Denver Law Review

Volume 29 | Issue 11 Article 6

January 1952

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department of the bank to investigate the title and to determine whether the car was good security. The bank's officer asked the defendant seller if the title were clear. The seller said it was. Thereupon plaintiff signed the note and chattel mortgage. The car in fact was mortgaged and plaintiff had to pay off said mortgage. She sued defendant seller and joined defendant bank. Upon trial judgment entered against both defendants, the bank appealed. This case was reversed as to the bank only, primarily on the grounds of insufficient pleading to show employment of bank to examine title in plaintiff's behalf. The Court held that the instruction for such an examination was outside of the employee's duty in behalf of the bank and, in performing such examination, the employee became agent of the plaintiff. Any liability resulting from negligence would be the personal liability of the employee and not of the bank.

CONTRACTS, AGENCY, SALES AND CORPORATIONS

HARRY A. KING

With exception of the few cases which are hereinafter discussed, the bulk of the decisions by the Supreme Court in the last year on the questions of contracts, agencies and partnerships, personal property, sales and corporations present examples of the application of familiar rules of law in differing factual situations.

An interesting case presenting and determining questions of procedure in administration of estates and primarily involving the reformation of a contract is that of *Holter v. Cozad,* 238 P. 2d 190. The question presented for determination by the Court was whether or not a contract for the purchase and sale of real property entered into by a decedent during his lifetime, as the seller, and another, as the purchaser, might be reformed and specifically performed in the proceeding to administer the estate of the deceased. The petition to the County Court for this relief was denied. On an appeal to the District Court the relief prayed for was granted. On a writ of error to the Supreme Court it was held that because of the indefiniteness of the description of the property, which was the subject of the contract, that before a specific performance could be decreed the contract must first be reformed to set forth the real agreement of the parties. This the County Court was without jurisdiction to do in the estate proceeding. On the appeal from the decision of the County Court, the District Court's jurisdiction was derivative and limited for the purpose of the appeal to the matters and things which might have been adjudged and determined by the County Court in the first instance. It was, therefore, without jurisdiction to grant the relief awarded in the decree. It was said that the relief prayed for in the petition filed in the County Court should have been sought in a separate proceeding filed in the District Court wherein the contract might have been reformed and specific performance ordered in the one action.

The cases of *Oriental Refining Co. v. Hallenbeck,* 240 P. 2d

913 and *Light v. Rogers,* 242 P. 2d 234 are interesting and informative for the recognition and application of the parol evidence rule. In each of the cases, the Court held that parol evidence was inadmissable to alter the terms of a contract which on its face was definite and certain.

The case of *Wright v. Nelson,* 242 P. 2d 243, involved what was contended to have been a conveyance to delay, hinder and defraud creditors. The case is considerably important for the complete discussion of fraudulent conveyances and the elements thereof which appear in the decision. In reversing the judgment of the District Court, the Court held that the plaintiff had failed to sustain by a preponderance of the evidence the burden of overcoming the usual presumption of validity which attends all sales, and went on to hold that to justify setting aside a conveyance to hinder and delay a creditor it must appear that the hindering and delaying was intended to be produced by the grantor through covin, malice or for the grantor's benefit and advantage, and in addition it must also appear that the grantee participated in or had knowledge of the grantor's intent. A secret intent entertained by a grantor to defraud creditors of which the grantee is ignorant does not taint the transfer with invalidity. The transfer there attacked was not one which fell within the statute which places on the parties thereto the burden of proving the bona fide of a transaction. It was further held in that case that for purposes of the three year statute of limitation that a party is charged with knowledge of a fraudulent transfer as of the date when he became possessed of the means to detect the fraud and that possession of the means of detecting a fraud is equivalent to knowledge of the fraud.

Weinchel v. Adamic, 242 P. 2d 219, presents another in the increasing list of cases wherein our Court has held that exemplary damages may not be awarded under the provisions of our statute, where the action sounds in contract. In this case the jury was instructed on the issue of exemplary damage and returned a verdict therefor in favor of the plaintiff. The facts were that Weinchel, who had agreed to purchase cattle from Adamic, agreed to pay for the animals on the basis of their weight after they had gone without food and water for twelve hours. The cattle were weighed and paid for and taken by the purchaser who thereafter stopped payment on the check which he had given the seller, justifying his actions on the contention that the cattle, during the twelve hour period preceding the determination of their weight, had been fed and watered, contrary to the contract. The Court was of the opinion that there was little or no evidence in the case from which the jury might conclude that the seller had breached his contract in this regard; and appeared inclined to accept the seller's verision of the case that payment of the check was stopped by the purchaser for the purpose of negotiating and procuring a more favorable price. The Court's views on the evidence adduced at the trial are significant in indicating its attitude on the question of awarding exemplary damages in cases sounding in contract. As viewed by the

Court, the facts were not closely disputed, and certainly the case presented aggravated circumstances wherein, if exemplary damages are ever to be awarded for breach of a contract, they might well here have been allowed.

The case of *Greenwood v. Kier*, 234 P. 2d 417, is important for the able discussion and review of the authorities which appears in the opinion on the question of the family car doctrine, concededly predicated on an agency. The doctrine, the Court points out, is of comparatively recent origin and has enjoyed rapid growth and extension. One of the questions presented was whether or not the doctrine would be extended to include a case where, from the facts, it appeared that the title to the vehicle claimed to have been a family car was in the name of a corporation; that the vehicle was used primarily in the conduct of the corporate business; and that the principal officer of the corporation and the one who directed its activities was the wife of the man to whom the vehicle had been loaned for the purpose of a hunting expedition, in which the corporation had no interest. Generally speaking, the family car doctrine has been limited to cases in which the car was kept and maintained by the head of a family for the general use, pleasure and convenience of members of the family. While the Court does not specifically hold that the owner of the car or the one who has the primary control of its use must necessarily be the head of a family to constitute the vehicle a family car, it does nevertheless observe that the efforts of the plaintiff to establish this fact failed, and further notes that evidence to the effect that the husband was not employed at the time of the accident creates no presumption that he was not the head of a family and discharging his obligations as such. Cases are cited in which it appeared that the title to a vehicle was vested in a corporation which was under the control of a person who was also the head of a family who also had the exclusive custody, control and use of the car, which was used as a family car, wherein it has been held that notwithstanding that the title was in the corporation the vehicle was a family car. In each of the cases relied upon by the Court, however, the car was either owned by the head of a family or its use as a family car was made available by the head of the family. Whether one who is not the head of a family who maintains an automobile for use by members of the family would be liable under the family car doctrine is not decided; yet language appears in the opinion which would indicate that this is a rule which the Court might be somewhat reluctant to adopt.

In the same action the plaintiff sought to recover damages from the corporation which owned the vehicle involved in the accident on the theory that at the time it was loaned to the driver thereof he was intoxicated, a fact which was well known to the officers of the corporation who made the bailment. The Court recognized the general rule that a bailor is not liable for the negligent acts of his bailee. In its charge to the jury on this aspect of this case, the trial court instructed in effect that unless the jury found that at the time of the bailment the officers of the corporation knew that the bailee

was intoxicated and that in his intoxicated condition he intended to operate the vehicle on the highways, that they should find for the defendant corporation. This the Supreme Court held to be a correct statement of the law. It may well be questioned if the trial court's charge to the jury was broad enough or sufficiently detailed to present for the jury's determination the issue of the bailor's liability predicated on the doctrine that one who bails a dangerous instrumentality to a bailee who, because of his incompetence, should not have been entrusted with the use of the thing bailed, will be answerable for the damages sustained by third persons as a consequence of the bailment. Here, of course, the bailor's liability is predicated on his own negligence and not on that of the bailee which might be imputed to him because of the relationship of the parties arising from the contract of bailment.

A novel case and one of considerable interest is that of *Panhandle Co. v. Pressey & Son*, 243 P 2d 756, with the discussion of which I shall conclude this article. There the Panhandle Company, who dealt in second hand iron, contracted to sell Oliver some used well casing at an agreed price to be paid upon delivery of the pipe in Boise City, Oklahoma. The pipe was taken on one of the employer's trucks by an employee, French, to Boise City where he met Oliver who had a truck and driver available for the transfer thereof. The pipe was unloaded from the Panhandle Company's truck and delivered to Oliver who affixed his signature to the original of the sales ticket which had been made covering the transaction. French, the seller's agent, demanded payment in full for the pipe, but Oliver explained that he had left at such an early hour that he had been unable to procure a cashier's check from the bank to make the payment and assured French that he would on the following day mail a check therefor to the Panhandle Company. French advised Oliver that he was without authority to deliver the pipe except that he receive payment and before permitting Oliver to depart with the pipe he would have to procure authority therefor from his employer, which he attempted to do. French was unable to reach his principal by telephone and upon returning to the place where the pipe had been delivered could find neither Oliver, Oliver's truck, nor the pipe. Subsequently, the Panhandle Company learned that Oliver had left Boise City and had proceeded to Pressey's place of business in Colorado and had there sold the pipe. The case involved an action in replevin by the Panhandle Company against Pressey, the purchaser of the pipe from Oliver, for the recovery thereof.

The judgment of the trial court which was against the Panhandle Company was reversed on the theory that under the terms of a contract, such as the one made between plaintiff and Oliver, which was for the sale of personal property for cash, the title to the property purchased does not pass to the purchaser unless the payment is received upon the delivery or is specifically waived by the seller. One who purchases property and pays a valuable consideration therefor to a seller who in turn has acquired no title because of his failure to pay the purchase price upon which the

sale was conditioned acquires no right in the property which is valid as against the claims of the initial seller. There are exceptions to the rule which the Court recognized where some muniment of title is by the initial seller placed in the hands of the purchaser on which a subsequent purchaser relies. In such a case the rule that where one of two innocent persons must suffer a loss arising from the culpability of a third person, he whose carelessness or negligence made the loss possible must bear the loss.

This completes a review of the more important and novel cases decided in the past year on the subjects assigned. Needless to say, all of the adjudicated cases are of importance. Only those in which novel or interesting questions have appeared have been noted and the omission of any one case from this discussion should not be regarded as a conclusion of the writer that the omitted case is wanting in importance, but rather that the issues of law presented, discussed and applied do not present the novelty which would make them of interest in this type of paper.

CRIMINAL LAW

M. E. H. SMITH

The Colorado Supreme Court has ruled on approximately twenty cases in the field of criminal law during the past year. The majority of these cases have been the usual run of the mill raising no new points or issues for consideration by our Court. However, there are eight which deserve comment at this time.

I should like to call your attention to the case of *People v. Dolph*.[1] You will recall that this case had considerable publicity, and involved one of the councilmen of the City of Denver. Councilman Dolph was allegedly trafficking in the sale of a liquor license. He was apprehended and arrested when he received $500 in the basement of a drug store. As a result, he was charged with confidence game and attempting to obtain money by false pretenses. The confidence game was disposed of under a common principle and is not noteworthy in the case. The trial court ruled that there is no crime of attempting to obtain money by false pretenses and dismissed the case. The state appealed and the Supreme Court held that while the facts showed violations of all concepts of ethics and decency, still, in the State of Colorado there is no crime of attempted false pretenses since there is no specific statute enacting it and there was no crime such as this known to the common law as of 1607.

Both *Block v People*,[2] and *Kallnback v. People*,[3] were cases of causing death of a person while operating an automobile under the influence of intoxicating liquor. In the Block case the question was raised concerning the obtaining of a sample of blood for an alcohol test while the defendant was unconscious. In the Kallnback case

[1] 239 P. 2d 312, 1951-2 C. B. A. Adv. Sh. (Dec. 17, 1951).
[2] 240 P. 2d 512, 1951-2 C. B. A. Adv. Sh. (Nov. 19, 1951).
[3] 242 P. 2d 222, 1951-2 C. B. A. Adv. Sh. (Feb. 4, 1952).