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## Torts and Workmen's Compensation: Workmen's Compensation

Wex S. Malone

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was based upon the institution of a proceeding before the Louisiana Board of Tax Appeals for the revocation of beer and liquor permits issued to Nagim. In fact, Nagim had notified the New Orleans miscellaneous revenue department that he no longer operated the establishment, and a notation to that effect was made in the record. It was conceded that Nagim's recovery would depend upon his ability to show that statements made by defendants in the revocation proceeding were made maliciously and without probable cause. The evidence failed to establish this. Plaintiff had failed to notify the State Department of Revenue of his retirement from the operation, and the revocation action was instituted in part in reliance upon the records of that department.

## WORKMEN'S COMPENSATION

*Wex S. Malone\**

### PURCHASER'S COMPENSATION LIABILITY TO SELLER'S EMPLOYEES

For many years our courts have maintained the position that the employee of the person who sells and delivers timber to a buyer is not entitled to workmen's compensation from the latter under R.S. 23:1061 (the provision of the statute subjecting a principal to the compensation claim of his contractor's employee).<sup>1</sup> This position has resulted in numerous hardships among those employed in the lumber industry. There has developed a fairly common practice by the Louisiana lumber buyer of interjecting a middleman between himself and the owner of the standing timber. Ownership of the timber is transferred to this intermediary who, in turn, agrees to sever it and deliver it by way of resale to the ultimate purchaser. Usually it is this ultimate purchaser who initiates the entire transaction. Such purchases are almost universally made solely on the credit of the ultimate buyer. Usually such buyer withholds from money due the intermediary a sum sufficient to pay the owner of the standing timber, and this sum is paid directly to the latter. In practical effect, the intermediary is no more than a contractor who is paid for severing and hauling the timber. Yet, since the title passes through him, the courts have felt compelled to exclude him from the classification of contractor, because he is regarded as a "seller." Apparently it is assumed that such a

\*Professor of Law, Louisiana State University.

1. MALONE, *LOUISIANA WORKMEN'S COMPENSATION LAW AND PRACTICE* § 123 (1951).

person cannot be a "seller" and a "contractor" at the same time.<sup>2</sup> As a result, the employees of this intermediary must rely exclusively upon the intermediary for compensation in the event of injury or death, and, as might be suspected, the intermediary is usually insolvent.

In recent years there is increasing evidence that lumbering transactions such as described above are coming to be regarded in court with a more skeptical eye.<sup>3</sup> The most recent example is *Jones v. Hennessy*.<sup>4</sup> Hennessy, a lumber buyer, induced the deceased, its own former employee, an illiterate Negro, to move to a new locality and to work for an intermediary who presumably was cutting timber for sale to Hennessy. The latter provided quarters and a line of credit for living expenses for the deceased during much of this operation. It was not claimed, however, that deceased was a direct employee of Hennessy. The court, in concluding that the intermediary was not a seller to Hennessy within the meaning of R.S. 23:1061, relied upon the fact that the former had purchased a sawmill from Hennessy on credit. The terms of the purchase arrangement for the mill were such that as a practical result the intermediary was compelled to sell timber exclusively to Hennessy at the risk of losing his mill. It is interesting to note that previous decisions of the courts of appeal, in holding that the intermediary was in fact a seller to defendant within the meaning of the statute, have ignored the fact that an exclusive resale arrangement existed.<sup>5</sup> From the opinion in *Jones v. Hennessy*, it is difficult to determine whether the court, in allowing compensation, was prompted to do so by the exclusive character of the sale arrangement, or whether it was influenced by the fact that Hennessy interested himself in procuring the services of the deceased for the intermediary, and assisted in financing the deceased. The importance of the case lies in the fact that the result reached suggests possibly that resale arrangements of this type may be more critically scrutinized in the future.

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2. It is not clear why one person may not be *both* a seller and a contractor with reference to another. Our courts have recognized that one may be the *employee* of another who has sold him goods when the seller controls the buyer's conduct in the reselling of the same goods. *Buettner v. Polar Bar Ice Cream Co.*, 17 So.2d 486 (La. App. 1944). Similarly, a buyer may exercise control over a worker hired to deal with goods while they are still in the ownership of the seller. *Sizemore v. Kirkland Timber Co.*, 131 So. 501 (La. App. 1930).

3. *Kline v. Dawson*, 230 La. 901, 89 So.2d 385 (1956).

4. 232 La. 786, 95 So.2d 312 (1957).

5. *Hatch v. Industrial Lbr. Co.*, 199 So. 587 (La. App. 1941); *Perkins v. Hillyer Deutsch Edwards, Inc.*, 199 So. 590 (La. App. 1941).