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Colorado Supreme Court Decisions

Dicta Editorial Board

COLORADO SUPREME COURT DECISIONS

(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.)

APPPEAL AND ERROR—WRIT OF ERROR—DISMISSAL—NO. 12,341—*Ernst versus Eldred, Judge—Decided May 27, 1929.*

Facts.—Judgment in lower court was rendered on July 8, 1927. The writ of error was brought on March 30, 1929. Eldred filed motion that the writ of error be dismissed on the ground that it was not brought within one year from the rendition of the judgment.

Held.—Rule Eighteen provides that a Writ of Error shall not be brought after the expiration of one year from the rendition of the judgment complained of. The motion to dismiss is well taken and will be granted.

Writ Dismissed.

PROMISSORY NOTE—COGNOVIT—NO. 12348—*Sullivan vs. International Harvester.—Decided June 17, 1929.*

Facts.—On September 16, 1927, judgment was entered in favor of the plaintiff on the complaint on a cognovit note. A verified answer and confession of judgment was filed by an attorney acting under the power contained in the note. Defendant knew about the judgment the next day after it was rendered. September 23, 1927, defendant appeared by another attorney and moved to set the judgment aside, but tendered no answer. He attempted to support the motion by an affidavit. On November 21, 1927, he filed a further affidavit but still tendered no answer. On March 26th he filed an answer, and on April 2nd plaintiff moved to strike the same on the ground that it was not filed in apt time. The motion was granted. The defendant then waited a year lacking ten days and brought the case to this court.

Held.—The judgment was regular and the answer should have been stricken because not filed in apt time.

INSURANCE—CANCELLATION OF POLICY—NO. 12353.—*Westchester Fire Insurance Company vs. Schuricht.—Decided July 1, 1929.*

Facts.—The Insurance Company insured the plaintiff against loss or damage by hail to his growing crops. Later the plaintiff suffered a loss, which loss was adjusted and paid. Still later the plaintiff again suffered a loss, which the defendant refuses to pay. Trial was to the Court and Jury, which found for the plaintiff. The only issue was whether the policy was in force at the time of the second loss. The defendant offered a proof of loss and an adjustment blank in which was the following clause "In consideration of this company paying me $650 I hereby cancel my policy No. 9133", which was signed by the plaintiff. The policy was not in possession of the defendant and was never surrendered.

Held.—The question of whether or not the policy was cancelled was submitted to the Jury and was a disputed fact. The Jury found that it was not cancelled, and accordingly returned a verdict in favor of the plaintiff. This Court will not interfere with the finding of the jury.