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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.)

TRIAL—FINDINGS OF FACT—NO DISTURBANCE OF ON APPEAL —NO. 12475—*Kniffen vs. Gavin, Administrator—Decided November 24, 1930.*

Facts.—The plaintiff seeks to enforce the payment of three promissory notes against the estate of Timothy Foley, deceased. The court held, upon conflicting evidence, that the notes were forgeries and disallowed the plaintiff's claim. Error was alleged.

Held.—There was sufficient evidence upon which to support the finding of the lower court, and it will not be disturbed here.

Judgment affirmed.

WORKMEN'S COMPENSATION—FINDINGS OF FACT—NO DISTURBANCE OF—NO. 12663—*Industrial Commission et al vs. Diveley—Decided November 24, 1930.*

Facts.—The plaintiff's husband died as the result of a ruptured appendix. The question as to whether or not the rupture was caused by an accident arising out of and in the course of employment was disputed. Upon hearing before the referee, compensation was denied. The referee's findings were affirmed by the commission. The claimant thereupon brought an action in the district court, and that court gave a judgment setting aside the award of the commission and making an award in favor of the claimant.

Held.—The burden is upon the claimant to prove that the accident arose out of and in the course of employment; and the claimant also has the further burden of proving that the injuries for which compensation is claimed were the proximate result of the accident. Upon the question of causal connection, the evidence was conflicting and the award of the

commission, based upon conflicting testimony, can not be disturbed.

Judgment reversed.

MUNICIPAL CORPORATIONS—PLATS—EFFECT OF—VACATION DEEDS—NO. 12331—*Brell vs. Town of Ovid—Decided December 1, 1930.*

Facts.—Brell was the owner of certain property which was shown on a plat for the Town of Ovid. Brell filed a deed vacating the avenues, streets and alleys adjacent to the blocks owned by him within the limits of the Town. Subsequently, the Town of Ovid was incorporated. Thereafter Brell brought suit to disconnect from the incorporated town all of the land owned by him within the town limits, but inasmuch as he did not have the required twenty acres, judgment went against him.

Brell thereupon filed a second vacation deed which attempted to cover the streets, alleys and avenues which had already been covered by the prior deed; and to also include other streets and alleys not in the prior deed. Brell then filed the present suit. The trial court gave Brell title to all the land covered by the first deed and quieted in the Town of Ovid the land omitted from the first vacation deed. Brell complains of the decree.

Held.—(1) After filing his first vacation deed, Brell did not own the four adjacent blocks as required by the statute as a condition to the vacation of avenues, streets and alleys. The second vacation deed was, therefore, void.

(2) The contention of the plaintiff that there was no need of a vacation deed in that there had never been a dedication of the streets and alleys in question is unsound in that the statute provides that upon the incorporation of a city or town all avenues etc. described on the plat as being for public use shall be deemed public property and the fee thereof shall be vested in such city or town.

Judgment affirmed.

FRATERNAL INSURANCE—RATES—AMENDMENTS TO CONSTITUTION—NO. 12544—*Woodmen of the World, et al. vs. McCue, et al.—Decided December 15, 1930.*

Facts.—Suit was filed in lower court by eight members of the fraternal benefit society to enjoin it from enforcing certain of its laws which operated to increase its rates and method of insurance and injunction was granted. Questions raised were did plaintiffs have capacity to sue and were the amendments objected to legally adopted.

Held.—Plaintiffs had capacity to sue. Sec. 2624 and 2625 C. L. of 1921, providing for attorney general to make application for injunction not applicable because this only refers to winding up of insurance society and in this case no such relief is sought.

Amendments increasing rates were not legally adopted in that the constitution of the society provided that amendments to the constitution must be adopted by two-thirds of the votes of any regular or special Head Camp Session and such amendments were not adopted by such two-thirds vote.

Judgment affirmed.

ATTORNEYS—DISBARMENT—NO. 12591—*People vs. Allen—Decided December 22, 1930.*

Facts.—Respondent Allen helped organize the American Tax Company, was a director thereof and before his election to the board was employed as general attorney and was voted 10,000 shares of its stock for the first year of his services, including organization work. The stock was not actually issued and delivered and Allen was paid $10,000 in cash and his stock was then issued and turned back for application to a personal account, representing funds that Allen had drawn from the treasury of the company. This was done on the sole authority of the president and with the consent of the secretary-treasurer. The company paid dividends when it had no net earnings. Allen participated in declaring such dividends.

Held.—Allen's withdrawal of $10,000 of the company's funds and his discharge of that indebtedness by a credit on the books for the return of his 10,000 shares of stock, was by

collusion with the president and was a fraud on the company. The illegal payment of dividends was with the advice and consent of Allen and for the purpose of defrauding the public by the promotion of sales of stock.

Name of respondent stricken from roll of attorneys of this state and he is forbidden to appear as such in any of its courts.

PLEADING—NO. 12256—*Molholm v. Broomfield State Bank —Decided December 1, 1930.*

Facts.—The bank sued Mrs. Molholm on two promissory notes. The defendant sought to avoid liability on the ground that the notes were signed without consideration and as an accommodation to the bank. For reasons which do not appear, the trial court did not permit this to be pleaded and judgment was rendered against the defendant.

Held.—This was a good defense and should not have been stricken from the record.

Judgment reversed.

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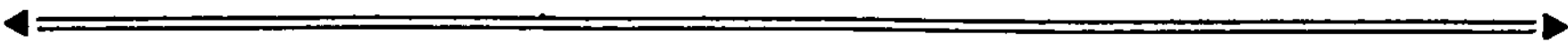

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