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Cornelius T. Walker

to the guest. The hotel business is a matter of public interest and is subject to legislative regulation which may, within reasonable limitation, extend or restrict the rights and liabilities of persons involved.[25] Some limitation is certainly desirable. The Florida statute, however, is too strict to provide adequate protection to the guest. The limitation of one thousand dollars placed on valuables deposited in the hotel safe is reasonable; but, as a practical matter, guests are unlikely to submit a complete inventory of baggage and wearing apparel in order to get the full protection of the five hundred dollar limitation. In many instances even this would still be most inadequate. When a guest has established that the goods were lost and the management through its negligence caused that loss, it seems that recovery for the true value of the property should be permitted; but, under the resent statute, failure of the guest to submit an inventory of property limits his recovery to one hundred dollars. Although the common law liability has not been extinguished, it has been rather severely limited. Some mitigation of the harsh duty imposed by the common law is necessary today; but the 1947 amendment has gone so far in limiting the duty of the innkeeper as to leave the guest with inadequate protection.

HENRY A. CARRINGTON

AUTOMOBILE OWNER'S LIABILITY FOR THE NEGLIGENT ACT OF THE DRIVER: PLEADING AND PROOF

Florida Laws 1947, c. 24199, §1, Fla. Stat. Ann. §51.12

A 1947 Florida statute[1] relieves the plaintiff of the necessity of alleging the legal relationship existing between the owner of an automobile and the driver in an action to recover damages from the owner for the negligent operation of the vehicle by a third party driver. Previously, a declaration which failed to allege the legal relationship (*e.g.*, master and servant, principal and agent, bailor for hire and bailee, or

[25]State v. Norval Hotel Co., 103 Ohio St. 361, 133 N. E. 75 (1901).

[1]Florida Laws 1947, c. 24199.

bailor and gratuitous bailee[2]) which existed between the owner and driver was insufficient for recovery.[3] In addition to establishing the defendant's ownership, the plaintiff was required to prove that this legal relationship existed at the time of the negligent operation.[4] The statute provides that a presumption of the owner's liability is established by the plaintiff's proof of defendant's ownership of the vehicle and of the identity of the driver. In effect this amounts to a presumption that the automobile was being driven by the third party with the defendant owner's consent, inasmuch as in this state the owner of an automobile is liable for any negligent use of his motor vehicle while being operated with his express or implied consent.[5]

In determining the ownership of the automobile, another 1947 statute[6] must be considered. This statute provides, *inter alia,* that an owner who has made a bona fide sale shall not be subject to civil liability when he has made the proper endorsement of his certificate of title to a purchaser and either delivered it to the purchaser or mailed it to the Commissioner of Motor Vehicles. Under a similar statute in another jurisdiction,[7] it has been held that the vendor is precluded from denying ownership of the motor vehicle unless the certificate of title has been properly endorsed and delivered.[8] The same conclusion could be reached under the Florida statute.

The 1947 statute further provides that this presumption of liability of the owner of the vehicle for the negligent operation by a third party is subject to rebuttal by competent evidence. It is important, therefore, to determine what the legislature intended to require as competent evidence. According to the Wigmore theory[9] all presumptions are alike and disappear upon the introduction of substantial countervailing evidence. Under this view the owner's mere denial would rebut the presumption and

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[2]Lynch v. Walker, 31 So.2d 268 (Fla. 1947); Engleman v. Traeger, 102 Fla. 756, 136 So. 527 (1931); Herr v. Butler, 101 Fla. 1125, 132 So. 815 (1931); Southern Cotton Oil Co. v. Anderson, 80 Fla. 441, 86 So. 629 (1920); Anderson v. Southern Cotton Oil Co., 73 Fla. 432, 74 So. 975 (1917).

[3]McDougald v. Couey, 145 Fla. 689, 200 So. 391 (1941).

[4]D'Allesandro v. Bechtol, 104 F.2d 845 (C. C. A. 5th 1939); Engleman v. Traeger, 102 Fla. 756, 136 So. 527 (1931).

[5]Cases cited note 2 *supra.*

[6]Florida Laws 1947, c. 23658 (Title Certificate Law).

[7]GEN. CODE OHIO §§6290-3, 6290-4.

[8]Fredricks v. Birkett L. Williams Co. 68 Ohio App. 217, 40 N. E.2d 162 (1940).

[9]9 WIGMORE, EVIDENCE §§2490, 2491 (3d ed. 1940).