

Specific Performance--Attorney's Knowledge Imputed to Client (Hodes v. Foster et al., 155 N.E. 762 (Ill. 1927))

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RECENT DECISIONS

SPECIFIC PERFORMANCE—ATTORNEY'S KNOWLEDGE IMPUTED TO CLIENT—The appellant, Foster, contracted to sell her residence to the appellee. A cashier's check for \$1,000 was endorsed to her and deposited with a third party as earnest money. The title report showed a conveyance to Mrs. Foster and her husband as joint tenants. Her representative wrote requesting proof of her husband's death. Mrs. Foster, without replying, left the city. Upon her return about two weeks later she was advised that appellee wished to close the deal. She then requested leave to remain in the house, rent free, for a further period of two months. Appellee wrote agreeing to this and again requesting a closing. On this same day, Mrs. Foster executed a warranty deed conveying the property to the appellants, Burton and wife, for substantially the same consideration as reserved in the first contract. The attorney who appeared for all appellants represented the Burtons in their dealings with Mrs. Foster. She told him of the existing contract and received from him a written agreement by which the Burtons were pledged to defend any actions and to assume any liability that might result. Upon learning of the conveyance, appellee filed his bill for specific performance, naming Mrs. Foster and the Burtons defendants. *Held*, that performance should be decreed as recommended by the Master in Chancery. Judgment affirmed on appeal. *Hodes v. Foster, et al.*, 155 N. E. 762 (Sup. Ct. Ill. 1927).

The subsequent vendees were charged with the actual knowledge of their attorney as to the existence of the prior contract. The Court found no facts to indicate that the prior contract had been induced by fraud or an inadequate consideration. Mrs. Foster had secured valuable concessions from the appellee and the repudiation was, in the Court's opinion, but a scheme to deprive him of the benefits of his bargain. Confronted by these findings, the Court held itself bound to grant a decree.

The Court, in granting the decree, followed the general principle laid down in an earlier Illinois case. *Gladville v. McDole*, 247 Ill. 34, 93 N. E. 86 (1910). The case also accords with recent decisions in other jurisdictions upon analogous facts. *Asher v. Roberts*, 206 Ky. 186, 266 S. W. 1089 (1925); *Atlas Portland Cement Co. v. American Brick & Clay Mfg. Co.*, 280 Pa. 449, 124 Atl. 650 (1924); *Collier v. Moore*, 31 Ga. App. 227, 120 S. E. 441 (1923); *Leinbach v. Dyatt*, 112 Kan. 782, 212 Pac. 894 (1923); *Matthews v. Barte*, 212 Ala. 667, 103 So. 874 (1925); *Hansen v. Humphrey*, 218 App. Div. 291, 218 N. Y. Supp. 197 (3rd Dept. 1926). The California Courts, going further, have decreed specific performance at the suit of a son, to whom a father had orally agreed to convey, against another son who subsequently took title with knowledge of the prior agreement. *Peixouto v. Peixouto*, 40 Cal. App. 782, 181 Pac. 830 (1919). In *Bispham's Principles of Equity* (10th ed. 1922) Sec. 365, it is said that an alienee with notice of the original contract is liable for its performance at

the suit of the purchaser, and, apparently, no authority to the contrary has been found by the learned author.

Once the fact of knowledge is established, it would seem unfair upon principle to deprive the original purchaser of his specific remedy merely because the title has passed from the party with whom he contracted; nor should a subsequent vendee be heard to disclaim knowledge gained by an attorney within the apparent scope of his authority while handling a matter entrusted to him.

HIGHWAY LAW; SECTION 282E AS AFFECTING COMMON LAW LIABILITY OF OWNER OF MOTOR VEHICLE—The action is to recover for death alleged to have been occasioned through the negligent operation of an automobile. The uncontradicted evidence necessitates the conclusion that the driver of the car was using it at the time of the accident for his own purposes exclusively, without the permission and against the commands of the defendant his employer. *Held*, The action would not lie inasmuch as the plaintiff gained nothing by Sec. 282e of the Highway Law (Cons. Law Chap. 25) providing that the owners of motor vehicles, operated upon public highways, shall be liable for death or injuries to person or property resulting from negligent operation by any person legally using same with the permission, express or implied, of the owner. Judgment affirmed. *Fluegel v. Coudert*, 244 N. Y. 392 (1927).

The Court held that the effect of the statute was to render obsolete the doctrine of such cases as *Van Blaricom v. Dodgson*, 220 N. Y., 111, 115 N. E. 443 (1917); *Potts v. Pardee*, 220 N. Y., 431, 436, 116 N. E. 78 (1917), and that liability no longer depended on use or operation by a servant in the "business" of a master, but upon its legal use or operation in the business "or otherwise" of the master with permission or consent. Thus the owner who loaned the car to a friend or an employee would be liable for the negligence of the operator though the loan was unrelated to employment and a mere friendly accommodation. The father would be liable for the negligence of the son to whom he had entrusted the use of the family automobile (*Van Blaricom v. Dodgson*, supra). The Court significantly stated, "We make no attempt at exhaustive enumeration. What has been said will suffice for illustration or example." It would thus appear that the Highway Law does not recognize such independent operation by a gratuitous bailee as will relieve the bailor from liability for the former's negligence, and the Court's opinion would seem to indicate that the section is still charged with such pregnant possibilities as will materially change the law of automobiles. 1 *St. John's L. Rev.*, 53, 54 (1926).

SALES—ELECTION OF REMEDIES—RIGHTS OF PARTIES—Defendant sold to one Edgar an automobile under a conditional bill of sale contract. Edgar paid \$50 in cash and gave a promissory note for the balance of purchase price. The conditional sale contract provides inter alia, that title should not pass until full price was paid, an acceleration clause for balance in case of default. In event of such default vendor may take immediate possession of property with privilege of resale, seller to have right to enforce any one or more