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Assumption of Risk: Contributory Negligence: Imputed Negligence: Host and Guest Relationship

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RECENT DECISIONS

ASSUMPTION OF RISK—CONTRIBUTORY NEGLIGENCE—IMPUTED NEGLIGENCE—HOST-GUEST RELATIONSHIP.—Defendant L entered her car which she had parked on the left side of the highway with its lights turned down, and turned them up. Plaintiff Scory walked around to the left rear of the car either to push it or to enter on the right side. Thus her view of the approaching car of co-defendant S was obstructed. Defendant S, blinded by the lights, continued at a speed of 40 miles an hour, failed to see the turn on which defendant L's car was parked, and ran into the ditch on the left side of the highway striking the plaintiff, causing the injuries sued for. The jury found defendant L's negligence in parking the car on the left side of the road, and in turning up the lights, contributed to the injury of the plaintiff; the jury also found that defendant S was negligent in maintaining a high rate of speed after being blinded by lights which also contributed to plaintiff's injuries. The jury further found the plaintiff free from negligence with respect to her own safety when she approached to enter the automobile, while it was standing on the left side of the highway. The lower court granted a motion for judgment notwithstanding the verdict on the ground that the plaintiff was guilty of either assumption of risk or contributory negligence and gave judgment dismissing the complaint. *Held,* the evidence warranted the findings of the jury in entirety, leaving only a question of law as to whether the plaintiff assumed the risk of defendant L's negligent acts. Judgment against the plaintiff reversed as to the defendant S, and affirmed as to the defendant L on the ground that the plaintiff assumed the risk. *Scory* v. *La Fave et al.,* (Wis., 1934) 254 N.W. 643.

Following the rule laid down in *Knipfer* v. *Shaw,* 210 Wis. 617, 246 N.W. 328, 247 N.W. 320 (1933) and followed in *Young* v. *Nunn, Bush & Weldon Shoe Co.,* 212 Wis. 403, 249 N.W. 278 (1933) and in *Walker* v. *Kroger Grocery & Baking Co.,* (Wis., 1934) 252 N. W. 721, Recent Decision, 18 Marq. Law Rev. 192 (1933), the court ruled in the instant case that the plaintiff knew that there was danger when she had to enter the car parked on the left side of the road, and that she proceeded notwithstanding this hazard.

As to whether the plaintiff assumed the risk of the defendant's negligence in turning up her lights, the court ruled as in *Young* v. *Nunn, Bush & Weldon Shoe Co.,* supra, and *Walker* v. *Kroger Grocery & Baking Co.,* supra, that this act of negligence cannot well be separated from her prior negligent act. Therefore the plaintiff assumed the risk of this act. In any event the plaintiff's action against her host is barred.

The trial court in ruling on the motion for judgment against the plaintiff herein made no distinction between assumption of risk and contributory negligence. These are distinct and fundamentally different defenses, *Knauer* v. *Joseph Schlitz Brewing Co.,* 159 Wis. 7, 149 N.W. 494 (1914), and lead to far different results when interposed in a suit such as shown in the instant case. Against another negligent user of the highway, a holding that the guest merely assumed a risk does not cut down his recovery against that third party; whereas if the guest is held to have negligently contributed to his injuries he comes within the comparative negligence law, and his recovery will be diminished proportionately.

As stated in *Fandek* v. *Barnette & Record Co.,* 161 Wis. 55, 150 N.W. 537 (1915), if the injury is caused by acquiescence in a hazard no greater than that which an ordinarily careful and prudent man would accept, it is assumption of risk; but if the hazard is such as a man of ordinary care and prudence would

not accept, it is contributory negligence. Thus, in the instant case, the court could hold the plaintiff guilty of contributory negligence as a matter of law only if the evidence established, without the possibility of reasonably finding to the contrary, that the hazard was not one such as a man of ordinary care and prudence would accept under the same or similar circumstances.

The court holds here that although the defendant L violated the law in so parking her car, yet it was not negligence as a matter of law to enter the car. Therefore it was properly a jury question whether the plaintiff was negligent in attempting to so enter. The mere fact that the negligence of the host was a contributing cause of the accident will not necessarily make the assumption of risk by the guest amount to contributory negligence as toward the negligent third party. *Wiese* v. *Polzer,* 212 Wis. 337, 248 N.W. 113 (1933).

R. A. McD.

CONFLICT OF LAWS—ALIMONY—ENFORCEMENT OF FOREIGN DECREE.—Plaintiff was awarded a divorce decree in South Dakota ordering the defendant to pay the plaintiff as permanent alimony, $75 monthly. The parties have since removed to Minnesota, and defendant is now delinquent in his payments. The purpose of this action is not to recover that amount as a debt by ordinary judgment and execution, but to compel its payment through whatever power the Minnesota courts may have, on the equity side, to resort to sequestration, receivership or even contempt proceeding against defendant. *Held,* that Minnesota courts will enforce a foreign alimony degree in the same manner as a decree of its own courts. *Ostrander* v. *Ostrander,* (Minn. 1934) 252 N.W. 449.

The question raised in this case was whether the local statute (Mason's Minn. St. 1927, Sec. 8604), authorizing resort to sequestration and contempt proceedings to compel the payment of alimony, includes an action brought to compel the payment of unpaid installments under a foreign decree for alimony. The court held that the local action on that decree was itself a case where "alimony" is decreed and hence the statute applies.

A decree of a court having jurisdiction of the subject matter and parties awarding divorce and incidentally alimony is entitled to the same faith and credit in other states as it has in the state where rendered, and an unconditional and final award of alimony, when the same remains unpaid, may be enforced by appropriate proceedings in other states. *Cheever* v. *Wilson,* 9 Wall. 109, 19 L.Ed. 604 (1870); *Moore* v. *Moore,* 208 N.Y. 97, 101 N.E. 711 (1913); *Van Orden* v. *Van Orden,* 58 N.J. Eq. 545, 43 Atl. 882 (1899); *Sistare* v. *Sistare,* 218 U.S. 1, 30 Sup. Ct. 682, 54 L.Ed. 905, 28 L.R.A. (N.S.) 1068, 20 Ann. Cas. 1061 (1910); *Holton* v. *Holton,* 153 Minn. 346, 190 N.W. 542, 41 A.L.R. 1415 (1922). In accord with the instant case, *Franchier* v. *Gammill,* 148 Miss. 723, 114 So. 813 (1927); *Cummings* v. *Cummings,* 97 Cal. App. 144, 275 Pac. 245 (1929); *Creager* v. *Sup. Ct. of Santa Clara Co., et al,* 126 Cal. App. 280, 14 P. (2d) 552 (1932), have held that equity will enforce the payment of alimony awarded in conjunction with a foreign divorce decree. These courts have taken the position that to hold that a foreign alimony decree could not be enforced in equity would be to disregard the "full faith and credit" clause of the federal law, which they interpret to mean, that the judgment with its peculiar right of enforcement as one for alimony, should be established and enforced by the equity courts of that state in the same manner and to the same extent as it could have been enforced by its own courts, if originally obtained in that state. The full faith and credit clause does not make it obligatory upon the courts to enforce foreign alimony decrees by the modes of