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Joint Liability of Separate Owners of Auto Trucks and Tractors and of Trailers or Semi-Trailers for Negligence of Operator

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CURRENT LEGISLATION

JOINT LIABILITY OF SEPARATE OWNERS OF AUTO TRUCKS AND TRACTORS AND OF TRAILERS OR SEMI-TRAILERS FOR NEGLIGENCE OF OPERATOR.—One of the purposes for the passage of Section 59 of the New York Vehicle and Traffic Law [1] was to give a remedy to those injured by a motor vehicle through the carelessness of an irresponsible driver to whom the owner had intrusted his automobile.[2] Under the section above referred to, the owner of a motor vehicle is liable for injuries resulting from negligence in the operation of the vehicle by any person legally using the vehicle with the owner's consent.[3] In other words, the negligence of the operator is imputed to the owner, under certain conditions.[4] This extended the common law, for the rule then was that the owner was not liable unless he himself was negligent,[5] or unless his agent was negligent, while using the automobile within the scope of his employment,[6] or unless liability was predicated under the rules applicable to master and servant relationship.[7] In view of the fact that there are four times more casualties occasioned annually by motor vehicles than the casualties suffered by the whole United States during its stay in the World War,[8] and the comparatively remediless plight of those injured by motor vehicles, the addendum to the common law, effected by statute, was only in keeping with the times. Of course, where the automobile was owned by two separate persons, the liability under the statute was joint,[9] unless one of the owners was operating the car, in which case only the operator-owner was liable.[10] This latter anomaly resulted from the well known norm of statutory construction whereby

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[1] N. Y. CONS. LAWS c. 71 (Vehicle and Traffic Law) § 59 (1929), formerly c. 25 (Highway Law) § 282e (1924).

[2] Cohen v. Neustadter, 247 N. Y. 207, 160 N. E. 12 (1928); Plaumbo v. Ryan, 213 App. Div. 517, 210 N. Y. Supp. 225 (2d Dept. 1925).

[3] *Ibid.*; Fluegel v. Coudert, 244 N. Y. 393, 155 N. E. 683 (1927).

[4] N. Y. VEHICLE AND TRAFFIC LAW (1929) § 59.

[5] Van Blaricom v. Dodgson, 220 N. Y. 111, 115 N. E. 443 (1917).

[6] *Ibid.*

[7] Engel v. Eureka Club, 137 N. Y. 100, 32 N. E. 1052 (1893); Potts v. Pardee. 220 N. Y. 431, 116 N. E. 78 (1917).

[8] Figures released by the U. S. War Department lists the total casualties of the United States in the World War at 350,300. This includes those wounded, dead, missing, and prisoners. Figures released by the Travelers' Insurance Company of Connecticut, lists 1,145,600 persons injured and 32,428 killed in automobile accidents in 1938. The casualties were slightly higher in 1937. See Note (1939) 13 ST. JOHN'S L. REV. 362, n.2; THE WORLD ALMANAC (1940) 554, 860.

[9] Wadsworth v. Webster, 237 App. Div. 319, 261 N. Y. Supp. 670 (3d Dept. 1932); Goodman v. Wilson, 129 Tenn. 464, 166 S. W. 752 (1914); Switzer v. Sherwood, 80 Wash. 19, 141 Pac. 181 (1914). See also Caplan v. Caplan, 243 App. Div. 456, 278 N. Y. Supp. 475 (3d Dept. 1935), *modified*, 268 N. Y. 445, 198 N. E. 23 (1935).

[10] Leppard v. O'Brien, 225 App. Div. 162, 232 N. Y. Supp. 454 (3d Dept. 1929), *aff'd without opinion*, 252 N. Y. 536, 170 N. E. 144 (1929).

an enactment in derogation of the common law is strictly construed.[11] Tangent to this peculiarity was a situation wherein one person owned part of a vehicle and another person owned the other part. An illustration of this is where trailers are involved. Where both the trailer and the "puller" or auto truck are owned by one person, no question is presented, for liability under Section 59 is uncontestably present.[12] But where there was one owner of the truck and a separate owner of the trailer, the courts were confronted with a new problem. The judicial eye could not place this new-fangled contraption. The judges never considered the combined vehicle as being co-owned; they were interested in the elementary question of whether or not it was a motor vehicle.

II.

Apart from liability under the imputed negligence enactment, the question as to whether or not a truck and trailer combined constitutes a motor vehicle has been answered in the affirmative.[13] Thus, in *Western Indemnity Co.* v. *Wasco Land Co.*,[14] the construction of a statute was involved providing for the exhibition of a red light on the tail end of a *motor vehicle.* The court therein stated that a train of vehicles drawn by a motor tractor was a motor vehicle under the enactment. In *State* v. *Schwartzmann Service Co.*,[15] a trailer attached to a tractor was held a motor vehicle under a law prohibiting the operation of motor vehicles, upon the public highways, over a specified weight. To the same effect, under a similar excessive weight statute, was *Leamon* v. *State*[16] wherein the court stated that the trailer, when attached to another vehicle, loses its identity as a separate vehicle. In *Eddleman* v. *City of Brazil*[17] it was held that the evidence of the operation of a trailer was sufficient to sustain a conviction under an indictment alleging the operation of a *motor truck* over the legal weight. In the preceding cases it is to be noted that the imputed negligence law was not involved.

But in civil cases, based upon statutes similar to New York's Section 59 of the Vehicle and Traffic Law,[18] the holdings, outside of New

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[11] *Ibid.;* Burnside v. Whitney, 21 N. Y. 148 (1860); Atwater v. Lober, 133 Misc. 652, 233 N. Y. Supp. 309 (1929).

[12] This is obvious under N. Y. VEHICLE AND TRAFFIC LAW (1929) § 59.

[13] Western Indemnity Co. v. Wasco Land Co., 51 Cal. App. 672, 197 Pac. 390 (1921); Eddleman v. City of Brazil, 201 Ind. 84, 166 N. E. 1 (1929); State v. Schwartzmann Service Co., 225 Mo. App. 577, 40 S. W. (2d) 479 (1931); Leamon v. State, 17 Ohio App. 323 (1923); Kern v. Contract Co., 55 Ohio App. 481, 9 N. E. (2d) 869 (1936); *cf.* People v. Congress Radio, 133 Misc. 542, 232 N. Y. Supp. 647 (1929).

[14] 51 Cal. App. 672, 197 Pac. 390 (1921).

[15] 225 Mo. App. 577, 40 S. W. (2d) 479 (1931).

[16] 17 Ohio App. 323 (1923).

[17] 201 Ind. 84, 166 N. E. 1 (1929).

[18] CAL. CIV. CODE (1929) § 1714¼; IOWA CODE (1927) § 5026; MICH.

York, have consistently been that the combined vehicle is not a motor vehicle.[19] Only the tractor or truck is a motor vehicle. In New York, however, there was a conflict before 1938, in its only two cases.[20] *Herrick* v. *Arborio, et al.*[21] was a case wherein one defendant, Arborio, loaned the other defendant, Adams, his trailer. Adams thereupon attached it to his truck. While upon the public highway a collision occurred between the combined vehicle and the plaintiff's automobile through Adams' negligence. Plaintiff sought to hold both defendants. It was held that a motion to dismiss as to defendant Arborio should have been granted. The court said that aside from the differentiations made by the Legislature between a motor vehicle and a trailer as evidenced by various provisions in reference to registration and license plates, there is also "a clear distinction to be made between a motor vehicle and a trailer from the standpoint of the danger accompanying their operation. A motor vehicle has certain dangerous propensities and potentialities. It usually contains a high-powered motor, and its operation must be carefully controlled to protect the safety of others. A trailer in and of itself has no such inherently dangerous properties." [22]

In 1937, the decision in *Pecoraro* v. *Shippers Dispatch, Inc.*[23] was handed down, without discussing the "motor vehicle" aspect although it is apparent that the court must have relied upon it. The plaintiff, while driving his automobile, was negligently hit from behind by a unit consisting of a "puller" and a semitrailer attached. The "puller", or front part, was owned by a person not a party to the litigation while the trailer was owned by the defendant. Judgment was rendered for the plaintiff. Justice Summers stated that "[courts] no longer look at the factual scene before them through the stigmatic lenses devised by legislative ingenuity. It is apparent that these great caravans upon our highways, whose potentiality for destruction under modern conditions is almost incalculable, may, if the independent contractor doctrine is extended to cover this field, by the hiring of a financially circumscribed owner and operator of a "puller", leave the plaintiff, negligently injured by this new transportation unit, with a judgment of recovery for damages fluttering impotently in a cleverly devised financial vacuum." [24]

The *Pecoraro* case did not mention the *Herrick* decision but even a cursory examination would show that they are irreconcilable. Neither case was appealed, but in 1938 the New York Court of Ap-

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COMP. LAWS (Cahill, 1915) § 4825, as amended by MICH. PUB. ACTS 1927, No. 56, MICH. PUB. ACTS 1929, No. 19; see Note (1931) 17 CORN. L. Q. 158.

[19] Liberty Highway Co. v. Callahan, 24 Ohio App. 374, 157 N. E. 708 (1926); Fuller v. Palazzolo, 329 Pa. 93, 197 Atl. 225 (1938).

[20] Herrick v. Arborio, *et al.*, 144 Misc. 15, 258 N. Y. Supp. 5 (1932); Pecoraro v. Shippers Dispatch, Inc., 162 Misc. 309, 295 N. Y. Supp. 153 (1937).

[21] 144 Misc. 15, 258 N. Y. Supp. 5 (1932).

[22] *Id.* at 16, N. Y. Supp. at 7.

[23] 162 Misc. 309, 295 N. Y. Supp. 153 (1937).

[24] *Id.* at 313, N. Y. Supp. at 157.

peals decided the issue squarely in *Hennessy* v. *Walker, et al.*[25] Defendant Walker hired a semitrailer from the defendant Niagara Freight Lines, Inc., for transportation purposes. Through the negligence of Walker's employee, Peck, who was driving the combined vehicle, a head-on collision occurred between the unit and an automobile, driven by Hennessy, which contained two other persons. The action was against Walker, his employee, and Niagara Freight Lines, Inc. The trial judge charged the jury that it "makes no difference whether it [the semitrailer] was hitched on to this truck or put on in such fashion that it could not be taken off. It [the combined vehicle] was occupying the highway, and it was owned by two owners, and under the statute the owners of vehicles on the highway are responsible for their operation." [26] A judgment, affirmed by the Appellate Division, was rendered against the three defendants. Upon appeal the judgment was reversed as to the appellant, Niagara Freight Lines, Inc., and a new trial granted for error in charging the jury. The court said: "* * * it is clear that the purpose and intent of the Legislature was separately to classify motor vehicles, trailers and other kinds of vehicles and to extend liability by Section 59 to an owner of a *motor vehicle* or of a *motorcycle,* as separate and distinct kinds of vehicles, for negligence of others in their operation. The literal wording of the statute so indicates; reading the Vehicle and Traffic Law as a whole makes such a construction imperative. So read, the mischief to be remedied was cured. The mere fact that a trailer is hitched to and drawn by a motor vehicle does not change its character as a separate and distinct vehicle or make it a motor vehicle within the meaning of Section 59. No decision to the contrary has been called to our attention." [27]

So the *Hennessy* case categorized New York as in line with all the other jurisdictions on the matter under discussion. It is submitted that the legislative purpose, by enacting a new section, 59-a of the Vehicle and Traffic Law,[28] was to abrogate this recently enunciated New York doctrine.

III.

The new section went into effect May 18th, 1939. It provides:

> "Every owner of an auto truck or auto tractor and every owner of a trailer or semi-trailer attached, if separately owned,

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[25] 279 N. Y. 94, 17 N. E. (2d) 782 (1938).

[26] *Id.* at 98, N. E. (2d) at 784.

[27] *Id.* at 101, N. E. (2d) at 785. It is interesting to note that the counsel for respondent cited the *Pecoraro* case for the proposition that statutes are not to be so construed as to defeat the legislative purpose, but omitted to cite it for the trailer proposition. It is submitted that the court must have conceded the proposition for which the *Pecoraro* case was cited, and hence did not bother to read the case. This would account for the court's words, last cited in the body of this article above.

[28] N. Y. Laws 1939, c. 472.

> shall be jointly liable and responsible for death or injuries to person or property resulting from negligence in operation by any person legally using or operating the same, or either, with the permission, expressed or implied, of such owners. For the purposes of this section, the auto truck or auto tractor and the trailer or semi-trailer shall be deemed one vehicle and the operator while acting within the scope of his employment shall be deemed the agent of each and the operator of the combined vehicle. * * * " [29]

The above statute undoubtedly changes the law in respect to the liability of separate owners of trucks and of trailers for the negligence of the driver. It is submitted that the enactment will be construed in conjunction with Section 59, and, in effect, constitute a truck and trailer combined a "motor vehicle" although liability will be predicated under Section 59-a. In this writer's opinion the same result could have been effectuated by incorporating the new section into Section 59. Perhaps this was not done so as not to render the imputed negligence enactment complex or confusing. It would not have been logical to amend the definition of "motor vehicle" [30] so as to include a truck and trailer combined for then other provisions would have had to be amended also, particularly those relating to registration and license plates.[31]

It is to be noted, however, that the phrase "operated upon any public highway of this state" is omitted from Section 59-a although

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[29] *Ibid.;* the statute continues along the lines of N. Y. VEHICLE AND TRAFFIC LAW § 59 as follows:

> "§59-a. Joint liability of separate owners of auto trucks or tractors and of trailers or semi-trailers for negligence of operator. * * * All bonds executed by or policies of insurance issued to the owner of an auto truck or auto tractor, or issued to the owner of a trailer or semi-trailer, shall contain a provision for indemnity or security against the liability and responsibility provided in this section; but this provision shall not be construed as requiring that such a policy include insurance against liability of the insured, being an individual, for injuries to his or her spouse or for injury to property of his or her spouse. If an auto truck or auto tractor or a trailer or semi-trailer be sold under a contract of conditional sale whereby the title remains in the vendor, such vendor or his assignee shall not be deemed an owner within the provisions of this section, but the vendee, or his assigns shall be deemed such owner notwithstanding the terms of such contract, until the vendor or his assignee shall retake possession. A chattel mortgagee, conditional vendor, or an entrustor as defined by section fifty-one of the personal property law, of an auto truck or auto tractor, or of a trailer or semi-trailer shall not be deemed an owner within the provisions of this section." (N. Y. Laws 1939, c. 472.)

[30] N. Y. VEHICLE AND TRAFFIC LAW § 2, subsection 8: "'Motor vehicle' shall include all vehicles propelled by any power other than muscular power, except * * * such vehicles as run only upon rails or tracks." There are separate provisions defining "trailers" (subsection 27) and "semi-trailers" (subsection 28).

[31] N. Y. VEHICLE AND TRAFFIC LAW § 11, subds. 1, 6, 8; § 12, subds. 1, 3; and § 14.

it is found in Section 59. Whether this omission was intentional or not does not appear, but it is probable that the courts will construe it to hold the owners liable under 59-a even though the accident occurs elsewhere than on a public highway. It is to be also noted that the liability is joint, and not joint and several. This would have an effect in procedural matters.[32]

An interesting problem which is likely to arise is when either the owner of the truck or the owner of the trailer, instead of a third person, is operating the combined vehicle. In the event of an accident caused by the negligence of the operator, would *both* owners be liable? In *Leppard* v. *O'Brien*,[33] an automobile was co-owned by two brothers. While the car was being driven by one of the brothers, the plaintiff was negligently injured in an accident which also caused the death of the operator of the co-owned automobile. Defendant, the other brother, was not in the car at the time, but the plaintiff sought to hold him liable under the imputed negligence law. The court dismissed the complaint, saying: "Each of them in the eyes of the law had title and possession without the permission of the other and used it in his own right; neither of them could so control possession and operation of the car as to deny permission to the other owner or his agents and employees. It nowhere appears in the statute [New York Vehicle and Traffic Law § 59] that the Legislature intended that the vicarious liability created by its enactment should be visited upon one who could not prevent or control the use or operation of his car by withholding permission. * * * Our conclusion is that [the statute] * * * was not designed to make each part owner of an automobile liable for the consequences of the negligent operation of it by a co-owner or his agent." [34] At first blush, it would seem that if one of the owners of either the truck or of the trailer were driving the combined vehicle, the other owner would not be liable. This would be based on the theory that Section 59-a makes the separate owners of the vehicles co-owners as to the combined vehicle, and in view of the reiteration in the *Leppard* case, that the co-owner is not liable if the auto is driven by the other owner. But there really is no indication that the Legislature intended Section 59-a to make separate owners of parts of a vehicle, co-owners as to all of the vehicle. The enactment, being in derogation of the common law, must be strictly construed.[35] Thus, if the owner of the *trailer* were driving the combined vehicle, his negligence would be imputed to the owner of the truck. This would have been the result even without 59-a. However, where the owner of the *truck* is driving the combined vehicle, the owner of the trailer would

[32] N. Y. CIV. PRAC. ACT § 192; N. Y. CIV. PRAC. RULE 102; see PRASHKER, CASES AND MATERIALS ON NEW YORK PLEADING AND PRACTICE (2d ed. 1937) 721.

[33] 225 App. Div. 162, 232 N. Y. Supp. 454 (3d Dept. 1929), *aff'd without opinion*, 252 N. Y. 536, 170 N. E. 144 (1929).

[34] *Id.* at 165, N. Y. Supp. at 457.

[35] Atwater v. Lober, 133 Misc. 652, 233 N. Y. Supp. 309 (1929).

be liable under Section 59-a for that states that "the auto truck or auto tractor and the trailer or semi-trailer shall be deemed one vehicle and the operator * * * shall be deemed the agent of each." [36] In other words, the owner of the truck is constituted the agent of the trailer-owner, while he is driving the vehicle. Furthermore, Section 59-a is titled "Joint liability of separate owners * * * for negligence of *operator*" as contrasted with Section 59 which is headed "Negligence of *operator other than owner* attributable to owner." (Italics ours.) Besides, the *Leppard* case proceeded on the theory that liability should not be placed on "one who could not prevent or control the use or operation of his car by withholding permission." [37] It is clear that this contention and argument would not be applicable in trailer cases, for such permission may be withheld by either the truck-owner as to his truck, or the trailer-owner as to his trailer.

In all, Section 59-a of the New York Vehicle and Traffic Law, as part of the legislative scheme to prevent accidents (by making owners more prudent in renting or otherwise loaning their vehicles to others) and to give those injured by moving vehicles a more adequate remedy (extra parties to sue), is a very salutary enactment. It shows the progress of the law and engenders the belief that, if new exigencies occur, the Legislature is on hand to do its duty, and cure any defect by an appropriate remedy.

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EXAMINATION BY PSYCHIATRISTS IN CRIMINAL CASES.—Whenever a power of appointment is delegated to or authority conferred upon individuals, nepotism or favoritism will, to a certain degree, be found to prevail as a result of the exercise of the power or authority. The human element to be contended with in public administration is the tendency on the part of the officials to bestow patronage in consideration of family or political relationship rather than in consideration of merit. Such evils have been found to exist in the appointments of lunacy commissions in criminal cases. The Legislature by a recent enactment has endeavored to improve the situation [1] by an act abolishing court-appointed lunacy commissions. Prior to 1936, a statute [2] authorized the judges in criminal cases to appoint lunacy commissions consisting of "three disinterested persons". To alleviate the growing scandals in having unqualified persons appointed as members of a lunacy commission under such a provision, the Legislature

[36] N. Y. VEHICLE AND TRAFFIC LAW § 59-a.
[37] 225 App. Div. at 165, 232 N. Y. Supp. at 457.

[1] N. Y. Laws 1939, c. 861; N. Y. CODE OF CRIM. PROC. §§ 658-662(d) and 870.
[2] N. Y. Laws 1933, c. 564.