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Supreme Court Decisions

Dicta Editorial Board

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ORIGINAL PROCEEDINGS—*In re: Interrogatories of the Senate Concerning the Constitutionality of House Bill No. 379*—No. 14149—*Per Curiam.*

Interrogatory 1. Does House Bill No. 379 and particularly Section 20 thereof conflict with Section 2(a) of Amendment No. 4 to the Constitution, "The Old Age Pension Amendment"?

The answer is No.

BONDS — TRUSTEE'S LIABILITY — ACCELERATION OF MATURITY DATE OF BOND—*The Union Deposit Co. et al. vs. Talbot*—No. 13899—*Decided April 19, 1937*—*District Court of Denver*—*Hon. Geo. F. Dunklee, Judge*—*Reversed.*

FACTS: The District Court entered judgment for over $2,600 against the defendant Union Deposit Company and also the defendant Union Trust Company. That judgment is brought to the Supreme Court by both companies for review. The sole question is one concerning the acceleration of the maturity date of the bond, which was dated August 8, 1927, and which was to be paid for in ten annual installments of $180 each. Among the terms and provisions incorporated in the bond was the following: "When advance payments are made and with interest computed thereon at 6% per annum, compounded annually, amount to $2,500 before the maturity of the bond, then this bond, at the option of the owner, shall become immediately due and payable, or interest in cash, at 6% per annum, will be paid annually thereafter to the registered owner, his heirs or assigns, until maturity." Results of calculations by experts for both plaintiff and defendant varied as to the maturity date. Defendants contend the action was prematurely brought.

HELD: 1. The error that crept into the calculations represented by plaintiff's expert is the inclusion of those sums which constitute the payments necessary to make up the first $180 annual payment, which should have been paid August 8, 1927, the date of the bond. The payments made on August 8th, September 1st, September 3rd, November 1st, and December 3, 1927, aggregating $179.79, were obviously not advance payments within the meaning of any provisions of the bond.

2. As to the defendant Union Trust Company's contention that the District Court erred in entering judgment against it for the full amount of the supposed liability of the defendant Union Deposit Company, if there is a liability on the part of the latter, it is because of the direct promise to pay the bond. The trust company, however, can be held liable only in connection with its capacity as trustee.

Opinion by Mr. Justice Bouck. Mr. Justice Young dissents.

DISBARMENT PROCEEDINGS—ATTORNEY'S EMPLOYMENT INCONSISTENT WITH DUTIES OF PUBLIC OFFICE—*State of Colorado vs. Nolon*—No. 14019—*Decided April 5, 1937*—*Original Proceeding in Disbarment*—*Respondent Suspended.*

FACTS: Nolon, a member of the Colorado Bar, was elected to the office of State Senator for the Thirtieth and Thirty-first General Assemblies; that in the Thirtieth Assembly he became chairman of the standing insurance committee of the Senate, and of an interim committee to act between the adjournment of the Thirtieth and the incoming Thirty-first assemblies. The interim committee, with Nolon as chairman, was appointed to carry on between the sessions and make a thorough and detailed investigation of any and all alleged unlawful, fraudulent, improper or unauthorized practices, transactions or business of any insurance company. Soon after the adjournment of the Thirtieth Assembly, five companies which were subject to investigation by the committee severally retained and paid Nolon to act as their attorney. Nolon at the time was aware of the fact that the companies knew when they retained him that he was chairman of the interim committee charged with investigation of the respective companies. None of the five companies were examined by the interim committee.

HELD: 1. A State Senator who is a licensed attorney is not disqualified from practicing law during his term of office, but he is not absolved from the requirement of observing the proprieties of his profession.

2. The court does not countenance the conduct of an attorney in accepting tendered professional employment which should have been instinctively rejected by the most unwary of attorneys.

Opinion by Mr. Justice Hilliard. Mr. Justice Bouck and Mr. Justice Knous not participating.

SURETIES—WILFUL MISAPPLICATION OF FUNDS—INTENT—BONDS—FRAUD—*The Mortgage Broker Company vs. Mills et al.*—No. 13878—*Decided April 5, 1937*—*District Court of Denver*—*Hon. Henley A. Calvert, Judge*—*Affirmed.*

FACTS: Reference will be made to the plaintiff in error as plaintiff and defendants in error as defendants, or Mills, and surety or bonding company. Plaintiff sought to recover approximately $4,000 from Mills, a former secretary-treasurer of the company, and the surety on his bonds. Plaintiff's business is that of making loans. Mills became the sole managing agent of the company, because he was called upon to act alone. Plaintiff complains that Mills loaned money in greater amounts than the loan applications called for. The bond is in the form of the usual fidelity bond, and provides for payment of any direct loss caused by the employee named therein "through larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, *willful misap-*

plication, or any other act or fraud or dishonesty * * *." There is not the slightest reflection upon the personal integrity of Mills.

HELD: 1. The words "wrongful abstraction," and "willful misapplication" followed by "or any other act of fraud or dishonesty" in a bond, are construed to indicate or denote acts of fraud or dishonesty.

2. Before the terms used in the bond could have application as the basis of liability on the part of a surety, it first must be established that Mills converted the money or property to his own use or benefit, intending thereby to defraud his company.

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

INSURANCE—COUNTIES—FIDELITY BONDS—STATUTE OF FRAUDS—STATUTE OF LIMITATIONS—CAUSES OF ACTION—ACCRUAL OF —*Massachusetts Bonding and Insurance Company vs. The Board of County Commissioners of Adams County, Colorado*—No. 13886—*Decided April 19, 1937*—*District Court of Adams County*—*Hon. Samuel W. Johnson, Judge*—*Affirmed.*

FACTS: Action brought by the board, defendant in error, against the bonding company, plaintiff in error, to recover on a fidelity bond. Judgment was in favor of the county and the bonding company prosecutes error. Shearston was appointed to the office of Deputy County Treasurer and Deputy Public Trustee for the county on April 6, 1923. The bond was made to indemnify the county for any defalcations caused by Shearston. The premiums on this bond were paid regularly each year. Beginning in June, 1928, and continuing until February, 1933, Shearston embezzled from the County Treasurer's office the total sum of $29,488.37. The lower court allowed the maximum penalty of the bond of $3,000 to be recovered for each of the five years, making a total of $15,000. The bonding company assigns error on the following: (1) That it was surety on only one continuing bond and its maximum liability for the entire period involved was $3,000. (2) Statute of frauds. (3) Bonds were for a two-year period. (4) Recovery barred by the statute of limitations.

HELD: 1. "A renewal of a fidelity policy or bond constitutes a separate and distinct contract for the period of time covered by such renewal, unless it appears to be the intention of the parties, as evidenced by the provisions thereof, that such policy or bond and the renewal thereof shall constitute one continuous contract."

2. The memorandum which the statute of fraud requires was met where the company sent notices of the premium due, identifying the contract, the dates between which the premium operated making the contract effective and subscribed to by an agent whose authority was not questioned.

3. As to the contention that the contracts were for two-year periods: there is no merit in this contention, and the trial court properly found that the contracts were for each year.

4. The three-year statute of limitations may not be invoked against the State, and even though the State was not a party to this action, it is unquestionably true that part of the money stolen belonged to the State.

5. The causes of action do not accrue until the defalcations become known, which was within the three-year period in this case, and therefore the statute of limitations would not bar a recovery.

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

WORKMEN'S COMPENSATION—EVIDENCE OF AN INJURY, TIME OF—THE COMPLAINT—CAUSES OF ACTION—HERNIA—EVIDENCE—SUPREME COURT—*Hallack and Howard Lumber Company et al. vs. Bagly et al.*—No. 14094—*Decided April 19, 1937—District Court of Denver—Hon. Frank McDonough, Sr., Judge—Affirmed.*

FACTS: Proceeding under the Workmen's Compensation Act in which plaintiffs in error are seeking to reverse a judgment of the lower court which affirmed an award of compensation by the Industrial Commission to the defendant in error, Bagly. Bagly was injured on October 28, 1935, while working in the shop of the lumber company, by being struck in the groin by a board. It appears that Bagly had had abdominal trouble before which resulted in an operation for hernia in 1930. His contention here is that his being struck by the board caused a new hernia slightly below where the old one had been. He received medical attention the same day that he was injured; no hernia was found, but he did have a definite tenderness over the left groin. He continued to have pain and it was subsequently discovered that he did have hernia. The award is being attacked because there was no external evidence of the rupture on the same day that the accident happened, but the claimant testified that the injury developed into a rupture. Then the question naturally arises—was the commission justified in making the inference that the accident caused the hernia?

HELD: 1. The outward evidences of an injury need not become immediately apparent. It is sufficient if the injury complained of was set in motion or caused by the accidental injury becoming apparent in a reasonable time.

2. If the facts established are sufficient to cover two causes of action, the court might so treat the complaint. Therefore, the contention of the plaintiffs in error that, "because the Attorney General argued in his brief that the injury would be compensable because of an accident arising out of claimant's employment, it constitutes an abandonment of the hernia as a basis for compensation," is erroneous.

3. Under the Workmen's Compensation Act the Supreme Court is precluded from disturbing findings based upon sufficient evidence.

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

DENVER LAWYERS APPOINTED

Robert E. More and John O. Rames, of the Denver bar, have been appointed to represent the State of Colorado as members of the Standing Committee on State Legislation of the American Bar Association.

The principal function of this committee is to promote the views of the association with reference to legislation pending and proposed in the various states, and especially to sponsor Uniform State Laws drafted and adopted by the National Conference of Commissioners on Uniform State Laws and approved and recommended by the association for passage by state legislatures.