

10-1-1958

Evidence—Presumption of Continuity of Ownership

Buffalo Law Review

Follow this and additional works at: <https://digitalcommons.law.buffalo.edu/buffalolawreview>



Part of the [Evidence Commons](#)

Recommended Citation

Buffalo Law Review, *Evidence—Presumption of Continuity of Ownership*, 8 Buff. L. Rev. 145 (1958).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol8/iss1/86>

This The Court of Appeals Term is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

COURT OF APPEALS, 1957 TERM

While the majority opinion appears to be generally consistent with precedent, its position may often result in the exclusion of the only available evidence, when through the normal course of events the most desirable evidence is unavailable. Sufficient proof may be at hand, as in this case, to render a decision morally certain. Surely the report of an investigation conducted by responsible and impartial hospital employees at the time of the incident is to some degree credible. Some jurisdictions⁶ have met such problems by enacting statutes permitting the trial court under certain circumstances to admit into evidence the declaration of a deceased person in spite of the hearsay rule.

Presumption of Continuity of Ownership

In *People v. Scandore*,⁷ defendant was charged with unlawful construction within a restricted area, and without a permit, of parts of a building.⁸ At the trial the prosecution offered in evidence a deed showing defendant as grantee of the premises in question. Although the deed had been recorded nine years before the alleged violations, defendant made no objection as to its evidentiary value. On appeal, following conviction, however, defendant claimed that the deed was insufficient to prove that he had been the owner of the premises as of the critical date.

In unanimously reversing the Appellate Division and reinstating the conviction of the defendant, the Court of Appeals made use of a well-established principle in the law, the presumption of continuity or, as it is sometimes called, the presumption against change. This rule is to the effect that once conditions of a continuous nature are proved to exist, their continuance will be presumed for so long as is usual with things of like nature.⁹

The Court reasoned that since a recorded deed is the customary way of indicating ownership,¹⁰ defendant's ownership will be presumed to have continued down to the critical date.¹¹ It concluded that it would be unreal to reverse

6. For example Massachusetts' Laws, 1898, ch. 535, as amended, 1920, ch. 233 §65 provides:

A declaration of a deceased person shall not be inadmissible in evidence as hearsay or as private conversation between husband and wife if the Court finds it was made in good faith before the commencement of the action and upon personal knowledge of the declarant.

7. 3 N.Y.2d 681, 171 N.Y.S.2d 808 (1958).

8. ADMINISTRATIVE CODE OF THE CITY OF NEW YORK §532-11.0. NEW YORK CITY DEPARTMENT OF PARKS, RULES AND REGULATIONS §60.

9. RICHARDSON ON EVIDENCE, §73 (8th ed. 1955). Such a presumption is far from being irrebutable or conclusive and its strength and duration will be determined by the facts and rationale which support it. See *Maggio v. Zeitz*, 33 U.S. 56, 65 (1947).

10. N. Y. CIV. PRAC. ACT §384. N. Y. CODE CRIM. PROC. §392 provides:

The rules of evidence in civil cases are applicable also to criminal cases, except as otherwise provided in this Code.

11. Accord: *Collins v. Streitz*, 95 F.2d 430, 433 (9th Cir. 1938). See *Wilkins v. Earle*, 44 N.Y. 172, 192 (1820).

defendant's conviction, particularly since he never raised the issue of ownership until appeal.¹²

Little sympathy can be felt for the plight of the defendant. Certainly, the defendant knew whether or not he was the owner of the premises, and it does not seem to be placing an undue burden on him to require that he contest his ownership, once the deed is placed in evidence. If he had, in some manner, taken issue as to the sufficiency of the deed fixing his ownership, the prosecution would have been given an opportunity to supply additional proof in the matter.

Admissibility of Confession

Although confessions obtained during the course of an illegal detention are summarily excluded from evidence in the federal courts,¹³ in the courts of New York State such confessions are considered as evidence if the jury finds them to have been voluntarily made.¹⁴ However, the federal rule has been limited to cases where the confession was obtained during the illegal portion of the period before arraignment. *U. S. v. Mitchell*¹⁵ held that where the illegal delay began after the confession was procured such delay was immaterial to the issue of admissibility.¹⁶

The rationale of the *Mitchell* case has been incorporated into New York law by the unanimous decision of the Court in the case of *People v. Scully*.¹⁷ There the Court held that it was not error for the trial court to refuse to charge that the delay in arraignment, subsequent to the procuring of the confession, was unnecessary as a matter of law. In cases where the confession was obtained during the course of an illegal detention it has been held error not to so charge.¹⁸ Thus the time of the confession and not the time of arraignment is the controlling circumstance.

The Court's rationale is that, since the confession was procured before the detention became illegal, no disclosure was induced by the illegal delay. The illegality of the detention does not retroactively change the circumstances under which disclosures were made.¹⁹

12. There was other evidence in the record showing defendant as owner of the premises as late as one year before the critical date.

13. *McNabb v. U. S.*, 318 U.S. 332 (1943); *Mallory v. U. S.*, 354 U.S. 449 (1957).

14. *People v. Mummiani*, 58 N.Y. 394, 180 N.E. 94 (1932).

15. 322 U.S. 65 (1944).

16. *Accord*, *Symons v. U. S.*, 178 F.2d 615 (9th Cir. 1949); *People v. Zamara*, 66 Cal. App. 166, 152 P.2d 180 (1944); *Mares v. Hill*, 118 Utah 484, 222 P.2d 811 (1950).

17. 4 N.Y.2d 453, 176 N.Y.S.2d 300 (1958).

18. *People v. Alex*, 265 N.Y. 192, 192 N.E. 289 (1934).

19. Cf. *State v. Jenkins*, 1 Vt. 377 (1803), where court held threats of violence made after defendant confessed to be of no consequence.