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Notes on Recent Cases

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NOTES ON RECENT CASES

EMPLOYMENT AND COMPENSATION OF ATTORNEYS—Question of Attorney's Fees is Primarily for Referee to Determine.—Duty of fixing amount of attorney's fees in bankruptcy matters is peculiarly for the referee, and the court will not retry the question or substitute its own judgment for that of the referee where there is nothing to show that he did not fairly pass on the question in view of the evidence before him, or that there is any mistake of law. *Matter of Am. Range and Foundry Co.* (D. C., Minn.), 7 Am. B. R. (N. S.) 170.

MASTER AND SERVANT.—Owner of Family Automobile Liable for Son's Negligence.—Where a person allows his son, who is a member of his family, to drive an automobile which he maintains for the comfort, convenience, pleasure, entertainment, and recreation of his family, whereby the son negligently injures another in his person, the owner is liable; the son, while so driving, is acting in the furtherance of the owner's purpose, being thereby the servant of the owner. *Ambrose v. Young,* 130 S. E. (W. Va.) 810.

The mere fact that a son or daughter of the owner of an automobile was driving the machine at the time of an injury to another, and that such child was guilty of negligence contributing to the injury, does not necessarily render the owner liable for the injuries. *Napier v. Patterson et al,* 196 N. W. 73 (Iowa); *Haynes v. Wilson,* 128 Atl. 70 (Md.). In the law of torts, as a general rule, a parent is not liable for the wrongful acts of his children. In order to charge the parent with responsibility, he must be connected in some manner with the wrongful acts. This connection may result: either from the relationship of master and servant, or principal and agent; *Stickney v. Epstein,* 123 Atl. 1 (Conn.); *Gates v. Mader,* 147 N. E. 241 (Ill.); *Allison v. Bartlett et ux.,* 209 Pac. 863 (Wash.); or from the negligence of the parent in entrusting the machine to an incompetent driver. *Elliott v. Harding,* 140 N. E. 338 (Ohio).

If the machine is used in the prosecution of the owner's business, he will be liable, though he had no knowledge of the particular trip in question. And where an automobile was pur-

chased for the pleasure of the owner's family, the "business" of the owner in such a case is the furnishing of pleasure to his family, and the driver is acting for him in the scope of his "bussiness" when driving the machine for such purpose. *Linch v. Dobson et al,* 188 N. W. 227 (Neb.); *Gates v. Mader, supra.*

It is clear that when the machine is being run by a child to carry other members of the family, the owner is liable in case of an injury, on the theory that the relation of master and servant existed between him and the driver. But on the question as to whether a child is acting in his father's business when such child is running the car for his own pleasure, or to take his friends for a trip, the decisions are not in harmony. In some jurisdictions, the view is taken, that when an automobile is procured for the pleasure and entertainment of the members of his family, the "business" of the owner is the running of the machine for their purposes, and the operation of the machine by a member of the family is deemed within the scope of the owner's business, though the operator is not taking other members of the family on a trip but is using it for the pleasure of himself and his own friends. *Jones v. Cook,* 123 S. E. 407 (W. Va.); *Robertson v. Aldridge et al,* 116 S. E. 742 (N. C.); *Stickney v. Epstein, supra; Allison v. Bartlett et ux., supra.* In other jurisdictions, however, it is held, that when a child or other member of an owner's family uses such a vehicle solely for the entertainment of his own friends, the machine is not being used in the scope of the owner's business, and consequently he escapes responsibility for the negligence of the driver. *Myers et al v. Shipley,* 116 Atl. 645 (Md.); *Stumpf et ux. v. Montgomery,* 226 Pac. 65 (Okla.); *McGowan v. Longwood,* 136 N. E. 72 (Mass.).

"While automobiles are not inherently regarded as dangerous instrumentalities, and the owner thereof is not responsible for the negligent use of the same, except upon the theory of the doctrine of respondeat superior, yet there is an exception if he entrust it to one, though not an agent or servant, who is so incompetent as to the handling of same as to convert it into a dangerous instrumentality, and the incompetency is known to the owner when permitting the use of the vehicle." *Gardiner v. Solomon,* 75 So. 621 (Ala); *Elliott v. Harding,* 140 N. E. 338 (Ohio); *Tyree v. Tudor et al,* 111 S. E. 714 (N. C.) J. C. B.