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Property - Ownership and Incidents - Weather Control as an Infringement of Landowner's Rights

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been utilized to impute the driver's contributory negligence to his passengers, thereby preventing them from asserting a successful suit for damages against the other negligent driver.[10] Joint enterprise exists when it is shown that the parties have mutual right of control over the automobile and act together for a certain project of undertaking.[11] It has been held that mutual control and joint undertaking existed where: mother and son traveled in jointly owned automobile to bring other son home from army;[12] sisters shared expenses of trip taken for purpose of getting materials to decorate their home;[13] several boys borrowed a car and shared expenses of trip to attend a dance.[14] Since the existence of a right to control is based on "sheer fiction," according to the majority of justices in the instant case, it is apparent that they have different criteria in mind. Moreover they state "in joint enterprise situations the policies behind the doctrine of *respondeat superior* are equally applicable,"[15] which would imply that the importance of the doctrine of joint enterprise to impute negligence is eliminated.

North Dakota cases have stated that recovery will be denied to a passenger on the ground that his driver's contributory negligence is imputed to him on the following theories: passenger had right to control the automobile;[16] passenger and driver were engaged in a joint enterprise;[17] passenger himself is guilty of contributory negligence.[18]

The instant case presents a striking example of the general unwillingness on the part of most courts to impute a driver's negligence to his passengers thus preventing them from recovery against third persons.

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PROPERTY — OWNERSHIP AND INCIDENTS — WEATHER CONTROL AS AN INFRINGEMENT OF LANDOWNER'S RIGHTS — Plaintiff owned a ranch in Texas. Defendant was hired by a group of Texas farmers to seed clouds for the purpose of preventing hailstorms. He conducted operations by airplane over land belonging to plaintiff. Rainfall on plaintiff's land diminished. Plaintiff sued for an injunction to prevent further weather control operations over property belonging to him. The Texas Court of Appeals *held,* that a landowner is entitled to the natural fall of water from clouds over his land, and entitled to enjoin interference therewith as an infringement of his rights in his property. Injunction granted. *Southwest Weather Research Inc. v. Rounsaville,* 320 S.W.2d 211 (Tex. Civ. App. 1959).

In the instant case the court resorted to the common law analogy of the

Del. 519, 107 A.2d 798 (1954); Cowart v. Lewis, 115 Miss. 221, 177 So. 531 (1928).

10. Saliba v. Abelson, 192 Ark. 1021, 96 S.W.2d 443 (1936); Collins v. Graves, 17 Cal. App. 2d 288, 61 P.2d 1198 (1936); Grubb v. Illinois Terminal Co., 366 Ill. 330, 8 N.E.2d 934 (1937).

11. Bryant v. Pacific Electric Ry. Co., 174 Cal. 737, 164 Pac. 385 (1917); Campbell v. Cambell, 104 Vt. 468, 162 Atl. 379 (1932); Offer v. Swancoat, 27 S.W.2d 899 (Tex. Civ. App. 1930); see Round v. Pike, 102 Vt. 325, 148 Atl. 283 (1930).

12. Johnsen v. Pierce, 262 Wis. 367, 55 N.W.2d 394 (1952).

13. Grubb v. Illinois Terminal Co., 366 Ill. 330, 8 N.W.2d 934 (1937).

14. Greenwell v. Burba, 298 Ky. 255, 182 S.W.2d 436 (1944).

15. Sherman v. Korff, 91 N.W.2d 485 (Mich. 1958) (dictum).

16. *Cf.* Billingsley v. McCormick Transfer Co., 58 N.D. 921, 228 N.W. 427 (1929); Ouverson v. Grafton, 5 N.D. 281, 65 N.W. 676 (1895).

17. Christopherson v. Minneapolis, St. P. & S. Ste. M. Ry., 28 N.D. 128, 147 N.W. 791 (1914).

18. See, Bolton v. Wells, 58 N.D. 286, 225 N.W. 791 (1929); Amenia & Sharon Land Co. v. St. P. & S. & S. Ste. M. Ry., 48 N.D. 1306, 189 N.W. 343 (1922).

theory of "natural rights" of property.[1] In *Slutsky v. City of New York*,[2] the proprietor of a resort in upstate New York sought to enjoin cloudseeding operations carried on over his property by the City of New York on the grounds that excessive rainfall was interfering with his business and constituted a trespass. The court, in denying the injunction, based its decision on a balancing of the conflicting interest between the plaintiff, having only a remote possibility of inconvenience, and the City of New York having the problem of supplying water to its ten million inhabitants. It is not difficult to imagine the impracticability of applying the theory of the principal case to this set of facts.

The instant case and the *Slutsky*[3] case are the only instances of adjudication of the problem of weather control. There are two additional cases wherein the problem was at issue, but one of them was disposed of on a procedural point[4] and the other was a trial court decision[5] with no written opinion.

Of the thirteen states which have enacted statutes in connection with weather modification and control,[6] those of Colorado,[7] South Dakota,[8] and Wyoming[9] are the most comprehensive. These states assert that ownership of all moisture in the air belongs to the state. Most of the states require the operators to have a license or authorization and to report their activities to a board or commission.[10] North Dakota has no legislation dealing with any phase of the matter; and the only Federal statute on the subject makes no attempt to establish controls.[11] It merely provides for the establishment of an advisory board whose sole function is to collect and evaluate the effects of public and private experimentation.

Various legal writers have suggested analagous laws which the courts may possibly utilize in an attempt to support future decisions concerning this new and thus far, seldom adjudicated problem.[12] Further adherence to the theory of the principal case could lead to severe restrictions on public and private use of cloud seeding.

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1. "The right to acquire and own property, and to deal with it and use it as the owner chooses, so long as the use harms no one, is a natural right." See Spann v. City of Dallas, 111 Texas 350, 235 S.W. 513 (1921).

2. 97 N.Y.S. 2d 238 (1950).

3. Slutsky v. City of New York, *supra* note 2.

4. Avery v. O'Dwyer, 305 N.Y. 658, 112 N.E.2d 428 (1953).

5. Sample v. Irving P. Krick, Inc., Civil Nos. 6212-6, 6223-c, 6224-c, W.D. Okla. (1954).

6. Ariz. Rev. Stat. Ann. §§ 45-2401 to 2407 (1956); Calif. Water Code c. 4, § 400 to 415 (1956); Colo. Sess. Laws c. 295 (1951); Idaho Code c. 32 § 22-3201 (Cum. Supp. 1959); Mass. Ann. Laws c. 6 § 72 (1958); Neb. Sess. Laws c. 9 (1959); Nev. Rev. Stat. tit. 28 c. 532 (1957); Oregon Rev. Stat. c. 558 (1953); S. Dak. Sess. Laws c. 321 (1953); Utah Code Ann. § 73-15-1 (Supp. 1955); Wash. Rev. Code c. 245 § 43.37.010 (1957); Wis. Stat. Ann. c. 195 § 40 (1957); Wyo. Stat. tit. 9, c. 4, §§ 9-267 to 9-276 (Cum. Supp. 1955).

7. Colo. Sess. Laws c. 295 (1951).

8. S. Dak. Sess. Laws c. 321 (1953).

9. Wyo. Stat. tit. 9 c. 4 § 9-267 (Cum. Supp. 1955).

10. Ariz. Rev. Stat. Ann. § 45-2401 (1956); Calif. Water Code c. 4 § 402 (1956); Mass. Ann. Laws. c. 6 § 72 (1958); Neb. Sess. Laws c. 9 § 20 (1958); Colo. Sess. Laws c. 295 § 6 (1951); Nev. Rev. Stat. tit. 28 c. 253 § 532.190 (1957); Oregon Rev. Stat. c. 558 § 558.020 (1953); S. Dak. Sess. Laws c. 321 § 4 (1953); Wash. Rev. Code c. 245 § 43.37.080 (1957); Wis. Stat. Ann. c. 195 § 40 (1957); Wyo. Stat. tit. 9, c. 4 § 9270 (Cum. Supp. 1955).

11. 67 Stat. 599 (1953), 15 U.S.C. § 311 (Supp. V, 1958).

12. Notes, 45 Calif. L. Rev. 698 (1957), 29 Chi-Kent L. Rev. 150 (1951), 39 Ga. L. J. 466 (1951), 4 Van L. Rev. 332 (1951), 1 Stan. L. Rev. 508 (1949), 1 Stan. L. Rev. 43 (1948); Comments, 14 Albany L. Rev. 204 (1950), 37 Calif. L. Rev. 114 (1949), 1 Catholic L. Rev. 122 (1951), 34 Marq. L. Rev. 262 (1951).