Denver Law Review

Volume 13 | Issue 1 Article 7

July 2021

Supreme Court Decisions

Dicta Editorial Board

Supreme Court Decisions

CONSTITUTIONAL LAW—COLORADO INDUSTRIAL RECOVERY ACT—*In re Interrogatories of the Governor Concerning Chapter 89, Session Laws 1935*—No. 13805—*Decided October 28, 1935.*

This opinion was in respect to the interrogatories of the Governor concerning constitutionality of the Colorado Industrial Recovery Act passed by the 1935 legislature.

1. Chapter 89, Session Laws 1935, generally known under the name of Colorado Industrial Recovery Act, is unconstitutional.

2. Said Chapter 89 is a plain violation of Article III of the Constitution of the State of Colorado which divides all governmental powers into three departments and prevents the interference of one to another.

3. Said act is unconstitutional because it is a violation of Article IV of the state constitution which vests all legislative power in the general assembly, save for certain exceptions.

4. The unconstitutionality of the act is settled by the decision of Schechter vs. United States, 55 Supreme Court 837.—*Mr. Justice Bouck and Mr. Justice Hilliard dissent.*

ATTORNEYS-AT-LAW — DISBARMENT — SUFFICIENCY OF GROUNDS FOR—*The People vs. Bentall*—No. 13715—*Decided October 28, 1935.*

This was an original proceeding for disbarment of an attorney-at-law based upon respondent's conviction of a felony.

1. Respondent, an attorney-at-law, having been convicted of a felony, based upon plea of guilty to the commission of eight different felonies, disbarment inevitable.—*Judgment for disbarment entered.*

BUILDING AND LOAN ASSOCIATIONS—STOCKHOLDER—LOAN TO ASSOCIATION—DISTINCTION BETWEEN—*The Silver State Building and Loan Association vs. Austin, et al.*—No. 13551—*Decided October 28, 1935—Opinion by Mr. Justice Holland.*

This action was brought by Austin to recover a balance, alleged to be due from defendant on a transaction claimed by the plaintiffs to be a loan.

1. Judgment for the plaintiff on motion was properly granted.

2. Where a building and loan association borrows money and in consideration thereof issued what it denominates a time certificate which

provides that the same can be cashed at the end of six months for its face value plus interest, this is an unambiguous contract and means exactly what it says and the plaintiff is entitled to his money upon demand after the expiration of the said time.

3. Even though in connection with such loan the building and loan association and the loaner signs an application that he is purchasing certain certificates of stock in the building and loan association, such contract does not change or vary the terms of an absolute promise to repay the money loaned.

4. The instrument evidencing the transaction controls and not the means employed to secure the return of the money two years thereafter. This certificate of deposit clearly indicates an indebtedness which was created and certain and definite arrangements for the repayment thereof by the defendant.

5. An attempt by the defendant to construe the contract as a contract to purchase stock and not a time certificate of deposit cannot be upheld.

6. A time certificate does not become a stock certificate under the pleadings.—*Judgment affirmed.*

Mr. Justice Bouck dissents.

TAXATION—ELEEMOSYNARY CORPORATION—EXEMPTION—*William F. McGlone, Manager of Revenue and Ex-Officio Assessor and Ex-Officio Treasurer of the City and County of Denver, Colorado, vs. The First Baptist Church of Denver*—No. 13523—*Opinion by Mr. Justice Young.*

Action by a religious organization to have certain property removed from the tax rolls and have the same declared exempt under the Colorado Constitution and statutes.

The First Baptist Church purchased ground with improvements thereon and paid taxes until the time the improvements were torn down at which latter time the board of trustees contemplated erecting a new church; for lack of finances the new buildings were not constructed and the lots were vacant for several years.

Held: The trial court was right in finding as a matter of fact that the vacant property was exempt. The tearing down of the old structure was the starting of the construction of a new building, which in good faith is being carried out. The Colorado Constitution (Sec. 5, Article X) provides: "Lots with the buildings thereon, if said buildings are used solely and exclusively for religious worship, for schools, or for strictly charitable purposes . . . shall be exempt from taxation unless otherwise provided by general law." Section 7198, C. L. '21 is almost identical.

The Colorado court has heretofore and now follows the liberal construction and such property is exempt while the program of expansion and construction is in good faith being carried out.

CONTRACTS—PAROL EVIDENCE TO VARY WRITTEN INSTRUMENT—RECITALS—CONSTRUCTION—*Brennan vs. Monson, Public Trustee et al.*—No. 13753—*Decided October 7, 1935—Opinion by Mr. Justice Young.*

This was an action to enjoin the foreclosure of real estate by the public trustee. The plaintiff, Brennan, bought the property from the makers of the trust deed and note. Subsequently an extension agreement was made between him and the note holder. It contained the following recital, "and, whereas, eighteen hundred and no/100 dollars of said indebtedness remains unpaid, with interest paid to March 15, 1932."

Defendant relied on defaults in interest and payment of taxes subsequent to that date. Evidence was offered but not admitted to prove that payments prior to that date were sufficient to cover the alleged defaults and it was stipulated that payments subsequent to the said date were insufficient.

1. This phrase is but a recital and does not constitute a contract that interest was paid *only* to the date of extension.

2. The evidence offered would not have varied the terms of the writing because to have that effect the recital would have to then be read "with interest paid *only* to March 15, 1932," and that was not the contract of the parties.—*Judgment reversed.*

WORKMEN'S COMPENSATION—LIMITATIONS ON WRIT OF ERROR—*Hull vs. Denver Tramway Corporation et al.*—No. 13816—*Decided October 21, 1935—Opinion by Mr. Justice Hilliard.*

The claim being rejected by the Commission, an action was brought in the District Court and on July 31, 1935, judgment was rendered against the claimant. The writ of error issued September 13, 1935.

1. S. L. 1931, P. 825, Sec. 1 requires the clerk of the District Court to return the record to the Commission within twenty-five days unless in the meantime a writ of error addressed to the District Court shall be obtained. This is a short statute of limitations and it is no excuse that the judge was absent and could not sign the bill of exceptions within the said period. The writ of error is a writ of right and the record may be filed subsequently.—*The motion to dismiss the writ of error is granted.*

GARNISHMENT—AUTOMOBILE LIABILITY INSURANCE—*Universal Indemnity Insurance Company, Garnishee, vs. Richard E. Gore*—No. 13517—*Decided October 21, 1935—Opinion by Mr. Justice Hilliard.*

Plaintiff, who sustained damages in an automobile accident, had judgment against the Hertz Driv-Ur-Self System, Inc., which carried liability insurance with the Universal Indemnity Insurance Company. Plaintiff then caused garnishee summons to be served on the insurance company and obtained judgment against the garnishee.—*Affirmed.*

MUNICIPAL CORPORATIONS—ICY SIDEWALKS—NEGLIGENCE—EVIDENCE OF—*City and County of Denver vs. Brubaker*—No. 13470—*Decided October 21, 1935*—*Opinion by Mr. Justice Bouck.*

Plaintiff below slipped on an icy sidewalk and recovered a judgment against the city. City alleges error on two grounds: (1) the refusal of the trial court to permit the introduction into evidence of a certain ordinance relating to the cleaning of snow from sidewalks, and (2) admission of evidence to the effect that other persons had fallen on the same sidewalk.

1. The ordinance sought to be introduced interposes a duty on property owners to keep their sidewalks clear of snow. The city does not become responsible for such an accident until a reasonable time has elapsed and the sidewalk has not been cleared by either the property owner or the city. There was no showing that a reasonable time had not elapsed. The ordinance was inadmissible.

2. Under ordinary circumstances, evidence of similar but disconnected incidents is inadmissible. The evidence here showed, however, that, within a period of forty-five minutes prior to the accident in question, eight people had slipped or fallen. "The repeated slipping within that time—too short to make a substantial change of condition at all likely—had a direct bearing on the issue by indicating an unusual situation which was dangerous." Such evidence tended to give constructive notice to the city in that it showed a continued existence of a dangerous condition.—*Judgment affirmed.*

Justices Campbell, Burke and Holland dissent.

REPLEVIN — ADVERSE POSSESSION — SALE — DAMAGES — INTEREST—*Belcoe vs. Heffelfinger*—No. 13741—*Decided October 14, 1935*—*Opinion by Mr. Justice Burke.*

1. Personal property in the adverse possession of another may be sold by the owner.

2. The purchaser steps into the shoes of the seller.

3. Evidence of damages showing value of property and length of time it had been wrongfully detained was sufficient evidence to go to the jury.

4. Interest was properly allowable.—*Judgment affirmed.*

PHYSICIANS AND SURGEONS—ASSIGNMENT OF CLAIM—LIMITATIONS—*Lanke vs. American Medical and Dental Association*—No. 13575—*Decided October 21, 1935*—*Opinion by Mr. Justice Campbell.*

In an action for professional services the record held to show a proper assignment to plaintiff and the claim held not barred by limitation since sut was brought within the applicable period of limitation after the last item of services on an open account.—*Judgment affirmed.*

CONTRACTS—DIRECTORS OF SCHOOL DISTRICT—CONFLICTING EVIDENCE—*Annie De Herrera vs. School District No. 11, Etc.*—No. 13542—*Decided October 21, 1935—Opinion by Mr. Justice Holland.*

Plaintiff, Herrera, applied to school board for position as teacher, was offered $80 per month and asked for fifteen days' time to announce her acceptance or rejection of offer. Later plaintiff discussed getting higher salary with president of the board but higher amount suggested by president was not satisfactory to plaintiff. Board then hired another teacher, and then plaintiff came into court claiming that she had been hired by the board at $80 per month. Trial court held that no contract had been consummated.—*Affirmed.*

INSURANCE—DEATH FROM ACCIDENTAL MEANS—VIOLATION OF LAW BY INSURED—PUBLIC POLICY—*Metropolitan Life Insurance Company vs. Roma*—No. 13462—*Decided October 21, 1935—Opinion by Mr. Justice Burke.*

Roma carried a life insurance policy which provided for double indemnity in case of death "as the result directly and independently of all other causes of bodily injuries sustained through external, violent and accidental means" which were not "the result of violation of law by the insured." Some person, unknown, entered Roma's house and shot and killed him. His widow sued to collect the double indemnity. The answer of the insurance company alleged that for years Roma had been a violator of the narcotic laws and that he had been the leader of an underworld gang so engaged, which vocation and leadership subjected him to assassination, and that he was killed as a direct result of his vocation and while engaged in the violation of law. A demurrer to this answer was sustained by the trial court. The company elected to stand on its answer.

1. The answer pleaded death by other than accidental means, and it also pleaded death as the result of violation of law by the insured. Therefore, the demurrer was erroneously sustained.

2. A contract to indemnify another for injuries resulting from deliberate violation of the law, even though that purpose is not expressed in the contract, is against public policy and will not be enforced.—*Judgment reversed and cause remanded with instructions to overrule the demurrer.*

Mr. Justice Bouck concurs in the result.

Mr. Chief Justice Butler and Mr. Justice Hilliard dissent.

Mr. Chief Justice Butler, dissenting:

1. The facts pleaded in the answer fail to show a direct causative connection between the violation of law and the death and, therefore, fail to show that death resulted from other than accidental means, as defined in the policy.

EMINENT DOMAIN—FINAL JUDGMENT—ESTOPPEL—*Heimbecher vs. City and County of Denver*—No. 13554—*Decided October 14, 1935*—*Opinion by Mr. Justice Bouck.*

1. A previous mandamus action which was dismissed and not appealed is not res judicata because it failed to state a cause of action and the object sought and the parties defendant were different.

2. In eminent domain proceedings by a municipality the city may dismiss the proceedings within ninety days after the decree, and after ninety days the judgment becomes final and the city is bound to pay the award.

3. The city joined issue in the Supreme Court on a case involving the amount of the damage (the appeal having been taken by Heimbecher). The city contended the award was fair and so is now estopped from claiming the award is excessive in the sense in which excessiveness excuses a failure to complete the award by paying the price fixed.—*Judgment reversed.*

EVIDENCE—CONFLICTING—EFFECT—CANCELLATION OF INSURANCE POLICY—*Retail Hardware, Etc., Insurance Co. vs. Securities Corporation*—No. 13519—*Decided October 14, 1935*—*Opinion by Mr. Justice Burke.*

1. Where evidence of cancellation of fire insurance policy is conflicting judgment below finding that policy was not cancelled prior to a loss by fire, will not be set aside.—*Judgment affirmed.*

WILLS—CONTEST—EVIDENCE—$1.00 BEQUEST—PROPONENT NOT REPRESENT ESTATE—BURDEN OF PROOF—*Lamborn v. Kirkpatrick*—No. 13512—*Decided October 7, 1935*—*Opinion by Mr. Justice Bouck.*

1. It was proper to admit testimony showing that the proponent of a will had engaged in extensive prior litigation and had acquired some knowledge of legal phraseology, in order to prove that the phraseology of the will in question was that of the proponent and not of the testator.

2. In considering the question whether or not a witness is competent to testify because named as a legatee in a will, a bequest of $1.00 is not to be considered as conferring a material benefit.

3. The proponent of a will is not a representative of the estate but is merely an interested party.

4. Proponent of will, who lived in unlawful cohabitation with the testator before and at the time the will was made, has the burden of proving that such relationship was not used to influence the deceased in making the alleged will.—*Judgment affirmed.*

Mr. Justice Holland and Mr. Justice Young dissent.

IRRIGATION DISTRICT BONDS—LIEN ON REAL ESTATE WITHIN THE DISTRICT—*Lida Comstock, Executrix, vs. The Olney Springs Drainage District—Decided October 7, 1935—Opinion by Mr. Justice Campbell.*

Board of Directors of plaintiff drainage district made findings of increased value that would accrue to lands in the district if drainage completed and, pursuant to statute, issued bonds for the purpose of completing drainage. The defendant refused to pay the assessments on her land, which was sold and treasurer's deed issued. The question was whether or not the treasurer's deed to the real estate carried with it the water rights. The court held that the treasurer's deed carried the water rights with the property and denied the contention of the defendant that shares of stock in a mutual irrigation company, not organized for personal profit, but held that such shares of stock are only incident to the ownership of the water right.—*Judgment affirmed.*

PRINCIPAL AND AGENT—AMBIGUOUS INSTRUCTIONS FROM PRINCIPAL—*R. T. Smith and The Larimer County Abstract Company vs. Union Savings and Loan Association*—No. 13717—*Decided October 7, 1935—Opinion by Mr. Justice Bouck.*

Verdict was directed by the lower court in favor of plaintiff in a suit brought by it as principal against defendants as its agents, to recover damages for violation of instructions in connection with the closing of a real estate loan. The agents had construed the instructions as requiring payment of special assessments by the borrower to date of closing, while the principal contended that all deferred installments should have been so paid.

The instructions were ambiguous and the interpretation of the agents reasonable.—*Judgment reversed with directions to enter judgment for defendants.*

TRUST BANKING

for

Corporations and Individuals

Services to Corporations

Trustee under Corporate Mortgages . . . Depository for Protective Committees . . . Transfer Agent and Registrar for Corporate Stock . . . Miscellaneous Fiscal Agencies.

Services to Individuals and Families

Executor and Administrator of Estates . . . Trustee under Wills . . . Trustee of Living Trusts and Life Insurance Trusts . . . Safekeeping of Securities.

Escrows

BUSINESS SERVICE FOR BUSINESS MEN AND WOMEN AND THEIR COUNSEL.

THE AMERICAN NATIONAL BANK
THE DENVER NATIONAL BANK
THE COLORADO NATIONAL BANK
THE INTERNATIONAL TRUST COMPANY
THE UNITED STATES NATIONAL BANK