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Colorado Supreme Court Decisions

Dicta Editorial Board

COLORADO SUPREME COURT DECISIONS

(EDITORS NOTE.—It is intended in each issue of the Record 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.—No. 12,123—*Kahnt, Plaintiff in Error, vs. Caldwell, Defendant in Error.—Decided September 17, 1928.*

Facts.—Court below rendered opinion and ordered Attorney for plaintiff below to prepare a decree on the opinion, instead of doing so he filed a motion to amend the findings.

Held.—Opinion of Court below constituted no final decree; therefore, there was no judgment to affirm or reverse.

Writ of Error Dismissed.

APPEAL AND ERROR—CONDEMNATION PROCEEDINGS. — No. 11,982.—*Miller, Plaintiff in Error, vs. City and County of Denver, Defendant in Error.—Decided September 24, 1928.*

Facts.—The City and County of Denver brought condemnation proceedings. Miller filed answer, attacking sufficiency of petition and validity of the proceeding. Court appointed Commissioners in Condemnation.

Held.—Order determining that Condemnation proceeding will lie and appointing commissioners is not a final order. writ of error will not lie thereto until after the final determination of the proceeding and entry of final decree; a writ of error can then be sued out.

Writ Dismissed.

CIVIL SERVICE-INITIATIVE AND REFERENDUM.—No. 12,213.—*Miller vs. Armstrong, as Secretary of State.—Decided September 29, 1928.*

Facts.—A petition to initiate a repeal of Section Thirteen of Article Twelve of Colorado Constitution, known as the Civil Service Amendment, was protested. The Secretary of

State sustained the protest and the District Court upon review affirmed the Secretary's action.

Held.—Action of the District Court was right. The petition was not in the form prescribed by law, nor were there sufficient legal signatures on the petition to entitle it to go on the ballot.

Judgment Affirmed.

CRIMINAL LAW — STEALING STOCK. — No. 12,120. — *Dave Camp, Plaintiff in Error, vs. The People of the State of Colorado, Defendant in Error.—Decided September 24, 1924.*

Facts.—An information filed by the district attorney, charged C. with receiving 42 stolen sheep from one Muniz during the month of December, 1926, knowing that they had been stolen. By his own confession, Muniz stole the sheep, and was the principal witness for the people. He testified on direct examination that the 42 sheep had all been delivered to C. during the month of December, and that he had never at any other time sold any other sheep to C. C. offered in evidence checks purporting to have been endorsed by Muniz in February, 1926, and also offered testimony to prove purchase of sheep from Muniz at that time. These offers were rejected by the trial court, and C.'s attempt to cross-examine Muniz on these points were stopped by the trial court.

Held.—The denial of this right to cross-examine was error. It was important for C. to shake the credibility of Muniz, without whose testimony the people's case must have failed.

Judgment Reversed.

DEATH BY WRONGFUL ACT—HIGHWAYS—INSTRUCTIONS.—No. 11,768.—*Lewis, Plaintiff in Error, vs. Lanier, et al, Defendant in Error.—Decided May 14, 1928.*

Facts.—Lewis, Plaintiff, sued defendants for damages for death of her husband caused by barricading highway, and failing to properly illuminate the barricade at night whereby an automobile in which the plaintiff's husband was riding was overturned causing his death.

Held.—1. Instructions to jury were erroneous in that they commingle the question of negligence of the defendants with the question of negligence of those approaching in an automobile and failed to point out the difference between the effect on the plaintiff's right to recover for negligence on the part of the driver of the automobile, and negligence on the part of the guest.

2. Contract between the State of Colorado and the defendants providing how the defendants were to put up warning devices upon closing the highway was incompetent as this was an action based on negligence and not upon contract.

Judgment Reversed.

FRAUDULENT CONVEYANCE.—No. 11,966.—*James vs. Myers. —Decided October 1, 1928.*

Facts.—This was an action by James, a judgment creditor, to set aside a deed of conveyance of real estate made to Heaney by the judgment debtor, Myers, on the ground that the same was made with the intent to delay, hinder and defraud their creditors, including the plaintiff.

Held.—It was essential for the plaintiff under the issue to show among other things not only the alleged fraudulence in the defendant, the grantor, but also knowledge thereof or participation therein by their grantee, Mrs. Heaney. The evidence being conflicting, this Court will not disturb the findings of the lower Court made thereon, which was in favor of the defendant.

Judgment Affirmed.

LANDLORD AND TENANT.—No. 11,729. — *Second Industrial Bank, Plaintiff in Error, vs. A. L. Morrison and May Morrison, Defendants in Error.—Decided September 24, 1928.*

Facts.—One J. B. Hurt owned a house and M. and M. were in possession under him. About June 1, 1925, the Bank notified M. that it had purchased the property and requested M. to pay $25.00 a month rent, which M. refused to do. Two weeks later M. moved out. This action was begun in Justice Court to collect $12.50 rent. Defeated there, plaintiff appealed to County Court where defendant was again victorious.

Held.—Under the facts as found below, M. and M. are under no liability under either an expressed or implied contract.

Judgment Affirmed.

MISTAKE—REFORMATION OF DEED.—No. 11,944.—*Clarence W. Hoback, Plaintiff in Error, vs. Mollie Rink, Defendant in Error.*

Facts.—Action to reform a warranty deed from plaintiff to defendant by inserting a reservation of oil rights on the ground of mutual mistake. The oral evidence was contradictory as to the intention of the parties. The plaintiff introduced letters from defendant to show the intention. Judgment in lower court for defendant.

Held.—A review of the testimony shows that there was a conflict of oral testimony, and the documentary proof is not such clear, precise and indubitable evidence of the mistake as would require the trial court to disregard the oral testimony or justify the interference by the appellate court with the findings of the trial court.

Judgment Affirmed.

REPLEVIN—FRAUD.—No. 12,096.—*Albin, Plaintiff in Error, vs. Davies, Defendant in Error.—Decided September 24, 1928.*

Facts.—Albin brought Replevin against Davies and was defeated.

Held.—Assuming that evidence produced by Davies established fraud, such fraud would not defeat Albin's action, provided he is a bona fide holder of the note and mortgage. If Davies has been defrauded, she should seek redress from the one who committed the fraud, and is not entitled to be made whole at the expense of one who in no manner was responsible for her loss.

Judgment Reversed.

SCHOOL DISTRICTS—CONTRACTS WITH TEACHERS.—No. 11,949.—*Ryan, Plaintiff in Error, vs. School District, No. 26, Defendant in Error.—Decided September 17, 1928.*

Facts.—Plaintiff and his wife claimed pay for teaching

after the expiration of their contract, and also claimed that as the plaintiff and his wife were elected teachers for three consecutive years the employment continued without further election or appointment "stable and continuous" during efficiency and good behavior.

Held.—Act of 1921, Colorado Laws, Sections 8,444 and 8,445, with reference to teachers who have been elected or appointed for three consecutive years only applies to First-Class School Districts. Defendant in error was the third class school district; hence, statute has no application. Plaintiff and his wife were not entitled to compensation for teaching after the contract expired because the so-called extra services were rendered after the plaintiff and his wife were informed by an officer of the School District that the district would not pay for such services. Under such circumstances the law will not imply a promise to pay.

Judgment Affirmed. ———

WATERS AND WATER RIGHTS.—No. 11,959.—*The Pioneer Ditch Company, Plaintiffs in Error, vs. The Florida Canal Enlargement Company, Defendant in Error.—Decided September 17, 1928.*

Facts.—Court below referred case to a Referee. Referee filed his report and Court set a day in the future for objections to the report findings and decree. No objections were filed by plaintiffs in error. Court entered decree reserving certain matters for determination. Plaintiff in error filed its petition objecting to any changes in the findings and proposed decree.

Held.—Court below was right in refusing to reopen questions theretofore decided, without any objection or exception on the part of plaintiff in error, and in limiting the hearing to the question, expressly reserved for consideration, namely; whether or not the defendant in error was entitled to a conditional award in excess of that already decreed by the Court.

Judgment Affirmed.