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Taxation

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ficient to exclude the confession, but that the weight to be given thereto was for the jury. It was also held that under *Schneider v. People* [41] it was proper to admit a joint confession which included statements regarding similar offenses, as they were restricted by instruction as evidence only of plan or design.

In the last case to be mentioned, *M. McRae v. People,*[42] it was held that where an irreconcilable conflict in the evidence was presented it was the sole province of the jury to determine the credibility of the witnesses. This was a case of manslaughter while driving a vehicle under the influence of alcohol where the blood alcohol analysis result was very high, and the only testimony as to what the defendant had had to drink was "one and a half bottles of 3.2 beer." The instructions as given by the trial court were found to be without error and the conviction was affirmed with one Judge dissenting.

In conclusion the writer would like to cite one more legislative amendment, 40-14-2, '53 C.R.S. relating to obtaining goods under false pretenses has been amended so that the dividing line between a felony and misdemeanor is now $50.00 instead of $20.00.[43]

TAXATION

By KEITH ANDERSON *of the Denver Bar*

DECISIONS

Only two cases dealing with this subject were before the Colorado Supreme Court during the past year. One has application only to a special class of taxpayers, but the other is of interest to all property owners.

In *Cooper Motors, Inc. v. Board of Jackson County Commissioners, et al.,*[1] the plaintiff's attorneys asked the court to overrule *City and County of Denver v. Hover Motors, Inc.*[2] On an agreed statement of facts, the trial court was presented with the issue whether automobiles, upon which the specific ownership tax had been paid, were subject to *ad valorem* taxes in those situations where they form a part of a dealer's stock of merchandise. The trial court, following the rule of law laid down in the *Hover* case, held that they were. The Supreme Court reversed the decision of the lower court, overruling its holding in the *Hover* case. With commendable frankness the court recognized its prior error in construction of the applicable statute and constitutional provision.

The other case, *Weidenhaft v. County Commissioners of El Paso County, et al.,*[3] was an attack upon the validity of the statewide reappraisal program as applied to real property. The plain-

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[41] 118 Colo. 543, 199 P. (2d) 873 (1948).
[42] Vol. 7, C.B.A. Ad. Sh. No. 13, pg. 460; 286 P. (2d) 618.
[43] S.B. 124, approved April 15, 1955.
[1] 279 P. 2d 685, 1954-55 C.B.A. Adv. Sh. No. 6.
[2] 121 Colo. 439, 217 P. 2d 863.
[3] 283 P. 2d 164, 1954-55 C.B.A. Adv. Sh. No. 10.

tiff, an owner of real property situated in El Paso County, brought an action against the County Commissioners of said county to recover the entire 1952 taxes levied upon his property. Since the allegations made by the plaintiff included charges that the State Tax Commission was unlawfully usurping the function of the county assessor and that the statute (137-6-12 1953 C.R.S.) under which it was acting was unconstitutional, the Attorney General was permitted to intervene with the result that the Tax Commission, the individual members thereof, and the Attorney General became parties defendant.

The majority opinion considered that plaintiffs were actually advancing two theories, the first was that the statute under which the State Tax Commission was acting was unconstitutional and invalid, and the second was that the proceedings conducted pursuant thereto were irregular and illegal. On the second issue, the court expressed the view that the plaintiffs had failed to pursue their administrative remedies and that the case might be disposed of on this issue alone. However, in view of the insistence on the part of the plaintiffs' counsel that his entire case was based upon the invalidity of the law, the court chose to decide the case upon that issue. In so doing, the court held, with one dissent, that there could be no present question as to the constitutionality of the statute; that the statute was sufficiently broad to justify the Commission in the adoption and application of reasonable standards essential to bring about a more accurate, equitable and equal original assessment; and that the Tax Commission's action in issuing a pricing manual and other data and forms which assessors were directed to use, but which were designed only for aid and assistance of assessors and as standards by which they might more accurately appraise property, was not a usurpation of assessors' functions.

LEGISLATION:

The legislature adopted a number of changes in the statutes relating to taxation, which are probably of more continuing interest than these cases.

S. B. 180 amends Subsection 14 of 138-1-12 C.R.S. 1953 by permitting nonresidents to deduct contributions to Colorado charities in amounts equal to 15% of the income derived from sources within Colorado, in the case of nonresident individuals, and 5% of such net income, in the case of nonresident corporations. This remedied a serious defect in prior law, which permitted deduction only if ordinarily and necessarily incurred in connection with the production of Colorado income. Naturally this greatly inhibited nonresidents from making gifts to Colorado charities.

H. B. 202 continues the 20% credit against the state income tax which has been in effect for several years to the calendar year 1955 or a fiscal year beginning in 1954 and 1955.

H. B. 459 Subsection (3) of 138-1-39 of C.R.S. 1953 relating to the period of limitation for refunds of income taxes.

H.B. 182 effects a substantial revision of the income tax laws relating to corporate distributions, liquidations and reorganizations, so as to bring them generally in line with the 1954 Internal Revenue Code.

H. B. 232 amends the Colorado inheritance tax law so that it is in conformity with the 1954 Revenue Code with respect to the credit against the federal estate tax for the inheritance tax paid. It also requires the filing of a copy of the Federal estate tax return with the Inheritance Tax Commissioner in every estate where such a return was filed.

Several other statutes were passed relating to the general property tax but in general they effected only procedural changes.

PROPERTY LAW

By WILLIAM B. PAYNTER, *of the Colorado Bar*

(1) BUILDING RESTRICTIONS—USED CAR LOTS AND HOUSE TRAILERS

Cases which deal with building restrictions are *Taylor v. Melton,* 1954-55 C.B.A. Adv. Sh. No. 1, p. 23 and *Pagel v. Gisi,* 1954-55 C.B.A. Adv. Sh. No. 13, p. 478. Both involved the question of the effect of actual notice of building restrictions contained in an original deed but omitted in subsequent deeds.

In *Taylor v. Melton,* supra, plaintiffs alleged in substance, that one Fairley who was the owner of a parcel of land, platted and subdivided same and a map thereof was filed February 4, 1941, in the office of the County Clerk and Recorder; that Fairley sold a portion of the tract to Nesbitts, the deed to which was dated March 20, 1941, and thereafter recorded and which deed provided that neither the grantees nor their successors and assigns would construct a residence on the land of a cost less than $2,500; the grantor covenanting that he would not build or permit to be built upon any of the land standing in his name in the particular subdivision, any structure other than a residence of construction value of not less than $2,500; the above restrictions being a covenant running with the land and binding upon the grantor, his successors and assigns forever.

It was further alleged that plaintiffs were the owners of certain lots in said Fairley Addition and defendants the owners of Lot Three thereof; that plaintiffs and defendants respectively acquired their titles to said lots or parcels of land with notice and knowledge of the restrictions set forth in the deed to the Nesbitts and notwithstanding said restrictions, the defendants in February, 1952, planned and commenced and intended to complete a structure to be utilized as a used car lot, in violation of said restrictions.

The trial judge inspected the premises and found thereon a one room small building used as an office, a number of cars parked on the lot and the same was being used as a used and new automobile sales lot and that in addition thereto defendants had built