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Supreme Court Decisions

Dicta Editorial Board

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(EDITOR'S NOTE.—It is intended to print brief abstracts of the decisions of the Supreme Court in the issue of Dicta next appearing after the rendition thereof. In the event of a filing of a petition for rehearing, resulting in any change or modification of opinion, such will be indicated in later digests.)

CONSTITUTIONALITY OF LEGISLATION RELATING TO OLD AGE PENSION LAW—PARTIAL UNCONSTITUTIONALITY OF STATUTES—No. 13149—*The City and County of Denver et al. vs. Anna Lynch and George A. Luxford, as County Judge of the City and County of Denver—Decided December 29, 1932.*

Where the Legislature passed an "Act Relating to Old Age Pensions," and after setting out the requirements to qualify under the Act, provided that the County Judge should "fix the amount of the pension with the approval of the board of county commissioners" and that "such court and board shall be final" and made additional provisions relating thereto, said Act was held to be unconstitutional in that it attempted to confer judicial duties upon officials of another department of government.

Where it appears that, in all probability, the invalid portion of the Act was an inducement to the passage of the valid, and it is not clear that it was the intent of the General Assembly to establish the old age pension system and force it upon the counties with their commissioners deprived of all control over its administration or that the resulting finality of the decision of the county judge would be as potent an argument with the lawmakers for the passage of the Act as the finality of the joint decision of the county judge and the holders of the county pursestrings, it was concluded by the court that the unconstitutional portion of the Act carried the whole down with it.—*Judgment reversed —Mr. Justice Hilliard dissents.*

TAXATION — EXEMPTION — CHARITABLE ORGANIZATION — *Denver Press Club vs. Collins, as Assessor, etc.*—No. 12731—*Decided December 27, 1932—Opinion by Mr. Justice Alter.*

1. A club, formed to create closer social relations among persons engaged in a particular line of work and to promote the interests of the members of the club, is a social organization, and, although it carried on incidental charitable work, its property is not within the purview of Sec. 5, Art. 10 of the Constitution of Colorado and, therefore, is not tax exempt.—*Judgment affirmed.*

WILLS—INVALID BEQUEST—ADMISSION TO PROBATE—*Ireland vs. Hudson et al.*—No. 12965—*Decided December 30, 1932—Opinion by Mr. Justice Campbell.*

1. An instrument of testamentary nature, properly executed, and containing several valid bequests, will not be refused admission to pro-

bate merely because another attempted bequest is invalid.—*Judgment affirmed.*

REVENUE—PROPERTY SUBJECT TO TAXES—WORTHLESS EQUITY IN REAL PROPERTY—EXCESSIVE TAXES—PROCEDURE TO RECOVER — PLEADINGS — NECESSARY ALLEGATIONS — *Bordner vs. Board of County Commissioners Baca County*—No. 12817—*Decided December 27, 1932—Opinion by Mr. Justice Moore.*

1. Bordner sued the Board of County Commissioners to recover $466.72 protested payments of taxes for years 1922 to 1928 inclusive, assessed against his equity in certain school lands, protesting that said taxes were void because "plaintiff owed a greater debt upon said lands than the value of the lands," and "did not own an equity in said lands of any value whatsoever." A demurrer to this complaint was sustained and the cause dismissed.

2. An equity in real estate is a property right subject to taxes notwithstanding it may have no cash value; if of no value, a tax assessment would be excessive but not illegal.

3. Where taxes are excessive the taxpayer must first seek administrative relief afforded by statute.

4. The complaint must allege and the proofs must show that the taxes were paid under protest and that the administrative remedies provided by statute were invoked.—*Judgment affirmed.*

MUNICIPAL CORPORATIONS—PETITIONERS FOR INCORPORATION—LANDOWNERS—"BONA FIDE LANDOWNERS"—HOLDERS UNDER CONDITIONS SUBSEQUENT—EVIDENCE OF CONDUCT AFTER SIGNING PETITION—ADMISSIBILITY—*The People of State of Colorado, on Relation of I. J. Taylor et al. vs. E. P. Koerner et al.*—No. 12888—*Decided December 27, 1932—Opinion by Mr. Justice Butler.*

1. A proceeding to have declared invalid the attempted incorporation of Town of Paoli on grounds that twenty-one signers of the petition for incorporation were not landowners or were not "bona fide" landowners. Each of said petitioners had purchased his land at the price of $25 a lot, paying only $2.50 in cash and receiving a Warranty Deed therefor, which was recorded, and executing his promissory note for the balance. Each purchaser placed in escrow a Warranty Deed from himself to the vendor covering the same property, under escrow instructions to deliver the deed to the vendor if the notes were not paid at maturity, or to cancel the deed if the notes were paid.

2. The conveyances to the purchasers transferred title and were analogous to conveyances upon condition subsequent, divesting the grantor of his title and vesting it in the grantee, subject to being revested in the grantor in the event of failure to pay the note at maturity. The purchasers were, therefore, landowners at the time of signing the petition.

3. Evidence that most of the purchasers completed their payments was properly admitted by the trial court, as evidence of conduct after signing the petition would help to show the good faith or bad faith of the parties when they entered into the arrangement.—*Judgment affirmed.*

TRIAL—FINDINGS OF FACT—DISTURBED WHEN—SURPRISE—*Hiner vs. Cassidy*—No. 12764—*Decided December 27, 1932—Opinion by Mr. Justice Butler.*

I.

When upon conflicting evidence the trial court determines issues of fact, those findings will not be disturbed upon review. On review, the record is viewed in the light most favorable to the successful party in the trial court.

II.

Where defendant has pleaded that she received an assignment of a claim for collection against a construction company but where the proof is that she received the claim for collection against a bonding company, this does not constitute surprise. It is true there was a variance, but had objection been made thereto on the ground of variance, an amendment to the pleadings could and would have been allowed. Where a variance does not affect the substantial rights of the parties, it cannot be made the grounds for reversal.—*Judgment affirmed.*

MUNICIPAL CORPORATIONS—CONTRACTS FOR PURCHASE OF FURNITURE—VALIDITY OF—*Harvey vs. City and County of Denver et al.*—No. 13220—*Decided December 30, 1932—Opinion by Mr. Justice Burke.*

I.

Plaintiff, as a taxpayer, asks to enjoin the city through its commissioner of supplies from completing a purchase of furniture for a new court house. In the lower court, the issues were found for the defendants. Whereupon the defendants allege error and ask that this writ be made a supersedeas one. A supersedeas will not lie since the judgment was for costs only.

II.

Although defendants allege the matter to be one publici juris, no such right is herein involved and the cause should not have been advanced on the docket.

III.

The facts when applied to provisions of the charter show compliance therewith.—*Judgment affirmed.*

CONTEMPT—CONSTRUCTION OF STATUTE—*Jones vs. Cutting et al.*—No. 13157—*Decided January 7, 1933—Opinion by Mr. Chief Justice Adams—En banc.*

1. In a civil action pending in the district court, the court ordered Jones to give his deposition before a notary public as upon cross exam-

ination under the statute. He prosecutes error to review judgment. The statute referred to is Sec. 6570 C. L. 1921. The facts in essential particulars are similar to those set forth in cause No. 12937, Taylor vs. Briggs, wherein we held that procedure adopted was unauthorized. The judgment is reversed, and cause remanded.—*Mr. Justice Campbell and Mr. Justice Alter not participating.*

CONFESSIONS — EVIDENCE — ADMISSIBILITY OF EVIDENCE — PURPOSES FOR ADMISSION — WHETHER CONFESSION VOLUNTARY QUESTION FOR COURT—*Moss vs. The People*—No. 13161—*Decided December 27, 1932—Opinion by Mr. Justice Campbell—En banc.*

1. Defendant Moss was found guilty of murder in the first degree and sentenced to death. The conviction is based principally upon defendant's confession. The trial court held hearing separate from the main trial to ascertain if confession was voluntary and found it was. Held, "Whether or not a confession is voluntary is primarily a question for the trial court. Its admissibility is largely within the discretion of that court; and, on review, its ruling thereon will not be disturbed, unless there has been a clear abuse of discretion." No such abuse appears here.

2. Over defendant's objection, the State introduced evidence of a microscopic slide containing a specimen of the blood of deceased. A witness, who had been engaged in chemical laboratory and microscopical work for twelve years, was permitted to testify as an expert concerning this blood. Held, "The rule established by the weight of authority is that the decision of the trial court as to the qualification of any expert is never reversed, except in cases of abuse." No such abuse appears here.

3. Evidence was introduced at the trial over defendant's objection, that defendant had not been at a certain pool hall the night of the murder. Defendant contended that the State was putting defendant's character in issue, before defendant had alleged his good character. Held, that the purpose of this testimony was not for the purpose of placing defendant's character in issue, but for the purpose of showing defendant was not at a certain place, which he frequented, on the night of the murder.—*Judgment affirmed.*

PUBLIC UTILITIES—CONVENIENCE AND NECESSITY—FINDING OF FACT BY COMMISSION—*Public Utilities Commission et al. vs. The Town of Erie et al.*—No. 13207—*Decided January 7, 1933—Opinion by Mr. Chief Justice Adams.*

I.

A finding of fact as to what public convenience and necessity requires at the time of the order when based upon ample testimony and when not found to be unjust or unreasonable cannot be reversed upon appeal to the District Court.—*Judgment reversed with instructions to reinstate the order of the Commission.*

Beginning with this—February, 1933—issue of DICTA, SYDNEY H. GROSSMAN will handle all advertising matter.