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Motor Vehicles—Family Car Doctrine

The facts in the two instant cases are very similar. The cause of action in *Duggan v. Lubbin* arose in Quebec, a foreign country, while the cause of action in *Squier v. Houghton* arose in New Jersey, a foreign state. The defendants in both cases are residents of New York. It seems that both cases would fall under Civil Practice Act Sec. 13, quoted above. In both cases the statutes of New York would bar the actions, being shorter than the foreign limitations. At least this is true in *Duggan v. Lubbin,* and we can assume it to be true in *Squier v. Houghton* for otherwise there would be no reason for wanting to apply the New Jersey statute. The court in *Duggan v. Lubbin* held that the action could not be maintained because it was barred by the New York statute. In this, it followed the course laid down by previous courts in applying the statute in question. The other case holds that the New Jersey law applies despite the fact that the New York statute bars the action. This latter decision would extend the period in which action may be brought and is contrary to all the authorities. R. B. S., '30.

MOTOR VEHICLES—FAMILY CAR DOCTRINE.—An action for injuries was brought by a pedestrian who was struck while crossing the street by an automobile driven by an unemancipated minor returning from school. The issue raised was whether the parent should be charged under the ruling known as the "family car doctrine." *Held,* that the owner of the automobile was liable under this doctrine for the negligence of his minor son on the theory that he was using the automobile to go to and from school under his father's direction. *Mebas v. Werkmeister,* 299 S. W. 601 (Mo. 1927).

The case is now before the Supreme Court on a writ of *certiorari* since it is in conflict with the opinon of the Supreme Court in *Hays v. Hogan,* 273 Mo. 1; 200 S. W. 286, which is considered the leading case on this subject in Missouri. The court discussed *Hays v. Hogan,* saying that "though the 'family purpose doctrine' is impliedly at least disapproved, yet the facts here do not come within that case and are not controlled by the principle therein announced." The court further distinguished the principal case from others by stating that here the son was using the automobile in going to and from school under the direction of the father.

The decision in the principal case is in accord with the laws of Illinois. Up to the present the trend of decision in Missouri seemed to be directly opposite to that in Illinois. During the many years that Illinois opposed the "family car doctrine" Missouri followed it; and when Missouri repudiated this doctrine we found Illinois taking it up.

In 1910, in the case of *Daily v. Maxwell,* 152 Mo. App. 415; 133 S. W. 351, the Kansas City Court of Appeals held a father liable for an injury caused by his minor son who was driving the family car. Two years later in *Marshall v. Taylor,* 168 Mo. App. 240, 153 S. W. 527, the same court apparently approved the doctrine of *Daily v. Maxwell.* This case which involved facts of a similar nature held that unless the parents could conclusively show that the son who was operating the car was operating it without his consent, the father's consent would be presumed.

Hays v. Hogan, supra, as decided in the appellate court followed *Daily v. Maxwell* and *Marshall v. Taylor,* but on appeal the Supreme Court reversed the case holding that "the mere ownership of an automobile purchased by a father for the use and pleasure of himself and family does not render him liable in damages to third persons for injuries sustained through the negligence of his minor son while operating the same on a public highway in furtherance of his own business or pleasure and the fact that he had his father's special or general

permission to use the car is wholly immaterial." *Curtis v. Harris et al.*, 253 S. W. 474, which is in accord with the following: *Bolman v. Bulene*, 200 S. W. 1068; *Llymeln v. Lowe*, 239 S. W. 535; *Buskin v. Januchowsky* (Mo. App.) 218 S. W. 696; *Mays v. Fields* (Mo. App.) 217 S. W. 589 and *Bright v. Thatcher*, 202 Mo. App. 501; 215 S. W. 788, all having followed *Hays v. Hogan*.

It is interesting to note that Becker, J. who concurred in the principal case, reversed his own holding in *Bright v. Thatcher, supra*, wherein he said, "Irrespective of the result reached upon the question in other jurisdictions, it is no longer open to question in this state that the ownership of an automobile purchased by the father for the use and pleasure of himself and family does not render him liable for damages to a third person injured through the negligence of a member of his family while operating the automobile in furtherance of that member's own pleasure, and the fact that the members of the family had the father's *special or general consent* to use the car for his pleasure is *wholly immaterial*." (Italics ours.)

An excellent treatment of the family purpose doctrine in other jurisdictions can be found in a note that appeared in 11 ST. LOUIS LAW REVIEW 131. Suffice it to say, the weight of authority is opposed to this doctrine, and it is also very interesting to note that there is a distinct geographical division, the western, central and Pacific states some 17 or 18 in number have been found to favor this doctrine, while the northwestern and Atlantic states, notably New York, Massachusetts and Pennsylvania, have rejected it. M. W. S., '29.

NEGLIGENCE—PRESUMPTION OF DUE CARE—PEDESTRIAN CROSSING STREET IN MIDDLE OF BLOCK.—Plaintiff's decedent received fatal injuries by being struck by delivery truck driven by defendant's employee. Deceased was at the time of the accident crossing a heavily travelled thoroughfare in the middle of a block on a very dark night. *Held*, deceased though crossing street in middle of block was presumed in exercise of due care and defendant declared liable for negligence. *Hinchey v. J. P. Burroughs & Son*, 215 N. W. 346 (Mich., 1927).

Whether in crossing a street in the middle of a block rather than at a street intersection plaintiff is guilty of contributory negligence is generally held to be a question of fact to be determined by the jury. *Colon v. Bloch*, 232 Pac. 486 (Cal.). The courts proceed upon the theory that vehicles have the right of way except at street intersections, and therefore a pedestrian in crossing a street in the middle of a block must use greater care for his safety than when crossing at a place provided for pedestrians. *Green v. Ruffin*, 125 S. E. 742 (Va.).

The courts have refused consistently to hold that the crossing of a street in the middle of the block is negligence as a matter of law. They have preferred to treat the question of negligence in crossing a street both at places of intersection and at places other than intersections as a question of fact for the jury, and evidence of the amount of traffic upon the street and of the maximum speed limit established by ordinance thereon is admitted to enable the jury to ascertain the fact of contributory negligence. *Meyer v. Lewis*, 43 Mo. App. 417, l. c. 418; *Blackwell v. Remwick*, 131 Pac. 94 (Cal.); *Heartsell v. Billow*, 184 Mo. App. 420; 171 S. W. 7; *Genter v. O'Donoghue*, 179 S. W. 732 (Mo. App.). The Michigan court in presuming that the deceased was in the exercise of due care when crossing a street in the middle of a block has seemingly transcended the bounds of the great weight of authority. The question of negligence should have been submitted to the jury. J. R. B., '28.

TAXATION—EXEMPTIONS—REAL ESTATE AS "ENDOWMENT" OF COLLEGE.—A