Denver Law Review

Volume 7 | Issue 2 Article 4

January 1929

Colorado Supreme Court Decisions

Dicta Editorial Board

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(EDITOR'S NOTE.—It is intended in each issue of DICTA to print brief abstracts of the decisions of the Supreme Court. These abstracts will be printed only after the time within which a petition for rehearing may be filed has elapsed without such action being taken, or in the event that a petition for rehearing has been filed the abstract will be printed only after the petition has been disposed of.)

APPEAL AND ERROR—BILL OF EXCEPTIONS—NO. 12,364—*Royal Exchange Assurance vs. Tritch Hardware Company, et al—Decided October 14, 1929.*

Facts.—The Hardware Company brought suit against one Fox and the Assurance as garnishee answered that it owed Fox $3,173.48 and judgment was entered for the Hardware Company. Thereafter the Assurance asked leave to withdraw its garnishee's answer on the grounds of fraud, but the petition was denied. The evidence purporting to back the Assurance's petition is not before the Supreme Court by bill of exceptions or in any other proper way.

Held.—The necessary evidence not being before the Court in the correct manner, it cannot be considered. The rules of court require a bill of exceptions.

Judgment Affirmed.

APPEAL AND ERROR—INTERVENTION—PLEADING AND PRACTICE—ON REHEARING—NO. 12,434—*Prince Hall Grand Lodge, Etc. vs. Hiram Grand Lodge, et al, and the Grand Lodge, intervenor—Decided September 16, 1929.*

Facts.—Under the opinion handed down in this case September 16, 1929, the Court held that the writ of error should be dismissed because of the failure of plaintiff in error to file a bill of exceptions.

The only parties before the Court for the re-hearing are the plaintiff in error, Prince Hall Lodge, and the Intervenor, Grand Lodge. This cause began as a suit between Prince Hall Lodge and Hiram Lodge for an adjudication between them of the rights to Masonic names, emblems, etc. The Grand Lodge asked authority from the District Court to file a petition in intervention. Prince Hall Lodge filed its objections to the Grand Lodge's application for leave to intervene, alleging many argumentative facts. Grand Lodge was

then permitted by the trial Court to intervene as a claimant adverse to both Prince Hall and Hiram. Thereafter Prince Hall filed what appeared to be a special demurrer to the petition in intervention, also alleging many extraneous facts. The demurrer was over-ruled, but Prince Hall neither elected to stand on its demurrer nor did it answer within the time limited by the trial Court. Some time after Prince Hall was in default for failure to answer, the cause was tried in District Court. At that time Prince Hall, through its counsel, stated to the Court that the Grand Lodge had a right to Masonic names and insignia superior to Prince Hall and of the other alleged Masonic bodies in Colorado.

Held.—The case might well be decided in favor of the Intervenor simply because of the failure of plaintiff in error to present a bill of exceptions to the Supreme Court. In addition to this reason, the judgment is affirmed because, (1) the statement contained in Prince Hall's objection to the filing of the petition in intervention and in the special demurrer to this petition cannot be considered; (2) the only question being litigated is the right of the Grand Lodge to the exclusive use of Masonic names and insignia, and this was admitted by counsel for Prince Hall; (3) this Court cannot take judicial notice of the use of Masonic names or prerogatives or the ownership of property, as it has been requested to do by counsel for Prince Hall.

Judgment Affirmed.

CORPORATIONS — STOCKHOLDERS — NO. 11,989 — *Mountain States Packing Company, et al, vs. J. H. Curtis, et al.— Decided October 14, 1929.*

Facts.—Sigman owned 850 out of 2,500 shares of the capital stock of the K. & B. Company, and later bought 1255 shares owned by the Mountain States Packing Company. The latter company had 60,000 shares of preferred stock and also 60,000 shares of common stock, of which 23,586 were issued to one Melville as Trustee. Later, Melville received 5,000 shares of this common stock for legal services, and in 1927 he returned to the company the trustee stock. Defendants in error seek (1) to set aside the agreement under which Melville held the Trustee stock; (2) to set aside the sale of the K. & B.

Company stock to Sigman; and (3) to set aside the transfer of the 5,000 shares of stock to Melville for legal services.

Held.—Melville's return of the trustee stock and the fact that it was used at stockholders' meetings only to make a quorum render it impossible to grant the first request of defendants in error. As to the second point, the sale to Sigman was approved by a great majority of the Packing Company's stockholders. The third point is not well taken because the evidence shows that Melville had been under-compensated for his services to the Packing Company, not over-paid. To interfere with the foregoing transactions would take the control of corporations away from the stockholders and put it in the courts, and in the absence of fraud, the decisions of the majority of the stockholders must stand as the decisions of the corporations.

Judgment Reversed with Directions.

DISBARMENT—CONTEMPT—NO. 12,423—*People vs. Humbert —Decided November 12, 1929.*

Facts.—Humbert, formerly an attorney of this Court, was disbarred in 1920. Thereafter for about seven years, he permitted his name and office address with a designation "lawyer" or "attorney" to appear in the Denver Directory, the Colorado Directory, and the Denver Telephone Directory.

Held.—Even though Humbert did not actively cause the words "lawyer" or "attorney" to appear after his name in various directories, yet if he passively permitted these publications to continue with such a designation after his name, it must have been done with his knowledge. These were continuing advertisements, and even though put in circulation by others it was his duty, after disbarment, to see that they were discontinued, and such failure constituted contempt. Respondent found guilty of contempt.

DISMISSAL—CONTINUANCE—MINOR—NO. 12,183—*Rausch v. Cozian—Decided October 28, 1929.*

Facts.—Suit was brought by a minor by her next friend for damages received by being struck by defendant's automo-

bile. When the case was called for trial, the plaintiff could not attend the trial on account of having chronic appendicitis; whereupon plaintiff's counsel asked for a continuance until the next morning. Continuance denied, whereupon plaintiff's attorneys refused to proceed with the trial and judgment was entered for defendant.

Held.—A litigant has a right to be present to assist his counsel in the trial; and his necessary absence is a good reason for a continuance. The plaintiff is a minor and ward of the Court, and under such circumstances, the Court is in duty bound to protect her rights, which cannot be waived either by her guardian ad litem or her attorneys.

Judgment Reversed.

DIVORCE—NO. 12,162—*Hagge vs. Hagge—Decided October 21, 1929 (On Rehearing.)*

Facts.—Plaintiff below was awarded a preliminary decree of divorce and defendant below then filed a motion to set aside the findings of fact and conclusions of law. Thereafter a final decree in favor of plaintiff below was entered. Both the findings of fact and the final decree were based upon conflicting evidence.

Held.—There was sufficient evidence to sustain the findings of fact and the final decree.

Judgment Affirmed.

EMINENT DOMAIN—VALUATIONS OF PROPERTY—NO. 12,184 —*City of Denver vs. Ben Tondall, et al—Decided October 21, 1929.*

Facts.—The City in pursuance of a plan to straighten the Platte River instituted an action under the eminent domain statute. The Commission appointed to award compensation for property taken or damaged made its report in which one Heimbecker, the owner of some of the property affected, did not acquiesce. There was a trial to a jury, which awarded Heimbecker compensation at the rate of $238.00 per lot for the land taken and $1,500.00 a lot for land damaged. There was no evidence to indicate any difference in the values of the lots taken and the lots damaged.

Held.—The jury was permitted to speculate on the damages and the amount awarded for the property damaged is obviously excessive.

Judgment Reversed.

NON-SUIT—INDEFINITE VERDICT—MOTION FOR NEW TRIAL —NO. 12,398—*Southern Surety Company vs. Peterson—Decided October 7, 1929.*

Facts.—Peterson had judgment against the Surety Company in Justice Court, and upon appeal, in County Court. The action is on a policy compensating for personal injuries. The company asserts error on the grounds that (1) the County Court should have granted it a non-suit; (2) the judgment is uncertain in amount in that it is for a definite sum "plus legal rate of interest"; and (3) failure of proof.

Held.—(1) The Company was not entitled to a non-suit because it did not specify the grounds therefor; (2) Peterson's counsel have waived the indefinite sum of interest, and this cures this alleged defect; (3) the company did not object to the matters constituting the third objection, and these points cannot be raised now.

Judgment Affirmed.