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Supreme Court Decisions

Dicta Editorial Board

• Supreme Court Decisions •

(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.)

BONDS—INTEREST ON BONDS AFTER MATURITY—MANDAMUS STATUTE CONSTRUED—*North Denver Municipal Irrigation District vs. Heath*—No. 12940—*Decided June 20, 1932—Opinion by Mr. Justice Campbell.*

1. In an action in Mandamus under the code to compel the board of County Commissioners to make the required levy of assessments sufficient to pay bonds and interest thereon after maturity, held that the controlling question is as to the right of the bondholder to interest on bonds of an irrigation district and interest on the attached coupons after maturity; that our special statute merely entitles the holder to the principal and interest on the bonds to the time of their maturity.—*Judgment reversed with instructions to dismiss and to tax the costs both on review and below to the plaintiff.*

CASUALTY INSURANCE—SCOPE OF POLICY—PERSONS IN INTEREST IN COVENANT TO DEFEND INSURED AGAINST SUITS FOR DAMAGES—*The Continental Casualty Co. vs. Carver*—No. 12747—*Decided June 20, 1932—Opinion by Mr. Justice Burke.*

1. Where a casualty insurance policy, insuring an auto sales company "against loss imposed upon the assured by law for damages on account of bodily injuries accidentally suffered by . . . persons not employed by assured", specifically provided that it did not cover persons other than officers and employees of the company, the insurance company was not liable for damages from injuries occurring while a car of the insured, used for demonstration purposes, was being driven by a friend of the insured, in an endeavor to make a sale for the insured.

2. A provision in such a policy that the casualty company will defend the assured against any suits brought against it to recover damages is not a contract for the benefit of the plaintiffs in such suits, and, where the casualty company fails to defend in such a suit against the assured, it is not liable to the plaintiff on a judgment obtained therein, and nothing therein decided is *res adjudicata* as to the casualty company.—*Judgment reversed.*

TRIAL—MISCONDUCT OF COUNSEL—RIGHTS OF INSURANCE COMPANY—REVERSIBLE ERROR—*National Surety Company vs. L. A. Morlan*—No. 12702—*Decided June 27, 1932—Opinion by Mr. Justice Moore.*

1. In an action against an insurance company on a burglary policy, it is reversible error where the attorney of the party successful in the court

below had, in closing, indulged in an inflammatory appeal to the prejudices of the jury, based on matters not justified by the pleadings or the evidence.

2. An insurance company is entitled to the same fair trial as an individual.—*Judgment reversed and the cause remanded for a new trial.*

SALE OF TAX CERTIFICATES BY COUNTY TREASURER—VALIDITY OF RESOLUTIONS OF COUNTY COMMISSIONERS—PRIMA FACIA CASE—*Thompson et al vs. County Commissioners et al—Decided June 27, 1932—Opinion by Mr. Justice Burke.*

1. Sec. 7409 C.L. 1921 provides for striking off to the County, at face, real estate offered for sale for taxes with no bids, and the issuance of certificates to the county. Chap. 152 page 612 L 1927, authorizes treasurer to sell such certificates to any person who desires to purchase them, on payment of "such sum as board of county commissioners * * * at any regular or special meeting may decide and authorize by order duly entered in the recorded proceedings of such board".

2. The power of county commissioners is limited by the statute to fixing of prices at which each certificate shall be sold, and that it neither extends to a bulk sale for a lump sum nor to a particular person.

3. When the basis of the complaint is the charge of a bulk sale for a lump sum to a particular purchaser, and the evidence substantiates the complaint, the plaintiff has established a prima facia case and it was error to sustain a motion to dismiss.—*Judgment reversed and remanded.*

BAILMENTS—CHATTEL MORTGAGE BY BAILEE—*The First State Bank of Wiggins vs. Simmons*—No. 12681—*Decided June 27, 1932—Opinion by Mr. Justice Campbell.*

1 .A contract whereby seeds were delivered by a seed company to a grower for the sole purpose of raising a seed crop for the company, the grower's only contract right being to receive a sum of money for his services in growing the crop, is a contract of bailment.

2. A chattel mortgage on the bailed property, given by the bailee, creates no right in the mortgagee as against the bailor or as against a judgment creditor of the bailee.—*Judgment affirmed.*

ZONING ORDINANCES — CONSTITUTIONALITY — MANDAMUS — APPELLATE PROCEDURE—*Hedgcock vs. People of the State of Colorado on relation of Samuel Reed*—No. 12630—*Decided June 27, 1932—Opinion by Mr. Justice Hilliard.*

1. Where the Denver building inspector refused to issue a permit to construct a store building at the south-west corner of Colfax Avenue and Adams Street for the sole reason that the said structure was not to be built fifteen feet back from the sidewalk line as provided in the zoning ordinance,

and it appeared that for many years the vicinity had been a business district and that for many blocks along Colfax Avenue the ordinance had not been observed, the refusal of the building inspector to issue the permit was so arbitrary and unreasonable as to make the ordinance unconstitutional in its operation and effect.

2. The validity of a zoning ordinance circumscribing the owner in the use of his property must be determined by considering it in connection with the circumstances and the locality.

3. A municipal charter allowing an appeal from the building inspector to a so-called board of adjustment cannot supersede provisions of the Civil Code nor control jurisdiction of the courts.

4. Such a board of adjustment has no authority to review the legal or equitable character of the building inspector's act in allowing or rejecting an application for a building permit, nor to pass upon the question as to whether the provisions of the zoning ordinance are in furtherance of the proper exercise of the police power of the municipality.

RECEIVERSHIP IN FORECLOSURE—BUSINESS PROPERTY—COST OF CONTINUING BUSINESS—LIABILITY OF MORTGAGEE FOR SAME—WAIVER OF CLAIMS — EVIDENCE OF SAME — ADMISSIBILITY — *West Colfax Loan Corporation vs. Culp*—No. 13,100—*Decided July 5, 1932—Opinion by Mr. Justice Butler.*

1. A mortgagee who obtains appointment of a receiver of property used as a sanatarium, and later dismisses the foreclosure proceedings with prejudice, is liable for costs of operating the sanatarium during receivership, including salaries, if the profits of the receivership were insufficient to pay the same.

2. Evidence tending to show that certain employees of the sanatarium, shortly after appointment of the receiver, agreed to look, for compensation, only to the profits of the business, or that they otherwise waived the right to collect compensation from the mortgagee, should be admitted.