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TORTS—NEGLIGENCE—BAILEE'S NEGLIGENCE AS A BAR TO AN ACTION BY THE BAILOR AGAINST A THIRD PARTY.—The plaintiff's son borrowed the plaintiff's automobile for an evening's pleasure trip in which the plaintiff had no interest. While on this trip, the automobile was damaged as a result of the negligence of the defendant and the driver of the plaintiff's automobile. *Held,* the relation

of the plaintiff to his son was that of bailor and bailee, but that the negligence of the bailee could not be imputed to the bailor so as to bar recovery for the damage to the automobile in an action against the negligent defendant. *Robinson v. Warren* (Me. 1930) 151 Atl. 10.

The early decisions in this country seem to lay down the rule that the bailor could not recover from a negligent third party for an injury to his goods if the bailee's negligence contributed to the injury. *Smith v. Smith*, 2 Pick. (Mass.) 621, is often cited in support of this contention but the court did not discuss the point. *Forks Township v. King*, 84 Pa. 230, supported the same rule though the court did not refer to the driver of the horse as bailee, although the defendant in the case cited *Baird v. Yohn*, 2 Casey (Pa.) 482, which held that the negligence of the bailee could not be imputed to the bailor so as to make the bailor liable for such negligence. *Texas & Pacific Ry. v. Tankersley*, 63 Tex. 57, specifically laid down the early rule which is still followed in Texas, *Munster v. Hexter* (C. C. A. Tex. 1927) 295 S.W. 245. However, authority has accumulated for the rule as laid down in the principal case until the weight is overwhelmingly in its favor, 1 THOMPSON, NEGLIGENCE, 2d. ed., sec. 512; *Lee v. Layton* (Ind. 1929) 167 N.E. 540; *Nash v. Lang* (Mass. 1929) 167 N.E. 762; *U-Drive-It Car Co., Inc. v. Texas Pipe Co., Inc.* (La. 1930) 129 So. 565. In support of the older rule, the court in *Illinois Cent. Rr. v. Sims*, 77 Miss. 325, 27 So. 527, said, "We have held that the bailee may, in a proper case, recover in his own name but of course for the benefit of his bailor; or the bailor may, himself, sue in his own name. * * * Whatever entitles to recovery, entitles either bailor or bailee to such recovery. *E converso*, whatever forbids a recovery to the bailee, will also defeat the bailor's action." The majority view was well expressed by the court in *New York, Lake Erie, & W. Rr. v. New Jersey Electric Ry.*, 60 N. J. L. 338, 38 Atl. 828 in which it is said that "It is only when the contributory negligence is of such a character, and the third person is so connected with the plaintiff, that an action might be maintained against the plaintiff for damages for the consequences of such negligence" that it "is justly imputed to him. This relation does not exist between the bailor and bailee under the ordinary contract of bailment." On facts similar to those in the principal case, the plaintiff would, no doubt, be barred in those states which apply the "family purpose" doctrine in automobile cases; also, in Florida, where the court holds the automobile to be a dangerous instrumentality, *Southern Cotton Oil Co. v. Anderson*, 80 Fla. 441, 86 So. 629; and, finally, in those states, which by statute, have made the owner of an automobile liable for the injuries inflicted by his automobile, *Secured Finance Co. v. Chicago, R. I. & P. Rr.*, 207 Iowa 1105, 224 N.W. 88.