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Supreme Court Decisions

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TAXES—TAX SALES—CERTIFICATES—SALE CERTIFICATES IN BULK —ACCOUNTING—*The Klein Land Company vs. Thompson, et al.* —No. 13692—*Decided December 14, 1936*—*Opinion by Mr. Justice Butler.*

Thompson and fourteen other taxpayers of Mesa County sued The Klein Land Company and others to nullify certain resolutions of the board of county commissioners and to abrogate sales of tax-sale certificates and enjoin the issuance of deeds thereon and to compel an accounting. At the close of plaintiff's evidence defendants' motion to dismiss was sustained and judgment entered accordingly. Plaintiffs sued out a writ of error and this court on June 27, 1932, reversed the judgment and remanded the cause to the district court for further proceedings in harmony with the opinion. Thereafter, The Klein Land Company tendered for filing a supplemental answer and upon objections the court refused permission to file the same and the case was retried on the former evidence which was introduced by stipulation and upon additional evidence. The judgment was entered against The Klein Land Company and an accounting had and decree entered in pursuance thereof.

1. The filing of a supplemental answer setting forth facts occurring subsequent to the commencement of an action rests in the sound discretion of the trial court and there was no abuse of this descretion.

2. Even if irrelevant testimony is admitted in an equity case tried to the court, the presumption is that the court did not consider irrelevant evidence.

3. Where it appears that two bulk sales of tax certificates were made to The Klein Land Company, each for a lump sum, such sales were void.

4. Where it appears that pending the litigation The Klein Land Company sold and assigned some of the certificates and sold and quit-claimed some of the land for which it received treasurer's deeds, such assignees were not necessary parties, particularly where The Klein Land Company made no request at the trial that such purchasers be made parties and made no objection to their non-joinder. The objection made at this time comes too late.

5. Moreover, purchasers during the pendency of litigation purchase at their peril and the one from whom they purchase continues the litigation as the representative of their interest. They are not necessary parties to the suit.

6. In the accounting, certain items were charged to The Klein Land Company such as amounts paid to it as purchase price by those to whom it sold certificates and land and another item was charged to

it consisting of certain sums of money deposited with the county in excess of the purchase price of the certificates delivered to the land company, which money had been refunded to the land company. It was erroneous to charge these two items against the land company.—*Judgment affirmed in all respects, except as to the two items charged against the land company.*

Mr. Chief Justice Campbell did not participate.

PLEADING—MOTIONS TO STRIKE OR MAKE MORE SPECIFIC—DISCRETION OF COURT IN RULING THERE—INSUFFICIENCY OF COMPLAINT FOR DAMAGES—*The William A. Box Iron Works Co. vs. The American National Bank of Denver, et al.*—No. 13748—*Decided December 21, 1936—Opinion by Mr. Justice Burke.*

The Iron Works Company brought this suit for damages for destroying its credit and wrecking it. Kunsmiller and Haughwort were vice-presidents and Marple assistant cashier of the defendant bank. It was alleged that the wrongs complained of were accomplished by certain alleged acts of these persons. One of the allegations is that the defendant at a stockholders' meeting appointed one Rubican to be its president and one Elizabeth Box to be its vice-president and Marple as its secretary. How they did this or how the plaintiff company came to submit to such dictation on the part of the bank or its officers was not alleged. Another allegation was that the defendants caused all its funds to be deposited in the bank and that the bank controlled and restricted its use but how they did this or how much the money was and in what manner its deposit was forced and its withdrawal controlled was not alleged. Also it was further alleged that the defendants and unknown persons conspired to liquidate the Iron works company but no details were alleged. Motions to strike and make more specific were sustained to the complaint and the iron works company electing to stand on its complaint and the court below dismissed the action.

1. The motions were properly sustained.
2. The defendants could not safely defend against such general charges.
3. Motions to strike or make more specific are addressed to the sound discretion of the court and rulings granting or denying same are not reviewable except for abuse of discretion and no abuse was shown.—*Judgment affirmed.*

CHARTER—ISSUING BONDS FOR ELECTRIC LIGHT AND POWER PLANT—*Cook et al. vs. The City of Delta et al.*—No. 14014—*Decided January 11, 1937—Opinion by Mr. Justice Young.*

The City of Delta operates under a charter adopted pursuant to Article XX of the state Constitution and is a home rule city. It sought to acquire an electric light plant and in pursuance thereof at a regular election by vote of the people the city charter was amended giving the

city council power to forthwith acquire a municipal electric light and power system and to issue in payment therefor bonds payable solely out of the earnings and revenues to be derived from the operation of the plant and providing that the bonds should not be a general obligation of the city. Plaintiffs brought the action as taxpaying electors seeking to have the amendment declared null and void.

1. The people of Delta had the power to adopt the amendment to its charter, giving the city council the above power.

2. Having such power the city complied with the procedural requirements for doing so.

3. It was not necessary to submit to the taxpaying electorate of the city, it being a home rule city, the question of issuing revenue bonds payable out of the earnings of a light and power plant thereafter to be constructed.

4. The question of the right of the city to use land bought for a tourist park for the proposed erection of a municipal electric plant or the use of money in its treasury derived from general taxation for the purpose of constructing a white way on its main street, were not properly in issue before the trial court and it was error for the court below to render a judgment in finding thereon.—*Judgment affirmed in part and reversed in part.*
