Bailments: Automobile Registration: Rights of Bailor Against Bailee's Creditor

Richard M. Rice

Follow this and additional works at: http://scholarship.law.marquette.edu/mulr

Part of the Law Commons

Repository Citation
Available at: http://scholarship.law.marquette.edu/mulr/vol22/iss3/6

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obriens@marquette.edu.
RECENT DECISIONS

Bailments—Automobile Registration—Rights of Bailor Against Bailee's Creditor.—The plaintiff was an automobile dealer. The plaintiff had loaned the automobile in question to a Mrs. S. The car was registered in her name. The dealer held a blank bill of sale executed by Mrs. S. She was an "official hostess" for the city and used the car in her work. She also advertised the plaintiff's agency. The car was seized by the defendant, a sheriff, on execution of a judgment against Mrs. S. When the sheriff refused to return the car the plaintiff sued him for conversion. The defendant contended that title was in Mrs. S, or that the plaintiff, at least had invested Mrs. S with possession and indicia of ownership and that the plaintiff should be estopped to assert title against the defendant. There was a verdict for the plaintiff. On appeal from an order denying a motion for a new trial or for judgment notwithstanding the verdict, held, order affirmed; the automobile registration statute does not affect title, but is effective merely for purposes of identification. Bolton-Swanby Co., (Minn. 1937) 275 N.W. 855.

Conditional sale filing requirements do not apply to bailments. Cooperider v. Myre, 37 Ohio App. 502, 175 N.E. 235 (1930). The bailee in the principal case had no vendee's interest in the automobile. Neither she nor the creditor could invoke the filing statutes to cut off the bailor's interest. See Bjork v. Bean, 56 Minn. 244, 57 N.W. 657 (1894). In some states leasing contracts or bailments may be utilized by vendors to avoid filing under conditional sale agreement statutes. See Continental Bank & T. Co. v. Webster Hall Corp'n., 4 F. Supp. 337 (W.D. Pa. 1932), aff'd, Webster Hall Corp'n. v. Continental Bank & T. Co., 66 F. (2d) 558 (C.C.A. 3d, 1935). Such devices are classified as conditional sale agreements under the Uniform Conditional Sales Act. Wis. STAT. (1937) § 122.01 (1) (b). In the principal case the plaintiff was not a vendor. Parol evidence is admissible to show that a claimant is a bailor and not a vendor. Moore v. Wilson, 230 Ky. 49, 18 S.W. (2d) 873 (1929). Nor does registration in the name of the bailee affect the claimant's status. Higginbotham v. Higginbotham's Trustee, 253 Ky. 218, 69 S.W. (2d) 329 (1934). The purpose of the registration statute is to aid the police in supervising a safe and convenient use of public highways by automobile users and to insure prompt payment of license fees and property taxes. Abraham v. Hartford Fire Insurance Co., 215 Iowa 1, 244 N.W. 675 (1932). The registration statute is passed for the exclusive benefit of the state. Ainick v. Exchange State Bank, 164 Minn. 136, 204 N.W. 639 (1925). A certificate is in no sense a warrant of ownership because registration is required to permit control over the operators of automobiles. Celina Mutual Casualty Co. v. Baldridge, (Ind. App. 1937) 5 N.E. (2d) 991 (1937); Braham v. Steinhardt-Hannon Motor Co., 97 Pa. Super. 19 (1929). A bailor is not estopped to plead his contract because the mere act of leaving chattels in another's possession does not clothe the bailee with apparent ownership. Simmons v. Shaft, 91 Kan. 553, 138 Pac. 614 (1914); Note (1910) 25 L.R.A. (n.s.) 760. In a comparatively recent Ohio case the plaintiff rented a patented game-machine to the lessee-operator of an amusement park. The lessee's landlord had bargained with the lessee that he might seize the lessee's equipment in the event of a default in the payment of rent. The lessee defaulted and the landlord caused the game-machine to be seized on process. As between the bailee of the machine and the landlord the court held that the bailee was protected. The bailor cannot lose his property interest through the bailee's misconduct. Cooperider v. Myre, supra. The Wisconsin court has not decided a case like the principal case. Since the
Wisconsin statute [Wis. Stat. (1937) § 85.01] is substantially like the Minnesota statute [Minn. Stat. (Mason, 1927) § 2677] and since the orthodox rules of bailments will very likely be applied in cases like this, it seems plausible to predict that the Wisconsin court will dispose of the case as the Minnesota court has done. Perhaps the registration statute could be amended to require that the certificate of title contain a specification of any bailor's title.

**BILLS AND NOTES—FICTITIOUS PAYEES—NEGLECT OF BANKS IN HONORING CHECKS.**—The plaintiff board of education brought suit against the defendant bank for money paid out by the defendant and charged against the plaintiff's account on the ground that the payments were unlawful. The evidence disclosed that the plaintiff's clerk prepared the checks on which the money was paid out, and that he inserted the names of fictitious payees. He then procured the signature of the president of the board through the misrepresentation that they were to be used in payment of bills due the payees named. Thereupon for a period of a year and a half after indorsing on the back of each check the name of the fictitious payee, with the knowledge or consent of such person, he added his own name below that of the payee, proceeded to the bank and deposited the checks with the exception of three or four, to his individual account. The bank contended, that since the checks had been made to the order of fictitious payees, under Article 1, § 9(3) of the Negotiable Instruments Act they must be regarded as payable to bearer and that delivery to the bank by the clerk passed valid title. The lower court found for the plaintiff. On appeal by the bank, held, judgment affirmed, the court holding that in order for the statute to operate the fact that the payee was fictitious must be known to the person making it so payable. Board of Education v. Nat'l. Union Bank, (N.J. Sup. 1938) 196 Atl. 352.

The rule of the Negotiable Instruments Act that an instrument is payable to bearer "when it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable," [Wis. Stat. (1937) § 116.13(3)], is intended partly for the protection of the drawee, partly for the protection of the holder, and partly for the protection of the person presenting the check to the drawee. 6 ZOllmann, BANKS AND BANKING (1936) § 3661; McCormack v. Central State Bank, 203 Iowa 833, 211 N.W. 542, 52 A.L.R. 1297 (1926). The cases all agree that it is the business of a bank to see to it that its depositor's moneys are expended according to his direction, and that every expenditure is at the bank's risk of the direction's being valid. Citizen's Nat. Bank v. Importers' & Traders' Nat. Bank, 119 N.Y. 195, 23 N.E. 540 (1890); Bank of Hatfield v. Chatham, 160 Ark. 564, 255 S.W. 31 (1923). Where a clerk of a city padded the payroll by issuing time slips in the names of fictitious persons, and he indorsed the name of the payee on each of the fraudulent checks, the city was held entitled to recover the amount of such checks from the drawee bank, on the ground that the fictitious nature of the payees was not known to the officials signing the checks so that the indorsements must be considered forged. City of St. Paul v. Merchants Nat. Bank, 151 Minn. 485, 187 N.W. 516 (1922). On behalf of the bank the strongest argument is that the payee is estopped to assert his right to recover in cases like the instant one. Where the dishonest agent has authority to draw checks and signs the principal's name the New York and Pennsylvania courts have held that the principal is to be charged with the knowledge of the agent in selecting a fictitious payee. Phillips v. Mercantile Nat. Bank, 140 N.Y. 556, 35 N.E. 982 (1894); Snyder v. Corn Exchange