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Recent Cases

J. G. G.

turn. Evidence secured by private citizens or officers of other jurisdictions, is admissible regardless of the manner in which it is obtained, unless they were acting under express orders from federal officers on that occasion or unless they acted in accordance with a general understanding with federal officers, or unless they intended to act solely on behalf of the federal government, even if there was no previous understanding, express or implied, that they should do so.

MARION A. MARQUIS.

RECENT CASES

CONDITIONAL SALES—SIGNATURE OF VENDOR. A salesman for the vendor secured an order for certain machinery. The order was made out on a conditional sale contract form which provided that the contract was subject to the approval of the vendor at its home office. The name of the vendor corporation was printed beneath the signature of the salesman, and appeared again at the end of the form accompanied by blanks for the personal signature of the proper approving officer. No such signature was ever entered, but the goods were delivered and the form filed within ten days. In this action by the vendor to recover the goods from the vendee's receiver after default in payments, *held*, that the sale was absolute as to the receiver, there being no signature by the vendor as required by Rem. Comp. Stat. sec. 3790. *State ex rel. Yates American Machine Co. v. Superior Court*, 47 Wash. Dec. 244, 266 Pac. 134 (1928).

The rule of the case is not new in this state. *Jennings v. Schwartz*, 82 Wash. 209, 144 Pac. 39 (1914) *Kennery v. Northwestern Junk Co.*, 108 Wash. 656, 185 Pac. 636, 190 Pac. 330 (1919) *Rychen v. Tacoma Farmers' Creamery*, 127 Wash. 359, 220 Pac. 780 (1923) *Seymour v. Landon*, 128 Wash. 682, 224 Pac. 3 (1924). The decision rests solely on the doctrine of stare decisis, and Justice Tolman concurring specially denounces it as illogical in light of the Statute of Frauds cases and recommends that the court unite in a reversal of the rule so often laid down.

It must be conceded that handwriting is not the only valid form of signature. Stamped, printed or typewritten names have been consistently recognized as proper signatures. 36 CYC. 448. It is necessary only that the signer adopt such symbols as his signature. *Weston v. Myers*, 33 Ill. 424 (1864) *Midkiff v. Johnson County Savings Bank*, 144 S. W 705 (Tex. 1912).

In the principal case, there being nothing to indicate express adoption, it must appear if at all by implication from the facts of delivery of the goods and filing of the document. Delivery might be referable to an absolute sale, but the filing would seem to be sufficiently conclusive evidence of adoption of the printed name as a signature binding on the vendor. Opposed to this there is only the suggestion arising from the blanks that the instrument is to be completed in a certain way. In this respect the Statute of Frauds cases and those involving wills and commercial paper are distinguishable, but there seems no very good reason why the vendor may not waive provisions inserted solely for its own benefit. The Washington cases cited proceed on the theory that policy demands a stricter rule in conditional sales cases to protect third persons. However, it would seem that an examination of the records would certainly apprise a third person of sufficient facts as to the vendee's interest in the property.

Directly opposed to the doctrine of the principal case is *In re Covington Lumber Co.*, 225 Fed. 444 (1914), decided in the local federal court shortly prior to the first of the Washington cases. In the later case of *In re Frankel*, 225 Fed. 129 (1915), the same court seems to explain its former decision on the ground that the contract was signed by the salesman. This

solution seems doubtful since the salesman neither had nor purported to have authority to make a binding contract. These cases are of course not controlling on the state court and neither has ever been cited in the latter's decisions.

It seems improbable that the court would go so far as to hold that a printed signature, unaccompanied by blanks, is insufficient.

J. G. G.

INNKEEPERS—ASSAULT BY ONE GUEST ON ANOTHER—LIABILITY OF LANDLORD. The plaintiff, a hotel guest, was assaulted by another guest, for which assault she brought an action against the hotel proprietor, to recover damages. The defendant had knowledge that the plaintiff had been previously insulted and annoyed by this guest. *Held*: That the plaintiff is entitled to recover from the hotel proprietor. *Gurren v. Casperson*, 47 Wash. Dec. 215, 265 Pac. 472 (1928)

This decision is undoubtedly correct in view of the facts of the case; for it appears that the defendant had been informed by the plaintiff that the guest had annoyed her and further that she had demanded from the clerk of the hotel protection from the acts of the wrongdoer. The general rule is that the innkeeper must protect his guests while in the inn against injury at the hands of third persons, whether they be guests or strangers, where it is in the power of himself or his servants so to do. *Curran v. Olson*, 88 Minn. 307, 92 N. W 1124, 97 Am. St. Rep. 517, 60 L. R. A. 733 (1903) *Rommel v. Schambacher* 120 Pa. St. 579, 11 Atl. 779, 6 Am. St. Rep. 732 (1888) 32 C. J. 562. As to the extent of the innkeeper's duty the authorities are divided. Many cases indicate that he owes the same high degree of care to his guest that a common carrier owes to its patrons. *Turlock v. Wille*, 187 Fed. 956, 112 C. C. A. 1 (1911) *Dalzell v. Dean Hotel Co.*, 193 Mo. App. 379, 186 S. W 41 (1916). The other view is that the innkeeper must use only ordinary care. *Clancy v. Barker* 131 Fed. 161, 66 C. C. A. 469, 69 L. R. A. 643 (1904) *Weeks v. McNulty*, 101 Tenn. 495, 48 S. W 809, 43 L. R. A. 185, 70 Am. St. Rep. 693 (1898) It would seem that the latter of the above stated views is the more reasonable in view of the fact that the apparent weight of authority is to the effect that an innkeeper is under legal obligation to receive and entertain all unobjection able persons who offer themselves as guests so long as he has accommodations for them, and they pay or are willing to pay a reasonable consideration therefor. *Willis v. McMahon*, 89 Cal. 156, 26 Pac. 649 (1891) *Bowlin v. Lyon*, FG *Ia.* 536, 25 N. W 766, 1885) The innkeeper can only be expected to use reasonable care in deciding which guests are objectionable. If they do not appear to be objectionable, he must receive them. It is therefore logical that the innkeeper should be required to use only reasonable care in protecting a guest from other guests. The duty should not be an absolute duty but his liability should be made to depend upon whether or not he was negligent.

Which of the two views the Washington court approves has not been decided. It was not necessary to decide that point in the principal case, for here the innkeeper did not use even reasonable care inasmuch as he had knowledge that the guest had been previously annoyed. Our court has under other circumstances recognized degrees of care in negligence cases. *Saxe v. Terry*, 140 Wash. 503, 250 Pac. 27 (1926) In the principal case the court cites the case of *Chase v. Knabel*, 46 Wash. 484, 90 Pac. 642 (1907) but that case is not directly in point. It is therefore still uncertain as to what view of the standard of care the Washington court will take in a case in which a guest is injured by another guest. E. G.

SEARCH WARRANTS—RIGHT TO SEIZE ARTICLES NOT NAMED THEREIN. Police officers entered defendant's premises under a search warrant for liquor. No liquor was found but one of the officers saw goods which he recognized as having been stolen and he arrested the defendant for receiving stolen goods. *Held*, that the motion to suppress the evidence was properly denied, for the reason that, being lawfully on the premises, the

officers could take cognizance of, and seize, the evidence of crime before them. *State v. McKindel*, 48 Wash. Dec. 148, 268 Pac. 593 (1928).

This is the first Washington case where this point has arisen. The court states that the federal cases are to the contrary, but it is believed that they are distinguishable on their facts. The requirements that search warrants shall particularly describe the things to be seized, make general searches under them impossible and prevent the seizure of one thing under a warrant describing another. *Marron v. United States*, 275 U. S. 192, 48 Sup. Ct. 74, 72 L. ed. —— (1927), where under a search warrant for liquor a ledger was seized. Papers and documents cannot be seized under a search warrant for liquor *United States v. Olmsted*, 7 Fed (2nd) 760 (1925). While the language of these cases indicates a contrary view, they deal with a totally different problem, namely, the seizure, under a search warrant for other things, of books, papers and documents which are not on their face contraband. The papers and documents of themselves are not subject to seizure, and admittedly the right to search and seize under a search warrant is limited to the things described therein. A warrant to search for smuggled goods cannot be used to *search for* evidence of violation of the prohibition act. *United States v. Moore*, 4 Fed (2nd) 600 (1925). But this does not mean that if an officer in searching for things under a warrant, sees contraband or articles being used in the commission of a crime, he may not seize them. He does not do this by virtue of his warrant but in performance of his general duty to prevent the commission of crime. *State v. Muetzel*, 121 Ore. 561, 254 Pac. 1010 (1927) *United States v. Camaorta et al.* (D. C.), 278 Fed. 388 (1922). *Contra, People v. Preuss*, 225 Mich. 115, 195 N. W 684 (1923) holding that an officer executing a search warrant for stolen beans may not seize intoxicating liquors found on the premises. The Michigan court cites only TIFFANY, CRIM. LAW 362, and RULING CASE LAW. "If the warrant directs the seizure of a certain kind of property, a seizure of an entirely different kind, constitutes the officer a trespasser." 24 R. C. L. 709. This statement is based on *State v. Slamon*, 73 Vt. 212, 50 Atl. 1097, 87 A. S. R. 711 (1901), which merely held that under a warrant for stolen goods, a letter could not be seized. This is a different case. The letter, not being contraband on its face, if subject to seizure, was only so by virtue of the warrant, and the warrant did not include the letter. The contraband, however, is subject to seizure because of its nature, and this right on the part of the officer is independent of the search warrant, except that the latter gives him a lawful right to be on the premises. It will be conceded that the officer can only *make a search* for the things designated in his search warrant; but if in making this search he incidentally sees contraband, there is no valid objection to his seizing it. It might be difficult to show, as in the principal case, that the officer was searching for liquor, and was not searching for stolen goods, (merely happening upon them in the course of his search for liquor), but that is a question of proof and does not militate against the principle laid down. M. A. M.

BOOK REVIEWS

LECTURES ON LEGAL TOPICS, Vol. IV, 1922-23. By various authors. New York: The Macmillan Co., 1928. pp. viii, 393.

As appears from the title page, this book is a series of seventeen lectures delivered before the Association of the Bar of the City of New York in the winter of 1922-23 by thirteen lawyers, judges and law teachers from New York City and elsewhere. The subjects vary greatly and also the manner of treatment, ranging from reminiscences of practice, with hints to young lawyers, through closely reasoned lectures on the history of the law and the development of the theories on which it is based, to prophecies as to its future development.

Through all the lectures runs the thought that while the law should be stable and so far as possible certain, yet it is a living and growing science,