

July 2021

Supreme Court Decisions

Dicta Editorial Board

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Supreme Court Decisions, 14 Dicta 25 (1936-1937).

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Supreme Court Decisions

ANNOUNCEMENT—*Louis E. Gelt has been appointed a member of the committee to report Supreme Court Decisions.*

JUSTICE OF THE PEACE—CHANGE OF VENUE—INVALIDITY OF JUDGMENT ENTERED BY JUSTICE OTHER THAN JUSTICE TO WHOM CHANGE OF VENUE WAS TAKEN—*Citizens Industrial Bank vs. Lindsley, as Justice of the Peace*—No. 13975—*Decided September 28, 1936—Opinion by Mr. Justice Holland.*

This was an action in mandamus to compel a justice of the peace to issue execution on a judgment of his court. Mandamus was denied below. Plaintiff brought suit in the justice court of James N. Sabin and one of the defendants filed affidavit for a change of venue which was granted and the suit was transmitted to Henry S. Lindsley, the nearest justice. At the time of the trial, Lindsley was absent from the city and requested Sabin, the nearest justice, to serve in his place. Sabin entered judgment which was later partially satisfied and execution and garnishment was had and two of the defendants moved to quash the execution and for release of the garnishment on the ground the judgment was void. Lindsley sustained the motion and this mandamus action followed.

1. The motion to quash the execution was properly sustained. The execution being issued on a void judgment, its validity may be attacked by motion to quash in the court where issued.

2. Under Section 6184, Compiled Laws of 1921, where a change of venue is taken in justice court the original justice was stripped of all powers except to enter the order of transmittal. Once thus disqualified, the justice remained disqualified for every purpose of the case, even to the end that he, as substitute justice, could not enter a continuance even. Therefore, the judgment entered by the substitute justice who had previously been disqualified, was without authority and it therefore is void.

3. By payment on this invalid judgment, defendant consented to everything which consent could validate, but jurisdiction in this case could not be conferred by consent.

4. The execution issued on this void judgment was correctly quashed, and mandamus will not lie in aid of such a situation.

5. Nothing contained herein is to be considered as a criticism, since it is apparent that the actions of the justice complained of were in the best of faith.—*Judgment affirmed.*

WORKMEN'S COMPENSATION—DEPENDENCY OF POST-INJURY SPOUSE—*State Compensation Insurance Fund, and Hartman Bros., Inc. vs. Hartman, et al.*—No. 14007—*Decided October 19, 1936—Opinion by Mr. Justice Holland, En Banc.*

Decedent injured July 11, 1933. Claim for injuries made and temporary disability benefits paid. After 60 days, he returned to work and continued until September 23, 1934, when he married the claimant. He died October 5, 1934. The District Court found that the decedent's death was the proximate result of his accidental injury, and that the claimant was a dependent within the meaning of the Workmen's Compensation Act as construed in *McBride v. Industrial Commission*, 97 Colo. 166, 49 P. (2d) 386.

HELD: 1. Judgment of trial court affirmed on authority of the holding in the case of *McBride v. Industrial Commission, supra.*—*Judgment affirmed.*

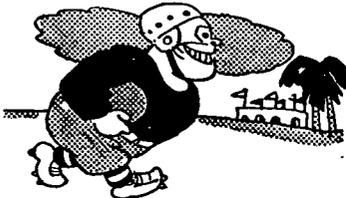
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