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Automobiles - Conditional Sales - Vendor's Liability for Torts of Vendee

Shelley J. Lashkowitz

willing to perjure themselves as to their true intentions, and denies protection to honestly mistaken takers who testify in good faith.[8]

Generally, a claim must be supported by acts plainly indicating an intent to claim.[9] Among conditions which will negative an intent to claim in any jurisdiction are: an agreement that the mistaken boundary is temporary and not the true line;[10] or a disavowal of claim by an expression of willingness to return the property to the true owner.[11]

The Supreme Court of North Dakota has never decided whether a claimant to real property held as a result of a mistaken boundary must prove his hostile intent to acquire title.[12] Of course, the other requirements of adverse possession, *viz.*, that it be open, actual, notorious, exclusive, continuous and uninterrupted must concurrently exist with the claim of right.[13] A North Dakota statute further provides that the land occupied must be substantially enclosed or that it must be cultivated or improved.[14] The North Dakota Court has decided that the claimant, ". . . must unmistakably indicate an assertion of claim of exclusive ownership,"[15] and that, ". . . every reasonable intendment should be made in favor of the true owner."[16] Thus it appears that in North Dakota a mistaken adverse claimant would have to prove his hostile intent to claim.[17] It is submitted that both logic and reason support the contrary rule; therefore in claims of adverse possession due to mistake in boundaries hostility should be presumed.[18]

KIRK B. SMITH

AUTOMOBILES — CONDITIONAL SALES — VENDOR'S LIABILITY FOR TORTS OF VENDEE — Plaintiff insurance company issued a garage-liability policy to a conditional vendor, and thereafter brought an action for a declaration of nonliability in regard to an automobile collision caused by the negligence of a defendant, a conditional vendee. It was *held* that an automobile dealer who purchased a used automobile and resold it under a conditional sales contract was not an "owner" within the meaning of Iowa Owner's Responsibility Law,[1]

8. Despite logic favoring a presumption of hostility, many courts maintain that a possessor must prove his hostile intent to claim. Winn v. Abeles, 25 Kan. 85, 10 Pac. 433 (1886); Yatczak v. Cloon, 313 Mich. 854, 22 N.W.2d 113 (1949); Missouri City Coal Co. v. Walker, 188 S.W.2d 39 (Mo. 1945); *cf.*, Anson v. Tietze, 354 Mo. 553, 190 S.W.2d 193 (1945) (after claimant set forth a prima facia possessory case, it devolved upon the title holder to come forth with the evidence).

9. O'Brien v. Schultz, 278 P.2d 322 (Wash. 1954).

10. Beck v. Loveland, 37 Wash.2d 249, 222 P.2d 1066 (1950).

11. Bell v. Barrett, 76 S.W.2d 395 (Mo. 1934); O'Brien v. Schultz, 278, P.2d 322, 329 (Wash. 1954) (dictum).

12. But *see* Bernier v. Preckel, 60 N.D. 549, 555, 236 N.W. 243, 246 (1931) ("acquiesence" and "adverse possession" used synonomously); Patton, 3 Am. Law. Prop. §15.2.

13. Rovenko v. Bukovoy, 77 N. D. 741, 754, 45 N.W.2d 493, 499 (1950) (dictum).

14. N. D. Rev. Code §28-0111 (1943).

15. Enderlin Investmen Co. v. Nordhaugen, 18 N. D. 517, 524, 123 N.W. 390, 392 (1909) (dictum).

16. Rovenko v. Bukovoy, 77 N. D. 741, 753, 45 N.W.2d 493, 498 (1950) (dictum).

17. *But see* Bernier v. Preckel, 60 N. D. 549, 555, 236, N.W. 243, 246 (1931).

18. For a well reasoned discussion of statutory adverse possession, see Sullivan v. Groves, 42 S.D. 60. 172 N.W. 926 (1919) (note especially the concurring opinion of Whiting, J. at 930, and the similarity of New York Code of Civil Procedure §372 (1880), now New York Civil Practice Act §40 (1939). to N. D. Rev. Code §28-0111 (1943).

1. Iowa Code 1950, §321.1(36) "Owner means a person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee

even though he had failed to comply with the Iowa Motor Vehicle Certificate of Title Act[2] in not obtaining a new certificate of title. *Federated Mutual Implement & Hardware Insurance Co. v. Rouse,* 133 F. Supp. 228 (N.D. Iowa 1955).

At common law a person was vicariously liable in tort only where the tort was committed by his agent or servant in the course of his agency or employment.[3] Today the doctrine of vicarious liability has been greatly extended by statutory enactments basing liability upon public policy rather than upon a principal-agent or master-servant relationship. Generally speaking, the Owner's Responsibility Acts impose strict liability on the basis of ownership rather than control.[4]

Legislation imposing strict liability has long been sustained as a valid exercise of the police powers of a State,[5] which acts in the furtherance of public safety, health, and welfare and is co-extensive with the public need. The reasonableness of its exercise must be measured largely by the same standard.[6]

The Iowa Owner's Responsibility Law,[7] until amended in 1937,[8] imposed vicarious liability on the owners of motor vehicles without making any reference whatsoever to "owners" of a motor vehicle under a conditional sales contract. However, even before these amendments,[9] the Iowa Supreme Court had held that a vendee under a conditional sales contract was the substantial, beneficial, and equitable owner; and that immediately upon the execution of the contract, a vendor, who retains the naked legal title only as security for the payment of the purchase price, was not an "owner" within the purview of the Iowa Owner's Responsibility Law of 1935.[10]

Although thirty states have legislation providing for the issuance of certificates of title to motor vehicles only Ohio[11], Nebraska[12], and Florida[13], have statutes similar to those of Iowa. The problem posed by the instant case was how to interpret the effect of the Certificate of Title Act, upon the Owner's Responsibility Law. In view of the incomplete reporting of the debates

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or lessee or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of this chapter."

2. Iowa Code Ann. §321.45(2) (Supp. 1954) "Except as provided in section (21) of this Act, no person shall acquire any right, title, claim or interest in or to any vehicle subject to registration under this chapter from the owner thereof except by virtue of a certificate of title . . . assigned to him for such vehicle; . . . No court in any case at law or equity shall recognize the right, title, claim or interest of any person in or to any vehicle subject to registration . . . unless evidenced by a certificate of title . . ."

3. Prosser, Torts 471 (1941).

4. Prosser, Torts 472 (1941).

5. Young v. Masci, 289 U.S. 253 (1933); Levy v. Daniels U-Drive Auto Renting Co., 108 Conn. 333, 143 Atl. 163 (1928); Robinson v. Bruce Rent A-Ford Co., 205 Iowa 261, 215 N.W. 724 (1927).

6. Hodge Drive-It Yourself Co. v. Cincinnati, 123 Ohio 284, 175 N.E. 196 (1931).

7. Iowa Code 1950 §321.493.

8. See note 1 *supra;* Iowa Code 1950, §321.1(36).

9. This amendment was passed for the purpose of removing doubt and not for the purpose of changing existing law. See Hansen v. Kuhn, 226 Iowa 794, 285 N.W. 249 (1939).

10. Hansen v. Kuhn *supra,* note 9; Craddock v. Bickelhaupt, 227 Iowa 202, 288 N.W. 109 (1939) (Statutory provisions regulating motor vehicles do not deny the seller and buyer the usual property rights under their contract which they would have had in absence of statute). Accord: Henrietta v. Evans, 10 Cal. 526, 75 P.2d 1051 (1938); Rutherford v. Allen Parker Co., 67 So.2d 763 (Fla. 1953); Coombes v. Letcher, 104 Mont. 371, 66 P.2d 769 (1937).

11. Ohio, R. C. §4505.01 et seq.

12. Nebraska, R. R. S. 1943, §60-101.

13. See note 16, *Infra.*

of the Iowa Assembly, the court was given little aid in the construction and application of the statute. The Certificate of Title Act states that "no person shall, acquire any right, title, claim or interest in or to any vehicle . . . from the owner thereof except by virtue of a certificate of title . . .; . . . No court in any case at law or equity shall recognize the right, title, claim or interest of any person in or to any vehicle subject to registration . . unless evidenced by a certificate of title, . . .".[14] The failure of the conditional vendor in the instant case, to have the certificate of title put in the name of the vendee brings into play the operation of the above act. In this situation, the conflict of the two acts becomes obvious. A recent Florida decision[15] held that a vendor under a conditional sales contract, who failed to comply with the State's Certificate of Title Statutes,[16] was not liable for negligent operation of the car by the vendee although he had failed to endorse and register title with the Motor Vehicle Commission. California, in a case involving identical facts and statutes,[17] has reached a contrary result.

The Iowa Court has made a reasonable reconciliation of the two conflicting acts. It must be remembered that the purpose of the Certificate of Title Act was to bring uniformity of the motor vehicle laws between the states, to prevent Iowa from becoming a dumping ground for stolen cars, and to verify and facilitate proof of ownership.[19] The Owner's Responsibility Law is principally concerned with problems of tort liabilty.

This decision demonstrates the court's judicial acumen in recognizing the importance of allocating the burden of liabilty to those directly responsible for the operation of dangerous instrumentalities, thus unchaining automobile dealers and finance institutions from the task of assuming unreasonable tort liabilities, thereby facilitating the free flow of commerce

SHELLEY J. LASHKOWITZ

BAILMENT — BAILMENTS FOR MUTUAL BENEFIT — LIABILITY FOR NON-NEGLIGENT LOSS OF RENTED CHATTELS — The defendant bailee rented an earth-moving machine from Air-Mac, Inc. Four months later the machine, without fault of the defendant, was destroyed by fire. The bailor recovered $4,000, the agreed value of the machine, on its policy with plaintiff insurance company. The insurer, subrogated to the bailor's rights against the bailee, sued to recover $4,000 under the terms of the contract of bailment. The

14. See note 2, *Supra.*

15. Palmer v. R. S. Evans, Jacksonville, Inc., 81 So.2d 635 (Fla. 1955).

16. Fla. Stat. 1953, §319.22(2) "An owner who has made a bona fide sale or transfer of a motor vehicle and has delivered possession thereof to a purcahser shall not by reason of any of the provisions of this law, be deemed the owner of such vehicle so as to be subject to civil liability for the operation of such vehicle thereafter by another when such owner has fulfilled either of the following requirements: (a) When such owner has made proper endorsement and delivery of the certificate of title as provided by this law. (b) When such owner has . . . placed in the U. S. mail, addressed to the commissioner, either certificate of title properly endorsed . . ."

17. Cal. Vehicle Code §402(a) (Deering 1948) "Every owner of a motor vehicle is liable . . . for the death . . . to person or property resulting from negligence in the operation of such vehicle . . . by any person using . . . the same with the permission . . . of such owner, and the negligence of such person shall be imputed to the owner for all purposes of civil damages." Cal. Vehicle Code §177(b) (Deering 1948) "Every dealer upon transferring by sale . . . of a type subject to registration hereunder, shall immediately give written notice of such transfer to the department . . ."

18. Rosenthal v. Harris Motor Co., 118 Cal. App.2d 403, 257, P.2d 1034 (1953); Bunch v. Kin, 2 Cal. App.2d 81, 37 P.2d 744 (1953).

19. See 3 Drake L. Rev. 2 (1953).