

1951

## Haskell N. Bates v. Jimmie Simpson et al : Brief of Plaintiff

Utah Supreme Court

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Davis and Bayles; Attorneys for Plaintiff and Respondent;

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

HASKELL N. BATES,  
Plaintiff and Respondent,

vs.

EMMIE SIMPSON,  
Defendant,

L. J. SAUNDERS,  
Defendant, Cross-complainant  
and Respondent,

THE EMPLOYERS' LIABILITY  
ASSURANCE CORPORATION,  
LTD., a corporation,  
Defendant, Cross-complainant  
and Appellant.

No.

7686

BRIEF OF PLAINTIFF  
and Respondent, Haskell N. Bates

FILED

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DAVIS AND BAYLES

Attorneys for Plaintiff  
and Respondent, Haskell  
N. Bates

Clerk, Supreme Court, Utah

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**STATUTES**

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

---

HASKELL N. BATES, :  
Plaintiff and Respondent, :

vs. :

JIMMIE SIMPSON, :  
Defendant, :

W. J. SAUNDERS, : No.  
Defendant, Cross-complainant : 7686  
and Respondent, :

THE EMPLOYERS' LIABILITY :  
ASSURANCE CORPORATION, :  
LTD., a corporation, :  
Defendant, Cross-complainant :  
and Appellant. :

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BRIEF OF PLAINTIFF  
and Respondent, Haskell N. Bates

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STATEMENT OF FACTS

Plaintiff cannot completely agree with  
the statement of facts as presented by Defen-  
dant, Cross-complainant and Appellant, The  
Employers' Liability Assurance Corporation,  
Ltd. Some vital facts are left out and other

On November 5, 1949, Plaintiff, Maskell N. Bates (R.71) a laborer (R.73) went into a used car lot at 999 South Main Street (not State Street), Salt Lake City, Utah, (R.78, 148, 166, and Ex. A) and entered into a purchase agreement with Jimmie Simpson to pay \$1395.00 for a 1947 Chevrolet Sedan, which was on display on the front of the lot with other automobiles. He signed a purchase order prepared in hand writing by Simpson, who also wrote or signed, Jimmie Simpson at the top of the order, Ex. A (R.78 and 134) (despite statement in Employers' Brief to the Contrary). Bates signed a title retaining contract form, prepared in hand writing, which Bates took with him, and also signed three or four blank copies which Simpson retained. Bates signed transfer of title to a car he owned and turned in his old car with title for a \$500.00 payment on the purchase price of the 1947 Chevrolet (R.76, 89). Bates also paid \$27.90 to Simpson for Sales tax and

\$2.00 for license plates (R.78). Simpson told Bates, that the car purchased with the California plate on it could be drive without a permit sticker, until Simpson obtained the new license plates (R.83), which Simpson said he would get within two or three weeks.

Simpson further told Bates, the automobile would be financed by either Strevell-Paterson or Capitol Finance Company, and that the finance company would hold title to the car until the contract was paid (R.83). Bates took the 1947 Chevrolet with him at the time.

During the following week Simpson informed Bates that Bill Saunders, (W.J.), who was referred to at one time as his finance man and at another time as his partner (R.84, 85), was out of town and would be back to take care of the financing.

During the second week after the purchase of the Chevrolet, Simpson told Bates that Saunders had financed the contract through

~~Strevell-Paterson.~~

Shortly after this last conversation Bates received a type written carbon copy of the contract (Ex. B) from Strevell-Paterson. This was one of the blank copies signed by Bates November 5, 1949. This was signed by W. J. Saunders, as Celler-Dwiler, when received from Strevell-Paterson.

When the time arrived for Bates to receive the license plates for the Chevrolet, in accordance with what Simpson had told him, he made numerous attempts to contact Simpson about the plates. Each time Bates saw Simpson, Simpson put Bates off a few more days and gave some excuse. December 17, 1949, was the last time Bates saw Simpson (R.86). At that time Simpson said he would get the plates the following week (R.87).

Thereafter Bates continued, without success, to try to contact Simpson, until January 14, 1950, when he located W. J. Saunders, one of the defendants herein. At that time



Chevrolet was in the Continental National Bank & Trust Company, Central Branch (R.90 and 91). This was the first time that Bates had any indication the title to the Chevrolet, was not held by Simpson at the time of the purchase, November 5, 1949, or that Strevell-Paterson did not receive title at the time the purchase contract was financed.

Employers' in it's brief, page 2, claims the 1947 Chevrolet was brought from California by Simpson under consignment. However, the record is devoid of any evidence of consignment or of the purpose of the sale to Simpson. The evidence is that Simpson purchased the car in California and that title with a draft was sent to a local bank for payment by Simpson, (R.91, 149 and 178).

That thereafter Brokaw and Bauer of California brought a replevin action against Bates for the recovery of the 1947 Chevrolet, (R.92). Bates gave notice of such action to

defendant J. J. Saunders (R.140) and to de-

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fendant Employers' Liability Assurance Corporation, Ltd., a corporation (8.138-139) and requested each to defend the suit. Each refused to do so. Whereupon Bates filed counterclaim for the Chevrolet. Upon the trial of the replevin case, the Chevrolet was awarded to Brokaw and Bauer. In attempting to protect the Chevrolet against the replevin action Bates incurred reasonable expenses of \$205.62, and by reason of the loss of the Chevrolet further lost all payments he had made on the purchase thereof, being \$727.90. A total judgment of \$933.52 was given Bates against the Employers' Liability Assurance Corporation, Ltd., in the case now before the court.

No judgment was given against Jimmie Simpson, who could not be found to serve summons upon, and plaintiff's complaint against W. J. Saunders was dismissed.

## STATEMENT OF POINTS RELIED UPON

### POINT NO. I.

THE COURT ERRED IN FAILING TO FIND AND CONCLUDE THAT SAUNDERS KNOWINGLY VIOLATED THE STATUTES OF THE STATE OF UTAH AND WAS THEREFORE LIABLE TO BATES.

### POINT NO. II.

THE COURT PROPERLY FOUND AND CONCLUDED THAT SIMPSON IN HIS DEALINGS WITH BATES WAS GUILTY OF FRAUD AND DECEIT, AND OF VIOLATION OF THE STATUTES OF THE STATE OF UTAH, THEREFORE, JUDGMENT AGAINST THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION LTD., FOR \$933.52 WAS PROPER.

### POINT NO. III.

THE FINDINGS OF THE COURT IN AND OF THEMSELVES ARE SUFFICIENT ON THE COMPLAINT OF BATES AGAINST DEFENDANT SAUNDERS AND OF THE CROSS-COMPLAINT OF EMPLOYERS', AGAINST DEFENDANT SAUNDERS, IF THE COURT DID NOT ERRO IN FAILING TO FIND AND CONCLUDE THAT

SAUNDERS WAS LIABLE TO BATES.

## ARGUMENT

### POINT NO. I.

THE COURT ERRED IN FAILING TO FIND AND CONCLUDE THAT SAUNDERS KNOWINGLY VIOLATED THE STATUTES OF THE STATE OF UTAH AND WAS THEREFORE LIABLE TO BATES.

Section 57-6-4 of Utah Code Annotated, 1943, provides:

"...every person, firm or corporation who shall bring any used or second hand motor vehicles into the State of Utah for the purpose of sale or resale ... shall, within ten days from the date of entry of said motor vehicle within the limits of the state of Utah register such motor vehicle with the state tax commission of the State of Utah ..., and shall before said used or second hand car is put on a used car lot for sale or offered for sale, or sold, execute a bond with two good and sufficient sureties, or with a surety company duly authorized to do business in the State of Utah as a surety or sureties thereon, payable to the state tax commission for the use and benefit of the purchaser and his vendees, conditioned to pay all losses, damages and expenses that may be sustained by the purchaser, or vendees, that may be occasioned by reason of the failure of the title of such vendor or by reason of any fraudulent misrepresentations or breaches of warranty as to freedom from liens, quality,

condition, use or value of the motor vehicle being sold ..."

Section 57-6-5 provides:

"Every person, firm, or corporation upon the sale delivery of any used or second hand motor vehicle shall within forty-eight hours thereof deliver to the vendee, and endorsed according to law, a certificate of title, issued for said vehicle by the state tax commission."

Section 57-6-7 broadens the terms 'dealer' and 'vendor' to include defendant, Saunders.

This section provides:

"The terms, 'dealer' and 'vendor', herein used shall be construed to include every individual, partnership, corporation or trust whose business in whole or in part is that of selling new or used motor vehicles and likewise shall be construed to include every agent, representative or consignee of any such dealer as defined above as fully as if same had been herein expressly set out; provided, no agent, representative or consignee of such dealer or vendor shall be required to make and file the said bond if such dealer or vendor for whom such agent, representative or consignee acts fully complies in each instance with the provisions of this act."

These provisions were considered to/im-  
be so  
portant by the legislature that a severe  
penalty has been attached to any violation  
thereof.

"No action or right of action to recover any such motor vehicle, or any part of the selling price thereof, shall be maintained in the courts of this state by any such dealer or vendor, his successors or assigns, in any case wherein such vendor or dealer shall have failed to comply with the terms and provisions of this act, and such vendor or dealer, upon conviction for the violation of any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than \$299 or by imprisonment for not more than six months in the county jail, or by both such fine and imprisonment."

The testimony of Saunders as quoted on pages 13 to 20 inclusive, and of Minson from Strevell-Paterson as quoted on page 20 of the brief of Defendant, The Employers' Liability Assurance Corporation, Ltd., conclusively shows that Saunders knowingly violated the statutes of the State of Utah, in that as a bonded, used car dealer he aided and abetted in a transaction wherein he assumed the position of dealer and seller of a motor vehicle brought into this state for the purpose of resale. He failed to register said motor vehicle, though he assum-

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quoted apply to defendant Saunders under whatever category he may be placed, whether individual dealer or agent of Simpson.

Defendant, The Employers' Liability Assurance Corporation, Ltd., attempts to use the foregoing section 57-6-5, U.C.A. 1949, in it's own behalf to place responsibility upon Saunders and to thereby recover from him under indemnifying provisions of Employers' bond on Saunders as a used car dealer. However, on page 30 of it's brief Employers says: "This defendant does not admit that the statute referred to confers any private right on plaintiff,..." If the statute is not for the purpose of protecting purchasers of used automobiles in instances of the nature here involved, it is difficult to visualize where the statute would be of any effect whatever.

Laws of Utah 1949, Chapter 67, Section 8, provides:

**Before any New Motor Vehicle Dealer's**



license or used Motor Vehicle Dealer's license shall be issued by the Administrator to any applicant therefore, the said applicant shall procure and file with the Administrator a good and sufficient bond in the amount of Five Thousand Dollars (\$5,000.00) with corporate surety thereon, duly licensed to do business within the State of Utah, approved as to form by the Attorney General of the State of Utah, and conditioned that said applicant shall conduct his business as a dealer without fraud or fraudulent representation, and without the violation of any of the provisions of this act. The bond may be continuous in form, and the total aggregate liability on the bond shall be limited to the payment of (\$5,000.00."

Laws of Utah 1949, Chapter 67, Section 10 provides:

"If any person shall suffer any loss or damage by reason of fraud, fraudulent representation or violation of any of the provisions of this act by a licensed dealer or one of his salesmen, then acting for the dealer on his behalf, or within the scope of the employment of such salesman, such person shall have a right of action against such dealer, and/or the automobile salesman guilty of the fraud, fraudulent representation or violation of any of the provisions of this act, and /or the sureties upon their respective bonds."

Laws of Utah 1949, Chapter 67, Section 13 provides:

"It shall be unlawful and a violation of this Act for the holder of any license issued under the terms and provisions hereof:

"(B) To violate any of the terms or provisions of this Act or any of the rules and regulations promulgated by the Administrator under the authority herein conferred upon him.

"(D) To violate any law of the State of Utah now existing or hereafter enacted respecting commerce in motor vehicles or any lawful rule or regulation respecting commerce in motor vehicles promulgated by any licensing or regulating authority now existing or hereafter created by the laws of the State of Utah."

From these statutes it is clear the purpose of the bonds issued by Employers' for Saunders and for Simpson are to protect plaintiff Haskell W. Bates.

## POINT NO. II.

THE COURT PROPERLY FOUND AND CONCLUDED THAT SIMPSON IN HIS DEALINGS WITH BATES WAS GUILTY OF FRAUD AND DECEIT, AND OF VIOLATION OF THE STATUTES OF THE STATE OF UTAH, THEREFORE, JUDGMENT AGAINST THE EMPLOYERS' LIABILITY ASSURANCE CORPORATION LTD., FOR

The argument of Employers' as set forth under Point 1 (b) of its brief, pages 24 to 29 inclusive, proceeds on the assumption that it is necessary to show both Saunders and Simpson were equal in culpability to hold Saunders liable on Saunders' indemnity agreement with Employers. However the citations there given do not so hold.

No question has been raised regarding the liability of Simpson for violation of the State motor vehicle laws and of the consequent liability of Employers, therefore no comment will be made thereon. Whether Simpson was guilty of fraud or not, in no way affects Employers' liability under the bond.

Laws of Utah 1949, Chapter 67, Section 8, provides, that the bond shall be "conditioned that said applicant shall conduct his business as a dealer without fraud or fraudulent representations and without violation of any of the provisions of this act."

provides, that if any person suffers loss because of fraud or violation of the act he "shall have a right of action against " the dealer and/or the sureties.

Section 13 (D) of the same chapter provides that the violation of "this act", includes the violation of any law of the State respecting commerce in motor vehicles.

Accordingly, whether Simpson was or was not guilty of fraud, in no way affects the liability of Employers to plaintiff on its bond for Simpson, whose whereabouts is unknown.

Fraud against Simpson was clearly proven. Every element of fraud as set out in, *Stueck v. Delta Land & Water Co.*, 63 Utah 495, 227 Pac. 791, was proven.

Simpson held out and represented to plaintiff that Simpson owned the 1947 Chevrolet and had the right to sell it, by displaying same on his lot for sale (A.87-88), when Simpson knew he did not have title to the car, and

could not get title until the title and draft arrived from California and Simpson had paid the draft. Simpson, to further his purpose of fraud and deceit, told plaintiff no permit sticker was required on the car, when Simpson as a used car dealer knew or should have known such statement was contrary to law, and would be relied upon by plaintiff. Simpson further violated the law when he represented to plaintiff that license plates would not be needed for the car for two or three weeks. Employers' contention that violation of a promise alone is not sufficient to prove fraud and deceit is correct. However, when the violation of a promise and subsequent acts, fit with all other facts of false representations, known by Simpson to be false, indicate clearly the plan of fraud and deceit. Simpson's stall with Bates about getting the license plates and his stall with Saunders about getting the title and the manner thereof, indicate Simpson's mind in the matter. Employers' claim,

that Simpson's contention of being too busy to get the plates, as given to Bates, may have been the truth (Employers' brief page 27).

Then, is "being too busy" justification for continued violation of law. Simpson knew the true reason he did not obtain the plates was, because he did not have title to the car, and his wish to continue deceiving plaintiff.

The evidence clearly shows he never did have title and never did intend to get any plates. Saunders testified that Simpson told "so <sup>many</sup> damn stories" about the title to the car that they could not be remembered. That Simpson also said the title to the car had been returned to California, but when this was rechecked with the bank, Saunders knew Simpson had been lying (A.187). Exhibit 11 shows the title of the 1947 Chevrolet was never returned to California until after Simpson disappeared. In all of Simpson's conversations with Bates, Simpson never once told Bates the truth about





THE CROSS-COMPLAINT OF EMPLOYERS', AGAINST  
DEFENDANT SAUNDERS, IF THE COURT DID NOT  
ERROR IN FAILING TO FIND AND CONCLUDE THAT  
SAUNDERS WAS LIABLE TO BATES.

The record pp. 41 to 46 and 49 to 54  
inclusive, are the complete Findings of Fact.  
Every material issue of fact presented to the  
Court by the pleadings and the evidence has  
been covered in the Findings.

Employers' contention in its Point No.  
VIII, pages 48 and 49 of its brief, that find-  
ings on plaintiff's complaint against Saunders  
and Employers' cross-complaint are not suf-  
ficient, fails when all of the Findings of  
Fact are considered together. The findings  
of the Court in Findings 4 to 12 inclusive,  
(R.50 to 53 inclusive), in finding for Saunders,  
though not following plaintiff's complaint nor  
the cross-complaint of defendant, Employers',  
correctly covers all material issues involved  
in the objections of Employers, if such Find-  
ings of Fact are supported by the evidence.



Jankelo v. Texas Co., 88 Utah 325, 54 Pac.(2d)  
425.

### CONCLUSION

The judgment of the Trial Court, in favor of plaintiff, Haskell M. Bates, is properly supported by the evidence and should be affirmed, and plaintiff should also be given judgment against defendant, W. J. Saunders.

Respectfully submitted,  
DAVIS and BAYLES