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Colorado Supreme Court Decisions

Dicta Editorial Board

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(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.)

CORPORATIONS—RECORDS OF—RIGHT OF STOCKHOLDER TO EXAMINE—NO. 12307—*Dynes and Fancher vs. Harris—Decided June 30, 1930.*

Facts.—Harris procured a peremptory writ of mandamus compelling the respondents to permit him to examine the books of the Colorado and Utah Coal Company. Respondents' answer to the petition admitted that the petitioner was a stockholder, but alleged that Harris was prompted by improper motives in desiring to examine the company books. The allegations of the answer further stated that Harris, in his capacity as a director of the company, was guilty of fraud toward the stockholders "in that while he was so serving, he learned of the strategic advantage of certain properties adjoining the property of the company," and that he took advantage of various company reports without divulging their contents, and that he acquired or was attempting to acquire these properties to be used in competition with the company. The answer further alleged that a suit is pending seeking to recover from Harris for the company, these properties fraudulently secured by Harris, and seeking further to restrain Harris from using for his private benefit any information secured by him while he was president and director of the company. The answer further alleged that the petitioner was not acting as a stockholder in his desire to examine the books, but rather as a competitor and adverse litigant, and that his interests were antagonistic to those of the company. A demurrer to this answer was sustained and the peremptory writ of mandamus was issued. The respondents, standing on the ruling on the demurrer prosecuted this writ of error.

Held.—(Opinion by *Mr. Justice Adams*)

(1) The petitioner's demurrer admits the existence of the prior suit and the allegations of bad faith set forth in the answer.

(2) From the conclusion reached in this opinion, Secs. 2267 and 2268 C. L. '21 as amended by Chap. 81 S. L. '27 give stockholders, creditors, and representatives, acting in good faith, the right to examine the corporate records and make abstracts therefrom.

(3) Colorado cases holding that "A stockholder's purpose in examining corporate books is not to be inquired into in an action of this kind," are not in accordance with the amended statutes. Under the existing statutes, good faith must be shown.

"We might therefore reverse the judgment on one or both of two grounds, first, that in the light of further reflection, we believe that we made a mistake in our former ruling and should candidly say so, or second, that the legislature has passed a new act, expressly amending Par. 2268, and amending Par. 2267 by implication. We base our present ruling on both of these grounds."

(4) Mandamus can not be converted into a weapon of fraud.

(5) The burden of proving the petitioner's bad faith is upon the respondents.

(6) "* * * when petitioner entertains a destructive purpose, hostile to the interests of the corporation as a whole, or the interests of other stockholders, whose rights are as sacred as his own, certainly the writ in his favor ought to be denied. He is then a trespasser, even on ground which otherwise would be his own domain; he has made himself an avowed enemy to be repelled. * * * No one has a right to misbehave, much less to enforce such claim in court."

Judgment reversed with directions to overrule the demurrer.

Mr. Justice Butler, concurring in part and dissenting in part.

Sec. 2268 C. L. '21 deals only with the *stock ledger,* not the balance of the corporate books. This is the section actually amended by the Session Laws of 1927. In other words, the right to examine the stock ledger is alone predicated upon the existence of good faith. The right to examine the other books is absolute, and the motive therefor can not be inquired into.

As to the merits of the respondents' contentions; Harris was a director of the company. There should have been no

trade secrets withheld from him, and if there were such secrets so withheld, they were done so wrongfully.

"Nor is it clear how the company could be *improperly* prejudiced by an inspection of the corporate records for the purpose of discovering evidence for use in the suit brought against Harris. If there is nothing in those records that would disprove the charges made against Harris, the company would suffer no harm; but if the records contain anything that would disprove those serious charges, it certainly would not further the interests of justice to judicially sanction the concealment of such defensive matter."

Therefore, so far as the judgment orders an inspection of all books, etc., except the stock ledger, it should be affirmed.

Mr. Justice Campbell and Mr. Justice Burke concur in the dissenting opinion with the following qualifications,

"They construe Sec. 2268 to mean that the court is given discretion to deny the right to inspect only when a by-law of the corporation limits the right of inspection."

As this company has no such by-law, the court had no right to refuse an inspection because of any improper motive on the part of the plaintiff. In their opinion, the judgment should be affirmed in its entirety.

CRIMINAL LAW—ERRONEOUS CHARGE—DEFENDANT DISCHARGED WHEN—NO. 12614—*Leighton and Scott vs. The People—Decided June 30, 1930.*

Facts.—The defendants were convicted of robbery. They prosecuted this writ of error upon the grounds that the court erred in refusing to direct a verdict of not guilty insofar as the evidence was insufficient to prove the crime charged.

Held.—"The record reeks with lecherous, vile, nauseating and unprintable testimony. An examination thereof convinces us that there was no sufficient proof of the crime of aggravated robbery charged in the information to require the court to submit the cause to the jury and the court, therefore, erred in refusing to direct a verdict of not guilty at the close of the People's case. Whatever crime may have been committed, it was not that of robbery."

Judgment Reversed.

MAN AND WIFE—PROPERTY RIGHTS—NO. 12566—*Hedlund vs. Hedlund—Decided July 7, 1930.*

Facts.—The plaintiff and defendant were man and wife. Subsequent to their marriage, the plaintiff's occupation carried him from his home in Hugo, Colorado to Columbus, Nebraska. Intermittently, the plaintiff alleged, he sent money to his wife to pay the family expenses, the surplus to be invested for the plaintiff. The plaintiff further alleged that he sent defendant a deed to his house with the name of the grantee left blank, in order that a sale might be effected; but that the deal fell through and that the defendant filled her name in as grantee. The plaintiff prayed for an accounting and "an equitable division of the accumulations of the parties." Defendant denied these allegations and alleged that all of the money sent her by the plaintiff was used for the payment of family expenses, and that as to the house, she entered her name as grantee at the plaintiff's request.

It was the main contention of the defendant "that a wife or husband cannot maintain an action at law or in equity to recover property acquired during the marriage relation." From a verdict for the plaintiff, defendant alleged error.

Held.—(1) "First, it is assumed that the common law fiction that husband and wife are one still persists in this state. * * * the fiction of one legal personality no longer exists."

(2) The right of one spouse to sue the other for property acquired by the former, even during coverture, is one which is now well established.

Judgment Affirmed.

MANDAMUS—WHEN APPLICABLE—NO. 12634—*Barghler vs. Farmers Irrigation Company—Decided June 30, 1930.*

Facts.—The plaintiff, claiming to be the owner of five shares of stock in the defendant corporation, brought this action of mandamus to compel the defendant to transfer these shares on the books of the company. The defendant obtained a judgment on the pleadings on the grounds that the ownership of the stock was in dispute. The defendant had also attempted to have the other claimants of the stock made parties to the suit so that it could be dismissed as to them. This

motion by the defendants was denied. The issue remaining was that of the ownership of the stock.

Held.—"No one is entitled to the writ whose right is not clear and unquestionable. * * * It is not an appropriate remedy * * * when it is apparent that the interests of third persons, who are not before the Court, are involved."

Judgment for Defendant Affirmed.

TAXATION—RAILROADS—TAX LIEN—NO. 12219—*Commissioners of Routt County vs. Denver and Salt Lake Railroad Co.—Decided June 30, 1930.*

Facts.—The County brought this action to recover $14,567.25, being the first half of the Company's tax for 1918 together with interest thereon. The Company contended that insofar as the Road was in the hands of the Government from December 29, 1917 until March 1, 1920, it should pay the tax. The Government and the Company contested the claim, but it was finally adjusted in Nov. 1925 when the Government paid to the Company only the principal of the tax. The County was not a party to the settlement, nor did it acquiesce to it. The Company offered to pay the principal, but contended that the County waived its right to all but the principal insofar as it failed to apply for an order compelling the Receiver to pay, and that by failing to litigate the matter earlier, it is estopped to demand more.

The defenses urged by the Company were: (1) The Receivership of the Road, and (2) Federal Control. Incident to these it says recovery of more than the principal would be inequitable, and that the sum demanded is due, if at all, from the United States. The Court held for the Company, and the County alleged error.

Held.—(1) There is nothing in a Receivership which would defeat the "perpetual lien" for taxes.

(2) Nor did Federal Control interfere with the rights of the County to recover the taxes due it. It was the expressed intention of Congress, when the Government took over the Railroads, to leave all State laws and regulations unimpaired so far as they did not interfere with specified Governmental uses.

During the time when the Government had control, there was a good deal of dispute between it and the Company. The

County could not have been required to abandon its lien and "chase these contending claimants through a doubtful course of litigation to see which, if either, it could hold. * * *"

Judgment Reversed.