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IN DIE HOË HOF VAN SUID-AFRIKA
[Noord-Kaap Hoë Hof, Kimberley]

Saaknommer: 952/05
Datum Verhoor: 27 Mei 2009
Datum Gelewer: 12 Junie 2009

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HENDRIK PETRUS STEENKAMP

EISER

versus

GWK BEPERK

VERWEERDER

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‘But physical prehension is not essential if the subject-matter is placed in presence of the would-be possessor in such circumstances that he and he alone can deal with it at pleasure. In that way the physical element is sufficiently supplied; and if the mind of the transferee contemplates and desires so to deal with it, the transfer of possession - that is the delivery - is in law complete. (See Digest 41, 2, 21; Voet 41, 1, 34. Savigny Book 2, sub-secs. 15-17. Pothier, Vol. II, par. 314). When this deposit of the subject-matter in the presence and at the disposition of the new possessor take the place of physical prehension, the delivery is said to be made *longa manu*, and it constitutes one of the forms of fictitious as distinguished from actual delivery. It is most appropriate to transactions where owing to the weight or

bulk of the article concerned, actual delivery is difficult. A resort to it in respect of portable movables would need some very special explanation. Indeed it is obvious that, as in all cases where mental attitude is not clearly evidenced by physical dealing, the principle of traditio longa manu must be cautiously applied. Where there is actual delivery the state of mind of the transferee is in general sufficiently shown by his acts. But where he does not exercise prehension of the subject-matter, his intention must be closely scrutinized, so that there may be no doubt as to his resolve to acquire possession. (

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volg daaraangaande te 183:

“There are three main requisites in a symbolic delivery. First, there must be the intention to resort to that form of delivery; secondly, there must be the pointing out in praesenti and the placing at the disposal of the deliverer; and thirdly, there must be the identification or clear ascertainment of the thing delivered.”

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“Die appellant beroep hom op traditio longa manu. In dié verband steun hy veral op die feit dat die verse onmiddellik na die kontraksluiting met die respondent se brandyster gemerk is, en daarna in ‘n aparte kamp op die plaas ingejaag en aangehou is. Hierdie feite is natuurlik nie op sigself genome voldoende om eiendomsoorgang tot gevolg te hê nie. Daar is veral twee bykomende vereistes vir eiendomsoorgang in ‘n geval soos die onderhawige. Die eerste is die subjektiewe element. In die onderhawige omstandighede sou die eiendom van die verse nie op die respondent oorgegaan het nie tensy die appellant ook

nog die bedoeling gehad het om die eiendom oor te dra (animus transferendi domini) en die respondent die bedoeling gehad het om dit te ontvang (animus accipiendi domini). Dit blyk duidelik uit talle gewysdes Hierbenewens moes die respondent ook nog in staat gestel gewees het om fisieke beheer oor die verse uit te oefen nadat hulle gebrandmerk en in die kamp ingejaag is.(

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