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Supreme Court Decisions

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Contracts; Live Stock; Leases; Partido Contracts. No. 14611. Decided May 27, 1940. First National Bank v. Matteson. District Court, El Paso County. Hon. John E. Little, Judge. On Rehearing. Affirmed. En Banc.

HELD: 1. Lease of livestock considered, and held not to be a partido contract.

2. A partido contract need not be in any set form.

3. The character of a lease is not varied by the fact that the interest of lessee is measured in cash.

4. Where one party is lessee of another's property and former mortgages it, the mortgage is not protected as against lessor.

Opinion by Mr. Justice Burke. Mr. Chief Justice Hilliard not participating. Mr. Justice Bakke dissenting.

Water Companies; Rates; Injunction. No. 14650. Decided June 10, 1940. Board of County Commissioners, etc. v. Rocky Mountain Water Co. District Court, Jefferson County. Hon. Robert W. Steele, Judge. Affirmed. En Banc.

FACT: A. The Board of County Commissioners fixed the rate to be charged by the water company for the carriage of water through its ditch, and the company brought injunction to restrain the enforcement of that order. The trial court enjoined the rate fixed by the Board.

B. It was admitted that irrespective of the items of \$7,000 for "working capital" and \$11,564.28 for valuation of company's plant as a "going concern" used in fixing the base for calculation of a proper rate, the rate was confiscatory.

HELD: 1. "Since the only thing enjoined is the enforcement of an admittedly erroneous rate, since such items as value of structures, equipment and operating expense are or may be variable, and since the board may now at any time readjust this rate, we find nothing to review."

2. The Supreme Court finds no justification for advisory suggestions.

Opinion by Mr. Justice Burke. Mr. Chief Justice Hilliard not participating.

Mandamus; Police Department; Waiver of Pension Rights; Dismissal of Provisional Appointee. No. 14623. Decided May 20, 1940—Edwards v. Guthner, etc. District Court, Denver. Hon. William H. Luby, Judge. Affirmed. In Department.

HELD: 1. Where it appears that a provisional appointee employed as provisional stenographer in the Denver police department, although over the age limit, is allowed to take and pass the civil service examination for police operator on the condition he waive his pension right, and where it is determined by the court that pension rights may not be waived, the civil service commission acted properly in striking his name from the eligible list.

2. The enforceable rules of the commission have the same effect as law, and the commission itself must obey them.

3. The requirement of filing formal charges against one whose name appears on the eligible list, applies only to those legally appearing thereon.

Opinion by Mr. Justice Bakke. Mr. Justice Knous and Mr. Justice Burke concur.

Mandamus; Elections; Pleading. No. 14637. Decided May 20, 1940—People ex rel. Harper v. Ingles, et al. District Court, Las Animas County. Hon. John L. East, Judge. Affirmed. In Department.

HELD: 1. Where a specific action is sought to be compelled by mandamus, there must be a clear legal right to have that specific action taken.

2. "If there is any discretion as to the taking or not taking of the action, or if the one sought to be compelled to act has a lawful right to require precedent action by another before acting himself, there is not a clear case of a legal right in the relator to have the action taken until there is a showing that such precedent action has been taken."

3. City clerk may not be compelled to certify election returns of a certain precinct as to the vote cast for city treasurer where it appears that there were errors in the returns of said precinct.

4. Failure to file replication is admission of new matter set up in answer.

Opinion by Mr. Justice Young. Mr. Justice Bouck and Mr. Justice Burke concur.

Appeal and Error; Mandate; Constitutional Law; Full Faith and Credit. No. 14534. Decided February 13, 1940—Meyer etc. v. Milliken et al. District Court, Denver. Hon. Robert W. Steele, Judge. Affirmed. En Banc.

HELD: 1. Where the supreme court, in considering a case upon appeal, enters an order for a mandate, such mandate is to be observed, and the inferior tribunal must yield obedience to it, yet such obedience is not to be blind, but an intelligent obedience.

2. Action of trial court examined and found to be a sufficient compliance with remittitur.

3. A court of this state unquestionably has the power to enjoin the enforcement of a foreign judgment between citizens of this state who are before the court and in the state where the judgment is palpably void upon its face.

Opinion by Mr. Justice Bakke. Mr. Justice Bock not participating.

Municipal Corporations; Torts; Negligence; Damages; Sidewalks. No. 14560. Decided January 22, 1940—Higgins v. City of Boulder. District Court, Boulder County. Hon. Claude C. Coffin, Judge. Reversed. In Department.

HELD: 1. Verdict for \$4,500.00 in favor of plaintiff, 76, against City of Boulder for injuries resulting from fall at night over wire bench on sidewalk on courthouse block, upheld.

2. "The duty of the city was to maintain this sidewalk in a reasonably safe condition for one using it in a proper manner," and such duty extended to the entire sidewalk.

3. "Whether an obstruction not a nuisance per se is such in fact is generally for the jury."

4. "Negligence is generally for the jury, and always so when the measure of duty is reasonable care."

5. Where sidewalk surrounds courthouse block and latter is central one in the city, the city had constructive notice of obstruction thereon, even if its officers were ignorant of it, if, in the exercise of ordinary diligence they should have known it.

6. The question of constructive notice depends upon the facts and circumstances of the particular case, and ordinarily is for the jury.

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

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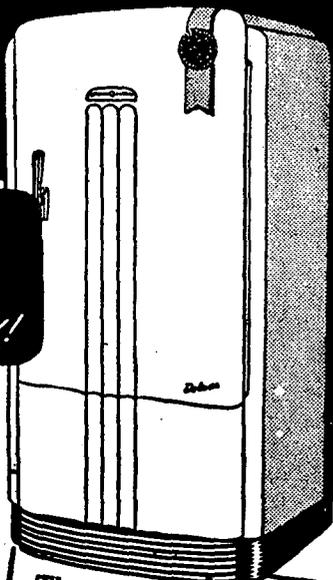


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