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Recent Trial Court Decisions

Dicta Editorial Board

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Held.—In case of one at work and not in immediate need, denial of a stay and consequent payment of the full amount will, in case of a reversal, defeat the Writ of Error and in the present case stay should be allowed.

Stay Ordered.

RECENT TRIAL COURT DECISIONS

(EDITOR'S NOTE.—It is intended in each issue of Dicta to note any interesting decisions of the United States District Court, the Denver District Court, the County Court, the Juvenile Court, and occasionally the Justice Courts.)

MUNICIPAL CORPORATIONS—SEWERS—BASIS OF ASSESSMENTS—DENVER DISTRICT COURT—No. 101392, Division 2—*Santa Fe Land Improvement Company vs. Denver—James C. Starkweather, Judge.*

Facts.—Plaintiff sues to enjoin assessment for sewer costs, claiming its property was already served by a sewer and not benefitted by the new one. The Council, sitting as a Board of Equalization, had refused to hear plaintiff, on the grounds it had no right to change the cost apportionment. Defendant demurred.

Held.—Sec. 20 of the Charter provides City may make improvements and “assess the cost * * * upon the property especially benefitted * * *”, but Sec. 60 provides, “The cost of district sewers shall be assessed * * * in proportion as the area of each piece of real estate in the district is to the area of all the real estate in the district * * *”, and makes the basis *area*, not *benefit*. The Council’s decision that the improvement was reasonable and beneficial to the territory *as a whole*, was a legislative act and final, and justified the creation of the district, irrespective of individual benefits.

Demurrer Sustained.

ANNULMENT—FRAUD.—DENVER JUVENILE COURT.—No. 6338.—*Sides vs. Sides.—Robert W. Steele, Judge.*

Facts.—Action to annul marriage on ground that said marriage was procured by fraudulent representations. Among

these representations were: that defendant could and would establish a home where he and plaintiff would live alone; that defendant did not use intoxicating liquor. At the date of marriage plaintiff was fourteen years of age. Plaintiff and defendant cohabited for seven days, then parted. The evidence was that defendant refused to provide a separate abode, and that he was financially unable so to do; also, that defendant became intoxicated.

Held.—To constitute such fraud as will support an annulment in a case where the marriage has been consummated by cohabitation, it is not sufficient that the misrepresentations relate to accidental matters, such as rank, fame, fortune, habits, or temperament; it is sufficient when the fraud relates to matters necessarily affecting the health or well being of the parties or any offspring. The youth of the plaintiff is immaterial if the misrepresentations do not relate to essential matters. In the present case, the misrepresentations do not go to the essence of the marriage contract.

Petition Dismissed.

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