Denver Law Review

Volume 9 | Issue 12 Article 8

January 1932

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.)

CONSTITUTIONAL LAW—PUBLIC DOMAIN RANGE—CONSTRUCTION OF ACT —EVIDENCE—*Rex Barrow, et al., vs. J. L. Wilcoxson, et al.*,—No. 12830 —*Decided September 12, 1932—Opinion by Mr. Chief Justice Adams.*

1. Where a group of cattlemen brought an action against several sheepmen to apportion and divide the use of a certain range on the Public Domain, and the proceedings were conducted under the provisions of Chapter 125, Session Laws, 1929, pursuant to the findings of referees; and the District Court designated a certain portion as cattle range and another part as sheep range, and granted injunctive relief. The Act was construed in conjunction with Allen v. Bailey as being Constitutional.

2. Instructions of the lower Court to the referees, to the effect that in determining the rights of the parties in or to a mixed range, consideration should be given not only to the use made thereof during the grazing season prior to the passage of the 1929 Act, but also for a reasonable period of time prior thereto to the end that the referees might determine which class of livestock growers first used said range or any part thereof, were not error. Objections enlarged upon in the Assignment of Error beyond instructions that the Trial Court might have changed if it had been given an opportunity to do so at the proper time, are not considered.

3. Where the evidence is conflicting upon the subject of how many years back the referees should have gone in determining the use of the range, the usual rule in such cases applies.

4. Where the findings of the referees and lower court were based upon conflicting evidence, and priority of use and occupation was employed in the determination of possessory rights, and evidence of unanimity and thoroughness of the referees's work as well as that of the District Court and respective counsel was shown, the judgment is just and equitable.—*Judgment affirmed.*

CONSTITUTIONAL LAW—EVIDENCE—SUPPLEMENTARY PROCEEDINGS—*J. H. Jouflos, et al., vs. R. H. Pitchford, et al.*,—No. 13134—*Decided September 12, 1932—Opinion by Mr. Chief Justice Adams.*

1. Where the District Court decreed an apportionment and division of a certain public range in Moffat County, pursuant to the provisions of chapter 125, Session Laws, 1929, and later supplementary proceedings were brought under section 6 of the same act, but evidence was not preserved by

Bill of Exceptions; it was assumed that the same was sufficient to support the decree.

2. In such case such statute was held constitutional on grounds similar to those presented in No. 12881, Allen vs. Bailey.—*Judgment affirmed.*

DIVORCE MANDAMUS TO COMPEL COURT TO ISSUE DECREE—*Laizure vs. Baker, Judge of County Court, et al.—Decided Sept. 12, 1932—Opinion by Mr. Justice Burke.*

1. Can the guilty party in a divorce action maintain mandamus to compel to court to enter a final decree in favor of, and over the protest of the innocent party, after the passage of six months from the entry of the findings of fact; or compel the court to issue a certificate that the parties are in fact divorced? HELD. Plaintiff relies on chap. 91 p. 327 L. 1929. without deciding the constitutionality of this act, if it be valid, the findings of fact shall set forth that after six months from their entry, unless certain specified action is taken, they shall operate as a decree of divorce upon the terms therein set forth; no further action need be taken by the court.

2. Since no further action need be taken by the Court, unless he exercises his discretion in issuing a final decree, mandamus will not lie to compel a court to exercise discretion.

JUSTICE COURTS—SUMMONS—APPEALS—WAIVER OF DEFECT IN SUMMONS—*Fort vs. Demmer—Decided Sept. 12, 1932—Opinion by Mr. Justice Alter.*

1. Summons issued out of Justice Court, returnable in four days instead of time provided by sec. 6376 C. L. 1921 is invalid, but this defect may be waived by defendants appearance in court.

2. In a proceeding under the unlawful detainer act, in Justice Court, if defendant fails to file her answer no issue is raised, hence none to be tried, and default will enter.

3. In an appeal from the Justice to the County Court if the appeal bond is not filed within the time specified by law, the County Court has no jurisdiction.

ATTACHMENT—INTERVENING CREDITOR—TIME ALLOWED—JURISDICTION OF JUSTICE—*North Denver Transfer and Storage Company et al. vs. Baylor et al.*—No. 13,158—*Decided September 12, 1932.—Opinion by Mr. Chief Justice Adams.*

1. Sec. 6096, C. L. 1921, allowing creditors twenty days after the return day in which to intervene in an attachment proceeding in the justice court, amounts to a statute of limitation.

2. In such a proceeding, where a claim which exceeded the jurisdiction of the justice court, was filed after the expiration of said twenty day period, such claim was void as to the plaintiff and other attaching creditors, and left nothing for the Justice to certify to the County Court under Sec. 6099, C. L. 1921.—*Judgment reversed and cause remanded.*

APPEAL BOND—APPROVAL—*Zimmerman vs. Combs et al.*—No. 13,115—*Decided September 12, 1932.—Opinion by Mr. Justice Butler.*

1. On appeal from the County to the District Court, an appeal bond is sufficient if actually, although not formally, approved within the time limited by statute. This is so even though the Judge of the County Court, after the expiration of such time, suggests the advisability of obtaining another surety, and, that having been done, then indorses his approval on the bond as of such later date.—*Judgment reversed and cause remanded.*

TAXES—TAX SALES—REFUNDS—*County Commissioners of Washington County vs. Lavington*—No. 12704—*Decided September 12, 1932.—Opinion by Mr. Justice Burke.*

1. Plaintiff purchased land at a tax sale. He later petitioned for a refund, claiming the sale was illegal. The land in question was originally platted. The only attempt to vacate the plat was a resolution of the County Commissioners. In due time, plaintiff obtained a tax deed. The lower Court awarded the plaintiff his refund and the Commissioners appealed.

2. In absence of a special statute, the purchaser at a tax sale buys at his peril. The Colorado statutes providing for refunds are:

(a) Where no tax was due at the time of the sale.

(b) Where the tax was illegal or erroneous.

3. Under such facts, as above outlined, the plaintiff does not come within either of the refunding statutes. The contention that the plaintiff bought acreage and that the tax due was upon lots is unsound. The fact that the tax was due and that he paid it is unaffected by mere method of description; so too is the contention unsound that the streets and alleys, dedicated to the public by plat, could not be taxed but that they were sold to him, there having been no statutory dedication of these streets and alleys. The section of the statute, which provides that an illegal or erroneous tax shall be returned to the taxpayer, is expressly limited to taxpayers and has no application to tax purchasers.—*Judgment reversed.*
