Buffalo Law Review

Volume 4 | Number 1 Article 60

10-1-1954

Property—Personal Property—Lost Trust Certificate

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possessor thereupon assumes a hostile attitude toward any rights of the owner.[36] The possessor's claim of right may be under a written instrument or judgment[37] or be unwritten.[38]

The majority of the court maintained that the railroad's easement ended in 1935[39] and that actual notice to the fee holders was unnecessary. Since the railroad and its successor the respondent possessed the land until 1952, the statutory requirement of fifteen years was met and title passed by adverse possession. It was further contended that the respondent himself having occupied the land from 1936 to 1952 under a mortgage purporting to be on the fee held adversely to the appellants under a written instrument.

The dissenters sought to resolve the issues in favor of the appellants. Judge Desmond conceded that there were no precise holdings regarding the mortgagee's right to cut off an interest other than that of his mortgagor but felt that the general rule of equity imposing a duty on one in possession to protect the interest of those upon whom his possession depends[40] was applicable to this situation, since the respondent owed a duty to the railroad which in turn owed a duty to the fee holders.[41]

The dissent also insisted that where possession is begun with permission, there can be no adverse possession without giving direct notice of the hostile claim to the owner, and that this rule is applied throughout the United States.[42]

B. Personal Property

Lost Trust Certificate

Plaintiffs represented a stock exchange firm which acquired five certificates of 100 shares each in a land trust in 1888. Four of the certificates were indorsed for transfer and had been presented for transfer on the books of the land trust, but the fifth one was never presented. Plaintiffs contended that it was lost

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36. *Ibid.*
37. C. P. A. § 37.
38. C. P. A. § 39.
39. See *Heard v. City of Brooklyn*, 60 N. Y. 242 (1875); see also *Miner v. New York Central & H. R. R. Co.; Roby v. New York Central & H. R. R. Co., supra* note 30.
40. *Cf. Burhans v. Van Zandt*, 7 N. Y. 523 (1852); *Ten Eyck v. Craig, supra* note 32; *Van Duzer v. Anderson*, 306 N. Y. 707, 117 N. E. 2d 805 (1954).
41. See *Becker v. McCrea*, 193 N. Y. 423, 86 N. E. 463 (1908).
42. See *City of New York v. Coney Island Fire Dep't.*, 259 App. Div. 286, 18 N. Y. S. 2d 923 (2d Dep't 1940), *aff'd*, 285 N. Y. 535, 32 N. E. 2d 827 (1941); *Branch v. Central Trust Co.*, 320 Ill. 432, 151 N. E. 284 (1926); *City of Grand Rapids v. Pere Marquette Ry. Co.*, 248 Mich. 686, 227 N. W. 797 (1929).

and as record holders they were entitled to a new certificate as well as accumulated dividends, pointing out that no adverse claims had been made in sixty-six years. Defendants, trustees, disputed plaintiffs' rights.[43]

Section 10 of the Stock Corporation Law makes the stock book of every stock corporation presumptive evidence of the facts therein in favor of the plaintiff, in an action against the corporation or its officers. Section 178 of the Personal Property Law authorizes issuance of new corporate stock certificates if the court is satisfied that they are lost or destroyed and the owner posts a bond indemnifying the corporation. The court pointed out that although these sections are not technically applicable to trust situations, they and related cases shed light on the legislative and judicial policy on the subject. It has been held that a person sued as a stockholder is presumed to be such if his name appears on the stock register, the presumption being sufficient until rebutted.[44] Under the predecessor of Section 178, *supra*, it was held that a new certificate should not be issued until loss of the certificate was proven as well as direct evidence that the stock had not been transferred or sold.[45]

The majority of the court maintained that the plaintiffs failed to establish any right to a new certificate or dividends because: 1) Like many stockbrokers they were in the habit of purchasing securities for customers but registering them in their own name for the convenience of all concerned; 2) The books of the plaintiffs' firm had been destroyed prior to 1920 and in 1924 an independent audit of the firm's accounts failed to disclose any right title or interest in the shares although shares in the trust were then being traded on the open market. Judgment dismissing the complaint without prejudice was affirmed.

The dissent maintained that the plaintiffs had established their ownership as a matter of law,[46] by showing that they had record title and that no adverse claims had been made in sixty-six years although the shares were listed on the New York Stock Exchange. "Opposed to such proof," Judge Fuld concluded, "is nothing more than unsupported speculation that some third party had an interest in the certificate."

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43. *Davis v. Fraser*, 307 N. Y. 433, 121 N. E. 2d 406 (1954).
44. *Hoagland v. Bell*, 36 Barb. 57 (1861).
45. *Matter of Speir*, 69 App. Div. 149, 151 N. Y. Supp. 555 (1st Dep't 1902).
46. *Cf.* Stock Corporation Law § 10; *Butler v. Glen Cove Starch Mfg. Co.*, 18 Hun 47 (1879); *Ganel v. Aleman Planting & Mfg. Co.*, 160 La. 422, 107 So. 291 (1926); *Guilford v. Western Union Tel. Co.*, 59 Minn. 332, 61 N. W. 324 (1894); *Shore Line Oil Co. v. King*, 68 Nev. 183, 228 P. 2d 395 (1954).