

Highway Law--Negligence of Operator other than Owner Attributable to Owner (Chaika v. Vandenberg, 252 N.Y. 101 (1929))

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who purchased it were acting in good faith and supposed that the corporation was solvent.”⁵ In this case, however, all claims of prior creditors had been satisfied and subsequent creditors (the officers) had notice of the agreement to buy back the stock. Even though there was no contract according to the tenets of former decisions of the court,⁶ recovery was permitted. Hence the rule seems to be that recovery may be had under an agreement to buy back stock as against creditors who had notice of the agreement. This result departs from mechanistic legal reasoning—for an agreement heretofore held to be utterly void is in this instance, for sound reasons, enforced.

R. L.

HIGHWAY LAW—NEGLIGENCE OF OPERATOR OTHER THAN OWNER ATTRIBUTABLE TO OWNER.—Plaintiff was struck and injured in New York City by defendant's automobile which was being operated by defendant's son at the time of the accident. The injuries were the result solely of the negligence of the operator of the car. Defendant disclaimed liability on the ground that at the time of the accident his son was not operating the car in his business or with his permission. He testified that he had given his permission for the use of the car on Long Island but had expressly forbidden its being taken into the city. The question with respect to the circumstances under which the car was taken out on the particular occasion was not tried before a jury, the parties having stipulated to waive a jury. The trial Court directed a verdict for the plaintiff, holding that where the owner intrusts his car to another to be used in the business or pleasure of the driver, a violation of restrictions upon the route to be taken should not relieve the owner from liability under the statute. On appeal, *held*, error. The Highway Law¹ imposes no liability on the owner for the negligence of one who uses the automobile unlawfully or without permission of the owner. *Chaika v. Vandenberg*, 252 N. Y. 101, 169 N. E. 103 (1929).

Evidence as to the owner's instructions to a person driving his car is admissible to show the extent of his authority. The intent of the legislature was not to make an arbitrary rule of liability on the part of an owner for all accidents caused by the negligent operation of his car but only in cases where an agency can be spelled out and where the person is "legally using the same with permission of the owner," which is interpreted by the instant case and a number of

⁵ *Re Fechheimer Fishel Co.*, 212 Fed. 357, 363 (C. C. A., 2nd, 1914).

⁶ *Supra* Note 4.

¹ Sec. 282-e (Cons. L., Ch. 25), now Vehicle and Traffic Law, Sec. 59 (Cons. L., Ch. 71): "Every owner of a motor vehicle * * * operated upon a public highway shall be liable and responsible for death or injuries to person or property resulting from negligence in the operation of such motor vehicle * * * in the business of such owner or otherwise, by any person legally using or operating the same with the permission, express or implied, of such owner."

previous cases to mean within the limits of the principal's business and within the extent of the owner's permission.² Some time back the courts inclined toward the view that the owner of a motor vehicle was responsible for the manner in which it was driven,³ tending to favor plaintiffs in negligence actions against owners. Even in those cases, however, it was held to be no more than a presumption that the owner was responsible for the operation of the auto and the presumption disappears where there is substantial evidence to the contrary.⁴ Whether the evidence in this case was substantial remained to be determined. A defendant should have an opportunity to introduce evidence tending to refute the presumption of his control. Operation contrary to instructions vitiates the owner's control as completely as though the car were operated by one who had converted it to his own use. In *Rolfe v. Hewett*,⁵ an owner was sued for injuries resulting in death caused by the negligence of his chauffeur who had been forbidden by the owner to take riders. It was held that the act of the chauffeur in taking the deceased as a rider contrary to his express instructions relieved the owner from liability. The holding in this case, it was thought,⁶ would be overruled by the force of Section 282-e enacted in 1924, but judicial construction has limited the application of the legislative enactment to those cases where the operator is acting within the limitations of the permission granted by the owner of the car.

J. C.

MOTOR VEHICLES—SERVICE OF PROCESS ON NON-RESIDENT DEFENDANT*—JURISDICTION OF CITY COURT.—Action in City Court of New York for personal injuries and property damage sustained in the alleged negligent operation by defendant of one of its buses in the city of New York. The defendant is a foreign corporation, operating a fleet of buses through New York City. It has its place of business in the state of New Jersey and has no office for the transaction of business in this state. The summons and complaint were served on the Secretary of State at Albany pursuant to Section 52 of the Vehicle and Traffic Law. The defendant contends that it was not served within the city of New York, the territorial jurisdiction of the City Court and moves to dismiss the summons and complaint.

² *O'Brien v. Stern Bros.*, 223 N. Y. 290, 119 N. E. 550 (1918); *Coyne v. Kennedy*, 229 N. Y. 550, 129 N. E. 911 (1920); *Fioco v. Carver*, 234 N. Y. 219, 137 N. E. 309 (1922); *Fleugel v. Coudert*, 244 N. Y. 393, 155 N. E. 683 (1927); *Psota v. Long Island R. R. Co.*, 246 N. Y. 388, 159 N. E. 180 (1927).

³ *Ferris v. Sterling*, 214 N. Y. 249, 108 N. E. 406 (1915).

⁴ *Potts v. Pardee*, 220 N. Y. 431, 116 N. E. 78 (1917).

⁵ 227 N. Y. 486, 125 N. E. 804 (1920).

⁶ See *Plaumbo v. Ryan*, 213 App. Div. 517, 210 N. Y. S. 225 (2nd Dept. 1925).

* See Current Legislation Section, *infra* p. 333.