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Automobiles--Liabilities of Dealers for the Sale of Defective Automobiles to Third Parties (Standard Oil Co. of Indiana v. Leaverton, 192 S.W.2d 681 (Mo. App. 1946))

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for an order absolute, since the order appealed from did not finally determine a special proceeding and does not come under the section of the Constitution on which the appeal is based.[15] Hearings are not contemplated in connection with applications for the issuance of a license. If a hearing is granted on application for a new license, it is a matter of courtesy.[16]

M. J. S.

AUTOMOBILES—LIABILITIES OF DEALERS FOR THE SALE OF DEFECTIVE AUTOMOBILES TO THIRD PARTIES.—Defendant, a used car dealer and proprietor of a repair shop, delivered a used car with defective brakes into the possession of a prospective buyer for the purpose of a trial run, without giving notice of such condition. The prospective buyer, while exercising the highest degree of care, drove the car onto the apron of one of plaintiff's service stations and because of the defective brakes ran into and demolished two gasoline pumps for the value of which the plaintiff is now suing. The trial court sustained a motion to dismiss the complaint.

Held, reversed and remanded. The duty of the defendant under the facts pleaded was not confined to that of bailor and bailee, or vendor and vendee, or any other such relationship, but rather is a duty which arises out of the obligation that the law imposes on every man to refrain from acts of commission or omission which he may reasonably expect will result in injury to third persons. *Standard Oil Co. of Indiana v. Leaverton,* — Mo. App. —, 192 S. W. (2d) 681 (1946).

Formerly it was the general rule that manufacturers or sellers were not liable to third persons with whom they had no contractual relationship in the use of their product, with the exception of those things inherently dangerous.[1] This doctrine was later limited when it was decided that whenever goods or machinery are supplied to another for his use a duty arises to use ordinary care and skill as to the condition of the thing supplied.[2] In the leading case attaching this liability to manufacturers of automobiles, it was said that although automobiles are not inherently dangerous articles *per se* they become akin to such when supplied in a dangerously defective condition.[3] A high degree of care was imposed on the maker because any reasonably prudent man would know that such articles by their

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[15] N. Y. CONST. Art. VI, § 7, subd. 3.

[16] Usdane v. Bruckman, 30 N. Y. S. (2d) 396 (1941).

[1] Thomas v. Winchester, 6 N. Y. 397 (1852).

[2] Devlin v. Smith *et al.,* 89 N. Y. 470 (1882); Heaven v. Pender, 11 Q. B. D. 503 (1883); Schubert v. J. R. Clark Co., 49 Minn. 331, 51 N. W. 1103 (1892).

[3] MacPherson v. Buick Motor Co., 217 N. Y. 382, 111 N. E. 1050 (1916).

weight and speed alone are liable to cause damage if defectively constructed. Responsibility for the breach of duty once rested on actual knowledge of the defect on the part of the dealer or seller,[4] but in later cases it was decided that this knowledge may be imputed in a great many cases, among them, when there is a duty to know and also when a person of ordinary care and prudence under the same or similar circumstances ought to have known.[5]

The doctrine as to automobile dealers may be summed up by saying that a dealer in standard make cars is not required to dismantle the car in order to be absolved, but the law imputes to such dealers such knowledge of its condition as can be ascertained by the use of ordinary care. The failure of the buyer to discover these defects, such as defective brakes, is not an intervening cause as will excuse the seller of liability.[6] A dealer in second hand cars who undertakes to overhaul and recondition used cars for subsequent use by others has the same duty as a manufacturer to exercise reasonable care as to the condition of the vehicle.[7] This is not the duty of an insurer, but merely one of using care to discover patent defects.[8]

E. J. M.

CARRIERS—NEGLIGENCE—NEGLIGENCE OF PASSENGER ALIGHTING FROM MOVING TRAIN.—Appellant sued to recover damages for injuries sustained while a passenger on appellee's railroad. Appellant alleges that while she was a passenger on appellee's daycoach she was awakened in the early morning, when it was still dark, and informed that her destination was the next stop. She proceeded to the vestibule to alight, and found the gangplank up and the door open. Thinking the train had stopped, she stepped off and was thrown under the train, sustaining serious injuries. The negligence alleged was the opening of the door and the raising of the gangplank, without providing a guard, before the train came to a stop. *Held,* judgment for defendant affirmed. *Harvin v. Kenan,* — Fla. —, 26 So. (2d) 688 (1946).

The court in reaching its decision considered the following points: First, in order for liability to attach to the railroad it is necessary that there be negligence on the part of the railroad or its agents. For the negligence to be actionable there must be a causal

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[4] Huset v. J. I. Case Threshing Mach. Co., 120 Fed. 865 (1903).

[5] Wichert v. Wisconsin Central Ry., 142 Wis. 375, 125 N. W. 943 (1910); Flies v. Fox Bros. Buick Co., 196 Wis. 196, 218 N. W. 855 (1928).

[6] 5 AM. JUR. 690 § 349.

[7] Bock v. Truck & Tractor, Inc., 18 Wash. (2d) 458, 139 P. (2d) 706 (1943).

[8] Eagan Chevrolet Co. v. Bruner, 102 F. (2d) 373 (1939).