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NEGLIGENCE-AUTOMOBILE BAILMENTS--EFFECT OF OWNER RESPONSIBILITY STATUTES

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NEGLIGENCE—AUTOMOBILE BAILMENTS—EFFECT OF OWNER RESPONSIBILITY STATUTES—Plaintiff brought an action to recover for damage to his automobile resulting from a collision with defendant's automobile. Each of the vehicles was being negligently operated by the son of the owner. A statute provided that one operating a vehicle with the owner's consent should be deemed the owner's agent.[1] The court refused to give an instruction which would preclude plaintiff's recovery if the jury found that his son's negligence contributed to the accident. On appeal from a verdict for the plaintiff, *held,* affirmed. The statute makes the bailor liable to persons injured because of the bailee's negligence but does not impute this negligence to the bailor so as to bar recovery against a third

[1] "Whenever any motor vehicle, . . . shall be operated upon any public street or highway of this state, . . . with the consent of the owner, express or implied, the operator thereof shall in case of accident, be deemed the agent of the owner of such motor vehicle in the operation thereof." 12 Minn. Stat. Ann. (1945) §170.54.

person.[2] Furthermore, the "family-purpose" doctrine[3] has been superseded by the statute. *Jacobsen v. Dailey*, 228 Minn. 201, 36 N.W. (2d) 711 (1949).

Several jurisdictions have had occasion to consider whether the contributory negligence of the driver may be imputed to the owner of a motor vehicle under legislation similar to that involved in the principal case.[4] Of these, only the New York courts have reached a similar result.[5] Moreover, the New York statute, unlike the one in Minnesota, does not purport to create an agency relationship between the owner and driver, but merely provides that "Every owner of a motor vehicle . . . shall be liable . . . for injuries . . . resulting from negligence in the operation of such vehicle . . . by any person operating the same with the permission, express or implied, of such owner. . . ."[6] Unable, therefore, to lean too heavily on authority, the Minnesota court finds justification for its holding in the undesirability of broadening the application of the contributory negligence rule,[7] an admittedly harsh doctrine.[8] Nevertheless, to allow this doctrine to continue to operate generally while restricting its operation under the statute in question works manifestly unjust results. A Minnesota resident familiar with this rule might likely register his car in the name of some non-driving member of his family so that in the event of an accident in which he is contributorily negligent, he may still recover for the damage to his car through the family member in whose name the car is registered;[9] but the other party to the accident might be unable to recover, though his fault be less, simply because he happened to be unaware of the rule or truthful enough to keep title in his own name.[10] The working of

[2] *Accord*: Ristau v. Riley, (Minn. 1950) 41 N.W. (2d) 772.

[3] See PROSSER, TORTS 500-503 (1941).

[4] Mills v. Gabriel, 284 N.Y. 755, 31 N.E. (2d) 512 (1940); Secured Finance Co. v. Chicago Ry., 207 Iowa 1105, 224 N.W. 88 (1929); National Trucking & Storage Co. v. Driscoll, (Mun. App. D.C. 1949) 64 A. (2d) 304; Milgate v. Wraith, 19 Cal. (2d) 297, 121 P. (2d) 10 (1942); Meisenheimer v. Pullen, 271 Mich. 509, 260 N.W. 756 (1935). See 15 Iowa Code Ann. (1949) §321.493, Mich. Comp. Laws (1948) §256.29, and N.Y. Veh. & Traf. Law (McKinney 1950) (April Pamphlet) Art. 5, §59, which provide merely that the owner shall be liable for the negligence of one using his car with his consent. D.C. Code (1940) §40-403, is almost identical to the Minnesota statute, supra note 1. Cal. Veh. Code (1943) §402 is unique in that it expressly provides that the negligence of the driver is imputable to the owner.

[5] Gochee v. Wagner, 232 App. Div. 401, 250 N.Y.S. 102 (1931).

[6] N.Y. Consol. Laws (Cahill 1930) c. 64-a, §59.

"Neither the word 'agent' nor the word 'servant' is used in the statute. . . . The driver is not in fact the agent of the owner and the statute does not make him such. No intention can be found in this statute to broaden the scope of the doctrine of contributory negligence." Gochee v. Wagner, supra note 5 at 403.

[7] See Christensen v. Hennepin Transp. Co., 215 Minn. 394, 10 N.W. (2d) 406 (1943); National Trucking and Storage Co. v. Driscoll, supra note 4 at 300; 34 MINN. L. REV. 58 (1949).

[8] PROSSER, TORTS 403 (1941).

[9] The common law rule, which according to the principal case is left untouched by the statute, is that the driver's contributory negligence does not bar suit by the bailor-owner against a negligent third party. 65 C.J.S. 808. But see Langford Motor Co. v. McClung Construction Co., (Tex. Civ. App. 1932) 46 S.W. (2d) 388.

[10] Is a court likely to look through this subterfuge? For a negative answer see Nash v. Lang, 268 Mass. 407, 167 N.E. 762 (1929).

this subterfuge is facilitated by the additional holding in the principal case that the "family-purpose" doctrine (whereby imputed contributory negligence may flow from an intra-family automobile bailment) is superseded by the financial responsibility statute. It would certainly seem that the Minnesota legislature did not intend to put such a price on ignorance or such a penalty on truth.[11] An elementary rule of statutory construction is that the words used are generally to be interpreted in the light of their recognized common law meaning.[12] Thus it is indeed doubtful whether the Minnesota legislature, had it intended to produce a result such as that reached by this court, would have employed the language it did.[13]

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[11] An additional policy consideration involved is that "if the negligence of the driver is not imputable to the owner in all cases where consent to drive has been given . . . this would lead to the exercise of less care on the part of owners in intrusting their cars to others." National Trucking & Storage Co. v. Driscoll, supra note 4, at 308.

[12] CRAWFORD, STATUTORY CONSTRUCTION §228 (1940). Of course, at common law the contributory negligence of an agent is imputed to the principal so as to bar suit against a third party, 38 AM. JUR. 922. Before the Minnesota view was announced in the Christensen case, it was believed that such would be the case where the agency relationship was created by statute. 21 MINN. L. REV. 823 at 835 (1937); Forrester v. Jerman, (D.C. Cir. 1937) 90 F. (2d) 412; Reno, "Imputed Contributory Negligence in Automobile Bailments," 82 UNIV. PA. L. REV. 213 at 219 (1934).

[13] At the time the Minnesota owner responsibility statute was first drafted, the law-making body of that state had ample model in legislation of other jurisdictions using words far more consistent with the holding of the Minnesota court than those of the Minnesota statute itself. Iowa Code (1931) §5026; Cal. Civ. Code (Deering 1931) §1714¼; N.Y. Consol. Laws (Cahill 1930) c. 64-a, §59; Mich. Comp. Laws (1929) §4648. Unlike the first Minnesota statute, [Minn. Laws (1933) c. 351, §4] none of these earlier statutes expressly purported to create an agency relationship between a bailee and bailor of an automobile. Query: When Minnesota adopted its first statute on this subject, two years after the decision in the Gochee case (supra note 6), did the legislature employ the words "shall be deemed the agent . . ." with a view to avoiding the results reached in the New York courts?