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Motor Vehicle--Family Purpose Doctrine--Adult Son

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STUDENT NOTES AND RECENT CASES

MOTOR VEHICLES—FAMILY PURPOSE DOCTRINE—ADULT SON.—The case of *Jones* v. *Cook*,[1] committed West Virginia to the so-called "family purpose" doctrine. The decision has been followed repeatedly.[2] A recent case[3] limited its application to cases where the automobile was owned for family purposes and driven by a member of the family at the time of the accident. A recent decision of our supreme court extends the doctrine to cases where the driver of the family automobile is an adult, *sui juris*, living at home, and driving the machine without parental consent.[4]

After the decision of *Jones* v. *Cook*,[5] the case was noted in the WEST VIRGINIA LAW QUARTERLY.[6] The view was expressed therein that the extension or warping of agency principles to cover such cases was unwarranted by the necessity, especially since it seemed the province of the legislature to provide for this liability. It is now apparent that the doctrine is with us to stay and we accept it as a part of the of law of this jurisdiction.

For purposes of discussion of this doctrine let us turn to an examination of the law as it existed before the day of the automobile. We find that the principles of agency allow recovery for injury against one who is not the wrongdoer where the wrongdoer is acting for the other in the capacity of servant or agent and where the wrongful act can be said to be within the scope of that authority or occupation. The owner of property was never before held liable for the negligent use of bailed property where he did not have a hand in the negligence and where the property was not a dangerous instrumentality in itself. The responsibility of the bailee was enough. As to the torts of his own family the person was not held liable unless his authorization or participation was shown. With the coming of the automobile it became necessary to apply old principles of tort liability and agency to new relations and instrumentalities. The primary application is not difficult. We see that it is still the law, generally, that in the case of employees hired to operate the automobile the owner is liable only where the injury complained of is the result of negligence of the employee while acting for the owner, and in

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[1] 90 W. Va. 710, 111 S. E. 828 (1922); 96 W. Va. 60, 111 S. E. 828 (1924).

[2] See Aggleson *v.* Kendall, 92 W. Va. 138, 114 S. E. 454 (1922); Ambrose *v.* Young, 100 W. Va. 452, 130 S. E. 810 (1925).

[3] Ritter *v.* Hicks, 102 W. Va. 541, 135 S. E. 601 (1926).

[4] Watson *v.* Burley, 143 S. E. 95 (W. Va. 1928).

[5] *Supra*, n. 1.

[6] 34 W. VA. L. QUAR. 53.

the scope of the employment.[7] It is admitted by practically all courts that the automobile is not a dangerous instrumentality in itself, though some have held that where the owner intrusts the car to a drunken or incompetent driver his negligence in so doing will cause his liability to a person injured by such driver.[8] It follows that the owner is not liable for the negligence of a person to whom the automobile is bailed, unless there was negligence in the bailment. The decisive question here is—'Who had control over the acts of the driver.'[9] As to members of the family of the owner of the automobile the old rules would have created no liability for negligent operation of the vehicle unless the owner and the person driving be shown to be in the agency relation. The parent was not responsible for the torts of the minor child.[10] This is the present holding in those jurisdictions which have refused application of the family purpose doctrine.

Just what is the true nature of the "family purpose" doctrine? It originated from the desire of the courts to give a relief in cases of injury by the then new and strange automobile. Where that was a case of owner-driver it was a case of straight negligence. Where the automobile was driven by another than the owner it must be a case of agency or a dependency for relief on the driver himself. In the case of the hired employee agency could, and did, give relief on familiar principles. It often happened that the driver was a member of the family of the owner, and generally one who was dependent on him. Moreover, such persons frequently had a general permission to operate the car for their own use. It was an easy step, in such circumstances, to the holding that the owner was liable where it was shown that he had furnished the car for the family, and where it was being used for that general use, no matter how remote the use might be from his intent or design. This doctrine applies only to cases wherein the car is a "family" car, and where the driver is a member of the family of the owner. Its application imposes a greater liability on the owner of a family car than upon the owner of a commercial car or a domestic car equipped with chauffeur.[11] If

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7 Adomaities *v.* Hopkins, 95 Conn. 239, 111 Atl. 178 (1920); Wilson *v.* Quick Tire Service, 52 Ga. App. 310, 123 S. E. 733 (1924); Reynolds *v.* Buck, 127 Ia. 601, 103 N. W. 946 (1907); Langan *v.* Nathanson, 161 Minn. 433, 201 N. W. 927 (1918). These states have all applied the "family purpose" doctrine.

8 Elliot *v.* Harding, 107 Oh. St. 501, 140 N. E. 338 (1923); Mitchell *v.* Churches, 119 Wash. 547, 206 Pac. 6, 36 A. L. R. 1132 (1922).

9 36 A. L. R. 1137, 1153; 42 A. L. R. 1446.

10 20 R. C. L. "Parent and Child", §33.

11 Ritter *v.* Hicks, *supra*, n. 3; Johnston *v.* Hare, 246 Pac. 546 (1926); Doss *v.* Elec. Light, etc., Co., 193 Ky. 499, 236 S. W. 1046 (1922); Richardson *v.* Weiss, 152 Minn. 391, 394, 188 N. W. 1008 (1922).

we may conceive the field of liability for motor car injuries as an entirety we perceive that the doctrine of the "family purpose" car is a superstructure reared upon a small part of that field. It is regarded as an unsatisfactory development by many of the courts which apply it, and it is totally refused by perhaps as many as have accepted it.[12]

In the jurisdiction adopting this anomalous rule the orthodox argument is that since the owner of the vehicle has made it his business to furnish a motor car for his family the operation of that car by any member of the family is an act in furtherance of his design and in the course of his authority to the family, express or implied.[13]

Some writers have advanced the opinion that the law of agency owes its origin to the desire of the courts to fix a liability for the act of the servant upon the master, one of the financially responsible.[14] In the beginning of that development it may have been looked upon as anomalous. The great body of our law has developed gradually and by almost imperceptible expansion. It is within the realm of possibility that this doctrine as to the family

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[12] The following cases approve: Benton *v.* Regesser, 20 Ariz. 273, 179 Pac. 966 (1919); Hutchins *v.* Haffner, 63 Colo. 365, 167 Pac. 966 (1917); Haugh *v.* Kirsch, 105 Conn. 429, 135 Atl. 568 (1927); Griffin *v.* Russell, 144 Ga. 275, 87 S. E. 10 (1915); Collison *v.* Cutter, 186 Ia. 276, 170 N. W. 420 (1919); Rauckhorst *v.* Kraut, 216 Ky. 323, 287 S. W. 895 (1926); Payne *v.* Leininger, 160 Minn. 75, 199 N. W. 435 (1924); Linch *v.* Dobson, 108 Neb. 632, 188 N. W. 227 (1922; Boes *v.* Howell, 24 N. Mex. 142, 173 Pac. 966 (1918); Watts *v.* Leffler, 190 N. C. 722, 130 S. E. 630 (1925); Ulman *v.* Lindeman, 44 N. D. 36, 176 N. W. 25 (1919); Foster *v.* Farra, 117 Ore. 286, 243 Pac. 778 (1926); Smith *v.* Jamison, 89 Pa. Super. 99, (1926) Mooney *v.* Gilbreath, 124 S. C. 1, 117 S. E. 186 (1923); King *v.* Smythe, 140 Tenn. 217, 204 S. W. 296 (1918); Birch *v.* Abercrombie, 74 Wash. 486, 133 Pac. 1020 (1913); Jones *v.* Cook, *supra*, n. 1; Cloyes *v.* Plaatje, 231 Ill. App. 183 (1923). *Contra:* Johnson *v.* Newman, 168 Ark. 836, 271 S. W. 705 (1925); Spence *v.* Fisher, 184 Cal. 209, 193 Pac. 255 (1920); Daily *v.* Schneider, 118 Kan. 295, 234 Pac. 951 (1925); Fuller *v.* Metcalf, 125 Me. 77, 130 Atl. 875 (1925); Myers *v.* Shipley, 140 Md. 380, 116 Atl. 645 (1922); McGowan *v.* Longwood, 242 Mass. 337, 136 N. E. 72 (1922); Bollman *v.* Bullene, 200 S. W. 1068 (Mo. 1918); Clawson *v.* Schroeder, 63 Mont. 488, 208 Pac. 924 (1922); Elms *v.* Flick, 100 Oh. St. 186, 126 N. E. 66 (1919); Campbell *v.* Kirkpatrick, 120 Okla. 57, 249 Pac. 508 (1926); Landry *v.* Richmond, 45 R. I. 504, 124 Atl. 263 (1924); McFarland *v.* Winter, 47 Utah 598, 155 Pac. 437 (1916); Blair *v.* Broadwater, 121 Va. 301, 96 S. E. 632 (1918); Papke *v.* Hearle, 189 Wis. 156, 207 N. W. 261 (1926); Doran *v.* Thomsen, 76 N. J. L. 754, 71 Atl. 296 (1908) distinguished in later cases, see Venghis *v.* Nathanson, 101 N. J. L. 110, 127 Atl. 175 (1925); Van Blaricom *v.* Dodgson, 220 N. Y. 111, 115 N. E. 443 (1917); (cf. McCrossen *v.* Moorehead, 200 N. Y. S. 581 (1923); Smith *v.* Weaver, 73 Ind. App. 350, 124 N. E. 503 (1919).

[13] Graham *v.* Page, 300 Ill. 40, 132 N. E. 817 (1921); King *v.* Smythe, *supra*, n. 12; Jones *v.* Cook, *supra*, n. 1; Payne *v.* Leininger, *supra*, n. 12.

[14] See Y. B. Smith, 23 COL. L. REV. 444.

automobile may be, not an unwise expansion or mistreatment of agency, but a new liability in tort which will become accepted by degrees. In spite of the persistency of the courts in calling this thing agency it is true even today that it resembles an independent tort liability—it need only be extended over the remainder of the situations where the owner places a car in the hands of another for operation. As to the wisdom, or necessity, of so extending it the courts or the legislature must decide, preferably the legislature.

—R. P. HOLLAND.

TAX EXEMPTION OF PROPERTY USED FOR EDUCATIONAL, RELIGIOUS AND CHARITABLE PURPOSES.—The Constitution of West Virginia provides that "all property, both real and personal, shall be taxed in proportion to its value * * * but property used for educational, literary, scientific, religious or charitable purposes; all cemeteries and public property may, by law, be exempted from taxation."[1] Pursuant to the authority vested in it by this provision of the Constitution the legislature has by statute exempted certain property, among which is the following: "* * * property used exclusively for divine worship; parsonages, * * * property belonging to colleges, seminaries, academies, and free schools, if used for educational, literary or scientific purposes * * * property used for charitable purposes, and not held or leased out for profit, * * * all property belonging to benevolent associations, not conducted for private profit, and used exclusively for the purposes of moral and physical education, * * * any hospital not held or leased out for profit; * * * and, provided further, that such exemption from taxation shall apply to all property, including the principal thereof, and the income therefrom, held for a term of years or otherwise under a bona fide deed of trust * * * by a trustee, * * * required by the terms of such trust to apply, annully, the income derived from such property to education, religion, charity and cemeteries, when not used for private purposes or profit.

Several interesting questions have arisen, and may arise, under these provisions of our Constitution and statute. Our first inquiry is, may the legislature exempt any property from taxation that it chooses, or is it limited in that it can only exempt "property used for educational, literary, scientific, religious or charitable

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1 CONST. art. 10, §1.
2 CODE, ch. 29, §57. Note Amendment 1927 Acts, ch. 14.