1-26-1941

District Bond Co. v. Pollack

Roger J. Traynor

the original title is, of course, sufficient, and apparently the phrase "relating to civil liability and financial responsibility of owners and operators of vehicles" in the title to the amendment refers only to the added sections, and not to the amended sections. **[3]** An amending title is sufficient if it reads: "An act to amend" a certain section of the code or a statute. (*Estate of Elliott,* 165 Cal. 339 [132 Pac. 439]; *Beach* v. *Von Detten,* 139 Cal. 462 [73 Pac. 187]; *People* v. *Parvin,* 74 Cal. 549 [16 Pac. 490.) **[2b]** Even assuming that the additional words relate to section 402, we are satisfied that the phrase "financial responsibility of owners" is sufficiently broad in meaning to include damage to a person's own property. The addition of further descriptive words cannot vitiate a sufficient title, unless such further words indicate a subject not really related to the matters covered by the body of a bill. (*Estate of Elliott, supra.*)

The trial court properly concluded that under section 402 of the Vehicle Code the negligence of a borrower of a car should be imputed to the owner in an action by the owner against a third party.

The judgment is affirmed.

Gibson, C. J., Shenk, J., Edmonds, J., Houser, J., Carter, J., and Traynor, J., concurred.

[L. A. No. 17217. In Bank. Jan. 26, 1942.]

DISTRICT BOND COMPANY (a Corporation), Plaintiff, v. FLORENCE POLLACK et al., Defendants; MARCUS ZASLAW, Intervener and Respondent; E. W. JOHNSON, Appellant.

[1] Streets—Improvement Act of 1911—Actions—Foreclosure—Effect on Owner Not a Party.—Under the Street Improvement Act of 1911 (Stats. 1911, p. 730; Deering's Gen. Laws, 1937, Act 8199) a purchaser of property who is bound by an assessment represented by a sewer bond is not divested of his title

McK. Dig. References: [1, 2] Streets, § 415 (1); [3] Quieting Title, § 48.

by a foreclosure proceeding or the commissioner's deed, where he was not made a party to the action and had no notice thereof. The purchaser at the sale obtained the lien which continued to exist against the property.

[2] Id.—Improvement Act of 1911—Actions—Foreclosure—Purchaser's Rights—Subrogation to Tax Liens.—The purchaser at a sale to foreclose a sewer bond under the Street Improvement Act of 1911 who pays the taxes on the property, not as a volunteer but to protect his interest therein is subrogated to the tax liens and is properly adjudged to have a lien against the property for the full amount of his expenditures.

[3] Quieting Title—Conditions to Relief—Payment of Taxes.—A person who seeks a decree quieting title against another who paid taxes assessed against the property, not as a volunteer, but to protect his interest therein, may be required as a condition to relief to repay the amounts expended for such purpose.

APPEAL from a judgment of the Superior Court of Los Angeles County. Thomas C. Gould, Judge. Affirmed.

Action to foreclose a street improvement bond in which the holder of a commissioner's deed issued pursuant to a prior proceeding to foreclose a sewer bond intervened, seeking a decree quieting his title against the defendant in intervention, a purchaser in possession of the land affected, who was not a party to the prior proceeding. Judgment quieting the title of the defendant in intervention, conditioned on payment of amounts expended in payment of the sewer bond and taxes, affirmed.

R. L. Carlisle for Appellant.

Paul Magasin and Charles H. Heustis for Respondent.

TRAYNOR, J.—In 1935, appellant, defendant in intervention in the court below, purchased certain real property located in Burbank, California, and went into immediate possession. In 1936 an action was brought to foreclose a sewer bond outstanding against the property. Appellant was not made a party to this action and had no actual or constructive

[2] See 16 **Cal. Jur.** 349-351; 33 **Am. Jur.** 439.
[3] See 22 **Cal. Jur.** 138.

notice thereof. A judgment of foreclosure was entered, pursuant to which a sale was held. The property was purchased at the foreclosure sale by Eva Zaik, and a commissioner's certificate of sale was issued to her. Eva Zaik assigned this certificate of sale to respondent, plaintiff in intervention in the court below, who secured a commissioner's deed to the property. Respondent paid Eva Zaik the amount bid at the foreclosure sale, paid delinquent taxes on the property, and costs. In the following year he paid the current taxes on the property. The various expenditures amounted to $656.81.

In 1937 the District Bond Company filed an action to foreclose a street improvement bond outstanding against the property. Respondent obtained leave to file a complaint in intervention, wherein he claimed to be the owner of the property by virtue of the deed obtained pursuant to the prior foreclosure proceeding, offered to pay the Bond Company's lien, and asked that his title be quieted as against appellant, who was named as defendant in intervention. Respondent's ownership of the property was denied by appellant, who asked in his answer that title be quieted in his favor against respondent.

The trial court found that the sewer bond foreclosure proceeding was ineffective as to appellant because he had no notice thereof. It decreed that title to the property should be quieted in appellant's favor and that appellant pay to respondent the $656.81 expended by respondent in payment of the sewer bond and the taxes against the property on condition that respondent deed all his interest in the property to appellant, respondent to have a lien against the property for this amount.

Appellant appeals from that part of the judgment ordering the payment to respondent of the sums expended by him and providing for a lien against the property.

[1] The assessment represented by the sewer bond created a lien against the property binding upon all subsequent owners until the bond was paid. (Street Improvement Act of 1911, secs. 66, 75, 63; Stats. 1911, page 730; 2 Deering's General Laws, 1937, Act 8199, secs. 66, 75, 63.) Appellant therefore acquired the property in question subject to the assessment lien already existing against it. The proceeding to foreclose this lien could not operate to divest appellant of his ownership because he was not made a party to the proceeding and received no notice thereof. (*Lee* v. *Silva,* 197 Cal. 364 [240 Pac. 1015]; *Page* v. *W. W. Chase Co.,* 145 Cal. 578 [79 Pac. 278]; *Noble* v. *Blanchard,* 120 Cal. App. 664 [8 Pac. (2d) 523].) The commissioner's certificate of sale and the commissioner's deed issued to respondent by virtue of the foreclosure sale were ineffective to pass to respondent full title to the property. Respondent, however, by his purchase obtained the lien, which continued to exist against the property. (*Burns* v. *Hiatt,* 149 Cal. 617, 620 [87 Pac. 196, 117 Am. St. Rep. 157]; *Tutt* v. *Van Voast,* 36 Cal. App. (2d) 282 [97 Pac. (2d) 869]; *Warden* v. *Barnes,* 111 Cal. App. 287, 292 [295 Pac. 569]; *Chapman* v. *Rudolph,* 58 Cal. App. 233 [208 Pac. 370]; Street Improvement Act of 1911, sec. 75, 2 Deering's General Laws, 1937, Act 8199, sec. 75.) The transaction amounted to a transfer to him of the assessment lien for value, and in no way prejudiced the rights of appellant who continued to own the property subject to the lien. (*Ibid.*)

[2] Respondent, acting not as a volunteer, but to protect his interest in the property, paid the taxes, past and current, and was thereby subrogated to the tax liens against the property. (See cases cited in 16 Cal. Jur. 349-351, secs. 48, 49.) The trial court therefore properly adjudged respondent to have a lien against the property for the full amount of his expenditures.

[3] Appellant contends that the relief afforded respondent was outside the issues raised by the pleadings. Appellant, however, in his answer affirmatively requested the trial court to quiet title to the property in his favor. (*Islais etc. Water Co.* v. *Allen,* 132 Cal. 432 [64 Pac. 713]; *Hough* v. *Wright,* 127 Cal. App. 689 [16 Pac. (2d) 301]; *Brooks* v. *White,* 22 Cal. App. 719 [136 Pac. 500]; *Beck* v. *Wilson,* 49 Cal. App. 281 [193 Pac. 158]; *Green* v. *Palmer,* 68 Cal. App. 393 [229 Pac. 876].) A party who requests equitable relief must satisfy the equitable claims interposed by the opposing party. (*Lanktree* v. *Lanktree,* 6 Cal. (2d) 120 [56 Pac. (2d) 943]; *Jeffords* v. *Young,* 98 Cal. App. 400, 406 [277 Pac. 163].) The trial court could not quiet appellant's title to the property without protecting the interests of respondent therein. (*Ellis* v. *Witmer,* 134 Cal. 249, 253 [66 Pac. 301]; *Holland* v. *Hotchkiss,* 162 Cal. 366 [123 Pac. 258, L. R. A. 1915c, 492]; *Warden* v. *Barnes, supra; Jeffords* v. *Young, supra; Sawyer* v. *Berkeley Securities Co.,* 99 Cal. App. 545 [279 Pac. 217]; *Beck* v. *Wilson,* 49 Cal. App. 281 [193 Pac. 158]; *Colkins* v. *Doolittle,* 45 Cal. App. 776, 780 [188 Pac.

601]; *Cordano* v. *Kelsey*, 28 Cal. App. 9, 22-24 [151 Pac. 391, 398]; *Stege* v. *Richmond*, 194 Cal. 305, 319 [228 Pac. 461], writ of error dismissed, 273 U. S. 648 [47 Sup. Ct. 245, 71 L. Ed. 821]; *Marysville Woolen Mills* v. *Smith*, 178 Cal. 786, 792 [175 Pac. 13]; *Hurt* v. *Pico Investment Co.*, 127 Cal. App. 106, 113 [15 Pac. (2d) 203].)

The judgment is affirmed.

Gibson, C. J., Shenk, J., Curtis, J., Edmonds, J., Houser, J., and Carter, J., concurred.

[Sac. No. 5497. In Bank. Jan. 26, 1942.]

BERT SPARKS, Respondent, v. PAUL ANKER BERNTSEN et al., Appellants.

[Sac. No. 5498. In Bank. Jan. 26, 1942.]

JAMES L. JOHNSON, a Minor, etc., Respondent, v. PAUL ANKER BERNTSEN et al., Appellants.

[Sac. No. 5499. In Bank. Jan. 26, 1942.]

BERNARD A. COKER, a Minor, etc., Respondent, v. PAUL ANKER BERNTSEN et al., Appellants.

[1] Automobiles—Operation—Persons Liable—Lender—Nature of Liability.—Under Veh. Code, § 402, relating to the liability of private owners of automobiles operated by others, the owner is primarily and directly liable jointly with the driver, and the owner's liability is the same as the driver's unless the verdict or judgment is in excess of the prescribed amount.

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[1] Statutes making owner liable for injury or damage by another operating automobile, notes, 61 **A. L. R.** 846, 851, 855, 859, 866; 62 **A. L. R.** 1163. See, also, 2 **Cal. Jur. Ten-year Supp.** 484; 5 **Am. Jur.** 697.

Liability of owner for negligence of one to whom car is loaned, notes, 36 **A. L. R.** 1137; 68 **A. L. R.** 1008; 100 **A. L. R.** 920.

McK. Dig. References: [1] Automobiles, § 167 (3); [2, 3] Automobiles, § 358; [4, 5] Trial, § 227.

[2a, 2b] Id.—Actions—Findings, etc.—Verdict—Against Lender and Operator.—In an action for damages brought against the owner and the operator of a borrowed automobile, a verdict for the plaintiff and against the defendants for an amount in excess of the amount specified in Veh. Code, § 402, is proper and sufficient. Any further provision purporting to apportion the total damages as between the defendants is mere surplusage, since the limitation of liability of the owner follows as a matter of law, and cannot be changed by the jury. In such cases, it is proper for the court, where the award exceeds the amount specified in the code section to render judgment for the plaintiff in the total amount limiting the recovery against the owner to the statutory sum, or, where the verdict is for a less amount, to render judgments against both defendants in the sum specified in the verdict.

[3] Id.—Actions—Findings, etc.—Verdict — Against Lender and Operator—Apportioning Damages.—In an action against an owner and the operator of a borrowed automobile, a verdict assessing damages at a specified amount against the driver and a less amount against the owner is erroneous. (See Veh. Code, § 402.)

[4] Trial—Verdict—Amendment by Jury—After Polling the Jury.—Code Civ. Proc., §§ 618, 619, should be read together. The polling of the jury does not preclude the court from exercising its powers under § 619 to correct an incorrect or insufficient verdict. The trial court retains control over such proceedings with power to procure correction of an informal or insufficient verdict until the verdict is recorded and the jury finally discharged.

[5] Id.—Verdict—Amendment by Jury—Duty of Court.—Where a verdict returned is incorrect or insufficient, it is the duty of the trial court on objection of a party to refer the verdict back to the jury.

APPEALS from judgments of the Superior Court of Placer County. Raymond McIntosh, Judge assigned. Affirmed.

Consolidated actions for damages arising out of an automobile accident brought against both the owner and the operator. Judgment for plaintiffs affirmed.

Hoge, Pelton & Gunther and Butler, Van Dyke & Harris for Appellants.

Nathan Goldwater, Leo Murcell, Orrin J. Lowell, Lowell & Lowell, Henry & Bedeau and Grover W. Bedeau for Respondents.