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AUTOMOBILES - HUSBAND'S LIABILITY FOR WIFE'S NEGLIGENCE WHILE DRIVING FAMILY AUTO - "FAMILY ERRAND" AND "FAMILY PURPOSE" DOCTRINES - ILLINOIS RULE

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RECENT DECISIONS

AUTOMOBILES — HUSBAND'S LIABILITY FOR WIFE'S NEGLIGENCE WHILE DRIVING FAMILY AUTO — "FAMILY ERRAND" AND "FAMILY PURPOSE" DOCTRINES — ILLINOIS RULE — Plaintiff's automobile was damaged by collision with an automobile belonging to the defendant while being driven by defendant's wife who was on an errand to purchase a twenty-five cent Hallowe'en party dress for her daughter. The accident was caused by the negligence of the defendant's wife. The defendant, his wife, and their child were living together, and the wife's sole income was derived from her husband, and from this she was to provide clothing and meet other expenses for the child. The circuit court gave judgment of damages to the plaintiff and the defendant appeals. *Held*, the plaintiff could recover since the husband was liable for the wife's negligent driving of the family automobile owned by him while she was using it on a family errand to make expenditures for their daughter. *O'Haran v. Leiner*, 306 Ill. App. 230, 28 N. E. (2d) 315 (1940).

Liability in this case cannot be based on the "dangerous instrumentality" doctrine, since this doctrine has in most jurisdictions been held not to extend to automobiles,[1] and in Illinois liability of the husband cannot be based merely on the husband-wife relationship unless he would be jointly liable with his wife if this relationship did not exist.[2] Furthermore, the courts of Illinois have rejected the "family purpose" doctrine,[3] which rests on a theory of principal-agent, and implies agency when the car is being used by the members of the family for their own pleasure and convenience. This court followed precedent and did not impose liability on this theory.[4] Under the "family errand" doctrine, employed in such cases in Illinois, liability is imposed on the basis of a principal-agent relationship. In the first case advancing this doctrine,[5] the daughter was on an errand to procure a necessity for herself, and the father was held liable

[1] Certain contrivances and agencies, such as locomotives, ferocious animals, and dynamite, are considered so dangerous that the owner is held absolutely liable for damages caused thereby. In the case of Trice v. Bridgewater, (Tex. Civ. App. 1932) 51 S. W. (2d) 797, the court said that though the idea of the father's being liable originally sprang from the "dangerous instrumentality" idea, this theory has been generally abandoned in cases concerning automobiles. Lewis v. Amorous, 3 Ga. App. 50, 59 S. E. 338 (1907); Jones v. Hoge, 47 Wash. 663, 92 P. 433 (1907).

[2] Ill. Ann. Stat. (Smith-Hurd, 1936), c. 68, § 4; Arkin v. Page, 287 Ill. 420, 123 N. E. 30 (1919).

[3] Although the decisions had not been uniform up to this time, it was denied in Anderson v. Byrnes, 344 Ill. 240, 176 N. E. 374 (1931), that Illinois followed the "family purpose" doctrine.

[4] 306 Ill. App. at 232: "it is clear that, under the law of this State, the so-called 'family purpose doctrine' is not in force. . . ." The court makes reference to White v. Seitz, 342 Ill. 266, 174 N. E. 371 (1931); Anderson v. Byrnes, 344 Ill. 240, 176 N. E. 374 (1931).

[5] In Graham v. Page, 300 Ill. 40, 132 N. E. 817 (1921), the daughter was on her way to have her shoes repaired when the accident occurred. The court stated, in sustaining liability, that the errand must be for the purpose of obtaining something which the father is under a duty to provide.

since she was acting as his agent in procuring what it was his duty to provide for her. If, as in the immediate case, agency is implied on any family errand in which an expenditure is to be made for the family, irrespective of necessity, is not the distinction between the "family purpose" doctrine and "family errand" doctrine being weakened, if not destroyed? It is true that this decision will not lead to the result of virtually absolute liability of the father, as does the "family purpose" doctrine in those states whose theory of liability is that "natural justice" dictates that the father should pay for damages done by his family while driving the family automobile.[6] Nevertheless, if this decision is followed to its logical conclusion, it will result in an imposition of liability on the father or husband who owns the family car in the same situations in which he would be held responsible in those states which follow the "family purpose" doctrine.[7] If the "family errand" doctrine is to be extended to situations where the car is being used to obtain non-necessities, things which are to bring pleasure to the family, it is the next logical step to imply agency where pleasure or convenience is realized directly through the use of the car as well as indirectly. The courts say in the principal case that agency will be implied if the car is being used "in pursuance of what may logically be construed as the 'business' or 'duty' of the husband or father." [8] If the court in subsequent decisions construes business or duty of the father in the light of this case, the "family purpose" doctrine will have been substantially reinstated in Illinois.

[6] In White v. Seitz, 342 Ill. 266, 174 N. E. 371 (1931), the court said that a few cases, though not many, had frankly abandoned the principal-agent basis and used "natural justice" as a basis of liability, because the automobile is so dangerous to human life and because of the injustice which might be suffered by the injured plaintiff if he had to rely on the wife or minor children to compensate him for his injuries.

[7] For a general discussion of the basis of liability used in various states, see 64 A. L. R. 844 (1929).

[8] See the principal case, 306 Ill. App. at 235.