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# Supreme Court Decisions

Dicta Editorial Board

# Supreme Court Decisions

WORKMEN'S COMPENSATION—ACCIDENT—*Hallenbeck, et al. v. Butler*—No. 14244—*Decided December 13, 1937*—*District Court of Denver, Hon. George F. Dunklee, Judge*—*Affirmed.*

FACTS: Employee engaged in work which caused dirt, dust and grit to fly into his eyes, over a period of seven years. On one occasion, however, infection set in and he makes claim for medical services for the treatment of the disease. The doctor testified that it was "of the nature of an occupational disease." The claimant did not fix any definite date of injury but stated that on three or four occasions, just prior to the time the infection set in, he got an excessive amount of dirt and grease in his eyes. The commission found that there was no accident and that the infection was only brought about by an occupational disease. The District Court ordered the commission to vacate its award and to carry out judgment in favor of claimant.

HELD: 1. The fact that dust and other foreign substances were constantly present and were characteristic of the particular occupation does not of itself make the condition an occupational disease. The substance which entered claimant's eyes at the time fixed did carry infectious matter resulting in injury.

2. When a physical condition arises which was induced by an unusual or excessive exposure at a time reasonably definite, such condition was unexpected and occasioned by an accident.

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

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SUNDAY BLUE LAW—CONSTITUTIONAL LAW—MUNICIPAL ORDINANCES—POLICE POWER—*Allen v. City of Colorado Springs*—No. 14193—*Decided December 13, 1937*—*County Court of El Paso County, Hon. James F. Sanford, Judge*—*Reversed.*

FACTS: Plaintiff in error convicted of violating ordinance requiring stores for the sale of merchandise to be closed on Sunday, except when required by necessity. Certain businesses such as retail drug stores were exempted from the provisions of the ordinance. Plaintiff in error owned and operated a grocery store and sold certain staple groceries which were not required by necessity. The drug stores in the city sold soaps, flavoring extracts, teas, coffees, spices and other similar articles usually carried by retail groceries.

HELD: 1. The ordinance is unconstitutional in that it is in violation of Sec. 25, Article V, of the Colorado Constitution inhibiting special and discriminatory legislation.

2. "Unquestionably it is the law that a City, in the exercise of the police power, has the authority by general ordinance to prohibit the carrying on within its limits of all businesses or occupations on Sunday,

except those of necessity or charity, upon the ground that thereby the peace, good order, good government and welfare of its inhabitants will be promoted and protected."

3. If in the operation of the ordinance, it is "discriminatory or amounts to class or special legislation, irrespective of the purpose for which it is passed, it is the duty of a court to relieve from its illegal effect."

Opinion by Mr. Justice Knous. Mr. Justice Hilliard and Mr. Justice Bakke dissent.

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ALIMONY—DISCRETION OF COURT—POWER OF COURT TO CORRECT CLERICAL ERRORS—EVIDENCE—*Weydeveld vs. Weydeveld*—No. 14003—*Decided April 4, 1937—District Court of Denver—Hon. Robert W. Steele, Judge—Affirmed.*

FACTS: Plaintiff in error is hereinafter referred to as plaintiff and defendant in error as defendant. They were divorced in 1930 and defendant ordered to pay alimony. The amount thereof eventually became a matter of dispute and finally of misunderstanding. Citation was issued against defendant for failure to pay. The original order was for $30.00 per month. Defendant moved to modify. As disclosed by the court reporter's notes, the order was granted June 8, 1932, and the amount thereby reduced to $20.00, but that order was not entered by the clerk. At the time it was made, defendant was in arrears. Plaintiff here contends that the court was powerless to grant defendant's application for a reduction while he was in arrears, and powerless to supply the missing order from the reporter's notes, hence, defendant was in contempt for failure to pay.

HELD: 1. The best reason for reduction of alimony is inability to pay, but payment is prima facie proof of ability. Modification is discretionary and discretion depends upon the facts.

2. The court has inherent power to correct palpable errors in its record.

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

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TAX SALES—REPAYMENT OF TAXES UNDER A VOID TAX DEED—DESCRIPTION OF THE PROPERTY—REAL PROPERTY—*The Cripple Creek Trading and Mining Co. vs. Stewart*—No. 13913—*Decided April 5, 1937—District Court of Teller County—Hon. John M. Meikle, Judge—Affirmed.*

FACTS: Parties are hereinafter referred to as the company and Stewart respectively. Stewart, alleging possession and ownership by virtue of tax deeds, brought action against the company, as holder of the fee, to quiet title to mining claims. On trial, Stewart admitted his deeds were void on their face, made proof of possession and the payment of taxes, and presented evidence of improvements. The court found no improvements, ordered that Stewart be reimbursed for his taxes. The company prosecutes this writ to review the judgment. Its assignments

amount simply to an assertion of error in requiring it to repay to Stewart said taxes.

HELD: 1. Sec. 7429, page 1902, C. L. 1921, provides that in all cases of recovery of land sold for taxes, all taxes paid shall be reimbursed. It evidently contemplates that he shall pay because the property and its tax burden were his and that burden has been discharged by another.

2. He who pays a tax and gets a deed can recover only when the record discloses upon what property the tax was paid and it appears that reimbursement will discharge the tax.

Opinion by Mr. Chief Justice Burke. Mr. Justice Knous concurs.

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EVIDENCE — INSTRUCTIONS — ORDINANCES — VEHICLES — *South Canon vs. Faires*—No. 14111—*Decided April 5, 1937*—*County Court of Fremont County*—*Hon. Kent L. Eldred, Judge*—*Reversed.*

HELD: In an action for a violation of an ordinance which reads: "No vehicle shall pass, or attempt to pass, any other vehicle proceeding in the same direction, at any street intersection of said town," the failure to make signs at the intersection, nor due care, nor lack of it in attempting to pass at the intersection, have any place in evidence or instructions. The simple question is, did the accused one attempt to pass?

Opinion by Mr. Chief Justice Burke. Mr. Justice Knous and Mr. Justice Holland concur.

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CONTRACTS—ROYALTIES—EVIDENCE—CONSTRUCTION—PATENTS —*Six Star Lubricants Co. v. Morehouse*—No. 14146—*Decided December 6, 1937*—*District Court of Denver, Hon. Charles C. Sackmann, Judge*—*Reversed.*

FACTS: Plaintiff, owner of patents on lubricants and greases, entered into contract with defendant to give latter exclusive right, for a consideration, to manufacture and sell lubricants using the elements of the patents during the life of the patents. Later, a new contract was drawn reducing the royalty payment. In the later contract, drawn by defendant's counsel, nothing was said as to the length of time over which the royalty payments were to continue. Plaintiff sued for royalties. Defendant contended that the plaintiff failed to establish that it used the formulae of the patents, that defendant's obligation to pay royalty terminated at the expiration dates of the patent, and that plaintiff should not be entitled to recover after patent expiration date on the theory that the clause in the contract giving defendant exclusive right to make the lubricants under the formulae was impossible of performance. In the trial court a jury held for plaintiff.

HELD: 1. The defendant's obligation to pay royalties continued only so long as it manufactured, jobbed or sold lubricating compounds

made according to the formulae or any patented modifications or improvements thereof.

2. Record examined and found not to contain any evidence, as to one period of time, that defendant manufactured any compounds, sold by it, in accordance with the patents, and, therefore, judgment is reversed and cause remanded for a new trial.

3. Where defendant sends statement to plaintiff marked "royalty account" and showing that for certain months it manufactured and sold a definite amount of the lubricating compounds, and later attempted to modify it by sending plaintiff a letter stating that the figures in the statement were wrong, and that defendant contended its attorneys had advised it that it was no longer liable for royalties, after expiration of patents, the jury was justified in finding that the contract did not terminate upon the expiration of the patents and that the mistake did not relieve defendant from the evidentiary effect that it was liable at least up to the expiration date.

4. "There is no legal inhibition against a party contracting to pay royalty on a patented article or formula for a period beyond the date of the expiration of the patents."

5. In case of ambiguity, uncertainty or indefiniteness, a contract must be interpreted against the party who drew it.

6. Where parties, when entering into a contract, know the expiration date of patents, involved in the contract, and one agrees to pay royalties thereunder for a period of time extending beyond the expiration date of the patent, he may not later be permitted to complain of the anticipated condition brought about by operation of law which permits all persons to use the formulae after the expiration dates of the patents.

Opinion by Mr. Justice Knous. Mr. Chief Justice Burke, Mr. Justice Bouck, and Mr. Justice Young concur.

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BONDS—CONTRACTS—COUNTY REFUNDING BONDS—PLEADINGS—AMENDMENTS—PRESENTMENT FOR PAYMENT—AGENCY OF DEPOSITORY—*Employers Mutual Insurance Co. v. Pitkin County Commissioners*—No. 14096—*Decided December 6, 1937—District Court of Pitkin County, Hon. John T. Shumate, Judge—Reversed.*

FACTS: Action to recover on refunding bonds issued by the county. Each bond is contract in itself and contains the county's absolute promise to pay, and contains a provision that it is payable at the office of the County Treasurer or at the banking house of Kountze Bros. in New York City at the option of the holder upon presentation of the particular bond or coupon. A tax had been levied and collected for the purpose of raising the sum necessary to pay all the bonds maturing on October 1, 1931, and sufficient funds were deposited with Kountze Bros. On October 13, 1931, the banking house went into receivership. Originally the plaintiff's pleadings contained allegations to the effect that a

demand for payment was made upon, and refused by, the County Treasurer as well as that the bonds and coupons had been previously presented for payment at the Kountze Bros. Bank and payment refused. The trial court found for the defendants; the plaintiff appeals and the defendants assign cross-error on the ground that the trial court erred in permitting plaintiff's pleadings to be amended so as to conform to plaintiff's proof, which showed no demand upon Kountze Bros.

HELD: 1. It is elementary that a trial court has the right and duty to exercise its sound discretion in permitting or refusing the amendment of pleadings to correspond with the evidence adduced, but where there was clear, convincing and conclusive evidence leading to the inevitable inference that counsel for plaintiff originally labored under a wrong conception of facts, it was proper for the court to allow the amendments by the plaintiff substituting the truth for previous error. It would have been an abuse of discretion not to do so.

2. It is not necessary for the holder of a negotiable instrument to present the instrument for payment on the day of maturity. Such failure will not discharge the acceptor of a bill or a maker of a note; and this is true, even where the paper is made payable at a particular bank, or some other specified place, and the acceptor or maker can show that he had deposited sufficient funds to meet his obligation at the stipulated place of payment.

3. Where the money for payment is deposited and the depository fails, after maturity of the obligation the loss falls upon the acceptor or maker and not the holder; but where a place of payment is specified in the instrument, and the acceptor or maker can prove that he was at the place, on the day of maturity, ready to pay the amount, or had so deposited sufficient funds to pay the obligation in full, the failure of the holder to present for payment will prevent any subsequent recovery of damages and costs, and subsequently accruing interest.

4. The depository where the obligation is made payable is the agent of the maker, and not of the holder, when there is no evidence of an express authority otherwise.

5. Evidence considered and found to obtain no substantial evidence of estoppel. In the light of the accepted view that no presentation at all is necessary to fix the makers' primary liability, the question of the holder's failure to present the securities within a reasonable length of time is irrelevant and immaterial.

Opinion by Mr. Justice Bouck. Mr. Chief Justice Burke and Mr. Justice Hilliard dissent.

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ESTATES—CLAIMS—EVIDENCE—WITNESSES—STALE CLAIMS—*In re: Estate of Stepp v. Stepp*—No. 14144—*Decided December 20, 1937—District Court of Denver, Hon. Charles C. Sackmann, Judge—Affirmed.*

FACTS: Plaintiff, only unmarried child of family, sued estate of his mother on claim for services as "nurse, attendant, and housekeeper,"

for period of sixteen years. The County Court gave him judgment for full amount, but the District Court reduced it and held that he was not entitled to any compensation for services as "nurse or housekeeper." The executor of the estate appealed. By her will, the mother provided that her estate was to be divided, "share and share alike" among her living children. The claimant relied on testimony of conversations of his mother with others in the presence of one of his brothers and certain persons who purchased the decedent's farm.

HELD: 1. The brother is such an adverse party as is contemplated by Sec. 2, Chap. 177, Vol. 4, 1935 C. S. A. (C. L. 1921, Sec. 6556) and is competent within the meaning of the exceptions contained in paragraph "Sixth" of said section, to testify, for if the judgment is sustained, he takes less as an heir.

2. Where there is nothing to show that the witness has an interest hostile to the estate, and where, on the contrary, the evidence shows that he would take less if the claim were sustained, he may testify.

3. Neighbors who have no interest in the result of the litigation may testify as to the conversations.

4. Where both courts believe the witnesses and the story told is consonant with domestic situations where one child in a large family remains unmarried and takes care of his aging parents, the Supreme Court will not disturb the findings.

5. The claim is not "stale," for it did not mature until the death of the mother.

6. The trial court's decision, on competent testimony, that the services performed were not gratuities, will not be disturbed.

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

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CORPORATIONS — STOCK — DIVIDENDS — TRANSFER AGENTS — LACHES — STATUTE OF LIMITATIONS — TRUSTS — *Holly Sugar Corp. v. Wilson*—No. 14165—*Decided December 6, 1937*—*District Court of El Paso County, Hon. Arthur Cornforth, Judge*—*Affirmed.*

FACTS: Action by A. E. Wilson of Canon City to recover from the corporation the value of shares of its preferred stock owned by him and accumulation of dividends thereon. He recovered.

In 1916 he purchased 20 shares of stock and received certificates in that number of shares previously issued to another, duly assigned. Later, in the same year, the corporation issued and delivered to him four new certificates each for five shares. In 1934 he sold the stock, made

formal assignments of the certificates, which were at once tendered to the corporation for re-issuance to the purchaser, but the company denied his ownership, and retained and "cancelled" the certificates. Although the corporation had declared dividends, it neither paid nor advised him of them, and he knew nothing about them.

The corporation made remittance of dividends to one A. E. Wilson of Denver, who concedes that he does not own the stock or is entitled to the dividends. He did present to the corporation his affidavit that he was the owner of the stock and had lost his certificates, whereupon he received new certificates. Neither man knew of the other until 1934.

HELD: 1. The original owner's loss was not occasioned by any negligence on his part and he was within his right in purchasing the stock through his bank in Canon City and placing the certificates in his safety deposit box. The carelessness was that of the corporation's transfer agent.

2. The owner and holder of certificates of stock is not put on inquiry as to dividends or any question concerning the ownership of the stock.

3. Under the circumstances, the element of time does not operate adversely to the plaintiff.

4. The statute of limitations or the doctrine of laches did not begin to run against the plaintiff until the company repudiated the relation, claimed the stock adversely, and brought such facts to the knowledge of plaintiff.

5. A corporation is trustee for its stockholders, and is bound to protect their interests, and the stockholder has a right to rely upon the fact that the corporation will preserve his right to the stock, and to presume that it will not assert an adverse claim to it.

6. A corporation proceeding to transfer stock, in the absence of the original certificates, does so at its peril.

7. The statute of limitations does not run against any of the dividends, since the certificates made no provision as to time when there is to be a declaration and payment of dividends, and the owner of the certificates was not advised of the dividends until 1934.

8. A stockholder is under no obligation to draw on demand his dividends within any prescribed period. The debt which a declared dividend creates on the part of a corporation to the stockholder is one payable only on demand as is the obligation of a bank to its depositors. It is not subject to limitation until there has been a demand upon the corporation and a refusal to pay.

9. Neither law nor equity favors the corporation.

10. The plaintiff is not to be relegated to an action against the Denver Wilson; it was the corporation which converted the stock.

Opinion by Mr. Justice Hilliard.

NEGLIGENCE—PERSONAL INJURY—TRESPASSER—LICENSEE—INVITEE—CONTRIBUTORY NEGLIGENCE AS A MATTER OF LAW—*Hooker vs. Routt Realty Co.*—No. 14120—*Decided January 24, 1938—District Court of Denver—Hon. Charles C. Sackmann, Judge—Affirmed.*

HELD: 1. Where one is a trespasser or mere licensee, she may not recover from owner of property on which she was injured by falling down a cement stairway on the outside of and at the rear of the building because she must take the premises as she finds them. To trespassers, a landowner owes only the duty of not injuring them by any affirmative act after becoming aware of their presence.

2. One who enters a hotel from the street going through the main lobby, through the hall and to the room of guest who she intends to visit is an express invitee.

3. Merely because one happens to be in a court where a portion of the public was free to go as tenants of the defendant, or customers of those tenants, does not, in itself, indicate any invitation to her in the capacity of a visitor to a sick guest of the hotel. There is no mutuality of interest.

4. Where one departs from the path used by those having occasion to go into the court, she became at best a licensee, and was not even an implied invitee.

5. Where the facts are not in dispute, and plaintiff's contributory negligence is evident and unquestionable, the court may declare the fact established as a matter of law and not permit the matter to go to the jury. EN BANC.

Opinion by Mr. Justice Bakke. Mr. Justice Young, Mr. Justice Knous and Mr. Justice Holland dissent.

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WORKMEN'S COMPENSATION—TIME TO FILE CLAIM—WAIVER—*Garden Farm Dairy et al. vs. Dorchak et al.*—No. 14124—*Decided January 24, 1938—District Court of Denver—Hon. Joseph J. Walsh, Judge—Reversed on Rehearing.*

FACTS: Claimant sustained a compensable injury September 3rd, 1932, but did not file his claim for compensation until March 13th, 1933. He notified employer about middle of February, 1933, that he claimed compensation, the employed filed a report of the accident with the commission, February 17, 1933, and two days later the insurance carrier filed a denial of liability. At the first hearing, the defendant moved to dismiss the claim upon the grounds that it was not filed within six months of the injury, as provided by the statute. The claimant contends that defendants waived the statute because they had knowledge of his intent to file the claim, that before the expiration of the six months' period they filed a denial of liability, setting forth the grounds upon which they would contest the claim on the merits, that

they never filed a supplemental notice of contest setting forth the ground that the claim was not filed in time; and that during the six months' period the insurance carrier procured a physician and surgeon to examine claimant.

HELD: 1. Evidence examined and found not to contain a waiver of statute.

2. There is no showing of a payment of compensation to remove the bar of the statute. Where during the six months' period, the carrier merely has an examination made of the claimant by a physician, who does not treat the claimant, such is not a furnishing of medical services in the sense that it constitutes payment of compensation which removed the bar of the statute. EN BANC.

Opinion by Mr. Justice Young.

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WORKMEN'S COMPENSATION—LACHES—*Industrial Commission et al. vs. Carpenter*—No. 14258—*Decided January 24, 1938—District Court of Denver—Hon. Otto Bock, Judge—Reversed.*

FACTS: Claimant, patrolman on Denver Police Department, was injured while attempting to make an arrest April 25, 1927. He suffered total disability for next 18 days for which he was paid full salary. He resumed his work and retired March 16, 1937. Neither the police department nor the claimant reported the injury to the insurance carrier or to the commission. After he retired (ten years after the injury), he filed his claim.

HELD: 1. The defense of laches is not available under these facts for the proceedings are purely statutory and not equivalent to a suit in equity.

2. The matter is remanded to the District Court with directions to instruct the Industrial Commission to vacate its order, and to take additional testimony and make proper findings and to determine whether or not the injury was due to accident which arose out of and in the course of claimant's employment, and whether or not the salary was paid as compensation for the injury. EN BANC.

Opinion by Mr. Justice Bouck. Mr. Justice Holland not participating.

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MONEY LENDERS—STATUTES—CONSTITUTIONAL LAW—PENALTIES—BOUNTIES—*Siebers et al. vs. Disque et al*—No. 14241—*Decided February 7, 1938—District Court of Denver—Hon. Stanley H. Johnson, Judge—Reversed.*

FACTS: Action to recover three times amount alleged to have been paid upon a loan in excess of that permitted by 1913 Money Lenders Act (Chap. 108, S. L. 1913). Plaintiff alleged the parties had certain loan transactions commencing in July, 1929, with several renewals of the indebtedness, and state that all payments made after

March 10th, 1936, were for excess interest over and above the amount allowed to be received by the defendants under the statute. This statute was specifically repealed by the 1935 Legislature which passed an act containing a section providing that the repeal of the previous statute shall not have the effect of releasing or changing any penalty, forfeiture or liability, "which shall have been incurred," etc.

HELD: 1. Plaintiffs lost their right to recover treble damages with the repeal of the 1913 act. The excess interest, here, was not paid until after the repeal of the act.

2. Plaintiffs may recover the amount of their excess payments, but not the penalty.

3. A law providing a penalty in the form of a bounty to the wronged person is not a contract such as to prohibit the State from repealing such law; it is a contract only to the extent that it bestows the promised bounty upon those who earn it, so long as the law remains unrepealed.

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

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EQUITY — PRESUMPTIONS — CONTRACTS—RAILROADS—SENIORITY RIGHTS—FRAUD—GRIEVANCE COMMITTEES—"MAIN LINE" OR "BRANCH LINE"—UNIONS—*Capra vs. Local Lodge No. 273, of the Brotherhood of Locomotive Firemen and Engineers*—No. 14118—*Decided February 21, 1938*—*District Court of Denver*—*Hon. James C. Starkweather, Judge*—*Affirmed.*

FACTS: Suit of equitable nature brought by Capra, a locomotive fireman in the service of the Denver and Rio Grande Western Railroad Company, to enforce what he claims to be certain seniority rights of himself and fellow members of the defendant in error lodge, over and upon a line of the aforementioned railroad operating between Denvr and Bond, Colorado.

On becoming a member of the lodge, Capra agreed to be governed by the constitution and by-laws of the brotherhood, which authorizes committees of its membership to negotiate for and establish rights in service, and tribunals to determine questions affecting such rights as may arise.

On April 1, 1925, a committee from five of the local lodges located on the railroad's western line entered into a contract with the railroad company here involved fixing certain seniority districts, and certain territory of the railroad system was definitely allocated in the contract. In 1927, the Moffat Tunnel was completed, and the railroad company by leasing certain other lines leading to and through the tunnel, and by construction of 38 miles of new road, established a new line between Denver and Grand Junction. This new line lessened traffic on the old, reducing the working conditions of the firemen. Members of Denver Lodge No. 273 contended as Capra now contends

for them, and himself, that they were entitled to exclusive seniority rights on this new line because it was a "branch" of the old line, and not a "main line," and would come under the provisions of the 1925 contract.

The general grievance committee composed of one member from each local, heard the matter, and by its decision held that Denver Lodge No. 273 was not entitled to *exclusive* rights over the new route and allocated the work by percentage on a pro rata mileage basis between lodges located on the line.

HELD: 1. The presumption is that correct and fair action was taken by supervising authorities and tribunals, and in the absence of fraud or caprice, courts cannot interfere.

2. As to whether the new line is a "branch" or "main line," is a question of fact which was decided by the trial Judge as being a "main line" and which decision the Supreme Court upholds.

3. Locomotive firemen have no inherent right to seniority in service, and can have only such rights as may be based on a contract relative thereto. EN BANC.

Opinion by Mr. Justice Holland.

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CRIMINAL LAW—INFORMATION—ASSAULT AND BATTERY—PENALTY—*Lane vs. The People of the State of Colorado*—No. 14224—*Decided February 21, 1938*—*District Court of Jefferson County*—*Hon. Samuel H. Johnson, Judge*—*Reversed and Remanded.*

FACTS: Lane was found guilty of assault and battery, and on the verdict, the Court sentenced him to a term of six months in jail.

Of the many errors assigned, defendant relies mainly upon the refusal of the Court to sustain his combined motions to set aside the verdict, one of the grounds thereof being in substance that he was served by the District Attorney at the time of arraignment with a copy of information materially different from the one on file with the Court, and upon which practically the entire trial had proceeded before the difference was discovered by him. The defendant's copy charged him with aggravated assault but not with battery, and the information on file, under which defendant was convicted, charges both aggravated assault and battery. The Court withdrew the charge of assault with a deadly weapon from the consideration of the jury and instructed the jury that under the information, it could consider the charge of assault and battery. Defendant had waived reading of the information.

HELD: 1. An information charging assault with intent to do bodily harm does not include a battery if such is not charged, but does include a simple assault, as such is necessarily a part of the aggravated assault. Therefore, under the copy of the information alleged to have been furnished defendant, defendant could not have been convicted,

under the circumstances of a higher degree of crime than that of simple assault.

2. The penalty for a crime is discretionary with the Trial Court within the statutory limitations.

3. Under the Statute the defendant shall, previous to arraignment, be furnished with a copy of the information if he or his counsel make a request therefor. Such a request was not made by defendant, but he cannot be penalized for such failure when he claims that he was furnishd with a copy by the District Attorney. EN BANC.

Opinion by Mr. Justice Holland. Mr. Justice Hilliard and Mr. Justice Bakke concur.

Mr. Chief Justice Burke and Mr. Justice Young concur in the conclusion.

Mr. Justice Bouck and Mr. Justice Knous dissent.

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QUIET TITLE—ASSESSMENT—DESCRIPTION OF "OWNER"—INTEREST, OMISSIONS—NOTICE—*Olson et al vs. The Tax Service Corporation*—No. 14200—*Decided February 21, 1938—District Court of Weld County—Hon. Frederic W. Clark, Judge—Affirmed.*

FACTS: Defendant in error brought action to quiet title to two tracts of land, one containing ten acres and the other fifty. Ownership was founded on two treasurer's deeds issued after the statutory time had elapsed following the sale for the 1929 and 1930 taxes, respectively. Plaintiff in error, Ernest W. Olson, was the owner of a life estate, while plaintiffs in error, Floyd H. Olson, Oscar W. Olson, and Clarence R. Olson, were remaindermen.

HELD: 1. Where property is assessed in deceased owner's name, and where the name and address of the life tenant in said estate is known, the "owner" is sufficiently described and properly assessed.

2. Certificates of purchase are not void where rates of interest are left blank, if there were no bids at the sale for a less rate of interest than the statutory rate.

3. Where the certificate covers forty-seven acres and the deed attempts to convey fifty acres—three acres having been dedicated for a public road—it can be corrected should the occasion arise, and does not amount to a discrepancy which would void the deed.

4. The treasurer did all the law required of him, and more in regard to giving due notice. While public officials must do their duty and comply with the law, the impossible should not be asked of them, nor their offices be made missing heir bureaus. EN BANC.

Opinion by Mr. Justice Bakke. Mr. Justice Bouck concurs in the conclusion.

WORKMEN'S COMPENSATION—INJURY—HERNIA—*Industrial Commission, et al. v. Valdez*—No. 14234—*Decided December 13, 1937—District Court of Huerfano County, Hon. John L. East, Judge—Reversed.*

FACTS: Claimant afflicted with hernia which he contended was the result of an accident arising out of and in the course of employment. Commission found against him. District Court reversed commission.

HELD: 1. Evidence considered and found to reasonably sustain finding of commission that the injury did not arise out of accident in the course of employment.

2. "Inferences and conclusions to be drawn from the evidence in workmen's compensation cases are for the commission and not for the courts."

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

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