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RECENT DECISIONS

AUTOMOBILES—ACTION AGAINST OWNER FOR INJURIES RECEIVED IN FOREIGN STATE—PRESUMPTION AS TO THE LAW OF FOREIGN STATES.—Defendant, a resident of the state of Pennsylvania, while in New York, loaned his automobile, registered in Pennsylvania, to his son, a resident of New York, for his son's own use. The son drove it to New Jersey where an accident occurred due to his negligence. Plaintiffs, guests of the son, were injured and seek to recover in this action against the defendant for the injuries sustained. At the trial no evidence was given as to the law of New Jersey. Trial term held for plaintiffs, Appellate Division reversed. On appeal, *held,* judgment for defendant affirmed. In the absence of evidence, the law of the foreign state will be presumed to be the same as the common law of New York.[1] And Section 59 of the Vehicle and Traffic Law, imposing a statutory liability on the owner of a motor vehicle when it is driven with his consent, without regard to whose business is being served, has no extra-territorial effect. *Cherwein* v. *Geiter,* 272 N. Y. 165, 5 N. E. (2d) 185 (1936).

At common law, the owner of a vehicle was not liable in negligence for an injury caused by its operation by another person unless at the time of the accident it was being used in the owner's business.[2] The owner was not liable for the negligence of a person to whom he had loaned his automobile, whether a member of his immediate family or a stranger, while it was being used for the business or pleasure of the borrower.[3] The family-car doctrine, under which the head of the family is held liable for the negligent driving of his minor child or wife, while using the car with his permission, but for his or her own pleasure or business [4] has been rejected in this state.[5]

Today, by statute,[6] the liability of the owner has been increased so that he is liable for the driver's negligence when the person oper-

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[1] RICHARDSON, EVIDENCE (5th ed. 1936) § 92.

[2] Rolfe v. Hewitt, 227 N. Y. 486, 125 N. E. 804 (1920); Potts v. Pardee, 220 N. Y. 431, 116 N. E. 78 (1917); Fallon v. Swackhammer, 226 N. Y. 444, 123 N. E. 737 (1919).

[3] Potts v. Pardee, 220 N. Y. 431, 116 N. E. 78 (1917); Van Blaricom v. Dodgson, 220 N. Y. 111, 115 N. E. 443 (1917); Fallon v. Swackhammer, 226 N. Y. 444, 123 N. E. 737 (1919).

[4] HARPER, TORTS (1933) p. 620.

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

[6] N. Y. CONS. LAWS, c. 71 (Vehicle and Traffic Law) § 59 (1929), formerly c. 25 (Highway Law) § 282e (1924), provides, in part: "Every owner of a motor vehicle or motor cycle 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 or motor cycle, 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."

ating the car has his consent, and whether used in his business or not, thus creating a liability where none existed before the enactment.[7] However, the statute has no extra-territorial effect.[8] It does not come into operation until an accident happens on a public highway in *this* state.[9] Where the accident occurs in another state, the law of that state applies in an action for the recovery of damages for negligence.[10] In the absence of any evidence as to the law of the foreign state, it will be presumed to be the same as the common law of the state where the action is brought.[11] Thus, in the instant case, Section 59 of the Vehicle and Traffic Law, not being a restatement of the common law, does not apply, and the owner is not responsible for the tort of the driver.

Although there was a bailment between father and son, it was a gratuitous one, and no such contract resulted [12] as would allow plaintiffs to sue as third-party beneficiaries.[13]

J. K.

CONSTITUTIONAL LAW—VALIDITY OF STATUTE ABOLISHING CAUSES OF ACTION FOR BREACH OF PROMISE TO MARRY AND SEDUCTION.—Plaintiff seeks to recover damages for a breach of promise to marry, and seduction, the acts alleged in the complaint occurring subsequent to the enactment of Article 2-A of the New York Civil Practice Act.[1] At Trial Term, a verdict was directed for the defendant on the grounds that the cause of action had been abolished by statute. The judgment has been affirmed by the Appellate Division, which held that the statute, in so far as it applies to this case, is constitutional. On appeal, *held,* affirmed. The legislature has plenary power in dealing with the subject of marriage, and may, in its discretion, abolish or alter causes of action in relation thereto, when a condition is deemed to exist that is detrimental to the best interests

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[7] Gochee v. Wagner, 257 N. Y. 344, 347, 178 N. E. 553, 554 (1931).
[8] Kernan v. Webb, 50 R. I. 394, 399, 148 Atl. 186, 188 (1929).
[9] *Ibid.*
[10] Metcalf v. Reynolds, 267 N. Y. 52, 195 N. E. 681 (1935).
[11] Matter of Marchant v. Mead-Morrison Mfg. Co., 252 N. Y. 284, 303, 169 N. E. 386, 392 (1929); Weissman v. Banque De Bruxelles, 254 N. Y. 488, 495, 173 N. E. 835, 837 (1930).
[12] 2 WILLISTON, CONTRACTS (1924) § 1039. Professor Williston, in discussing loans for bailee's use without hire, says, "Here as in that case there is likely to be no true contract * * *. There is * * * the possibility of a contract as the parties bargained for an exchange, but generally this will not occur."
[13] 1 WILLISTON, CONTRACTS 394 (1924). "The foundation of any right the third person may have whether he is a sole beneficiary or a creditor of the promisee, is the promisor's contract. Unless there is a valid contract, no rights can arise in favor of anyone."

[1] N. Y. Laws 1935, c. 263.