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AUTOMOBILES - STATUTORY LIABILITY OF OWNER - REGISTERED TITLEHOLDER ESTOPPED TO DENY OWNERSHIP

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RECENT DECISIONS

AUTOMOBILES — STATUTORY LIABILITY OF OWNER — REGISTERED TITLEHOLDER ESTOPPED TO DENY OWNERSHIP — Plaintiffs, injured in New York by an automobile driven by defendant's minor son, sued under a New York statute [1] which makes the owner of an automobile liable for damages for injuries resulting from negligence of its operator. The automobile was registered in Connecticut in defendant's name to avoid compliance with the Connecticut statute [2] which requires proof of financial responsibility as a prerequisite of registration for minors over sixteen years of age. *Held*, defendant estopped to prove ownership of the automobile in his son. *Shuba v. Greendonner*, 271 N. Y. 189, 2 N. E. (2d) 536 (1936), reversing 245 App. Div. 566, 283 N. Y. S. 297 (1935).

On conventional principles of estoppel, which require reliance by the plaintiff on the representations of the defendant, it is difficult to sustain this decision.[3] Although defendant acted wrongfully in fraudulently evading the statute, plaintiffs did not rely on the misrepresentations, there being no causative connection between the false registration and the collision.[4] Estoppel is never employed merely as a means of inflicting punishment.[5] But, in precluding defendant from denying ownership, the court reached a result consistent with the purpose of the registration statutes, which have been passed to facilitate identification of owners,[6] to protect highway users by elimination of certain classes of operators, and to assure financial responsibility of owners.[7] One might sustain the decision on the ground that a person is estopped to set up his fraud against the state. Thus, where an employer falsely countersigned a minor's auto license application representing himself as father, he was estopped to deny his right to sign since such would "countenance fraud upon the people of the state." [8] One of the

[1] N. Y. Consol. Laws, c. 71, "Vehicle and Traffic Law," § 59.

[2] Conn. Rev. Stat. (1930), §§ 1561, 1609.

[3] 10 R. C. L. 697 (1915); Georgia Veneer & Package Co. v. Frost, 168 S. C. 285, 167 S. E. 500 (1933).

[4] 84 UNIV. PA. L. REV. 668 (1936), discussing the decision of the principal case in the appellate division (245 App. Div. 566) and supporting the holding of that court, since estoppel "requires reliance by the plaintiff on the representations of the defendant." In Messersmith v. American Fidelity Co., 187 App. Div. 35, 175 N. Y. S. 169 at 172 (1919), where the owner unlawfully permitted a minor to drive his automobile, the court said, "There would be no causative connection between failure to have the automobile registered and the happening of the accident," affirmed 232 N. Y. 161, 133 N. E. 432, 19 A. L. R. 876 (1921).

[5] Worsham Buick Co. v. Isaacs, 121 Tex. 587, 51 S. W. (2d) 277 (1932).

[6] People v. MacWilliams, 91 App. Div. 176, 86 N. Y. S. 357 (1904); Stroud v. Water Commissioners, 90 Conn. 412, 97 A. 336 (1916).

[7] Kaufman v. Hegeman Transfer & Lighterage Terminal, 100 Conn. 114 at 120, 123 A. 16 (1923). Also principal case in 245 App. Div. 566, 283 N. Y. S. 297 at 300 (1935).

[8] Buelke v. Levenstadt, 190 Cal. 684, 214 P. 42 (1923). A statute [Cal. Stat. (1919), p. 223, § 17] similar to the New York statute imputed negligence of the min-

dissenting justices in the appellate division had such a principle in mind when he contended that the licensing authority acted in behalf of the general public, which would be required to accept an unintended risk if defendant were not estopped to deny ownership and avoid liability.[9] Analogy may be found in the refusal of courts to enforce agreements, and barring the parties from presenting further proof, the moment the object of an agreement appears to be prejudicial to the public welfare.[10] Further analogy is presented by cases where one is estopped to contest the constitutionality of a statute under which he has received a benefit.[11] Reliance, or change of position, is not a requisite of invoking such an estoppel.[12] It seems, therefore, that the apparent dubiety of the court in labeling the effect of its decision an estoppel [13] is unfounded, since the desirable conclusion may be supported as an estoppel to prevent a fraud on the general public.

or operating the automobile to the parent or guardian signing the application. Accord: Pontius v. McLain, 113 Cal. App. 452, 298 P. 541 (1931). But contra, Worsham Buick Co. v. Isaacs, 121 Tex. 587, 51 S. W. (2d) 277 (1932).

[9] The principal case in the Appellate Division, 245 App. Div. 566, 283 N. Y. S. 304, was criticized in 22 VA. L. REV. 709 (1936), on the ground that such an estoppel could apply only to the people of Connecticut and not to the plaintiff in New York. It is submitted that such an argument is tenuous in light of reciprocal statutes of most states treating vehicles registered in other states in the same manner as in-state automobiles. N. Y. Consol. Laws, c. 71, "Vehicle and Traffic Law," § 51; Conn. Rev. Stat. (1930), § 1561.

[10] Coverly v. Terminal Warehouse Co., 178 N. Y. 602, 70 N. E. 1097 (1904). The court pointed out that the reason for refusing to enforce such contracts is not to relieve one of the parties, but because making such an agreement is an injury to the public. Attridge v. Pembroke, 235 App. Div. 101, 256 N. Y. S. 257 (1932), and Roberts v. Criss, (C. C. A. 2d, 1920) 266 F. 296, showing that courts dismiss an action when the contract is shown to be against public policy.

[11] Daniels v. Tearney, 102 U. S. 415, 26 L. Ed. 187 (1880); 34 COL. L. REV. 1495 (1934).

[12] 48 HARV. L. REV. 988 at 992 (1935). Change of position, though spoken of as a necessary element, is, in fact, not considered a requisite by the courts.

[13] Expressed by the court, 271 N. Y. 189, 2 N. E. (2d) 536 at 538, "Whether we call it an estoppel or whether we decide that the action of the Legislature in regulating the use of such vehicles in this state establishes our public policy makes no difference in the final result."