Law Reoprt: Wheelclamping on private land was lawful

Arthur and another v Anker; Court of Appeal (Sir Thomas Bingham, Master of the Rolls, Lord Justice Neill and Lord Justice Hirst); 30 November 1995

PAUL MAGRATH , BARRISTER | THURSDAY 07 DECEMBER 1995

The wheelclamping of a vehicle parked without authority on private land and its release only on payment of a fee was neither tortious nor criminal, provided that the motorist had seen, and could therefore be taken to have consented to, a notice on the land warning of such consequences, and that the release fee was reasonable, easily payable and resulted in prompt release.

The Court of Appeal dismissed an appeal by the plaintiffs, David and Annette Arthur, against the decision of Judge Anthony Thompson QC, sitting in Truro County Court on 7 May 1993: (i) dismissing their claim against the defendant, Thomas Anker, an employee of Armtrac Security Services acting as the agent of the leasehold owners of a private car park in Truro, for compensation and damages for malicious falsehood and tortious interference with the plaintiffs' car; and (ii) allowing the defendant's counterclaim for pounds 660 in compensation for the cost of wheelclamps and padlocks removed by Mr Arthur, and for an assault by Mrs Arthur.

The Arthurs' car had been wheelclamped by Mr Anker after Mr Arthur had parked it in the private car park without authority, despite having seen a notice erected by Armtrac to the effect that vehicles left there without authority would be wheelclamped and a fee of pounds 40 charged for their release. Although he later accepted the fee was reasonable, Mr Arthur refused to pay it. Following an acrimonious argument, during which Mrs Arthur assaulted Mr Anker, both plaintiffs left. But that night Mr Arthur returned and succeeded in releasing his car. When Mr Anker returned next morning, both car and clamps had disappeared.

Against the plaintiffs' claim for compensation and damages, the defendant successfully advanced two defences. First was the old medieval self-help remedy of "distress damage feasant" under which, if a landowner found another's property causing damage on his land, he could seize it and withhold it from its owner until adequate compensation had been paid. Although aimed at livestock, the judge thought it could be adapted to apply to a car causing damage by using up space where it was at a premium.

Second was the defence of consent or "volenti non fit injuria", Mr Arthur having parked the car in full knowledge of the possible consequences and therefore being taken to have consented to them.

John G. Cooper (Natasha Arthur, Truro) for the plaintiffs; Timothy Ryder (Nalder & Son, Truro) for the defendants; Stephen Richards (Treasury Solicitor) as amicus curiae.

Sir Thomas Bingham MR, dealing first with the defence of consent, said that by voluntarily accepting the risk of being clamped Mr Arthur had consented not only to the otherwise tortious act of clamping but also to the otherwise tortious act of detaining the car until payment of the reasonable cost of the clamping and unclamping.

However, such implied acceptance would not extend to an unreasonable or exorbitant charge for releasing the car, nor would it apply where the warning was not of clamping but of conduct by or on behalf of the landowner which would damage the car. Nor might the clamper justify detention of the car or delay in its release after the owner had indicated a willingness to comply with the condition for release, and there must be means for the owner to communicate his offer of payment.

As for the remedy of distress damage feasant, his Lordship doubted if it could apply. Although it had survived and was capable of applying to inanimate objects, its application to a case such as this was plainly remote from anything ever contemplated by those who developed the remedy.

Lord Justice Neill concurred.

Lord Justice Hirst also concurred except on the remedy of distress damage feasant, on which issue he would uphold the judge's decision.

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