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## Supreme Court Decisions

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# Supreme Court Decisions

No. 14722. *Denham Theater, Inc. v. Beeler*. Decided January 13, 1941.

Negligence action wherein the defendant theater produced no evidence on its own part but relied upon the plaintiff's evidence to support the defense of contributory negligence. In view of this fact it was error for the trial court to instruct the jury, "In order for you to reach the conclusion that the defendant has proven its allegation of contributory negligence on the part of the plaintiff, you must feel satisfied in your minds, after hearing and weighing all the evidence, that the evidence produced by the defendant as to such contributory negligence outweighs that produced by the plaintiff." Opinion by Justice Bock. Justices Hilliard and Young dissent.

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No. 14762. *Pattridge v. Youmans*. Decided January 13, 1941.

Fraud action. Plaintiff alleges that defendant was guilty of fraud in pointing out to plaintiff a specific lot as the one which defendant was in process of selling to plaintiff, whereas it was not in fact such lot, and plaintiff lost to the true owner the house which he built upon the wrong lot. Affirming judgment for plaintiff, the opinion holds that statement of a fact as true by one not knowing whether it were true or false is sufficient to carry imputation of fraudulent intent. Opinion by Justice Bakke.

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No. 14532. *Miller's Groceteria v. Food Distributors Association*. Decided January 13, 1941.

Judgment reversed which had been rendered on the pleadings enjoining Miller's Groceteria from giving away bread and bags of groceries in alleged violation of the unfair practices act. The holding is that judgment on the pleadings was improper where a necessary element of the violation of the act, to-wit, "the purpose of injuring competitors and destroying competition," was unequivocally denied by defendant. Opinion by Justice Bouck.

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No. 14882. *Gordon v. Wheatridge Water District, et al.* Decided January 13, 1941.

Determination of the constitutionality of Chapter 175, Session Laws 1939 (35 C. S. A., Ch. 1738, 1939 Supp.), providing for the organization of water and sanitation districts. The act is held constitutional in part and unconstitutional in part. Opinion by Justice Knous. Justice Bock dissents in part.

No. 14756. *Fairall, et al. v. Redmon, et al.* Decided January 20, 1941.

Action to compel officials of old age pensions to certify such pensions to the state auditor on the basis of \$45.00 per month, regardless of the amount available for the payment thereof. Judgment reversed here and writ granted below ordered dismissed. Authority of the state board to prorate the amounts certified is necessarily implied where funds are insufficient to pay in full. Opinion by Justice Burke.

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No. 14635. *Garbarino, et al. v. Union Savings and Loan Association.* Decided January 20, 1941.

Action to recover on a check for \$1,000 written by defendant as part payment on the purchase price of real property from the plaintiff. Defendant had stopped payment on the check. Defenses interposed are no acceptance of plaintiff's offer to buy and the statute of frauds. Acceptance found; and held that the statute of frauds may not be used by a vendee to recover a part payment where the vendor be ready and willing to convey. Opinion by Justice Knous. Justice Bock dissents.

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No. 14673. *Corlett v. Crawford.* Decided January 20, 1941.

Upon conflicting evidence verdict of jury for defendant in error must be affirmed although the evidence of plaintiff in error may seem to the Supreme Court more consistent with the physical facts. Memorandum opinion per curiam.

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*Physicians; License; Optometry.* No. 14735. Decided June 3, 1940. *Bebber, et al. v. Fisher.* District Court, Denver. Hon. Henry S. Lindsley, Judge. Affirmed. In Department.

HELD: 1. The practice of optometry is but one branch of the practice of medicine, and a license for the latter covers the former.

2. An optometrist may practice generally as the employee of a layman.

3. A duly licensed M. D. need not take the examination to practice optometry.

4. The plaintiff is entitled to practice optometry, as an employee of a layman, by virtue of his physician's license, or by virtue thereof, he is entitled, without examination, to an optometrist's license provided he pays the statutory fees.

Opinion by Mr. Justice Burke. Mr. Chief Justice Hilliard and Mr. Justice Bakke concur.



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