Case Western Reserve Law Review

Volume 10 | Issue 3 Article 6

1959

Agency

Hugh Allan Ross

AGENCY

MASTER AND SERVANT

Course of Employment

A substantial number of states have held that where a truck is involved in a collision with the plaintiff, the plaintiff can establish a prima facie case by showing that the truck belonged to the defendant and that the driver was negligent. The burden of proof is then shifted to the defendant who can escape liability by proving that the driver was not his servant or was not in the course of employment. The Ohio Supreme Court, however, has rejected this view.[1]

In a recent court of appeals case, the plaintiff alleged that he had been hit by a truck which was on the wrong side of the road. The truck drove off without stopping, and nothing was known of the identity of the driver, except that the truck bore the sign "Glenn Cartage Company, Cleveland, Ohio." The plaintiff sued the Glenn Company in Ohio, alleging that since the accident happened in New York, the New York rule should be applied. The court held that the presumption of employment arising from ownership was a rule of procedure, and applied the Ohio doctrine denying recovery.[2]

The Borrowed Servant

A problem of frequent occurrence arises where a servant is, at the time of the accident, acting in some sense as the servant of two masters. The typical case involves a general employer who loans or rents a machine and driver to an independent contractor who is working for the general employer. In a very real sense, the work of the employee benefits both general and special employer. Since one of the reasons for the rule of *respondeat superior* is to encourage safety discipline on the part of the employer, the normal rule is that the employer who has control over the servant's work is liable for his torts. The rule is difficult to apply in most cases, because in fact both employers exercise some control. Certainly ultimate control rests in the general employer, who has selected and paid the servant and who retains the right to fire him. Probably for this reason, most of the cases hold that the general employer is liable in the

---

1. Halkias v. Wilkoff Co., 141 Ohio St. 139, 47 N.E.2d 199 (1943); Sobolovitz v. Lubric Oil Co., 107 Ohio St. 204, 140 N.E. 634 (1923).

2. McDougall v. Glenn Cartage Co., 79 Ohio L. Abs. 169, 151 N.E.2d 760 (Ohio Ct. App. 1958). See also, CONFLICTS section, *infra*.

case of divided control.[3] However, two cases decided this year point out the circumstances in which the special employer will be liable.[4] In both cases the special employer exercised considerable detailed control and in both the borrowed servant was working alongside the regular servants of the special employer and apparently under the same direction.

PRINCIPAL AND AGENT

Authority of the Agent

Three cases decided by the Supreme Court, all insurance cases, involved the same basic problem.[5] The issue was who bears the loss, as between insurance company and insured, which results from the fraud of the insurance agent. In each case the court held that the false agent had power to bind the company.

There were two court of appeal cases on implied authority. In the *Tenbusch*[6] case the president and majority shareholder of a closely held corporation had implied authority to contract for the sale of corporate realty, and in the *Tedrich*[7] case the court followed the usual rule that an attorney has no implied authority to compromise his client's claim.

Relations Between Principal and Agent

Holman v. Andrews[8] is a case of first impression in Ohio and warrants comment, although it is a common pleas decision. The rule is widely accepted that an agent can buy property belonging to the principal, even though the property is the subject of his agency power. However, in dealing with his principal, the agent is under a duty to disclose his own identity and every material fact which might affect the sale. In the *Holman* case the court held that the burden of proof is on the agent to prove that he made full disclosure, rather than on the principal to prove that he was deceived. The court also emphasized the high standard

3. The classic case is Standard Oil Co. v. Anderson, 212 U.S. 215 (1909). See also Redmond v. Republic Steel, 73 Ohio L. Abs. 197, 131 N.E.2d 593 (Ohio Ct. App. 1956).

4. Boaz v. Ostrander, 105 Ohio App. 524, 147 N.E.2d 671 (1958); Hartford Fire Ins. Co. v. Henry J. Spieker Co., 103 Ohio App. 455, 146 N.E.2d 138 (1956).

5. Saunders v. Allstate Ins. Co., 168 Ohio St. 55, 151 N.E.2d 1 (1958); Pannunzio v. Monumental Life Ins. Co., 168 Ohio St. 95, 151 N.E.2d 545 (1958); Scott v. Continental Assurance Co., 167 Ohio St. 515, 150 N.E.2d 38 (1958). See INSURANCE section, *infra.*

6. Tenbusch v. L. K. N. Realty Co., 78 Ohio L. Abs. 82, 149 N.E.2d 42 (Ohio Ct. App. 1958). See also CORPORATIONS section, *infra.*

7. Tedrich Furniture Co. v. Tisdale, 78 Ohio L. Abs. 330, 148 N.E.2d 717 (Ohio Ct. App. 1958).

8. 147 N.E.2d 142 (Ohio C.P. 1957).