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Taxation—Exemptions—Real Estate As "Endowment" of College

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

special Mississippi statute of incorporation exempted from taxation a college campus and buildings "and the endowment fund contributed to said college." *Held,* state court properly construed statute in ruling that real estate not part of the campus of the college, but donated to and rented by it for income purposes, is not included in the exemption. *Millsaps College v. Jackson,* 48 Sup. Ct. 94 (1927).

Great weight attaches to decisions of a state court regarding questions of taxation or exemption therefrom under the constitution or laws of its own state, and the United States Supreme Court will follow the construction of a state court on a contract of exemption from taxation when that construction is not obviously erroneous. *Chicago Theological Seminary v. Ill. ex rel. Raymond,* 188 U. S. 662; *Jetton v. University of South,* 208 U. S. 489.

Ordinarily an alleged statutory grant of exemption from taxation will be strictly construed. *People v. Watseka Camp Meeting Assoc.,* 160 Ill. 576, 43 N. E. 716; *Rochester v. Rochester R. Co.,* 182 N. Y. 99, 74 N. E. 953. Where there is doubt as to the legislative intention, or as to the inclusion of particular property within the terms of the statute, the presumption is in favor of the taxing power, and the burden is on the claimant to establish clearly his right to exemption. *Trenton v. Humel,* 134 Mo. App. 595, 114 S. W. 1131; *People v. N. Y. Tax Com'rs.,* 95 N. Y. 554.

An educational institution cannot as a general rule claim exemption from taxation in respect to property which it rents out for purposes wholly unconnected with its educational work. *Pratt Institute v. City of New York,* 91 N. Y. S. 136; *Willamette University v. Knight,* 35 Ore. 33, 56 P. 124; *Commonwealth v. Hampton Institute,* 106 Va. 614, 56 S. E. 594. But in some cases, where the exemption laws or charter provisions are broad enough to include such property yielding a revenue which is applied directly and exclusively to the maintenance of the institution, the exemption will be upheld. *New Haven v. Sheffield Scientific School,* 59 Conn. 163, 22 Atl. 156; *Williston Seminary v. County Commissioners,* 147 Mass. 427, 18 N. E. 210; *Little v. Theological Seminary,* 72 Ohio St. 417, 74 N. E. 193.

In the case under discussion the statute specifically designated certain land which was to be subject to the exemption. The Mississippi Court (136 Miss. 795, 101 So. 574), applying the rule of strict construction, stated that "the specific grant of an exemption on land of a certain character negatives by implication an intention to exempt land of a different character," citing *State v. Krollman,* 38 N. J. L. 574. This seems to be a reasonable inference which the United State Supreme Court properly upheld. F. A. E., '28.

PLEADING—EXHIBIT NOT PART OF PLEADING.—The trial court in a Missouri suit against an Indiana corporation sustained plaintiff's motion to strike out a paragraph of defendant's answer, which had attacked the jurisdiction of the court. The paragraph stated that the General Assembly of the State of Indiana had enacted a statute known as the Indiana Workmen's Compensation Act, which at all times in question was and remained in force in the State of Indiana, "a copy of which said act is herewith filed and marked defendant's Exhibit A, and that the act and each and every section thereof is hereby made a part of this plea, the same as if specifically pleaded herein." *Held,* that an exhibit attached to a petition or answer is not so far a part of the pleading itself as to save it from being bad on demurrer or motion to strike out, even though, if the petition were aided by the contents of the exhibit, it would thus be rendered good. *Scott v. Vincennes Bridge Co.,* 299 S. W. 145 (Mo. 1927).

The rules in the various jurisdictions as to the effect of an exhibit annexed