

Insurance--Exclusion of Liability Clause--Vehicle and Traffic Law (Weiss v. Preferred Ins. Co. of N.Y., 241 App. Div. 545 (2d Dept. 1934))

St. John's Law Review

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

St. John's Law Review (1934) "Insurance--Exclusion of Liability Clause--Vehicle and Traffic Law (Weiss v. Preferred Ins. Co. of N.Y., 241 App. Div. 545 (2d Dept. 1934))," *St. John's Law Review*: Vol. 9 : No. 1 , Article 28.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol9/iss1/28>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

offend solely against the majesty of the state to which it owes its life, or, in other words, constitute public wrongs only, then the courts of another state can provide no remedy.³ This is on the theory that the courts of this state should not entertain actions simply to redress the outraged dignity of foreign governments.⁴ If, however, such illegal acts also cause injury to the property rights of individual stockholders who are citizens of this state, those citizens are entitled to full relief, so far as such relief can be accomplished by acting directly on the persons of the defendants.⁵ The plaintiff does not sue in his own right but in the right of the corporation and to redress wrongs not personal and peculiar to himself, but to the corporation and alike to all its stockholders.⁶ The right of the stockholder to compel a restoration by the officers of the corporation is coextensive with the right of the corporation itself.⁷ The corporation would not be confined to the courts of the state which created it but could pursue its officers in whatever jurisdiction it might find them; otherwise, it would be remediless if these officers remained without the state.⁸

A contrary rule would be unfortunate at this time, when the majority of corporate enterprises in this state are carried on under incorporations effected under the laws of other states.⁹ Under any other rule, the directors and officials of a foreign corporation, transacting business and having its principal office in this state, might plunder the corporation with impunity and the courts of this state would be without power to redress such wrongs.¹⁰

J. E. H.

INSURANCE—EXCLUSION OF LIABILITY CLAUSE—VEHICLE AND TRAFFIC LAW.—Automobile liability insurance was issued in Connecticut, the place in which the insured resided. The policy excluded liability “while (the automobile is) being driven * * * by any person in violation of law as to age or under the age of sixteen (16) years in any event.” An accident occurred in New York while the vehicle was being operated by a driver under the minimum age limit in New York, although he was over the age of sixteen years and validly li-

³ *Miller v. Quincy*, *supra* note 2; *Ernst v. Rutherford and B. S. Gas Co.*, 38 App. Div. 388, 56 N. Y. Supp. 403 (2d Dept. 1898).

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Greaves v. Gouge*, 69 N. Y. 154 (1877); *Alexander v. Donohue*, 143 N. Y. 203, 38 N. E. 263 (1893); *BALLENTINE, CORPORATIONS* 611, 616; *CLARK, CORPORATIONS* (3d ed.) 486.

⁷ *Miller v. Quincy*, *supra* note 2; *Ernst v. Rutherford and B. S. Gas Co.*, *supra* note 3.

⁸ *Ibid.*; *BALLENTINE, CORPORATIONS* 861.

⁹ *Supra* note 3.

¹⁰ *Miller v. Quincy*, *supra* note 2; *Ernst v. Rutherford and B. S. Gas Co.*, *Fisk v. Chicago, R. I. & P. R. Co.*, both *supra* note 3.

censed in Connecticut.¹ *Held*, that the exclusion of liability for the accident was properly maintained by the insurance company. *Weiss v. Preferred Ins. Co. of N. Y.*, 241 App. Div. 545, 272 N. Y. Supp. 653 (2d Dept. 1934).

It is undisputed that the words, "violation of law as to age," relate to the law as to age at the place of the accident.² By virtue of statute no operator's or chauffeur's license is issuable to any person under eighteen years of age.³ Unlicensed drivers * * * cannot drive motor vehicles."⁴ The public policy of this state is not to allow one under eighteen to operate a motor vehicle.⁵ A person under eighteen years of age is presumed to be incompetent to operate a motor vehicle.⁶

Recognition of the licensees of Connecticut is not obligatory even under the theory of comity.⁷ The New York Motor Vehicle Law recognizes a limited reciprocity to the operators of other states; the extent of the reciprocity conforms to our theory of public policy as indicated above. Only those persons "of the age of eighteen years and upwards," who are non-residents of this state, and are residents of a state having laws, with which such persons have complied, which required such persons in order to operate or drive a motor vehicle on the public highway to be licensed, may operate a motor vehicle on the public highways of this state without being so licensed under New York's statutory regulations.⁸ One validly licensed in another state, operating a motor vehicle in this state while under the minimum age prescribed for the operators of motor vehicles in this state, is amenable to our penal law for driving without a license.⁹

N. S.

¹ Connecticut's age requirement for operators of motor vehicles is sixteen and upwards. Instant case.

² *U. S. Fidelity Co. v. Guenther*, 281 U. S. 34, 50 Sup. Ct. 165 (1930).

³ N. Y. VEHICLE AND TRAFFIC LAW (1929) §20, subd. 1.

⁴ *Id.* subd. 4; *OP. ATTORNEY GEN.* (1910) 411; *Morrison v. Royal Indemnity Co. of N. Y.*, 180 App. Div. 709, 167 N. Y. Supp. 732 (4th Dept. 1917); *Wagoner v. Fidelity Casualty Co. of N. Y.*, 215 App. Div. 170, 211 N. Y. Supp. 188 (3d Dept. 1926).

⁵ The one exception is the junior operator's license, whose right to drive is so limited and circumscribed as to be of no import in the instant case. N. Y. VEHICLE AND TRAFFIC LAW (1929) §20.

⁶ *La Rose v. Shaughnessy Ins. Co.*, 197 App. Div. 821, 187 N. Y. Supp. 562 (3d Dept. 1921).

⁷ "Comity in the legal sense is neither a matter of absolute obligation on the one hand, nor of mere courtesy and good will upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, *having due regard to the international duty and convenience, and to the rights of its own citizens or of the other persons who are under the protection of its laws.*" *Hilton v. Guyot*, 159 U. S. 113 at 163-4, 16 Sup. Ct. 139 (1859). (Italics writer's.)

⁸ N. Y. VEHICLE AND TRAFFIC LAW (1929) §51, subd. 2; *OP. ATTORNEY GEN.* 1912) 223.

⁹ See note on N. Y. VEHICLE AND TRAFFIC LAW (1929) §51 at 142 of booklet, N. Y. VEHICLE AND TRAFFIC LAW, ISSUED BY THE N. Y. STATE DEPT. OF TAXATION AND FINANCE (1934).