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Supreme Court Decisions

Dicta Editorial Board

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Supreme Court Decisions

JUVENILE COURT—DEPENDENCY—EVIDENCE—PETITION—AMENDMENT—*Davis vs. People, etc.*—No. 14482—Decided January 16, 1939—Juvenile Court of Denver—Hon. Eugene Madden, Jr., Judge.

HELD: 1. Evidence examined and found to be sufficient and upon which jury could base verdict of paternity of child.

2. The petition for dependency filed in Juvenile Court before birth of child was properly amended at time of hearing to show birth of child in interim.

3. Where the paternity of the child has been established beyond question, the law should be liberally construed to insure the necessary help to the child and mother, consonant with the father's ability to pay.

Opinion by Mr. Justice Bakke. Mr. Chief Justice Hilliard and Mr. Justice Knous and Mr. Justice Burke concur. IN DEPARTMENT.

WORKMEN'S COMPENSATION—ELECTION—*Stahura v. Industrial Commission*—No. 14465—Decided January 23, 1939—District Court of Denver—Hon. Robert W. Steele, Judge—Affirmed.

HELD: 1. Where coal miner suffers injury to leg, and doctors contend it should be amputated at knee, but claimant refuses to submit to operation, and receives and accepts statutory compensation on basis that leg was removed, he may not later claim additional compensation on the basis of permanent partial disability, for if his disability is greater than it would have been with amputation, it is the result of his own election.

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

CRIMINAL LAW — INTOXICATION — DRIVING AUTOMOBILE — EVIDENCE — CREDIBILITY OF WITNESSES — *Bauer v. People* — No. 14400 — Decided January 23, 1939 — District Court of Logan County — Hon. Arlington Taylor, Judge — Affirmed.

FACTS: Defendant found guilty of driving an automobile while under the influence of intoxicating liquor, having previously been convicted of a similar offense.

HELD: 1. "To prove that a person was intoxicated it is not necessary to prove the process, often a secret one, by which he got intoxicated."

2. "The state of intoxication is a condition as to the existence of which even a lay witness may express his opinion."

3. It was not error for the trial court to admit evidence of previous police court convictions of drunkenness and of driving while under the influence of intoxicating liquor, where the record shows it was admitted for purposes of impeachment. This is particularly so where the testimony of the defendant on direct examination opens the door for such evidence.

4. The Supreme Court has no right to interfere with the determination of the facts by the jury, which were charged with the duty of determining the credibility of the witnesses and the weight of their testimony.

Opinion by Mr. Justice Bouck. Mr. Chief Justice Hilliard and Mr. Justice Bock concur. IN DEPARTMENT.

WILLS—ELECTION OF SURVIVING SPOUSE—FILING ELECTION BEFORE PROBATE—*In re: Estate of Stitzer. Peterson, etc. v. Stitzer*—No. 14481—Decided January 30, 1939—District Court of Denver—Hon. Henry S. Lindsley, Judge—Affirmed.

HELD: 1. An election of a surviving spouse, not to take under the will of decedent, containing a provision reserving right to continue to contest probate of will, is valid although will is eventually admitted to probate and election is filed prior thereto.

2. Any written form of notice which accomplishes the purpose of informing those charged with the administration of the estate that the surviving spouse is dissatisfied with the will and is asserting statutory rights, is sufficient to constitute an election.

3. Form of election examined and found not to be ambiguous as to intention of surviving spouse.

Opinion by Mr. Justice Knous. EN BANC.

VENUE—REPLEVIN—EVIDENCE—*Johnson Oil, Inc. v. Rogers, et al.*—No. 14401—Decided January 30, 1939—District Court of Otero County—Hon. William B. Stewart, Judge—Affirmed.

HELD: 1. Court did not err in granting change of venue upon application therefor, in replevin suit to county where the subject matter (property) of the action was located. (1935 C. S. A. vol. 1, p. 36, sec. 26.)

2. Evidence examined and found to center around conflicting testimony as to oral agreement. Trial court's decision as to existence of such agreement will not be disturbed.

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

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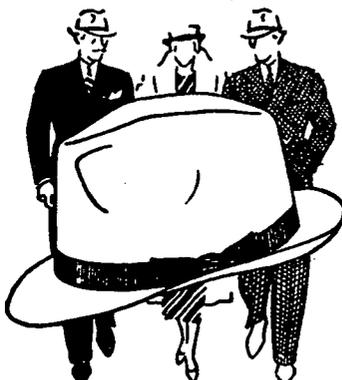
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