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Agency - "Family Car" Doctrine - Liability of Owner

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RECENT DECISIONS

Agency—"Family-Car" Doctrine—Liability of Owner.—Damaris Smith and her sister were students at Washington University. Their father purchased for them, in his own name, an automobile with the money the girls gave to him out of their savings, to enable them to travel to and from school. The car also was used for family purposes, occasionally by the mother to shop, and by the entire family if they went out together. The father had a car of his own, and there was no evidence that he decided to what uses the girl's car should be put, or maintained it in any sense. Damaris drove the car to a party, and due to her negligent operation collided with a car driven by deceased. Plaintiff, administrator, brought action against the father predicated liability on the "family-car" doctrine. Plaintiff prevailed in the lower court. On appeal, *held*, judgment reversed. The court said that the "family-car" doctrine rests upon the fact that the owner of the car puts it into circulation, and the theory that he is more likely than the driver to be financially responsible. Both ideas lose their force when, as in this case, the driver provides the money with which the nominal owner makes the purchase. *Smith v. Doyle*, 98 F. (2d) 341 (App. D.C., 1938).

The "family-car" doctrine has been adopted by many, but by no means all, American jurisdictions. It is applied and tersely stated in *Baptist v. Slate*, 162 Va. 1, 173 S.E. 512 (1934): "An owner of an automobile which has been purchased and maintained for the convenience, pleasure and use of the family, and which the members of the family are permitted to use at will, is liable for their negligent operation of the automobile while it is being used by them for their own convenience, recreation and pleasure."

The rule is an extension of the doctrine of *respondet superior* and rests on the theory that when the father buys a car for the use of the members of his family such members are his agents in executing his purpose when they drive the car. Accordingly he is liable for their negligence in driving just as any principal is liable for the torts of his agent committed in the course of his employment.

In Connecticut the doctrine is somewhat limited. In *O'Keefe v. Fitzgerald*, 106 Conn. 294, 137 Atl. 858 (1927), where the owner of the car gave his sister special permission to use the car on certain occasions, the court said that the special permission was a gratuitous bailment and did not come within the "family-car" doctrine. The driver must have general authority to drive the car. In *McDowell v. Harner*, 142 Ore. 611, 20 P. (2d) 395 (1933), the court held the father liable under the doctrine, even though the father expressly warned the son not to violate the law by carrying four people in the front seat, when the son's disobedience and negligent operation of the car resulted in the death of one of the passengers. *Cewe v. Schumenski*, 182 Minn. 126, 233 N.W. 805 (1930), on its facts resembles the principal case. The husband purchased the car with his own money but had the car registered in his wife's name. The court, in rendering judgment for the wife, said that the "family-car" doctrine has been extended to the limit, but there is no justification for further extending it so as to impose liability upon a wife merely because legal title of the car was placed in her by her husband.

The jurisdictions in which the "family-car" doctrine is not recognized severely criticize it for the extension of agency principles beyond their logical boundaries. In *Papke v. Haerle*, 189 Wis. 156, 207 N.W. 261 (1926), the court

refused to hold the father in a case where his daughter used his car to get a watermelon from the village for her own consumption. In *Mulanix v. Reeves* (Kan. City Ct. of Appeals 1937) 112 S.W. (2d) 100, the court held that mere proof of ownership and permission to drive the car is insufficient to show agency. The court, in *Robinson v. Warren*, 129 Me. 172, 151 Atl. 10 (1930), said that the father's permission to use the car established merely a bailor-bailee relationship. In *Cherwin v. Geiteir*, 272 N.Y. 165, 5 N. E. (2d) 185 (1936), the court held that the "family-car" doctrine with respect to liability of an automobile owner for injuries sustained by a guest does not obtain in New York. In *Miller v. McHale*, 263 Ill. App. 471 (1931), the court said that even though the father gave his consent to the minor son to use the car, he was not liable when the son used the car for his own pleasure.

Statutes in some states impose absolute liability on car owners for injuries negligently inflicted by the driver of the car, whether the driver be the owner, a member of his family, or a mere bailee. CALIF. CIVIL CODE (1931) Sec. 1714 $\frac{3}{4}$; IOWA CODE (1935), Sec. 5026; MICH. COMP. LAWS (1929), Sec. 4648; MASON'S 1927 MINN. STAT. (1938 Sup.) Sec. 2720-104; N. Y. VEHICLE AND TRAFFIC LAW, Sec. 59.

GERARD A. DESMOND.

Criminal Law—Double Jeopardy—Single Act as Constituting an Offense Against Two or More Persons.—Three men walking abreast across an intersection were struck by an automobile operated by the defendant "hit and run" motorist. One of the pedestrians sustained serious injuries, and the other two died as a result of the accident. In a prosecution for the involuntary manslaughter of one of the pedestrians killed, the defendant-motorist was discharged under a special statute. Subsequently, the defendant was indicted for the involuntary manslaughter of the other pedestrian who was killed in the accident. Prior to the trial, the defendant filed a petition for a discharge under the second indictment alleging his previous discharge based on the same act or cause of injury as that charged in the present indictment, and that he was placed in double jeopardy. The petition for discharge on the ground of double jeopardy was denied, a jury found the defendant guilty, and he was sentenced to prison. The defendant prosecuted a writ of error to the Supreme Court of Illinois.

On appeal, *held*, conviction affirmed. In order for one prosecution to be a bar to another prosecution, it is not sufficient to show that the act is the same in both prosecutions, but it must be shown that the offense also is the same in law and in fact in both prosecutions. Here the same act was involved, but there were two separate and distinct offenses, and, therefore, the rule against double jeopardy did not apply. *People v. Allen*, 368 Ill. 368, 14 N.E. (2d) 397 (1938).

The term "jeopardy" is applied only to criminal prosecutions, and signifies the danger of conviction and punishment which the defendant in a criminal prosecution incurs when duly put on trial before a court of competent jurisdiction. *State v. Lewis*, 164 Wis. 363, 159 N.W. 746 (1916). It is a uniform rule that when a person has been arraigned and has pleaded and has been placed on trial before a court of competent jurisdiction on a valid indictment or information, and a jury has been impaneled and sworn, that jeopardy attaches. *State v. Gilmer*, 202 Wis. 526, 232 N.W. 876 (1930). As noted in the principal case, however, special statutes may allow jeopardy to attach under other conditions. Before a defendant may avail himself of the plea of former jeopardy, however, it is necessary for him to show that the present prosecution is for