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Supreme Court Decisions

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CORPORATIONS—APPEARANCE IN JUSTICE COURT WITHOUT AN ATTORNEY—*United Securities Corporation vs. Pantex Pressing Machine, Inc., a Corporation, Intervenor, and Byram*—No. 13714—*Decided November 25, 1935—Opinion by Mr. Justice Young.*

FACTS: Plaintiff in error garnished City of Denver to recover property taken from one H. F. Byram for taxes. Defendant intervened under an unrecorded mortgage. Plaintiff was represented in Justice of the Peace Court by a collection agent, who was not a licensed attorney. Justice of the Peace Court entered judgment by default for intervenor, as plaintiff not represented by licensed attorney. County Court refused appeal on same grounds; the plaintiff company was represented there by a licensed attorney.

HELD: C. L. 21, Sec. 6091, provides that a creditor himself may prosecute action in Justice of the Peace Court. Sec. 6093 provides for bond, which was duly filed in this case. Sec. 6056 provides that plaintiff may appear by agent to prevent default. Sec. 6071 provides for appeals to County Court trial. Sec. 5997 provides for license to practice in court of record. Sec. 6017 provides punishment for attempt to practice in court of record without license. Sec. 1, Art. IV, Colorado Constitution, provides Supreme, District and City Courts, and such others as may be provided by law. Justice of the Peace Court established by legislative act is not court of record and legislative enactments allow practice before such courts without license as attorney. Plaintiff corporation complied with statutes in entirety. Agent had right to prosecute case in question in Justice of Peace Court.

CRIMINAL LAW—LARCENY AS BAILEE AND EMBEZZLEMENT—CRIMINAL RESPONSIBILTY OF CORPORATE OFFICERS—INSTRUCTIONS AND VERDICT—*Blackett vs. The People*—No. 13550—*Decided November 25, 1935—Opinion by Mr. Justice Holland.*

Defendant and others were charged with larceny as bailees and with embezzlement. Defendant was the dummy president of a brokerage company. A sum of money was paid to the company by complaining witness under a trading agreement. This money was converted, but the evidence failed to show that defendant either received, traded with or misappropriated the money. His connection with the company in reality was that of employee only. He was found guilty on both counts.

1. The proof was insufficient to sustain a conviction under either count.

2. Evidence of dissimilar transactions was improperly admitted, since neither a bailment nor an embezzlement was proved and defendant was not charged as a conspirator.

3. The giving of an instruction that an officer of a corporation, through whose acts the corporation commits an offense, is guilty of the same offense, was erroneous since there was no proof of any acts committed by the officer.

4. The giving of an instruction charging a corporate officer with such knowledge of its affairs as could be ascertained by the exercise of due diligence was erroneous as not supported by the evidence and as inapplicable to a criminal proceeding.

5. Larceny as bailee and embezzlement may be properly joined in the same information, provided on trial the evidence is limited to one transaction.

The motion to require the prosecution to elect should have been granted.

Judgment reversed.

Mr. Justice Butler, Mr. Justice Hilliard and Mr. Justice Bouck specially concurring.

Mr. Justice Burke and Mr. Justice Young dissenting.

CRIMINAL LAW—LARCENY AS BAILEE AND EMBEZZLEMENT—*West vs. The People of the State of Colorado*—No. 13549—*Decided November 25, 1935—Opinion by Mr. Justice Holland.*

Judgment reversed. See Blackett vs. People, 97 Colo. ——, also decided same day. Mr. Justice Burke and Mr. Justice Young dissenting.

LANDLORD AND TENANT—TENANT NOT AGENT OF LANDLORD—CONTRACTS—*Denver Tramway Corporation vs. Rumry*—No. 13627—*Decided November 25, 1935—Opinion by Mr. Justice Holland.*

Suit for breach of a contract concerning a diversion dam across Bear Creek. Plaintiff recovered for crop damage resulting from flood. The predecessor of defendant and others had built a dam on the site of the one now in question. Plaintiff subsequently released the builders thereof from liability for flood and granted the privilege to maintain the dam up to a certain height. Defendant then acquired title to the adjoining property, which it leased. The dam was reconstructed by the tenant and others to a greater height than that permitted by the agreement. Notice of this fact was given defendant. Plaintiff had judgment below for $1,000.

1. Defendant was not responsible under the general rule for the actions of its tenant.

2. Nor can a covenant of indemnity be implied from the dealings of the parties.—*Judgment reversed.*

BANKS AND BANKING—ACCEPTANCE OF DEPOSIT AFTER INSOLVENCY—*H. E. Woolsey, Plaintiff in Error, vs. People of the State of Colorado*—No. 13659—*Decided November 25, 1935—Opinion by Mr. Justice Young.*

FACTS: Defendant Woolsey was a director and cashier in active charge of state bank. On October 20, 1931, a deposit was accepted and on the same day the bank was closed as insolvent. Information was filed charging defendant with a felony as director, officer, or employee of bank, in accepting deposits after knowledge that the bank was insolvent and also charging larceny, following the form of information used and approved under the Act of 1885, making such Act larceny as well as a violation of Banking Act. Defendant pleads that information is erroneous in that it charges two separate crimes and is ambiguous and misleading.

HELD: Three points involved.

1. The information did include a charge of larceny which was erroneous, but larceny charge was upon same facts as constituted violation of Sec. 2676, C. L. '21. Sufficient facts were alleged to make our violation of Sec. 2676, therefore charge of larceny was mere surplusage and not misleading.

2. Cashier's knowledge of status of affairs of bank, coupled with his silence and failure to order deposits refused, and his knowledge that until ordered to the contrary, deposits would be accepted, operated as an assent to acceptance of deposits. If he did not know, as cashier and general manager, the status of affairs, he was guilty of criminal negligence tantamount to acceptance.

3. Court will not hear or review errors to which objection was not made at time of trial.

WORKMEN'S COMPENSATION—LIMITATIONS OF ACTION—SALARY AND COMPENSATION DISTINGUISHED—*Pearl Morrow vs. Industrial Commission of Colorado, et al.*—No. 13815—*Decided November 25, 1935—Opinion by Mr. Justice Holland.*

Following an injury to plaintiff, the school district paid her for seven months, or to the time of the expiration of the contract, her salary of one hundred twenty-five dollars each month, out of which plaintiff paid a substitute teacher, whom she employed, the sum of one hundred dollars per month. She filed claim for compensation approximately eight years after the date of her injury. The referee determined, as a matter of law, that the claim was barred by Section 84 of the Workmen's Compensation Act, being Section 4458, C. L. 1921, as amended by Session Laws of 1923, Chapter 201, Section 15. Plaintiff contended that the salary paid to her was a payment of compensation and, as to her, removed the operation of the bar of the statute.

1. Plaintiff cannot rely upon salary payments made by the

school district to excuse her delay of approximately eight years in presenting her claim.

Mr. Justice Burke, Mr. Justice Hilliard, and Mr. Justice Bouck dissent.

CONSTITUTIONAL LAW—REGULATION OF HOURS OF LABOR—*City and County of Denver vs. Fred Schmid*—No. 13729—*Decided November 25, 1935—Opinion by Mr. Justice Burke.*

City and County of Denver passed an ordinance in 1934 providing that no barber shop shall be open on Sundays or holidays or between the hours of 6:00 p. m. and 8:00 a. m., from which prohibition beauty parlors were expressly excluded. It was held invalid for the following reasons:

1. That this ordinance is unreasonably arbitrary is self-evident. It is not a limitation of hours of labor.
2. It does not apply to a particular trade or occupation because it is common knowledge that much of the work of barber shops is also performed in beauty parlors, which are expressly excepted.
3. It does not control a business for the benefit of the public.
4. It does not limit the business to when inspectors of State Barbers are on duty for the reason they are not required by law to make more than one inspection annually.

Mr. Justice Hilliard and Mr. Justice Bouck dissent.

DISBARMENT—JUDGE BEN B. LINDSEY REINSTATED—*People, ex rel. Colorado Bar Association, Petitioner, vs. Ben B. Lindsey, Respondent*—No. 12130—*Decided November 25, 1935—Decision en banc. Mr. Justice Campbell dissents.*

AUTOMOBILES—CHATTEL MORTGAGE—DIRECTED VERDICT—*The Leeman Auto Company, a Colorado Corporation, vs. The Swayne-Wimbush Motor Company*—No. 13629—*Decided November 25, 1935—Opinion by Mr. Justice Young.*

The Swayne-Wimbush Motor Company owned a Ford automobile upon which The Leeman Auto Company held a chattel mortgage. The Swayne-Wimbush Motor Company sued for damages, claiming that the mortgagee wrongfully took possession of the car, failed to use necessary care and diligence to secure a reasonable price, but sold the car to the damage of the plaintiff. The case was tried to a jury, which found a verdict in favor of the plaintiff.

HELD: The evidence sustains the verdict and plaintiff in error's objections to certain instructions cannot be considered because such instructions were not inserted in the abstract of record.

FOREIGN TRADE ASSOCIATIONS—RIGHT TO SUE—*Harriet E. Doll vs. Broadway Moving and Storage Company*—No. 13657—*Decided December 2, 1935*—*Opinion by Mr. Justice Holland.*

Plaintiff in error, Anthony Doll and Company, a co-partnership, the partners being residents of the city of New York, brought suit to collect an account.

1. Section 2457, C. L. 1921, concerning the filing of a partnership affidavit, does not apply to transactions in interstate commerce. The statute is not applicable to a non-resident partnership having its principal place of business outside the state and from which it transacted business by means of salesmen or agents coming into this state.—*Judgment reversed.*

COUNTY TREASURER—LIABILITY FOR DEPOSITS—*Jesse R. Patterson, et al. vs. The People, ex rel. Board of County Commissioners of the County of Weld—Decided December 2, 1935—Opinion by Mr. Justice Hilliard.*

Suit was brought by the people on relation of the Board of County Commissioners of Weld County against one Patterson and United States Fidelity and Guaranty Company as surety on Patterson's official bond as County Treasurer. January 1, 1933, when Patterson's successor had qualified, Patterson delivered to him everything belonging to the office with the exception of certain moneys represented by the balance of deposits to the credit of Weld County, made by the said treasurer with a New York banking house which had failed. For thirty years or more it had been a custom of County Treasurers to carry an account in New York for the payment of school bonds. Judgment was given against Patterson and his surety for the balance of the deposits with interest.

HELD: 1. The county had the right to maintain an action for the recovery of the moneys.

2. The doctrine of strict and undivided responsibility of County Treasurers for the safekeeping of tax funds coming into their hands does not admit of the plea of estoppel.

3. That the county took steps in a bankruptcy proceeding to make a claim on account of its loss did not permit delay in delivering moneys to the treasurer's successor in office.

4. The Act of 1927, Session Laws, page 280, requiring County Treasurers to deposit public funds in responsible banks located in the State of Colorado, said to relax the rule of strict responsibility, is without application because the loss was not of money in a bank in Colorado.—*Judgment affirmed.*