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Automobiles -- Dangerous Instrumentality -- Rental Owners

J. R. Stewart

in the instant case. Its reluctance to settle this phase of the law will call for a complete reversal by the legal writers who presumed the premature demise of *Pennoyer v. Neff*.[26] Although *Hanson* did not set out the limits of personal jurisdiction for future litigants, it did establish one point directly—*Pennoyer* lingers on.

Ralph P. Ezzo

AUTOMOBILES—DANGEROUS INSTRUMENTALITY—RENTAL OWNERS

The owner of a rental automobile informed the renter that the car was not to be driven by anyone other than himself and included a clause to that effect in the contract. The bailee allowed a third party to use the car who negligently collided with the plaintiff's automobile. *Held*, the contract provision does not relieve the company of responsibility for negligent operation of the automobile by a person other than the renter. *Leonard v. Susco Car Rental Sys.*, 103 So.2d 243 (Fla. App. 1958).

The common-law generally restricts liability of an automobile owner for the negligent operation of his vehicle by another to the master-servant relationship; in the absence of such a relationship the owner who entrusts his car to a competent operator is not responsible for the operator's negligence while he is using the car for his own purposes.[1] Several states have enacted statutes which modify this common-law rule restricting liability to the doctrine of respondeat superior,[2] but only one jurisdiction, Florida, has judicially expanded the common-law by the application of the dangerous instrumentality doctrine to automobiles.[3]

The Supreme Court of Florida first applied the doctrine to an automobile in 1917,[4] and the principle has since received legislative recognition.[5] The doctrine was originally limited to master-servant and principal-agent

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1. Downs v. Norrell, 261 Ala. 430, 74 So.2d 593 (1954); Field v. Evans, 262 Mass. 315, 159 N.E. 751 (1928); Maiswinkle v. Penn Jersey Auto Supply Co., 121 N.J.L. 349, 2 A.2d 593 (Sup. Ct. 1938); Cencebaugh v. Ridley, 101 Ohio App. 233, 139 N.E.2d 57 (1953); Kantola v. Lovell Auto Co., 157 Ore. 534, 72 P.2d 61 (1937); 5a AM. JUR. *Automobiles* §576 (1956); 60 C.J.S. *Motor Vehicles* §428 (1949); Annot., 100 A.L.R. 920 (1936).

2. *E.g.*, CAL. VEHICLE CODE ANN. § 402 (Supp. 1957); D.C. CODE ANN. § 40-424 (Supp. VI, 1951); IDAHO CODE ANN. § 49-1404 (1957); IOWA CODE ANN. c. 321, § 321.493 (Supp. 1958); MICH. COMP. LAWS § 257.401 (Supp. 1956); MINN. STAT. ANN. § 170.54 (West 1945); N.Y. VEHICLE AND TRAFFIC LAW § 59; R.I. GEN. LAWS § 31-31-3 (1956).

3. Weber v. Porco, 100 So.2d 146 (Fla. 1958); Lynch v. Walker, 159 Fla. 188, 31 So.2d 268 (1947); 3 FLA. JUR. *Automobiles* §§ 90, 152 (1955); 2 FLORIDA LAW AND PRACTICE *Automobiles* §§ 10, 36 (1955); 5 BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW AND PRACTICE § 2911 (Perm. ed. 1953); Comment, 5 U. FLA. L. REV. 412 (1952).

4. Anderson v. Southern Cotton Oil Co., 73 Fla. 432, 74 So. 975 (1917).

5. FLA. STAT. § 51.12 (1957).

relationships,[6] thus, bailments were not covered.[7] It is now settled that a bailor is liable for the negligent operation of his automobile by a bailee.[8] In the leading Florida case involving a bailment, *Lynch v. Walker*,[9] the development[10] of the dangerous instrumentality doctrine as a ground for vicarious liability is discussed, and the principle is stated as follows: "When an owner *authorizes and permits* his automobile to be used by another he is liable in damages for injuries to third persons caused by the negligent operation so authorized by the owner."[11] (Emphasis added.)

The Florida courts treat consent to operate the automobile, either expressed or implied, as a prerequisite to extension of liability to the owner.[12] It is not necessary that consent be granted for the particular mission,[13] type of use, [14] or period of time[15] involved; consent to the *use* of the vehicle is sufficient to hold the owner liable for the negligence of the driver.[16] Consent has been found in situations where the automobile was operated in direct violation of the owner's expressed orders.[17] Prior to the instant case, the most liberal interpretation of the consent element occurred in *Fleming v. Alter*.[18] In that case a pedestrian, injured due to the negligent operation of a rental car by the bailee's ostensible wife, was allowed to recover from the U-Drive-It company. The court held that the company in renting the car impliedly consented to its use by members of the bailee's family.[19]

In the instant case the court refused to accept the dictum contained in the *Fleming* decision which indicated that a clause restricting use of

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6. Warner v. Goding, 91 Fla. 260, 107 So. 406 (1926); Eppinger & Russell Co. v. Trembly, 90 Fla. 145, 106 So. 879 (1925).

7. White v. Holmes, 89 Fla. 251, 103 So. 623 (1925).

8. Fleming v. Alter, 69 So.2d 185 (Fla. 1953); Lynch v. Walker, 159 Fla. 188, 31 So.2d 268 (1947); Engleman v. Trager, 102 Fla. 756, 136 So. 527 (1931); Herr v. Butler, 101 Fla. 1125, 132 So. 815 (1931).

9. 159 Fla. 188, 31 So.2d 268 (1947).

10. For recent discussions of the theory of law that supports the doctrines see Weber v. Porco, 100 So.2d 146 (Fla. 1958), and May v. Palm Beach Chem. Co., 77 So.2d 468 (Fla. 1955).

11. Lynch v. Walker, 159 Fla. 188, 194, 31 So.2d 268, 271 (1947).

12. Lynch v. Walker, *supra* note 11; City Grocery Co. v. Cothron, 117 Fla. 322, 157 So. 891 (1934); Engleman v. Trager, 102 Fla. 756, 136 So. 527 (1931).

13. Jacksonville Paper Co. v. Carlile, 153 Fla. 661, 15 So.2d 443 (1943); Atlantic Food Supply Co. v. Massey, 152 Fla. 43, 10 So.2d 718 (1942); Southern Cotton Oil Co. v. Anderson, 80 Fla. 441, 86 So. 629 (1920).

14. Cropper v. United States, 81 F. Supp. 81 (N.D. Fla. 1948); Chase & Co. v. Benefield, 64 So.2d 922 (Fla. 1953).

15. Engleman v. Trager, 102 Fla. 756, 136 So. 527 (1931).

16. "Under the law of this state, if the owner once gives his express or implied consent to another to operate his automobile, he is liable for the negligent operation of it no matter where the driver goes, stops, or starts." Boggs v. Butler, 129 Fla. 324, 327, 176 So. 174, 176 (1937).

17. Cropper v. United States, 81 F. Supp. 81 (N.D. Fla. 1948); Jacksonville Paper Co. v. Carlile, 153 Fla. 661, 15 So.2d 443 (1943).

18. 69 So.2d 185 (Fla. 1953).

19. For discussion of the case see Note, 7 U. FLA. L. REV. 356 (1954).

the car would effectively bar liability of the owner for negligence of one other than the bailee.[20] The court found implied consent for the bailee to use the car for all *ordinary purposes* for which an automobile is rented, and evidently included the use of the car by others within that definition.[21] The majority considered the private contract between the bailee and bailor as insufficient to bar the rights of the public or to alter the owner's implied consent to the use of the automobile by others.[22] The dissenting judge felt there was an express witholding of consent to the use of the car by one other than the renter, and therefore the dangerous instrumentality doctrine should not be applied.[23]

The court in the present decision seems to have acted directly contrary to the views of the Supreme Court of Florida as expressed in *Fleming v. Alter*.[24] After an analysis of the dangerous instrumentality doctrine with emphasis on the requisite consent for liability under the doctrine, the majority abruptly concludes its opinion by finding an implied consent to the use of the car by others, without precedent to support such a conclusion. In effect, vicarious liability has been imposed upon rental owners based upon implied consent to the operation of their vehicles by persons other than the bailee, when in actuality such consent *is not* granted and is in fact expressly withheld. It is submitted that Judge Carroll's conclusion in the dissent appropriately asserts the objection to the majority's holding; if public policy considerations call for special imposition of liability upon car rental agencies, then such a determination is for the legislature and not the court.[25]

J. R. STEWART

SALES—IMPLIED WARRANTY—PRIVITY UNNECESSARY

The plaintiff purchased electrical cable, manufactured by the defendant foreign corporation, from a wholesale dealer. After eight months use the cable was found to be defective and several power failures required its removal. Suit was brought for a breach of implied warranty of fitness for the purposes intended. *Held*, privity of contract between plaintiff and the manufacturer was not a necessary prerequisite for recovery upon an implied warranty. *Continental Copper and Steel Indus., Inc. v. E. C. "Red" Cornelius, Inc.*, 104 So.2d 40 (Fla. App. 1958).

20. "This implication [that the rental owner is responsible] is underscored by the nonexistence of any clause in the contract specifying that the motorcar should be operated only by the renter." Fleming v. Alter, 69 So.2d 185, 186, 187 (Fla. 1953).
21. Leonard v. Susco Car Rental Sys., 103 So.2d 243, 247 (Fla. App. 1958).
22. *Ibid.*
23. Leonard v. Susco Car Rental Sys., 103 So.2d 243, 250 (Fla. App. 1958) (dissenting opinion).
24. 69 So.2d 185 (Fla. 1953).
25. Leonard v. Susco Car Rental Sys., 103 So.2d 243, 250 (Fla. App. 1958) (dissenting opinion).