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Parent and Child--Parent's Liability for Child's Negligence in Operating Automobile

PARENT AND CHILD—PARENT'S LIABILITY FOR CHILD'S NEGLIGENCE IN OPERATING AUTOMOBILE.—Plaintiff was injured through the negligence of defendant's daughter, nineteen years of age, while driving defendant's car for her own pleasure with defendant's knowledge and consent. *Held,* that the father is not liable. *Blair* v. *Broadwater,* 93 S. E. 632 (Va. 1917).

Since the common-law rule is generally recognized that a parent is not liable for the torts of his child on the ground of the parental relationship, *Cohen* v. *Meador,* 119 Va. 429, 89 S. E. 876 (1916), other reasons for imposing liability upon the parent are assigned by courts which disagree with the principal case. One ground sometimes relied upon by such courts is that the child is the agent of the parent in operating the automobile even for its own pleasure. *Davis* v. *Littlefield,* 97 S. C. 171, 81 S. E. 487 (1914); *Birch* v. *Abercrombie,* 74 Wash. 486, 113 Pac. 1020 (1913). In other words, they say that the father in purchasing an automobile to be used by the family for their pleasure, has entered upon the business of furnishing pleasure for the family, and that the child even in carrying out its own designs in pleasure-seeking, is acting as the father's agent and conducting the father's business thereby. This contention is not supported by the weight of authority or of reason, and is clearly met by the fact that the child in operating the car is not acting under the direction of the parent or truly in the furtherance of the parent's business, but is, *in fact,* with the parent's permission, merely carrying out its own independent design through means provided by the parent's generosity. *Doran* v. *Thomsen,* 76 N. J. Law 754, 71 Atl. 296, 19 L. R. A. (N. S.) 335, 131 Am. St. Rep. 667; *Van Blaricom* v. *Dodgson,* 220 N. Y. 111, 115 N. E. 443 (1917); *Elrick* v. *Heis,* 193 Ala. 669, 69 So. 530 (1915). The child is no more truly the parent's servant under these circumstances, than is the hired chauffeur who goes on a "joy-ride" of his own in his master's car. *Lotz* v. *Hanlon,* 217 Pa. St. 339, 66 Atl. 525 (1907). Such cases are clearly distinguishable from those where the child was operating the car as the servant of the parent, *e. g.,* in delivering groceries sold by the parent in his store, or even where the son takes the family out for their health or pleasure. *Van Baricom* v. *Dodgson, supra; Smith* v. *Jordon,* 211 Mass. 269, 97 N. E. 761 (1912); *McNeal* v. *McKain,* 33 Okla. 449, 126 Pac. 742 (1912); *Missell* v. *Haynes,* 83 N. J. Law 554, 91 Atl. 322 (1914). Another reason sometimes given for imposing liability is that an automobile is *per se* a dangerous instrumentality, and that, therefore, the parent is necessarily negligent in intrusting it to a child. *Hays* v. *Hogan,* 180 Mo. App. 237, 165 S. W. 1125, 1131 (1914). This contention has usually been overruled, *Cohen* v. *Meador, supra; Premier Mfg. Co.* v. *Tilford,* 111 N. E. 645 (Ind. 1916); *Smith* v. *Jordon, supra,* but facts may well exist under which a parent may be negligent in intrusting a car to a child who is too young, or inexperienced, or reckless, in the

same manner that parents have been held for intrusting dangerous firearms to children. *Meers* v. *McDowell,* 110 Ky. 926, 62 S. W. 1013, 96 Am. St. Rep. 475, 53 L. R. A. 789 (1901). *Cf. Allen* v. *Bland,* 168 S. W. 35 (Tex. Civ. App. 1914) where a parent had given an automobile to his son, aged 11 years, whose head barely came above the steering wheel. The court held an automobile not *per se* a dangerous instrumentality, but found the boy incompetent to be intrusted with it. The test is the parent's negligence. In some jurisdictions there are statutes restricting or forbidding the operation of automobiles by infants below a certain age. See, for example, WEST VIRGINIA ACTS, 1917, c. 66, § 127; NEBRASKA REVISED STATUTES, 1913, c. 28, § 195; NEW YORK CONSOL. LAWS, c. 25, § 282 (2). It is clear that a parent's act in permitting a child below the statutory age to operate a car is at least evidence of negligence by the parent. *Walker* v. *Klopp,* 99 Neb. 794, 157 N. W. 962 (1916); *Schultz* v. *Morrison,* 154 N. Y. Supp. 257 (1915); *cf. Dickinson* v. *Stuart Colliery Co.,* 71 W. Va. 325, 328, 76 S. E. 654 (1912). In the absence of a statute or of evidence that the daughter was not a fit person to be entrusted with the operation of an automobile, it would seem clear that the decision in the principal case is correct since the daughter in operating the car was acting for her own purposes at the time of the injury. Cases reaching a contrary decision necessarily depart from well-settled principles of liability. If a rule of absolute liability is desirable in such cases, its creation is within the province of the legislature. See 28 HARV. L. REV. 91; L. R. A. 1916F, 228, note.

PARTNERSHIP—LIABILITY FOR LIBEL PUBLISHED BY ONE PARTNER.—A partner, while in charge of the firm's correspondence during the absence of his copartner, wrote to a customer a libelous letter concerning a transaction with the firm. *Held,* that the firm is liable for the publication of the libel. *Henry Myers & Co.* v. *Lewis,* 92 S. E. 988 (Va. 1917).

Although the principal case appears to be one of first impression in Virginia as to the liability of one partner for a libel published by his copartner, there is ample authority in *accord* in other jurisdictions. *Lathrop* v. *Adams,* 133 Mass. 471, 43 Am. Rep. 528 (1882); *Dunn* v. *Hall,* 1 Ind. 344 (1849); *Burgess & Co.* v. *Patterson,* 32 Ky. Law Rep. 624, 106 S. W. 837 (1908); see ROWLEY, MODERN LAW OF PARTNERSHIP, § 513. There is also authority in West Virginia, *Citizens' Nat. Bank of Parkersburg* v. *Blizzard et al.,* 93 S. E. 338 (W. Va. 1917), that one partner may be liable for the tort of his copartner committed in the conduct of the partnership business. Cases which seem opposed to the principal case appear to disregard the question whether the service in which the tort was committed, if done in a *proper* manner, would have been within the ordinary course of the partnership affairs and incident to its business, but require