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Principal and Agent--Agent Acting for Undisclosed Principal--Automobile Corporation Held "Trader" Under Code § 13 Ch. 100

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quoted.[8] While the logic of the result is at least questionable, the practical result is not undesirable because it settles in one suit a question which would otherwise require two proceedings.

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PRINCIPAL AND AGENT—AGENT ACTING FOR UNDISCLOSED PRINCIPAL—AUTOMOBILE CORPORATION HELD "TRADER" UNDER CODE §13, CH. 100.—A number of automobiles were delivered by the owner to a private corporation, engaged in the general automobile business, under a verbal contract to store with power to sell. *Held,* corporation is a "trader" under Code, §13, c. 100, and the automobiles are subject to *fieri facias* lien of the creditors of the corporation. *Midland Investment Corporation* v. *May et al.,* 140 S. E. 5 (W. Va. 1927).

This decision raises the question of whether recordation of the contract would protect the owner from the creditors of the one to whom he had delivered cars for sale, when the latter was engaged in the general automobile business. There have been few West Virginia decisions construing this statute, but as the Virginia Statute (Virginia Code, 1919, §5224) is the same as that of West Virginia we can look to the Virginia decisions for construction. Recent Virginia cases in which the agent was held "trader" repeatedly speak of the contract of assignment "not having been recorded." *Capitol Motor Corporation* v. *Lasker,* 138 Va. 630, 123 S. E. 376; *Nusbaum* v. *City Bank,* 132 Va. 54, 110 S. E. 363. These decisions indicate that recordation should be sufficient to protect the interests of the principal, although earlier decisions seem contra. *Hoge* v. *Turner,* 96 Va. 624 at 632, 32 S. E. 291; *Partlow* v. *Lickliter,* 100 Va. 631, 42 S. E. 671. The principal case itself indicates that the creditor might be estopped from asserting his lien, thereby inferring that actual notice would protect the principal. It is submitted that constructive notice should be sufficient. The object of the statute is to prevent any evasion of own-

[8] W. VA. CODE, ch. 79, §1.

ership and liability for debts in case of controversy, and to preclude the assertion of secret claims of ownership against creditors of him who has conducted the business, possessed the property and appeared to be the owner. *Chesapeake Shoe Company* v. *Selner,* 122 Fed. 593; *General Electric Company* v. *Martin, et al.,* 99 W. Va. 519, 130 S. E. 299. If the object of the statute be to preclude the assertion of secret claims, recording the contract setting out the claim should take the case from the operation of the statute. Of course if the principal leaves his car for sale with an agent who does not buy, but merely sells cars for others, the agent would not be a "trader" and, consequently the statute would not apply. *Cable Company* v. *Mathers,* 72 W. Va. 811, 79 S. E. 1079; *Brown Manufacturing Company* v. *Deering,* 35 W. Va. 255, 13 S. E. 383; *In re New York, etc. Company,* 98 Fed. 711; *In re Tontine Surety Company,* 116 Fed. 401.

—FRED L. DAVIS.

INSURANCE—CONSTRUCTION OF POLICY.—In a recent case of interest the insured was the holder of a policy issued by defendant company commonly known as an accident policy, which provided for "triple indemnity" in the event the insured sustained injury "by being struck or run down by a conveyance while walking on or across any public highway." At the time of the accident the insured was standing behind a railroad depot upon ground abutting a county road. The space behind the depot was used for driving to and from the station, for shipping yards, and by the public generally for parking and turning automobiles. A saddle horse, from which the rider had temporarily dismounted, kicked the insured, which ultimately caused his death. A jury was waived, and the court held the defendant company liable for triple indemnity. *Gatewood* v. *Continental Life Insurance Company,* 23 F. (2d) 211.

It is customary to confine the Student Note and Recent Case section of the Quarterly to decisions of our local state courts, but the principal case is deemed sufficiently interesting and important to mention, for two reasons: (1) what