10-6-1967

Silver v. Reagan

Roger J. Traynor

[Sac. No. 7814. In Bank. Dec. 18, 1967.]

PHILL SILVER et al., Petitioners, v. RONALD REAGAN, as Governor, etc., et al., Respondents.

[Sac. No. 7815. In Bank. Dec. 18, 1967.]

ABE VICKTER et al., Petitioners, v. RONALD REAGAN, as Governor, etc., et al., Respondents; THE SENATE AND THE ASSEMBLY OF THE STATE OF CALIFORNIA, Interveners.

[1] **Constitutional Law—Operation and Effect of Constitution—Reapportionment of Congressional Districts—1967 Redistricting.**—Stats. 1967, 2d Ex. Sess., ch. 2, providing for the redistricting of the state's congressional districts, meets the governing requirements of the U. S. Supreme Court decisions as discussed in *Silver* v. *Reagan* (1967) *ante,* p. 452 [62 Cal.Rptr. 424, 432 P.2d 26], and is constitutional.

THE COURT.—In these congressional reapportionment proceedings the Governor, the Secretary of State, the Attorney General, and the Senate and the Assembly of the State of California have submitted to the court chapter 2 of the Statutes of 1967, Second Extraordinary Session providing for the redistricting of the state's congressional districts. They request that the court declare chapter 2 constitutional and instruct the Secretary of State to inform all election officials to follow chapter 2 in preparing for and carrying out the 1968 primary and general elections. We have reviewed chapter 2 in the light of the decisions of the United States Supreme Court governing us herein (*Silver* v. *Reagan* (1967) *ante,* p. 452 [62 Cal.Rptr. 424, 432 P.2d 26]), and we have considered the objections submitted by several citizens. We conclude that chapter 2 is constitutional and that the relief requested should be granted.

The Secretary of State is instructed to inform all election officials to follow chapter 2 in preparing for and carrying out the 1968 primary and general elections. The alternative writs of mandate heretofore issued are discharged and the proceedings are dismissed.

See **Am.Jur.2d**, Elections, §§ 12-15, 30, 32.

McK. Dig. References: [1] Constitutional Law, § 16.5.

[L. A. No. 26507. In Bank. July 31, 1962.]

THE PEOPLE ex rel. THE DEPARTMENT OF PUBLIC WORKS, Plaintiff and Appellant, v. HUGO A. FORSTER et al., Defendants and Respondents.

[1] **Evidence—Admissions—Offers to Compromise.**—Offers of compromise are not admissible in evidence as such. The reason for the rule is that a person is entitled to endeavor to "buy his peace" without fear that his offers of compromise for such purpose will be used against him if not accepted.

[2] **Compromise—Policy of Law.**—The law favors compromises.

[3] **Evidence—Admissions—Offers to Compromise.**—The declaration, in an offer of compromise, of facts involved in a controversy which are not mere concessions made for the purpose of such offer, but are statements of independent facts, are admissible against the party making them.

[4] **Id.—Admissions—Offers to Compromise.**—If a concession in an offer of compromise is hypothetical or conditional, it can never be interpreted as an assertion representing the party's actual belief and therefore cannot be an admission; conversely, an unconditional assertion is receivable without any regard to the circumstances which accompany it.

[5] **Id.—Admissions—Offers to Compromise.**—If an express admission is in terms made, it is receivable, even though it forms part of an offer to compromise. The occasion of the utterance is not decisive; what is important is the form of the statement, whether it is explicit and absolute.

[6] **Id.—Admissions—Offers to Compromise.**—The intention of a party is the crucial point in determining whether his statement amounts to an ordinary admission or constitutes an offer of compromise. If the proposal is tentative and any statements made in connection with it hypothetical, or if the offer was made to "buy peace" and in contemplation of mutual concessions, it is as to such point a mere offer of compromise; but if the intention is apparent to admit liability and to seek to buy or secure relief against a liability recognized as such, or

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[1] See **Cal.Jur.2d**, Evidence, § 406; **Am.Jur.**, Evidence, (1st ed. § 565).

[2] See **Cal.Jur.2d**, Compromise and Settlement, § 2; **Am.Jur.**, Compromise and Settlement (1st ed. § 4).

McK. Dig. References: [1, 3-6] Evidence, § 190; [2] Compromise, § 2; [7, 8] Eminent Domain, § 155; [9] Eminent Domain, § 175; [10] Eminent Domain, § 64.

the same power to admit the report and rebuttal testimony as the panel would have had if it had conducted the hearing. The referee exercised this power, and the report and rebuttal testimony became a proper part of the record, as the panel conceded in stating that it could consider the report if it wished to do so.

[5] The panel was obliged "to achieve a substantial understanding of the record," including this evidence. (*Allied Compensation Ins. Co.* v. *Industrial Acc. Com., supra,* p. 120.) It could not achieve a substantial understanding of the record when it refused to consider a proper part thereof.

The award is annulled and the case remanded for further proceedings consistent with this opinion.

Gibson, C. J., Schauer, J., McComb, J., Peters, J., White, J., and Dooling, J., concurred.

The petition of respondent Industrial Accident Commission for a rehearing was denied July 11, 1962.

jury returned a special verdict finding that defendant was guilty of negligence and that plaintiff-appellant Grossman was guilty of contributory negligence; nor is there a suggestion that such plaintiff-appellant requested, and the trial court refused to instruct the jury to return, a special verdict pursuant to Code of Civil Procedure, sections 624 and 625.

In the absence of such a special finding, or of a request therefor refused by the trial court, the reversal appears to be based on unwarranted speculation and is, therefore, obnoxious to the Constitution, article VI, section 4½. This conclusion is emphasized by the fact that the evidence strongly supports the implied finding that defendant was not guilty of any negligence proximately causing injury to the plaintiffs.

For the reasons stated the judgment of the trial court should be affirmed.

McComb, J., concurred.