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BAR ASSOCIATION BILLS

By IRA L. QUIAT, *of the Denver Bar* *

The Legislative Committee of the Denver Bar Association drafted and offered to the 40th General Assembly of the State of Colorado twenty-three (23) Bills.

Twenty (20) of these measures were passed, signed by the Governor, and are now in effect.

S.B. 35—COPIES OF BUSINESS RECORDS AS EVIDENCE

Many business firms now Photograph or Micro-film business records and destroy the original records. This Act makes such substituted records admissible in evidence if the original would be competent.

H.B. 329—APPEALS FROM JUSTICE COURTS AND
H.B. 331—APPEALS FROM MUNICIPAL COURTS

The former statutes providing for appeals from Municipal (Police) Courts from a conviction of a violation of an ordinance, and for appeals from the Justice Courts from a conviction of a criminal offense provided as a condition precedent that the defendant give bond. In a recent case a defendant who had been convicted of a violation of an ordinance sought to appeal to the Superior Court. Judge Johns held that the provision requiring a bond before an appeal could be taken was unconstitutional because a defendant had a fundamental right to appeal. These new acts now provide that a defendant may appeal from the Municipal Court and from a Justice Court by merely giving notice of appeal. If no bond is furnished, the judgment or sentence is not stayed, and the defendant remains in jail. The defendant may at any time after appeal, execute a bond, and the judgment will then be stayed.

The Municipal Court act further provides that upon the trial after an appeal is taken the County Court or Superior Court, and not the jury, fixes the sentence if the defendant is convicted by the jury.

S.B. 72—STATUTORY FORMS OF DEEDS AND MORTGAGES

In 1917, the Legislature passed an act providing for short statutory forms of deeds and mortgages which contained the long form of acknowledgment then provided for by law.

In 1927, the simple form of acknowledgement now used was adopted, but the Revisor of the Colorado statutes did not feel that he had the authority to substitute the simple acknowledgment for the long acknowledgment contained in the sections setting forth the statutory deed and mortgage, and the 1953 computation still provided the long form acknowledgment for the statutory instrument. In this new act, the simple acknowledgment was substituted for the old acknowledgment.

S.B. 201—CONCERNING WILLS

Our probate laws provided that if a witness to a will was de-

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ceased or removed to a distant country, or if his testimony could not be procured, his signature could be established by proof of the handwriting or other admissible evidence.

In the 1953 Revision of our Statutes, through an inadvertence this provision was omitted. The Legislature adopted the 1953 Revision as the official and existing laws of the State. This provision, therefore, was inadvertently repealed.

To re-establish this method of proving the signature of a witness, the above Bill was passed.

H.B. 258—CORPORATIONS

Section 31-1-19, C.R.S. 1953, stated the essential powers which each corporation possessed under the laws of this state, and lawyers did not believe it was necessary to re-state the same in a certificate of incorporation. However, this section contained a provision at the end reading as follows: "provided such powers are included within the objects set forth in its certificate of incorporation." Some lawyers were of the opinion that all of the powers granted to a corporation under 31-1-19 had to be incorporated in the certificate of incorporation because of this proviso. Other lawyers felt that the proviso only applied to the last subsection of this section.

In either case, the Legislative Committee felt that a corporation should have the right to exercise all of these powers whether stated in the certificate of incorporation or not. The Committee, therefore, rewrote the entire section, improved the language, and broadened some of the powers. None of the powers set forth in this new act need be set forth in the certificate of incorporation. All corporations can exercise these general powers, even though omitted from the certificate of incorporation.

Section 31-1-16 formerly provided that the certificate should contain a statement whether the corporation was to have perpetual existence, and if not, its duration.

Section 31-1-19 formerly provided that if no period of existence was stated the corporation was to have perpetual existence. There was an apparent conflict. Under this new act, if the term is not stated, the corporation's existence is perpetual.

Subsection 13 of Section 31-1-6 provided that if a corporation was created for the purpose of carrying on part or all of its business outside of the State, that the certificate should so state. Most certificates failed to contain such provision. Many Colorado corporations transacted business in other states. The law now provides that if the corporation is organized to do *all* of its business outside of the State, the certificate must state that fact. Domestic corporations may now carry on a part of its business in any other state even though the certificate of incorporation contains no statement of such power.

S.B. 202—DISSOLUTION OF CORPORATIONS

Section 31-6-3, C.R.S. 1953, provided that a corporation could not be dissolved until, all of its debts were fully paid, the notice

of dissolution was filed with the Secretary of State, a copy thereof in each County where the articles of incorporation had been filed, and the notice of dissolution was published in a newspaper printed in each of such counties. Until all of the foregoing requirements were complied with, the corporation was not dissolved. Technically thousands of corporations purported to have been dissolved are still legally in existence for a failure to literally comply with all conditions.

Now the notice of dissolution may state that all of the debts of the corporation have been paid, or provided for. If a corporation executed a mortgage and thereafter sold the property, and the purchaser assumed the mortgage, the payment of this indebtedness was provided for, and the corporation could be dissolved.

Upon the filing of a certificate of dissolution *with the Secretary of State* the corporation *is dissolved.* Thereafter, the officers of the company must (a) publish at least once the notice of dissolution only in the county where the principal office of the corporation was located, and (b) file a certified copy of the notice of dissolution with the office of the Recorder in each county in the State where the corporation owned an interest in real estate at the date of its dissolution; but these latter requirements are directory and a recovery not exceeding $1,000 for damages resulting from the failure to file in any respected county is provided.

S.B. 292—RELATING TO LIENS

A mechanic's lien properly filed is a charge against the property for a period of six months after the last work or labor is performed or furnished. If an action to foreclose such lien is not brought within said six months' period the lien is of no force. In examining abstracts, lawyers find liens of record for a period longer than six months, and cannot pass the title safely without an independent investigation to determine the lapse of time since the completion of the work or the furnishing of the last labor or materials.

This new Act adds a section to our lien law and requires the lien claimant or someone in his behalf to file annually an affidavit within 30 days from the annual anniversary of a filing of the lien to the effect that the improvements have not been completed. It in no way affects the requirement of the bringing of the suit within six months or the filing of the *lis pendens* within the six months. Hereafter, if the lien is more than one year old, and there is no such affidavit filed, the lawyer can disregard the lien.

S.B.—294—CONCERNING FOREIGN CORPORATIONS

Prior to this new Act, a foreign corporation, if it had any liability in this state, could not mortgage its real or personal property unless it published a notice, for six (6) successive weeks, of its intention to mortgage, and requiring persons who had claims against such corporation, to file the same with a County Clerk in the county in which the property was located. If the foregoing requirements were not complied with, the mortgage was void.

Most lawyers disregarded these provisions and approved titles for loans to foreign corporations and titles based on mortgages to foreign corporations without determining whether these provisions had been complied with.

The new law eliminates these unreasonable technical provisions and places foreign corporations on the same plane as domestic corporations in so far as mortgages. There are some other minor changes in this law which I do not detail.

The Secretary of State is now designated as the agent of a corporation for the service of process if the corporation has not appointed an agent in this state, or if the agent is absent from the county for 30 days.

S.B. 32—CONCERNING JOINT TENANCY

Section 118-2-1, C.R.S. 1953, formerly provided that no joint tenancy could be created unless the instrument of conveyance expressly declared the property was to pass "not in tenancy in common but in joint tenancy." If a deed conveyed to two persons merely as joint tenants, no joint tenancy was created. This technicality is now removed. If the instrument sets forth that the property is conveyed in joint tenancy, it is sufficient.

The old law detailed instances where a grantor could name himself and others as grantees, but through inadvertence provided that tenants in common and joint tenants could convey to themselves, or to themselves and others. In other words, *all* of the joint tenants, or *all* of the tenants in common had to be grantees, and if it was the desire of a number of such owners to convey that property to a lesser number of the grantors, it could not be done by such instrument.

The new law uses the simple expression that a grantor can also be one of the grantees.

S.B. 199—APPOINTMENT OF TRUSTEE TO MAKE MINERAL, OIL AND GAS LEASES WHERE FUTURE INTERESTS ARE INVOLVED

The discovery of oil, gas, and uranium in vast quantities in this state focused the attention of lawyers upon the legal complications in obtaining leases where "future interests" were involved. The proceeds from oil and minerals are a part of the corpus and not income from the land. A life tenant has no right to deprive the owners of future interests from the oil and minerals in and under the land. Many parcels of real estate could not be leased because of the inability to obtain the signatures of the owners of future interests to such lease. Oil and gas wells situate on a joining land were draining the oil and gas from the land affected by the future interests, and there was no remedy.

This Act empowers the Court in an appropriate action to appoint a trustee to make such a lease, and provides for the apportionment of the proceeds.

S.B. 293—FORCIBLE ENTRY AND DETAINER

Section 58-1-10, C.R.S., 1953, provided that on the face of a

complaint in a F.E.D. action a copy of Section 58-1-12 should appear. This was an error, it should have read Section 58-1-13 (the requirement to answer).

The Legislative Committee corrected this mistake, re-wrote this section, and made it clear and simple. Instead of requiring the answer to be filed on or before the "return day," the answer must now be filed on or before the "time specified for the appearance of the defendant in the summons." In a Justice Court a plaintiff no longer has to wait until the next day to have a default, but it can be entered against a non-appearing defendant within one hour after the time specified in the summons for appearance as in other justice cases. The pleadings need no longer be verified.

The old Section of the F.E.D. Act concerning "Notices to Quit" to terminate a tenancy was ambiguous in many respects. It has been re-drafted and a definite period for the service of the notice to terminate tenancies of all kinds is now clearly provided. The ambiguity as to whether a tenant had to serve such notice on the landlord has been eliminated, and both the tenant and the landlord must now serve a notice to terminate a tenancy unless the tenancy by the terms of the agreement ends at a time certain.

H.B. 261—ASCERTAINMENT AND APPORTIONMENT OF PRINCIPAL AND INCOME BETWEEN TENANTS AND REMAINDERMEN

Many states have adopted this uniform act which provides a clear method of ascertaining income and principal and the apportionment of receipts and expenses between tenants and remaindermen when there is no provision, therefore, in the instrument creating such estates. The act is about six or seven pages in length and space cannot here be taken to set forth the various provisions. All lawyers should acquaint themselves with the provisions of this new law.

H.B. 259—PROPERTY ACQUIRED BY TAX DEEDS

The City of Denver, in disposing of real estate it acquired through treasurer's deeds, followed a practice which was not in full compliance with Section 137-10-43, C.R.S. 1953, relying on the provisions of the charter and the ordinances of the City. This new law added a new subsection to the effect that the provisions of Section 137-10-43 do not apply to cities and counties of a population in excess of 300,000, and that such cities and counties may make sales and leases of tax title lots in compliance with the charter and the ordinances of such city and county. A six months' limitation period is fixed in which to question prior sales made by such city and county.

H.B. 260—ACKNOWLEDGMENTS

This law reinacts our acknowledgment statute and adds two additional subsections providing (a) that if the persons acknowledging the instrument be the directors, trustees, or managers of a dissolved or expired corporation, that the acknowledgment is

prima facie evidence that such persons were such directors, trustees, or managers and (b) if the person acknowledging be a partner that the acknowledgment is *prima facie* evidence that such person was a partner and had the proper authority from the partnership to execute and acknowledge the instrument as the act of the partnership.

S.B. 200—RELIGIOUS, EDUCATIONAL AND BENEVOLENT CORPORATIONS

Lawyers examining titles found that religious, educational, and benevolent societies (hereinafter collectively styled religious corporations) having an interest in real estate were incorporated under the non-profit statute. This was expressly prohibited under the provisions of the statutes relating to religious corporations. A serious question as to marketability was presented.

In 1951 the Legislative Committee recommended to the Legislature a new non-profit statute which was passed and which provided that religious corporations could be incorporated under this new non-profit statute. The 1953 revision of our statutes started out by stating that the non-profit law did not apply to any religious corporations. That rendered futile the action of the Legislature in 1951.

To eliminate this mistake on the part of the revisor of the statutes and to modernize and to remove any antiquated provisions of the law governing religious corporations, this new law was passed. Religious corporations can now be incorporated either under this new act or under the non-profit statute.

S.B. 203—AMENDING CERTIFICATE OF INCORPORATION

The laws concerning the amending of certificates of incorporation provided that no corporation could, by amendment, change the objects and purposes for which the corporation was originally organized. This worked a hardship on many existing corporations who wanted to expand into new lines and endeavors.

We re-wrote Section 31-3-1 giving a corporation unlimited power to amend its certificate of incorporation.

The old law also attempted to provide for amendments of certificates of incorporation of corporations not having any stock. There are separate provisions of law dealing with amendments of certificates of incorporation for non-profit, religious, and similar corporations. We, therefore, eliminated these provisions in the old act which created confused situations.

S.B. 291—RELATING TO INSURANCE COMPANIES

Domestic insurance companies are required to deposit securities with the insurance commissioner. Foreign corporations doing business in this state, as a general rule, make no such deposit with the Colorado insurance commissioner. In a number of cases, judgments have been obtained against foreign insurance companies in

Colorado courts and the foreign insurance company refused to pay the judgment, necessitating another suit in the state where the insurance company was domiciled.

Under this new act, if a judgment is obtained against a foreign insurance company and is not paid, and the sheriff's return discloses that he cannot collect the judgment, the judgment creditor or his attorney may file a complaint with the insurance commissioner. After reasonable notice to the insurance company, the commissioner may suspend the license of such company to do business in this state, until the judgment is paid.

H.B. 385—RELATING TO CHATTEL MORTGAGES

A chattel mortgage filed or recorded, created a lien for two years. The lien could be extended by filing annual statements within 30 days after each anniversary of the filing or recording of such mortgage.

This new act merely enlarges this 30-day period to 90 days.

H.B. 257—DETERMINATION OF DESCENT OF PROPERTY

Many lawyers felt that the statutes concerning determination of descent of real estate should be broadened to include personal property. In case of a farm, the heirs of a deceased person could be determined without probate proceedings, but if there was ditch stock in connection with the farm, there was no similar procedure to determine who were the owners of the ditch stock.

The new law broadens the old law so that the descent of real and personal property of a deceased person may be determined, and if desired in the same proceeding. There is a change in the title, and in place of the word "land" the word "property" is now used. There are minor changes in the form of notice and in the giving of the notice.

APPRECIATION

The writer wants to thank each and every member of his committee for the weeks of work required to draft the various bills submitted to the Legislature, for the hours consumed in checking bills sponsored by others, and for the magnificent job the Legislative Committee has done.

The Bar Association owes a deep debt of gratitude to many members of the Legislature. It would not be fair to single out and name some of them and omit others.

However, we cannot close this article without expressing our appreciation to Senator Don Brotzman, the Chairman of the Judiciary Committee of the Senate, and to Paul Hodges, the Chairman of the Judiciary Committee of the House. While each of these men carried a terriffic load as the Chairmen of these committees, nevertheless, they were never too busy to listen to us. They gave us courteous attention and brought our bills to the attention of the Committee so that they did reach the floor of each House.