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Contracts - Specific Performance - Intoxication as a Defense

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the state court. The Supreme Court said in *Stefanelli v. Minard*[19] that it would not interfere in state criminal proceedings to suppress evidence illegally obtained because of the special delicacy of the adjustment to be preserved between federal equitable power and state adminstration of its own law.[20]

Another argument against the decision laid down in this case is that it places additional restraints on federal law enforcement officials, thus making the apprehension of criminals more difficult. It has been argued that, as in the instant case, it would have the effect of releasing upon society criminals that are known to be guilty.[21]

Despite the rather weak authority for the decision reached in this case, it is submitted that the results flowing from the decision should be beneficial. Some feel that existing law does not provide sufficient protection from the arbitrary and illegal acts of law enforcement officers.[22] On the state level, suits against a policeman are generally fruitless because of his financial condition, and the municipality that hired the policeman is not liable because of governmental immunity.[23]

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CONTRACTS — SPECIFIC PERFORMANCE — INTOXICATION AS A DEFENSE. — In an action for specific performance of a contract for a sale of land brought by the vendee against the administratrix of the deceased vendor, the defense of intoxication of the vendor at the time of the execution of the contract was asserted. The District Court entered judgment for the plaintiff vendee and denied defendant's motion for trial de novo. On appeal, the Supreme Court of North Dakota *held* that the judgment of the lower court was correct in denying the defense of intoxication on the basis of the evidence presented. *Christianson v. Larson*, 77 N.W.2d 441 (N. D. 1956).

The early common law theory which provided that intoxication was no defense to the validity of a contract[1] has undergone a transformation so that today most states hold that a contract entered into by a party "excessively" intoxicated is voidable as to him.[2] What is meant by "excessive" intoxication has apparently not been precisely defined, but the common conception is that the intoxication must be so great as to deprive one of reason and understanding, thus rendering him incapable of comprehending the nature and consequences of his act.[3] This excessive intoxication to be effective as a defense must occur at the time the contract was executed.[4] The time within which excessive

19. 342 U. S. 117 (1951).
20. *Id.* at 120.
21. Comment, 42 Mich. L. Rev. 910 (1944) (Such decisions tend to "handicap law enforcement . . . and are . . . contrary to the public interest . . .")
22. Orfield, Criminal Procedure From Arrest to Appeal, 28-31 (1947).
23. *Id.* at 28, 29.

1. 2 Kent Comm. 451 (10th ed. 1860); Buch v. Breinig, 113 Pa. 310, 6 Atl. 86 (1886) (dictum).
2. *E.g.* Hauge v. Bye, 51 N.D. 848, 201 N.W. 159 (1924); Spoonheim v. Spoonheim, 14 N. D. 380, 104 N.W. 845 (1905); *In re* Thorne's Estate, 344 Pa. 503, 25 A.2d 811 (1942); *Ex parte* Burns, 194 Wash. 293, 77 P.2d 1025 (1938).
3. Martin v. Harsh, 231 Ill. 384, 83 N.E. 614 (1907); Keedick v. Brogan, 116 Neb. 339, 217 N.W. 583 (1928); Renfeldt v. Brush-McWilliams Co., 45 N. D. 224, 176 N.W. 838 (1919); Harlow v. Kingston, 169 Wis. 521, 173 N.W. 308 (1919).
4. Emerson v. Shirley, 188 La. 196, 175 So. 909 (1937); Simpson, Contracts 293 (1954).

intoxication may be averred in order to nullify the contract varies.[5] A North Dakota statute requires that a contract must be rescinded promptly upon discovery of facts giving rise to a right of recission.[6] Failure to disaffirm within a "reasonable" time after acquiring such knowledge is deemed an election to affirm it.[7] What constitutes a "reasonable" time is not definite but depends upon the facts of the particular case.[8] The North Dakota Supreme Court has suggested that the morning after the contract was entered into is a reasonable time,[9] while a period of seven years was considered too long.[10] A party was held not guilty of laches when he failed to rescind almost a year after discovery of fraud and when no rights of third parties intervened and he had received no consideration.[11]

There is a presumption that a signed contract is valid.[12] This requires the party asserting intoxication as a defense to assume the responsibility and burden of proving it.[13] There must be clear and convincing proof of excessive intoxication before the court will sustain this defense.[14] The degree of intoxication is a question of fact,[15] and the evidence is usually established by the testimony of witnesses, but their testimony is subject to the final determination by the jury.[16]

The holding in the principal case conforms to the general rule that there must be concrete and conclusive proof of excessive intoxication. The mere fact that the party attempting to rescind was known to have been a habitual drunkard will not give rise to a right to rescind,[17] unless he was excessively intoxicated at the execution of the contract.[18] In the instant case the Administratrix failed to establish such proof and was required to execute the deed as a contractual obligation of the deceased.[19]

RONALD SPLITT.

CRIMINAL LAW — NATIONAL MOTOR VEHICLE THEFT ACT — CONSTRUCTION OF "STOLEN." — Appellant was convicted under the Dyer Act for having appropriated to his own use and driven across a state line, an automobile bailed to him by the conditional vendee for the purpose of returning it to the conditional vendor. The conviction was affirmed on appeal by the United States Circuit Court of Appeals which *held* that the word "stolen" as used in

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5. Mann Chevrolet Co. v. Associates' Inv. Co., 125 F.2d 778 (8th Cir. 1942) (dictum).

6. N. D. Rev. Code § 9-0904 (1) (1943).

7. Frankish v. Fed. Mortg. Co., 30 Cal. App.2d 700, 87 P.2d 90 (1939); Hauge v. Bye, 51 N. D. 848, 201 N.W. 159 (1924); Spoonheim v. Spoonheim, 14 N. D. 380, 104 N.W. 845 (1905).

8. Mann Chevrolet Co. v. Associates' Inv. Co., 125 F.2d 778 (8th Cir. 1942).

9. Hauge v. Bye, 51 N. D. 848, 201 N.W. 159 (1924).

10. Spoonheim v. Spoonheim, 14 N. D. 380, 104 N.W. 845 (1905).

11. Deasy v. Taylor, 39 Cal. App. 235, 178 Pac. 538 (1919).

12. Bradley v. Industrial Commission, 51 Ariz. 291, 76 P.2d 745 (1938); Indemnity Ins. Co. v. Macatee Ins. Co., 129 Tex. 166, 101 S.W.2d 553 (1397). See also Crutcher Laboratory v. Crutcher, 288 Ky. 709, 157 S.W.2d 314, 319 (1942).

13. Lyon v. Jackson, 132 N.E.2d 779 (Ohio 1955). See also Brugman v. Brugman, 93 Neb. 408, 140 N.W. 781 (1913).

14. Emerson v. Shirley, 188 La. 196, 175 So. 909 (1937); *In re* Null's Estate, 302 Pa. 64, 153 Atl. 137 (1930).

15. Taylor v. Koenigstein, 128 Neb. 809, 260 N.W. 544 (1935).

16. Cardinal v. Cardinal, 131 S.W.2d 1005 (Tex. Civ. App. 1939); Jones v. Selman, 109 S.W.2d 1003 (Tex. Civ. App. 1937).

17. Snead v. Scott, 182 Ala. 97, 62 So. 36 (1913).

18. Taylor v. Koenigstein, 128 Neb. 809, 260 N.W. 544 (1935).

19. Francis v. Ferguson, 246 N. Y. 516, 159 N.E. 416 (1927); *In re* Fullmer, 319 Pa. 192, 197 Atl. 545 (1935); *In re* Murphy, 191 Wash. 180, 71 P.2d 6 (1937).