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Automobile - Negligence - Key Left in Ignition as Proximate Cause of Injuries Resulting form Thief's Negligent Driving

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RECENT CASES

AUTOMOBILE — NEGLIGENCE — KEY LEFT IN IGNITION AS PROXIMATE CAUSE OF INJURIES RESULTING FROM THIEF'S NEGLIGENT DRIVING — Plaintiff alleged that the defendant left her automobile unattended and unlocked with the key in the ignition on a San Francisco street and that a thief stole the car and negligently collided with the plaintiff's motorcycle. A motion for nonsuit was granted below on the ground that the complaint failed to state a cause of action.[1] On appeal it was *held*, one justice dissenting, that judgment be affirmed. The owner of the car was under no duty to persons who may be injured by its use to keep it out of the hands of a third person, in the absence of facts putting the owner on notice that the third person was incompetent to handle it. *Richards v. Stanley*, 271 P. 2d 23 (Cal.1954)

In the absence of a statute or ordinance, the majority of the courts have denied recovery against the owner for injuries occasioned by the negligent operation of an automobile by a thief.[2] The reason generally given is that the proximate cause of the injury is the negligence of the thief and not that of the owner of the automobile,[3] the courts proceeding from the premise that the intervening criminal act of the thief breaks the chain of causation,[4] or that one is only held accountable for the natural and probable results of his negligent act.[5] In jurisdictions having statutes imposing liability for leaving the key in the ignition, diametrically opposed results have been reached. *Ney v. Yellow Cab Co.*[6] held that the statute was a public safety measure and that its violation was prima facie evidence of negligence, and since the criminal act of the thief could have been foreseen, the causal chain was not broken. Similar results have been reached in Tennessee[7] and the District of Columbia.[8] The District of Columbia court reasoned that the statute was enacted to promote the safety of the public in the streets, and its violation

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1. Trial court ruled inapplicable a city ordinance which forbade automobile owners to leave automobile unlocked and unattended with keys in ignition but provided that the violation thereof should have no effect in a civil action. Instant case at page 25.

2. Cockrell v. Sullivan, 344 Ill. App. 620, 101 N.E.2d 878 (1951); Roberts v. Lundy, 301 Mich. 726, 4 N.W.2d 74 (1942); Latito v. Kyriacus, 272 App. Div. 635, 74 N.Y.S.2d 599 (1947); Wilson v. Harrington, 269 App. Div. 891, 56 N.Y.S.2d 157, aff'd, 295 N.Y. 667, 65 N.E.2d 101 (1945).

3. Wilson v. Harrington, *supra* note 2; See 4 Blashfield, Cyclopedia of Automobile Law and Practice §2534 n.26 (Perm. ed. 1946).

4. Midkiff v. Watkins, 52 So.2d 573 (La. App. 1951); Curtiss v. Jacobson, 142 Me. 351, 54 A.2d 520 (1947); Saracco v. Lyttle, 11 N.J. Super. 254, 78 A.2d 288 (1951); Restatement, Torts §448 (1934).

5. Salsedo v. Palmer, 278 Fed. 92 (2d Cir. 1921); Reti v. Vaniska Inc., 14 N.J. Super. 94, 81 A.2d 377 (1951); Latito v. Kyriacus, *supra* note 2, Prudential Society v. Ray, 207 App. Div. 496, 202 N.Y. Supp 614 (1924).

6. 2 Ill. 2d 74, 117 N.E.2d 74 (1954); *accord*, Ostergard v. Frisch, 33 Ill. App. 359, 77 N.E. 2d 537 (1948); Moran v. Borden Co., 309 Ill. App. 391, 33 N.E.2d 166 (1941).

7. Morris v. Bolling, 31 Tenn. App. 577, 218 S.W.2d 754 (1948).

8. Schaff v. R. W. Claxton Inc., 144 F. 2d 532 (D.C.Cir. 1944), *aff'd* after new trial, 169 F.2d 303 (D.C.Cir. 1944); Ross v. Hartman, 139 F.2d 14 (D.C.Cir. 1943) *cert. denied*, 321 U.S. 790 (1944) (These are the leading cases in which recovery was allowed.) The decision of Howard v. Swagart; 161 F.2d 651 (D.C.Cir. 1947) would seem to indicate that the District of Columbia courts are unwilling to extend the *Hartman* doctrine to its logical conclusion. There, the owner left his car in a parking garage wth the keys in the ignition and an employee of the garage loaned the car to a fellow employee who had no knowledge of the theft. The latter, while driving it some 12 hours after the theft, injured the plaintiff who brought suit against the garage owner. The court was of the opinion that to extend the principle of the *Ross* and *Schaff* cases to such a case "would result in a strained construction of the legal concepts pertaining to proximate cause.").

constituted negligence per se. This negligence created the hazard and thereby brought about the very harm which the statute was intended to prevent, and thus constituted the proximate cause of the injury.[9] A directly opposite result was reached in Massachusetts[10] and Minnesota,[11] these courts reasoning that the statute is merely an anti-theft measure and the injury to a third person is not within the harm which the enactment was intended to prevent.

While the act of leaving the key in the ignition may be considered negligence as *to one's proprietary interest in the automobile,* it is fundamental in our jurisprudence that the fact of negligence does not create a legal liability unless some duty was owed to the plaintiff by the defendant and there was a breach of this duty resulting in injury to the plaintiff.[12] While the defendant was under a duty not to create an unreasonable risk which would result in injury to the plaintiff, to hold him liable here would impose a further duty to control the action of a third person.[13]

Though it is well recognized that a duty of care may be imposed by legislative enactment, the courts have been unanimous in holding that there is no liability unless the plaintiff is one of the class of persons whom the statute was intended to protect, and the harm that occurred is of the type which it was intended to prevent.[14] None of the statutes in the jurisdictions which allow recovery expressly discloses for what purpose the statute was enacted.

The majority of the courts which have expressly considered the question of duty have concluded that there is no duty to one to whom no harm can

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9. "Negligence is the breach of a legal duty. It is immaterial whether the duty is one imposed by the rule of common law . . . or is imposed by a statute designed for the protection of others. . . . [T]he only difference is that in the one case the measure of legal duty is to be determined upon common law principles, while in the other the statute fixes it, so that the violation of the statute constitutes conclusive evidence of negligence, or in other words, negligence per se. . . . All that the statute does is to establish a fixed standard by which the fact of negligence may be determined." Mitchell, J., in Osborne v. McMasters, 40 Minn. 103, 105, 41 N.W. 543 (1889). Violation of an applicable statute is negligence per se, Scarborough v. Central Arizona Light & P. Co., 58 Ariz. 51, 117 P.2d 487 (1941); Eickhoff v. Beard-Laney Inc., 199 S.C. 500, 20 S.E.2d 153 (1942); Schuman v. Bank of Calif., 114 Ore. 336, 233 Pac. 860 (1925). Violation of a statute or ordinance is evidence of negligence. Hansen v. Kemmish, 201 Iowa 1008, 208 N.W. 277 (1926); Simonsen v. Thorin, 120 Neb. 684, 234 N.W. 628 (1931); Prosser on Torts, §39 (1941).

10. Galbraith v. Levin, 323 Mass. 255, 81 N.E. 2d 560 (1948); Sullivan v. Griffin, 318 Mass. 359, 61 N.E. 2d 330 (1945); Slater v. T. C. Baker Co., 261 Mass. 424, 158 N.E. 778 (1927) (In 1941 it seemed that Massachusetts was adopting the minority rule. In Malloy v. Neuman, 310 Mass. 269, 37 N.E.2d 1001 (1941), a recovery was allowed where the automobile involved was not registered in the state. This case was subsequently overruled by the later decisions).

11. Anderson v. Theisen, 231 Minn. 369, 43 N.W. 2d 272 (1950); Wannebo v. Gates, 227 Minn. 194, 34 N.W.2d 695 (1948); Kennedy v. Hedberg, 159 Minn. 76, 198 N.W. 302 (1934).

12. Morril v. Morril, 104 N.J.L. 557, 142 Atl. 337 (1922); Munroe v. Pennsylvania Ry. Co., 85 N.J.L. 688, 90 Atl. 254 (1914); Palsgraf v. Long Island Ry. Co., 248 N.Y. 339, 162 N.E. 99 (1928); See Buckland, *The Duty to Take Care,* 51 L. Q. Rev. 637 (1935); Green, *The Duty Problem in Negligence Cases,* 28 Col. L. Rev. 1014 (1928), 29 Col. L. Rev. 255 (1929); Prosser on Torts, §31 (1941).

13. Generally one is not bound to control the acts of a third person in the absence of a special relationship. Lane v. Bing, 202 Cal. 590, 262 Pac. 318 (1927); Kebr v. Central Brewing Co. of N.Y., 150 N.Y. Supp., 986 (1915); Restatement, Torts §315 (1934); Prosser on Torts §32 (1941).

14 Restatement, Torts §285, 286 (1934); Prosser on Torts, §39 (1941); 32 Col. L. Rev. 712 (1932); 19 Minn. L. Rev. 666 (1935).

be foreseen.[15] However, the greater number of cases have failed to consider the question of duty and use the language of proximate cause. In any case, the ultimate question should be whether the negligent act and the injury which resulted are so related that liability should be imposed.[16] The prevailing view, of course, is that one is liable for any injury which results from his negligent act if the injury was the natural and probable result of the negligent act.[17]

It has been held that the proximate cause of the injury in cases similar to the instant case was not the theft but rather the unskillful handling of the vehicle by the thief.[18] The key in the automobile did no harm. Before any injury could result there had to be some illegal act of a third person, and generally one is not bound to anticipate that some person will disobey the law.[19] Even if the automobile owner could have foreseen that his act of leaving the keys in the automobile would induce a thief to steal the automobile, certainly one should not say that he was bound to foresee that the thief would be a careless driver. Such a statement would seem contrary to common experience; it would seem that car thieves, in order to avoid attention would drive with extreme care. There may be circumstances however, such as leaving an automobile unlocked with the key in the ignition in front of a school, where one might reasonably anticipate that some injury could result,[20] due to the possibility that the automobile may fall into the hands of an immature driver.

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CONSTITUTIONAL LAW — EMINENT DOMAIN — PRIVATE v. PUBLIC USE. — The City and County of San Francisco sought to condemn certain property for the purpose of leasing it for a term of not less than twenty-five years to a private citizen who was to construct and operate a parking garage thereon. The City Controller refused to certify to the availability of funds for this purpose, contending, *inter alia,* that the proposed use was not a public one. In a mandamus proceeding by the City the court *held,* that the application for the writ be denied. Since the City was to retain no control over the rates to be charged by the lessee, the proposed use was private rather than public. *City and County of San Francisco v. Ross,* 279 P.2d 529 (Cal.1955).

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15. Sinram v. Pennsylvania Ry. Co., 61 F.2d 767 (2d Cir. 1932); Palsgraf v. Long Island Ry. Co., *supra* note 12; Waube v. Warrington, 216 Wis. 603, 258 N.W. 497 (1935); Prosser on Torts, 186 n. 95 (1941).

16. Prosser on Torts §§31,45 (1941).

17. Kiste v. Red Cab Co., 122 Ind. App. 587, 106 N.E. 2d 395 (1952); Palsgraf v. Long Island Ry. Co., *supra* note 12. *Contra,* Osborne v. Montgomery, 203 Wis. 223, 234 N.W. 372 (1931).

18. Wilson v. Harrington, *supra* note 2; 4 Blashfield, Cyclopedia of Automobile Law & Practice, §2534 n.26 (Perm. ed. 1946).

19. Leo v. Dunham, 41 Cal. 2d 712, 264 P.2d 1 (1953); Curtiss v. Jacobson, 142 Me. 351, 54 A.2d 520 (1947), See Babbitt, *The Law Applied to Motor Vehicles* §553 (1946); Restatement, Torts, §447 (1934). "There is usually much less reason to anticipate acts which are malicious or criminal than those which are merely negligent. Under ordinary circumstances, it is not to be expected that anyone will intentionally . . . steal an automobile and run a man down with it." Prosser on Torts, §37 n.90 (1941).

20. Restatement, Torts §302 Illus. 7 (1934).