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Constitutional Law, Elections, Banks and Banking

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suit, the insured defendant brought his insurer into the case by a third party complaint asking for judgment against the company for any sum he should be obligated to pay the plaintiff. The defendant recovered judgment against the company for the same amount as plaintiff's judgment. The Company contended that defendant had no right to make it a third party defendant because of a "no action" clause in the policy. Held: The purpose of Rule 14 (a) is to settle as many conflicting interests as possible in one proceeding. The "no action" clause is directly opposed to this rule and courts should not permit litigants to circumvent rules of court by contractural arrangements. The court also held, however, that the policy in this case was one of liability and not indemnity, and did not contain a true "no action" clause.

McCoy v. District Court:[10] At a pre-trial conference in an automobile damage case, the Court ordered the defendant to furnish plaintiffs with copies of statements made by plaintiffs and given to defendants after the accident and before suit was filed. The defendants brought original proceeding for writ of prohibition. Held: Under Rule 34, plaintiff does not have an unqualified right to examine a statement made by him and delivered to the defendant prior to the suit; he must show good cause. Rule 16, providing for pre-trial conference, does not confer authority on the trial court to compel production of documents or force the making of any admissions. The defendant had no adequate remedy here by writ of error.

In *Reserve Life Insurance Company v. District Court*,[11] it was held that where a party is notified to appear for a deposition, he is not entitled to *subpoena* nor to *per diem* allowance nor mileage under Rule 5 (b) (1).

CONSTITUTIONAL LAW, ELECTIONS, BANKS AND BANKING

JOHN R. CLAYTON

Eachus v. People:[1] Defendant was not a bonded butcher and sold some beef. He was convicted in District Court and appealed on constitutional grounds. Our Supreme Court upheld the bonded butcher statute as being within the police power. Our Court further quoted with approval the following from a United States Supreme Court case:

> We hold that the police power of a state embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals, or the public safety.

This case is mentioned to show that the legislature is our first line

[10] 246 P. 2d 619, 1951-2 C. B. A. Adv. Sh. (June 23, 1952).
[11] 1951-2 C. B. A. Adv. Sh. 470 (Aug. 18, 1952).
[1] 238 P. 2d 885, 1951-2 C. B. A. Adv. Sh. (Nov. 19, 1951).

of defense in the protection of personal liberties. The phrase "the public convenience or the general prosperity" is most inclusive.

City and County of Denver v. Thrailkill:[2] Thrailkill sued the Manager of Safety and Excise who, acting under a Denver ordinance, refused to transfer master licenses authorizing the operation of a considerable number of motor vehicles as taxicabs. The renewal of such master licenses was by ordinance placed within the sound discretion of the licensing authority. Thrailkill contended the ordinances against sale, transfer and assignment and such renewability from year to year were unconstitutional. Our Supreme Court upheld constitutionality stating that such a license was nothing more or less than the granting of a privilege to enter upon a business activity, that it was personal to the grantee, and that the licensing official could be reached by proper proceedings in the event of an arbitrary abuse of that discretion. Our Court further stated that such a master license was a mere personal privilege and not property in a constitutional sense. Thus no vested right was acquired when it was originally obtained.

Anderson v. Town of Westminster:[3] Plaintiff complained against the formation of an improvement district contending that the statutes outlining formation of such a district were unconstitutional as violating due process of law because no Court hearing was provided for prior to organization of the district. The statute in question provided for a hearing before the town trustees rather than a judicial hearing. Our Supreme Court, in upholding the constitutionality, stated:

> We believe a hearing before the governing body of the town before the passage of any ordinance and, in the event of a subsequent ordinance creating the district, the right of judicial review of its validity, preserves due process.

Sullivan v. Siegal:[4] Section of act repealing prior act limiting interest on any loan, and other conflicting acts, was invalid and unconstitutional with respect to loans over $300 as not within title stating that act relates to loans of $300 or less, and hence prior act was repealed as respecting loans less than $300, but not as to loans of over $300. It is commented on primarily to direct attention of practicing lawyers to the danger of relying upon the present Colorado Statutes Annotated as law. The practicing attorney can rely only on the Session Laws.

Youngstown Sheet and Tube Company v. Sawyer:[5] The question involved was whether the seizure order of the steel mills was within the constitutional power of the President. Justice Black delivered the opinion. In holding that the seizure order went beyond the constitutional power of the executive, the opinion pointed out that the President had not relied upon any statutory authori-

[2] 244 P. 2d 1074, 1951-2 C. B. A. Adv. Sh. (May 19, 1952).
[3] 244 P. 2d 371, 1951-2 C. B. A. Adv. Sh. (April 21, 1952).
[4] 245 P. 2d 860, 1951-2 C. B. A. Adv. Sh. (May 12, 1952).
[5] 343 U.S. 579 (1952).

zation, but had claimed authority "vested in me by the Constitution and laws of the United States, and as President of the United States and Commander in Chief of the Armed Forces". On the theory of "inherent executive authority" to avert national disaster, the Court rules that the President's power to see that the laws are faithfully executed "limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad". The legislative power was clearly reserved to Congress by the first clause of Article I of the Constitution, it was declared. (In conjunction with this holding, the speech of Chancellor Albert C. Jacobs, 10 Judicial Circuit on July 18, 1952, entitled "The Function of the Courts in Maintaining Constitutional Government and Individual Freedom" is recommended).

ELECTIONS

Martin et al v. Boyle:[6] Under statute providing for organization of fire protection districts, and providing that election for incorporation of territory into districts shall be held and conducted as nearly as may be in same manner as general elections in state, that official register lists of elections may be used for determining voter's qualifications, if a person's name is on latest official registration list his qualifications as voter at general election are established and if he is a taxpayer other than by payment of automobile taxes he is entitled to vote and if he established all of those qualifications and his name is not on official registration list he may establish his qualifications by affidavit. Laws 1947, ch. 238, sec. 1 *et seq.*, 8; Const. art. 7, sec. 11. The statute, sec. 8, ch. 238, Session Laws of 1947, provided that "such elections shall be held and conducted as nearly as may be in the same manner as general elections in this state". Our Court held that the legislature made an unequivocal allowance for conditions not controlled by the general election laws. Thus, in a special election under this particular statute, qualifications may be established by affidavit. Compare this case to *City of Montrose v. Niles*,[7] where our Supreme Court, in a water and sewage bond election, reiterated the general principle that the requirements of the law on the qualifications of electors are mandatory, and must be strictly observed. In the Montrose case our Supreme Court held that an owner of an automobile, who had paid the specific ownership tax thereon, a person who owns property which is assessed in the name of another, and a purchaser of realty under a contract of sale are not "taxpaying electors" and are not qualified to vote in a municipal bond election.

BANKS AND BANKING

First National Bank of Denver v. Jones:[8] Plaintiff purchased an automobile from one defendant and financed the purchase thru the bank. Plaintiff instructed the manager of the installment loan

[6] 237 P. 2d 110, 1951-2 C. B. A. Adv. Sh. (Sept. 24, 1951).
[7] 238 P. 2d 875, 1951-2 C. B. A. Adv. Sh. (Oct. 3, 1951).
[8] 237 P. 2d 1082, 1951-2 C. B. A. Adv. Sh. (Nov. 19, 1951).

department of the bank to investigate the title and to determine whether the car was good security. The bank's officer asked the defendant seller if the title were clear. The seller said it was. Thereupon plaintiff signed the note and chattel mortgage. The car in fact was mortgaged and plaintiff had to pay off said mortgage. She sued defendant seller and joined defendant bank. Upon trial judgment entered against both defendants, the bank appealed. This case was reversed as to the bank only, primarily on the grounds of insufficient pleading to show employment of bank to examine title in plaintiff's behalf. The Court held that the instruction for such an examination was outside of the employee's duty in behalf of the bank and, in performing such examination, the employee became agent of the plaintiff. Any liability resulting from negligence would be the personal liability of the employee and not of the bank.

CONTRACTS, AGENCY, SALES AND CORPORATIONS

HARRY A. KING

With exception of the few cases which are hereinafter discussed, the bulk of the decisions by the Supreme Court in the last year on the questions of contracts, agencies and partnerships, personal property, sales and corporations present examples of the application of familiar rules of law in differing factual situations.

An interesting case presenting and determining questions of procedure in administration of estates and primarily involving the reformation of a contract is that of *Holter v. Cozad,* 238 P. 2d 190. The question presented for determination by the Court was whether or not a contract for the purchase and sale of real property entered into by a decedent during his lifetime, as the seller, and another, as the purchaser, might be reformed and specifically performed in the proceeding to administer the estate of the deceased. The petition to the County Court for this relief was denied. On an appeal to the District Court the relief prayed for was granted. On a writ of error to the Supreme Court it was held that because of the indefiniteness of the description of the property, which was the subject of the contract, that before a specific performance could be decreed the contract must first be reformed to set forth the real agreement of the parties. This the County Court was without jurisdiction to do in the estate proceeding. On the appeal from the decision of the County Court, the District Court's jurisdiction was derivative and limited for the purpose of the appeal to the matters and things which might have been adjudged and determined by the County Court in the first instance. It was, therefore, without jurisdiction to grant the relief awarded in the decree. It was said that the relief prayed for in the petition filed in the County Court should have been sought in a separate proceeding filed in the District Court wherein the contract might have been reformed and specific performance ordered in the one action.

The cases of *Oriental Refining Co. v. Hallenbeck,* 240 P. 2d