Denver Law Review

Volume 9 | Issue 10 Article 6

January 1932

Supreme Court Decisions

Dicta Editorial Board

• Supreme Court Decisions •

MUNICIPAL CORPORATIONS—NEGLIGENCE OF—EVIDENCE OF—INSTRUCTIONS IN—*Wold vs. City of Boulder*—No. 12705—*Decided May 9, 1932*—*Opinion by Mr. Justice Burke.*

1. Verdict of the jury, when based upon disputed evidence, will not be disturbed unless wrong beyond question.

2. The exclusion of photographs as evidence is not prejudicial, when they merely tend to show what has already been established by other evidence beyond question.

3. In a suit against the municipality, to recover damage for falling on an icy sidewalk, the testimony of a witness for the defendant, that he had never seen ice formed at the place in question is admissible, when the plaintiff's witnesses have already made contrary statements.

4. Municipal corporation is not primarily liable for injuries suffered by a pedestrian because of a defect on the sidewalk. The liability of a city arises, if at all, only after it has had reasonable time, after acquiring or being charged, with knowledge of the defect, to remedy it. An instruction to this effect is not error. Evidence of absence of complaints concerning such defects is therefore admissible.

5. An instruction limiting the cause of action to the negligence alleged in the complaint, is not error.—*Judgment affirmed.*

MANDAMUS—JURISDICTION OF COURTS TO GRANT—*Laizure v. Judge of County Court of Pueblo County*—No. 13094—*Decided May 9, 1932*—*Opinion by Mr. Justice Butler.*

1. When in a divorce action the plaintiff, after obtaining her findings of fact and conclusions of law, has applied to set them aside and dismiss the suit and the court refuses to do so; and when after the expiration of six months, the defendant applies for a decree of divorce and the court has refused his application, application for a writ of mandamus should be made to the district court, unless it appears that there is reason to apply to the supreme court.

2. For purposes of mandamus, the district court is a superior tribunal to the county court.

3. The mere fact that the county and district courts have jurisdiction to grant divorces does not prevent the county court from being an inferior court. The two courts have concurrent jurisdiction only where the plaintiff seeks alimony in excess of $2,000.00. Under the present system, appeal from the county to the district court may be had and there is no reason to distinguish between divorce cases and other cases.—*Petition denied.*

STARE DECISIS—*Craddock Estate v. Palmer*—No. 13099—*Decided May 16, 1932—Opinion by Mr. Justice Burke.*

1. Where, after entry of finding of fact in divorce case, but before final decree, the wife dies, and the District Court after expiration of six months entered a final decree finding that cause of action survived and decreeing that husband had no right, title or interest in any property left by the deceased wife and such judgment is affirmed by this court, it became the law of the case.

2. The husband cannot thereafter attempt to re-litigate such issue by filing a petition for determination of heirship in County Court and on a judgment adverse to his alleged right as an heir, sue out writ of error in this Court and re-litigate the same question by merely bringing a different action. —*Judgment affirmed.*

ESTOPPEL—LIABILITY ON BOND—*In the Matter of the Assignment of Albert H. Stockham, et al. v. Jack, as Receiver*—No. 12898—*Decided May 16, 1932—Opinion by Mr. Justice Alter.*

1. Where the President of a bank signed as surety the bond of the cashier of the same bank in 1917, and the Cashier in 1922 was elected Vice President in which office he remained until 1927 when he was again elected cashier and between 1922 and 1929 a shortage occurred in his accounts in excess of the penalty in the bond, and thereafter the President made an assignment for the benefit of creditors and the bank went into Receivership, and Receiver filed claim with assignee of President for full penalty of bond, order allowing claim in full was not error.

2. Where in 1929 the bank examiner, before the bank failed, objected to the bond and the President assured him it was good and in full force and effect, the assignee of the President is estopped from setting up the defense that the bond had expired in 1922 by the Cashier's vacating his office and being elected Vice President.—*Judgment affirmed.*

DEEDS—CONVEYANCE FOR SUPPORT DURING LIFE—GROUNDS FOR SETTING ASIDE—*Potter, et al. v. Coombs, et al.*—No. 13079—*Decided May 16, 1932—Opinion by Mr. Justice Butler.*

1. Where a woman 65 years of age conveys her farm worth $30,000 to her physician and confidential adviser for a consideration of his paying to her annually during the rest of her life $1,800, she reserving a life estate therein, and further providing that upon failure to make any required payments, the doctor should reconvey the property and forfeit as liquidated damages and as rental, all payments, theretofore made, a failure to make the annual payment for two successive years or to pay the taxes work a forfeiture of the deed and a decree providing for payment of the balance due up to the death of the grantor or for a reconveyance of the real estate, was proper.

2. In such a case it is not necessary to allege or prove fraud.

3. Failure to perform the stipulation for support is a sufficient ground for setting aside the deed without any showing of fraud.—*Judgment affirmed.*

CARRIERS—JURISDICTION OF PUBLIC UTILITIES COMMISSION—COMMON CARRIERS—*Burbridge vs. The Public Utilities Commission*—No. 12906—*Decided May 23, 1932—Opinion by Mr. Justice Moore.*

1. The court below affirmed the findings and order of the Public Utilities Commission, which found that Burbridge was a motor vehicle, or common carrier, operating without a certificate of public convenience and necessity and further ordered him to cease and desist from operating as a motor vehicle carrier unless he shall have obtained a certificate of public convenience and necessity.

2. The Statutes of Colorado define *motor vehicle carrier* as one who, among other things, indiscriminately accepts, discharges and lays down either passengers, freight, or express, or who holds himself out for such purpose by advertising or otherwise.

3. The evidence shows that Burbridge operated four trucks transporting freight between Denver, Greeley, Brighton, and Eaton, under contract, either oral or written, for six business firms and in addition to this, accepted freight from numerous shippers upon the request of the six firms that he contracted with, which freight was delivered to the various branches of the said six firms that he was under contract with.

4. Such evidence fails to show that Burbridge did indiscriminately accept, discharge, and lay down, freight or that he held himself out for such purpose by advertising or otherwise.

5. Chapter 134 Session Laws 1927 was not intended to and does not regulate private motor vehicle carriers for hire. It regulates only common carriers engaged in the business of transporting by motor vehicle passengers, freight or express, for hire.

6. Burbridge was not, therefore, a common carrier as defined by the act.—*Judgment reversed.*

ATTORNEY AND CLIENT—PRINCIPAL AND AGENT—LOANS—PRINCIPAL'S LOSS—*Hentzell vs. Hildebrand et al.*—No. 13072—*Decided May 23, 1932—Opinion by Mr. Justice Butler.*

1. Hildebrand obtained a judgment below against Hentzell cancelling a promissory note and deed of trust. Mitchell, a lawyer, from time to time, sold secured notes to Hentzell and Hentzell loaned money through Mitchell as his attorney and agent, Mitchell examining the abstract of title and attending to the drawing of the papers. As a result, Mitchell became indebted to Hentzell for $1200.00. Hildebrand applied to Mitchell for a loan of $3000.00. The land being encumbered by a federal loan of $1800.00, Mitchell submitted the application to Hentzell, who told Mitchell that he would make the loan provided the title was all right and that Mitchell would repay the $1200.00 to Hentzell or pay that amount to the Hildebrands as part of the loan. The federal loan was to be paid out of the $3000.00. Mitchell obtained Hildebrands' note for $3000.00 and their deed of trust, and for the purpose of paying off the federal loan, Hentzell gave Mitchell sufficient, together with the $1200.00 owing by Mitchell to pay off the federal loan.

Mitchell did not pay off the loan, converted the money to his own use, and paid nothing to the Hildebrands.

2. The trial court was right in holding that Mitchell was Hentzell's agent in the transaction and that under the circumstances above that Hentzell and not the Hildebrands should bear the loss.

3. Judgment cancelling the note and deed of trust is justified by the evidence and the law.—*Judgment affirmed.*

APPEAL AND ERROR—UNLAWFUL DETAINER—NECESSITY OF DEPOSITING RENT ON APPEAL—*Routen vs. J. & O. Ranch Company*—No. 13087—*Decided May 23, 1932—Opinion by Mr. Justice Butler.*

1. In an unlawful detainer action before a justice of the peace, the J & O Ranch Company obtained judgment against Routen for possession of land. Appeal was taken to the County Court. The two bonds were filed and J & O Ranch Company filed motion to dismiss the appeal because of Routen's failure to deposit rent, and the appeal was dismissed.

2. Upon an appeal from the judgment of a justice of the peace in an unlawful detainer action founded upon non-payment of rent, the statute requires the defendant to file two bonds and also deposit with the justice of the peace the amount of rent found due and thereafter, upon appeal, the rent must be deposited with the Clerk of the appellate court as and when due.

3. Such provision in regard to the deposit of rent is not applicable where the rent was not payable in money, but was payable in one half of products from all livestock, including poultry. In such case it cannot be seriously contended that during the pendency of appeal the tenant should deliver either to the justice of the peace or the clerk of the appellate court livestock, poultry, eggs and other products from the rented premises.—*Judgment reversed with directions to set aside judgment of dismissal and re-instate the case on appeal.*

PRINCIPAL AND AGENT—LIABILITY OF AGENT TO PRINCIPAL FOR NEGLIGENCE IN HANDLING LOAN—*The Colorado Investment and Realty Company vs. Stubbs*—No. 12422—*Decided May 23, 1932—Opinion by Mr. Justice Hilliard.*

1. Where defendant is engaged in making farm loans and in buying and selling farm loans and the plaintiff was an investing customer, and in 1922, sold a $5,000. loan to plaintiff, secured by a first deed of trust due in five years; and where the defendant undertook to handle the collection of interest and see that the taxes were kept up and where it appeared that the maker of the loan defaulted in the interest for several years and defaulted in the payment of taxes during the entire period and the defendant failed to inform the plaintiff of these facts, but assured the plaintiff during the period from 1922 to 1926 that they were attending to the matter and that the payments were being promptly made of interest and taxes and did not disclose the true situation to the plaintiff until four years after the loan was made, at which time the security was so depreciated that the loan was valueless, the

plaintiff was entitled to recover from the defendant the full principal of the note and unpaid interest.

2. It is no defense to such an action that at most the defendant's failure to advise plaintiff promptly of the defaults operated only to postpone action and that there was no certainty that with knowledge the plaintiff would have proceeded at once to foreclose or take other steps to protect his interests.

3. From the inception of plaintiff's ownership of the note, defendant was his agent expressly charged and impliedly required to keep its principal informed as to any circumstances coming to its knowledge calculated in reasonable prospect to impair the security for the loan.

4. The question is not what the plaintiff would have done, but rather, what he could have done had his agent been faithful.

5. The measure of damages was the full face of the note and interest. Clearly the agent was negligent in matters essentially material; but for the agent's derelictions, plaintiff would have been in position to protect his investment. In such circumstances, the amount of the claim is the proper measure of damages.—*Judgment affirmed.*

MUNICIPAL CORPORATIONS—LIABILITY FOR FALLING ON ICY SIDEWALK—CONTRIBUTORY NEGLIGENCE—*City and County of Denver vs. Hudson*—No. 12664—*Decided May 23, 1932—Opinion by Mr. Justice Campbell.*

1. Plaintiff below had judgment against the city for damages in the sum of $1650. sustained by falling on an icy and slippery sidewalk. The defendant urged error in that the evidence of the plaintiff showed as a matter of law that she was guilty of contributory negligence in going upon an obviously dangerous sidewalk having at the time knowledge of its dangerous condition and also knowledge of one or more other safe and convenient ways by which the dangerous condition of the sidewalk on which she slipped and fell could have been avoided; and that her failure to use the safe way or ways, of which she knew, and her choice of a way she knew to be unsafe, constituted the sole and proximate cause of her injuries.

2. If the undisputed evidence shows that the plaintiff had knowledge of the unsafe condition of the sidewalk in question and that the adjoining street or sidewalk afforded a safe and suitable way for travel, plaintiff might be guilty of contributory negligence as a matter of law.

3. But, where there is testimony by the plaintiff that on the night previous to the injury several inches of snow had fallen upon and still covered the sidewalk in question and also the adjacent street and sidewalk which tended to show that not only the sidewalk on which plaintiff fell, but also the adjoining street, itself, and the sidewalk on the opposite side of the street were also in a bad condition by reason of the snow and ice, the plaintiff cannot be held guilty of contributory negligence as a matter of law in choosing the particular walk that she traveled on.

4. Reasonable minds might differ as to the question of the plaintiff's contributory negligence; hence, the trial court was right in submitting this issue to the jury.—*Judgment affirmed.*

SALES—WARRANTY—WAIVER OF WARRANTY—BY EXTENDING NOTE—*Emerson-Brantingham Implement Co. vs. Miller*—No. 12642—*Decided May 31, 1932—Opinion by Mr. Justice Hilliard.*

1. Plaintiff sued on promissory notes. Defendants admitted execution and delivery, but alleged they were part of purchase price of tractor, which defendants were induced to purchase through false representations as to its efficient usability. Alleged failure consideration and in a counter claim recovered in the court below the amount of note defendants had previously paid on the purchase price.

2. Under such circumstances, plaintiff cannot rely upon a provision of the written contract to purchase providing that all claims for damages by reason of non-performance of the machinery are waived. The court will not construe such a contract so as to work a forfeiture of rights except in very clear cases.

3. The judgment of the court below in favor of the defendant on the counter claim was grounded on the warranty that the tractor was well made, of good material and would do as good work as any other machine under like circumstances. The evidence was clear that the tractor did not comply with this warranty.

4. The rule that in case of rescission it is the duty of the party to return the tractor at the place where it was originally delivered does not obtain where the defendant offered to return the tractor and demanded surrender of their notes and the defendant refused such offer and demand. Under such circumstances, actual delivery would be useless and the law does not require useless or unnecessary things.

5. While ordinarily the renewal of a note after knowledge of defects in the machine would estop defendants from defending on account of breaches of warranty, yet in this case, there is no implication of law that the parties were attempting to adjust past differences or to shut off defenses arising out of past complaints, but that the transaction is to be understood merely as extending the time in which each of the parties is to perform his contract. The plaintiff's breach of warranty was not unconditionally consummated at the time the renewal note was given, for the reason that the warranty and the concurrent promise on the part of the plaintiff was not merely that there would be no defects, but if there were defects, the plaintiff would remedy them.—*Judgment affirmed.*

ATTORNEYS — DISBARRMENT — GROUNDS OF — *People vs. Warren* — No. 12652—*Decided May 31, 1932—Opinion by Mr. Chief Justice Adams.*

1. Where the evidence shows that an attorney makes collections without authority and appropriates the money to his own use, and by false and fraudulent pretenses, induces one to cash a worthless check for him and gives check for clothing on a bank where he has no funds, and is later convicted of forgery, such a series of crimes shows that he is utterly unfit to engage in the practice of law.

2. In view of the record in this case, respondent is disbarred.

WILLS — WAIVER OF WIDOW'S ALLOWANCE — *Vincent vs. Martin* — No. 12763—*Decided May 31, 1932—Opinion by Mr. Justice Moore.*

1. Vincent prosecutes error to review order of the County Court disallowing her claim for widow's allowance. It appears that during his lifetime, Vincent and his wife entered into a contract providing that he would will and bequeath to his wife the sum of $15,000.00 and all furniture and household goods and in consideration thereof, she agreed to accept the same in full satisfaction of any and all rights of dower, statutory allowances and rights of inheritance as surviving widow. Pursuant to this contract, will was executed by Vincent with the written approval and acceptance of the terms by the wife.

2. There was no failure of consideration. Neither fraud nor undue influence was charged or proven.

3. The words used in the contract "statutory allowances" was intended to and did include the widow's allowance.

4. While the waiver of a widow's allowance must be express, this does not mean that the words "widow's allowance" must be used in the waiver where the term used in the waiver clearly comprehends that it includes "widow's allowance."—*Judgment affirmed.*

MUNICIPAL CORPORATION—HOME RULE CITY—POLICE COURT—CREATION OF—*The People vs. Pickens*—No. 13035—*Decided May 31, 1932—Opinion by Mr. Justice Burke.*

I.

The power provided by Charter for the Mayor to appoint two Justices of the Peace, one of whom shall be designated to perform the duties of Police Magistrate, does not negative the power of the council to create a Municipal Court. No exclusive jurisdiction is conferred by the Charter, and the power to so appoint and designate Justices rests upon the same constitutional grant as the power to create the office here in dispute.

II.

A Municipal Court need not be established by charter provision. It can be created by ordinance.—*Judgment affirmed.*

PRINCIPAL AND AGENT—KNOWLEDGE—RATIFICATION—FINDINGS OF FACT —*Zang Company vs. Reilly*—No. 12686—*Decided May 31, 1932—Opinion by Mr. Justice Campbell.*

I.

Assuming that a mere secretary of a corporation is not invested with authority to enter into contracts of general employment, nevertheless, when such a secretary assumes to have such power and, to the knowledge of a Board of Directors of a corporation, exercises it in making such contracts, the contract will be upheld as being that of the principal corporation.

II.

The findings of fact by a jury, when supported by evidence, will be sustained.—*Judgment affirmed.*

BODY JUDGMENTS—LIABILITY OF AUTHORITIES—CASE OF—GOOD CONDUCT APPLIED TO—*Hershey, et al, vs. The People ex rel Johnson*—No. 13077—*Decided May 31, 1932—Opinion by Mr. Justice Butler.*

I.

One confined under a body execution on a judgment recovered in a tort action is not "sentenced" for a crime, and the provisions of the statute allowing prisoners sentenced for crimes time off for good behavior does not apply in such a case.

II.

Under the common law which applies in Colorado in absence of statute if an officer who has a prisoner in charge, permits a voluntary or negligent escape the execution creditor may recover the damages actually sustained. The presumption is that the creditor loses the entire debt by such an escape but the poverty or insolvency of the debtor can be introduced in mitigation of damages.

III.

Where an officer has in his custody a man confined under a body execution and releases him under the advice of the Attorney General and the City Attorney, such a release does not relieve the officer from liability. Under such circumstances, the escape is deemed a negligent escape.

IV.

Under such circumstances as outlined above, the execution creditor is entitled to recover whatever damages he has sustained as the result of the wrongful release. Prima facie the amount of his damage is the amount of his judgment against the confined debtor. The defending officers are, however, entitled to prove, if they can, the execution debtor's poverty or insolvency in mitigation of damages. It is error to exclude such proof.—*Judgment reversed and remanded.*

PUBLIC UTILITIES—CITY ORDINANCES AFFECTING—ORDINANCES—INTERPRETATION OF—*Canon City vs. Kaughman*—No. 12688—*Decided June 6, 1932—Opinion by Mr. Justice Hilliard.*

I.

An ordinance, providing that the right to operate an automobile or other conveyance for hire in the city in any of the parks, over any roads or highways owned or controlled by the city shall be licensed and subject to licenses issued by the City Council, does not affect a vehicle operating under a Certificate of Convenience and Necessity when it is shown that business was not solicited or accepted in the city that passed the ordinance.

II.

It is unnecessary to determine as to whether or not a public utility may be required to procure a license from a municipality under the facts of this case.—*Judgment affirmed.*

CONTRACTS—FRAUD—INCEPTION OF—RATIFICATION—*Duke vs. Cregan*—No. 12601—*Decided June 6, 1932—Opinion by Mr. Justice Butler.*

I.

Plaintiff was induced to purchase an interest in the Sage Transfer and Storage Company upon representations that the business made certain profits during several prior years. As a matter of fact, the figures given as profits included bad debts. In addition to this, the amount shown as having been paid for rent was inflated considerably over the actual amount paid. A provision in the contract set out that the purchaser was acting not as the result of his own investigation but in reliance upon the representations of the sellers. Where the Court below found that the purchaser actually bought in reliance upon the representations of the seller and that finding is supported by the evidence, it will not be disturbed in the higher Court.

II.

A contention that the plaintiff, by accepting his salary from the company, affirmed the contract is unsound and the plaintiff is not required to return the salary for it was received from the company and not from the defendants. The lower Court found that the plaintiff received his salary before he knew of the falsity of the representations made to him.—*Judgment affirmed.*

INSURANCE—LABOR UNIONS—PREMIUMS—EFFECT OF DELINQUENCY IN PAYING—*Brotherhood of Maintenance of Way Employees vs. Nolan*—No. 12505—*Decided June 6, 1932—Opinion by Mr. Justice Campbell.*

I.

Where, by a course of dealing, a company or organization, such as the one in question, has led a member to believe and understand that prompt payment of assessments will not be required but that they will be accepted and received after due and that the member will be considered in good standing notwithstanding the delay in payment, the company will be held to have waived prompt payment and the member will be deemed to be in good standing for such reasonable time after an assessment is delinquent as has theretofore customarily been allowed him in which to pay dues.

II.

Where it is established that an insurance society accepted payment of premiums after the insured was in default and that it was aware of such default, a waiver is established.

III.

Where dues or premiums, payable on November 1, were not paid until November 22, but at that time were received without question, the company will be deemed to have waived its requirement for prompt payment.—*Judgment affirmed.*

Mr. Justice Butler dissenting: The law set down in the majority opinion is correct but not applicable to the facts in hand. The company here involved was not an insurance company but a trade union. Its receipts are not premiums but dues. The dues are paid for membership and, according to

the by-laws, if they are paid promptly, certain death benefits are payable. The death benefits are an inducement to prompt payment but are by no means the sole purpose of the dues. The judgment should be reversed.

WORKMEN'S COMPENSATION—DURATION OF DISABILITY—*Industrial Commission vs. Roper*—No. 13003—*Decided June 6, 1932—Opinion by Mr. Justice Alter.*

I.

A finding by the referee for the Industrial Commission, sustained by a supplemental award of the Commission to the effect that a claimant's disability has terminated, must be supported by the evidence and, upon an action in the District Court to set aside an award of the Commission, it is the duty of the Court to set aside such a finding where the record discloses no supporting testimony.

II.

Under rule 2, Rules of Procedure of the Colorado Industrial Commission, the Court determined the duration of the disability. This rule must be pled. This was not done here.—*The judgment of the District Court is affirmed except as to the finding concerning the duration of disability.*

MANDAMUS—POLICE POWER—LEGISLATIVE CONTROL OF HOME RULE CITIES—*People, ex rel. Hershey vs. Begole*—No. 12650—*Decided June 20, 1932—Opinion by Mr. Justice Butler.*

1. Refusal of the auditor of the City and County of Denver to approve a demand, on the ground of want of lawful authority to approve it, amounts to a refusal to act upon it. Mandamus is the proper remedy to compel an audit.

2. Act of 1907 (S. L. 1907, c. 112; C. L. c. 29), establishing registration districts for vital statistics and imposing upon the city or county in which a registration district is situated, after approval by the auditing official of such city or county, liability for the compensation of the local registrar, is a valid exercise of the police power of the state.

3. Article XX of the state constitution imposes no limitation upon the power of the legislature to control "home rule" cities in matters of public, as distinguished from matters of local, nature.—*Judgment reversed with instructions.*

IRRIGATION DISTRICTS—DISSOLUTION—BONDS—INTEREST AFTER MATURITY—*Clint O. Heath vs. The Green City Irrigation District*—No. 12839—*Decided June 20, 1932—Opinion by Mr. Justice Campbell.*

1. Where the owner of irrigation bonds was tendered by the County Treasurer of Weld County, the full face value of his bonds, with interest thereon, to maturity, he is not in a position to question the validity of a dis-

solution decree of the District Court in which all the other creditors of the District who were parties to this proceeding, have acquiesced.

2. The bondholder is not entitled to interest upon the same after maturity or interest upon the attached coupons which accrued thereafter.—*Judgment affirmed.*

NOTES—INDIVIDUAL LIABILITY OF OFFICER—MISREPRESENTATION EVIDENCE—*Hollis vs. Commercial National Bank*—No. 12714—*Decided June 20, 1932—Opinion by Mr. Justice Hilliard.*

1. In an action on a note by the bank against the president of a Company in his individual capacity, alleging misrepresentation, and where the only evidence of misrepresentation is a letter that was not produced at the trial, held error to introduce secondary evidence, without first showing that the letter was directed to the bank; that the president of the bank, in whose custody the letter was given, could not be found; or that any effort was made to find him, what he knew or what disposition was made of the letter.—*Judgment reversed and remanded.*

LIFE INSURANCE—AMBIGUITY OF TERMS OF POLICY—CONSTRUCTION—*Shinall vs. Prudential Insurance Co.*—No. 12776—*Decided June 20, 1932—Opinion by Mr. Justice Burke.*

The date of the policy and the date for payment of annual premiums was March 21. The first premium was not paid until April 21st. The insured allowed the next annual premium, supposedly due March 21, to lapse, and died June 4th. The insurance company contended that the sixty days of grace had expired before the death of the insured. The application, which constituted a part of the contract, provided that the policy should not take effect until payment of the premium, whereas the policy was dated approximately one month prior to such payment. The grace clause recited: "If this policy after being in force one full year from its date shall lapse for non-payment of premium, the company will continue in force the insurance . . . for a period of sixty days from the due date of such premium." The question was whether the policy came into force on March 21 or on April 20, and, if not until the latter date, whether or not it could be said to have lapsed before April 20th of the ensuing year.

Held: 1. The terms of the policy were ambiguous as to the time when the policy came into force, and, consequently, were ambiguous concerning whether or not it had been in force for one full year prior to March 21, the date for payment of the premium.

2. Where the terms of an insurance policy are ambiguous concerning the date on which the policy will lapse for non-payment of premium, the ambiguity should be resolved against the insurance company as the writer of the doubtful document.—*Judgment reversed.*

WORKMEN'S COMPENSATION—AWARD—REVIEW—*Lockard vs. Industrial Commission et al.*—No. 13096—*Decided June 20, 1932—Opinion by Mr. Justice Hilliard.*

No error perceived in performance by District Court of instructions previously issued in this case by this Court. Rules of law previously stated in Industrial Commission et al vs. Lockard, 89 Colo. 428, 3 Pac. (2d) 416; Industrial Commission vs. Lockard, 90 Colo. 333, 9 Pac. (2d) 286, re-affirmed.—*Judgment affirmed.*
