Denver Law Review

Volume 8 | Issue 1 Article 6

January 1930

Colorado Supreme Court Decisions

Dicta Editorial Board

Colorado Supreme Court Decisions

COLORADO 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 the filing of a petition for rehearing, resulting in any change or modification of opinion, such will be indicated in later digests.)

DIVORCE—ALIMONY—MOTION TO SET ASIDE—NO. 12529—*Foreman vs. Foreman—Decided September 29, 1930.*

Facts.—Plaintiff had secured a divorce on the grounds of desertion. As an award of alimony, she was given the defendant's interest to some lots. As a part of her complaint, the plaintiff alleged that she was a poor person and without means except for a one-half interest in the lots to which the defendant held title to the other half. Defendant filed his application to modify the decree by setting aside the alimony award, and the testimony showed that the plaintiff had, at that time, about $2,000 in the bank. The trial court refused to set aside the decree, and the defendant alleged error.

Held.—Even though the plaintiff was guilty of misconduct in swearing falsely concerning her financial condition, the defendant, himself, had given false testimony. He did not come into court with clean hands and he should not receive the relief sought by him.

Judgment affirmed.

JUSTICE COURT—PRACTICE AND PROCEDURE—CERTIORARI—NO. 12355—*Foster et al vs. Nickles—Decided September 29, 1930.*

Facts.—Nickles was charged with the unlawful possession of intoxicating liquors. The complaint was filed before Foster, who is a Justice of the Peace. Nickles originally pleaded not guilty. Subsequently, but before trial, he asked leave to change his plea to one of guilty. The Justice refused this request, whereupon, Nickles sued out a writ of certiorari to the County Court, which court ordered that the Justice accept Nickles' plea of guilty.

Held.—It is upon the record alone that review by certiorari is had; not upon the averments in the petition for the writ. For the writ to apply, there must be a final judgment

in the Justice Court, and the petitioner must show injury. The writ is not proper in this case.

Judgment reversed.

WORKMEN'S COMPENSATION—EMPLOYER—WHO IS—NO. 12613—*Industrial Commission, Mitchell et al vs. Aetna Life Insurance Company et al—Decided September 29, 1930.*

Facts.—Platt-Rogers were in need of trucks for a building contract for the D. & R. G. W. Ry. They called upon the White Company for trucks, and among those supplied by the White Company, was one which had been purchased by one Smith. Smith had failed to pay for this truck, and the company was attempting, by its operation, to work out of it the unpaid purchase price. This truck was driven by one Mitchell. The radiator of the truck having frozen, Mitchell was going to the railroad station in his own car, to get a new one which was to have been sent out by the White Company. He was later found beneath his car in the river. Upon hearing before the referee, compensation was denied. Upon review, the Commission entered an award against Platt-Rogers. On rehearing, the award was changed to one against the White Company. Upon taking the case to the District Court, it was held that there was no evidence to sustain the award, whereupon error was alleged. The following questions were presented: (1) That there was no accident. (2) That if there was an accident, it did not arise out of and in the course of employment. (3) That there was no employment (but if there was, who was the employer?).

Held.—(1) The finding by the commission that there was an accident will not be disturbed.

(2)-(3) If an employe is pursuing the business of his employer at the time that he suffers from an accident, the injury is deemed to have arisen out of and in the course of employment. "If a vehicle with its driver be contracted by one employer to another the driver remains in the employ of the first." The White Company is accordingly deemed the employer in this case.

Judgment reversed with instructions.

MUNICIPAL CORPORATIONS—CONTRACTS OF—PROPER PARTIES —No. 12317—*City vs. Morrison—Decided September 29, 1930.*

Facts.—Morrison had entered into a contract with the City and County of Denver, whereby he was to build a ditch, and the city was to furnish the materials. The ditch having been completed, the city refused to pay $22,237.27 which was 15% of the total under the claim that the work was done improperly. Morrison maintained that the fault was with the materials which were furnished him by the city, and he thereupon brought this suit, to which the city filed a cross-complaint. Upon trial, judgment was had for Morrison. The city seeks a reversal because (1) The cause of action was in favor of the plaintiff and his partners and not in favor of the plaintiff alone, and (2) The insufficiency of the evidence.

Held.—(1) When a contract is made with one man alone, even though he is affiliated with others for the purposes of carrying out the terms thereof, the contracting party may sue in his own name.

(2) The judgment of the trial court will not be disturbed when it is based upon conflicting testimony.

Judgment affirmed.

WORKMEN'S COMPENSATION—NOTICE—SUFFICIENCY OF— NO. 12674—*Royal Indemnity Company et al vs. Industrial Commission et al—Decided October 6, 1930.*

Facts.—Claimant sought compensation for the loss of sight in one eye, as the result of an accident incurred in the course of employment. There was a good deal of conflicting testimony, but the commission held that the condition of the eye was caused by the accident, and awarded compensation, which award was sustained by the district court. The respondents contended that the award was erroneous because; (1) The injury was not the result of an accident and (2) Notice was not given in the time provided by the statute.

Held.—(1) The finding by the Commission that the injury was caused by an accident was amply supported by the evidence and it will not be disturbed.

(2) The provision of the statute which requires notice,

does not contemplate that notice should be given by one who is already receiving compensation. The claimant received medical treatment at the expense of the employer. "This constituted the receipt of compensation within the meaning of the statute, and dispensed with the necessiy of giving notice within six months."

Judgment affirmed.

EJECTMENT—NO. 12178—*Reagan vs. Dick—Decided October 14, 1930.*

Facts.—Plaintiff sued in ejectment. The original owner of the premises under dispute had permitted his taxes to lapse and the defendant had obtained the tax deed. After the tax deed was issued to the defendant, the property was sold at a sheriff's sale on an execution against the original owner. The plaintiff claims under this sheriff's sale. The particular parcel of land in dispute had been platted. Both the plaintiff's and the defendant's deeds purported to convey the North Star Mill Site. The question presented is as to the plaintiff's right to possession. From a judgment for the plaintiff, the defendant alleged error.

Held.—(1) Land, when platted and incorporated as a part of a town, loses its identity as a part of a mill site. Therefore, a deed to a mill site would not include such land.

(2) A sheriff's deed can only convey the property which belongs, at the time, to the judgment debtor. When land has been previously sold for taxes, there can be no right to possession under a sheriff's deed.

Judgment reversed.

ELECTIONS —CONTEST OF—WHEN—NO. 12706—*People et al vs. Mitchell et al—Decided October 7, 1930.*

Facts.—The plaintiff, Youst, and defendant, Mitchell, were designees for the nomination of County commissioner at the Republican primary. Mitchell was declared to be nominated and Youst sought to contest the election, alleging that a mistake was made in the count, and that a recount would re-

sult in his, Youst's, nomination. The defendant's demurrer to the complaint was sustained and the plaintiff alleged error.

Held.—A proper basis must be laid before ballot boxes will be opened. The grounds for the contest of an election must be specifically set out.

Judgment affirmed.

A PRAYER FOR FREEDOM

After filing a divorce complaint, a Denver attorney discovered that the prayer was that "the *bounds* of matrimony be dissolved". He is still wondering what would have been the status of his client had the prayer been granted as made.