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Article 7

Agency: Factor's Liability for Conversion Committed on Behalf of Principal

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RECENT DECISIONS

Agency — Factor's Liability for Conversion Committed on Behalf of Principal — Birmingham, a livestock dealer at the stockyards in Sioux City, Iowa, owned fifteen cattle. A stranger, through misrepresentation of his identity, obtained said cattle from appellant by making and issuing a false and worthless check for the purchase price thereof. The stranger told appellant he proposed to feed the cattle on his farm, but instead he had the cattle transported and delivered to the appellee, a commission broker or factor selling and handling livestock for others at the stockyards in Sioux Falls, South Dakota. Appellant did not learn of this delivery to appellee for immediate resale until some time later. Appellee sold said cattle for the stranger to a third party and collected and paid to the stranger, his principal, the proceeds of said sale, less expenses and its commission. Appellant sued the factor for damages for the wrongful conversion of said cattle. *Held:* A factor or commission merchant who receives property from his principal, sells it under latter's instructions, and pays him the proceeds of the sale is guilty of a conversion if his principal had no title thereto or right to sell the property. *Birmingham v. Rice Bros.* (Iowa, 1947), 26 N.W. 2d. 39.

The majority rule,[1] stated also in the Restatement of Agency, is that an agent who does acts which would otherwise constitute conversion of a chattel, is not relieved from liability by the fact that he acts on account of his principal, and reasonably although mistakenly believes that the principal is entitled to possession of the chattels.[2] A factor is not protected by any rule of good faith and innocence of wrongdoing, which may protect a mere agent from liability in conversion.[3] In the instant case the title to the cattle did not pass because of the fraud practiced by the principal. He not only misrepresented himself, but he also gave a worthless check in payment of the purchase price.[4] Unquestionably the seller could have recovered from the factor's principal. Therefore, since the principal is liable for conversion, the factor who aided in perpetrating the wrong is also liable.[5] The liability is based upon tort and not upon contract.

An important issue in the instant case was whether or not the Packers' and Stockyards Act[6] relieves market agencies from tort liability for wrongful conversion and thus abrogates legal rights under state law. The act makes it the duty of every stockyard owner and

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[1] Mechem on Agency, 2d Ed., Section 2583 (1914).
[2] Section 349, Restatement of Agency (1933).
[3] Hoven v. McCarthy Bros. Co., 163 Minn. 339, 204 N.W. 29 (1925).
[4] 52Am. Jur. 823; Mulroney v. Mfg. Co. v. Weeks, 185 Iowa 714, 171 N.W. 36 (1919).
[5] Supra, Fh 3, 204 N.W. at 30.
[6] Packers' and Stockyards Act of 1921, par. 1 et seq., 304, 307, 312, 7 U.S.C.A.

market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard. The U.S. Supreme Court has held that various stockyards of the country, coming within the Act, and the marketing agencies connected therewith, are public utilities and must comply with rules prescribed by the Secretary of Agriculture.[8] Therefore, a logical conclusion would be that since the buyer and seller of livestock on commission, the factor in the instant case, is not at liberty to select its customers, or principals for whom it sells, it is unreasonable to hold it liable in conversion where it is required by law to make a sale of livestock.[9] The majority of the court in the instant case, in a five to four decision, held contrary to the Minnesota decision.[10] The court felt that such an agency is not required to handle livestock where its principal is a thief or holds a title otherwise defective, and may make reasonable requirements that one proposing to deal with it establish his identity and the ownership of and title to the livestock involved.

The conclusion reached by the Minority judges in this Iowa case seem to be more reasonable and just. They recognized that the Act does change the status of these agencies, livestock brokers, from that of ordinary factors to that of public utilities.[11] These agencies were bound as a public utility to render the service upon a reasonable request.[12] Therefore, factors operating under the Packers' and Stockyard Act should not be held to the same liability as ordinary factors or agents for wrongful conversion. Instead, they should be treated as an exception to the general rule and held not liable as in the Missouri case[13] decided in 1942.

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[7] Id., par. 213.
[8] Tagg Brothers & Moorehead v. United States, 280 U.S. 420., 50 S. Ct. 220., 74 L.Ed. 524 (1930); Morgan v. U.S., 298 U.S. 468, 56 S.Ct. 906, 80 L.Ed. 1288 (1936); Stafford v. Wallace, 258 U.S. 495, 42 S.Ct. 397, 402, 66 L.Ed. 735, 23 A.L.R. 229 (1922).
[9] Mason City Production Credit Association v. Sig Ellingson & Co., 205 Minn. 537, 268 N.W. 713, 715 (1939).
[10] Id.
[11] Supra, Fh.8, 280 U.S. at 429; Farmers' Livestock Commission Co. v. U.S., D.C., 54 F. (2d) 375 (1931).
[12] Blackwell v. Laird, 236 Mo. App. 1217, 163 S. W. (2d) 91 (1942).
[13] Id. 236 Mo. App. 1217.