which might embarrass them in their disposition or because of the press of their regular practice, are puzzled as to where these surplus matters should be sent.

A Clearing House Committee of the association, acquainting itself with the qualifications of the stragglers and strugglers, might do much to help both courts and lawyers in these matters and at the same time materially help the stragglers and strugglers themselves.

Such a committee might prepare a confidential questionnaire to be sent to all members of the association, inquiring among other things: Does your regular practice consume all of your time in each working day? Does it provide you with support for yourself and family? If you have a surplus of business, would you be willing to refer such surplus matters to this committee for recommendation as to suitable counsel? In what class of

matters do you consider yourself to be especially well qualified? Do you have special aptitude for any of the following: consultation, briefing, trial work, commercial advice, corporation matters, criminal causes, or any other particular phase of legal work? Will you please name one or two of your brother lawyers who are having a difficult time and whom you consider especially well qualified in any particular branch of the profession?

Many other questions might be added to this list and when the information sought by the questionnaire had been obtained it could be tabulated and card-indexed so that the committee would have a ready reference in the hands of the association's secretary to be used whenever a request was received from courts or lawyers.

If the stragglers and strugglers, or any considerable proportion of them deserve to perish by the wayside, the foregoing suggestion is of no value;

if, on the other hand, they deserve to be helped and encouraged in an organized way, it may have some merit.
—Contributed.

Proving His Pedigree

The recent case of attempted tire robbery, at White's lunch room near Sewickley bridge, was quietly disposed of, it being shown that the accused, Lawrence Kaufmann, of New Kensington, came from very good people and was drunk when he came.—*Pennsylvania paper.*

Sweeping Out Rubbish

Contrary to public opinion, mere schemes to evade law, once their true character is established, are impotent for the purpose intended. Courts sweep them aside as so much rubbish. (Justice Burke in *Davis v. People*, 247 P. 801.)

—Courtesy of Omar E. Garwood.

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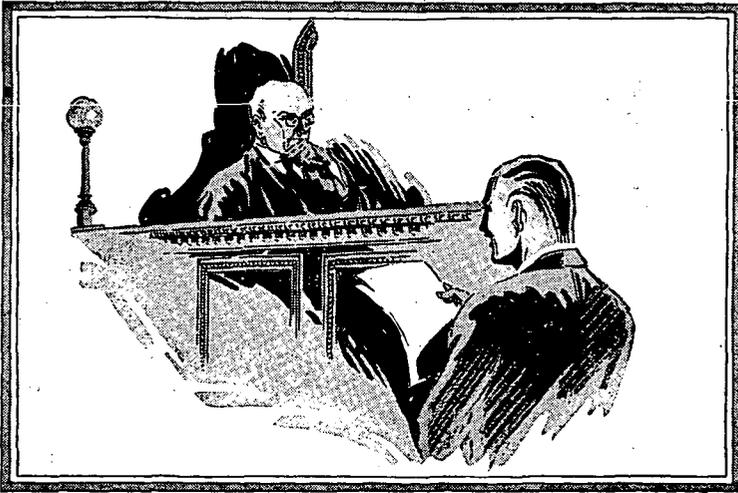
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Leading Articles

THE FEDERAL ESTATE TAX LIEN

GEORGE T. EVANS, ESQ.

REFLECTIONS ON THE GENERAL PROPERTY TAX

VICTOR ARTHUR MILLER, ESQ.

Merry Christmas

*Merry Christmas, fellow member!
May the saint of old December
Bring you happiness unbounded,
And, by loyal friends surrounded,
May your Christmas be as jolly
As the mistletoe and holly.
May your whole New Year be joyous,
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