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Negligence--Owner of Car Who Leaves Keys in Parked Vehicle Not Liable for Injury Caused by Thief

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NOTES

NEGLIGENCE. OWNER OF CAR WHO LEAVES KEYS IN PARKED VEHICLE NOT LIABLE FOR INJURY CAUSED BY THIEF

Richards v. Stanley[1] was an appeal before the Supreme Court of California from a decision of the District Court of Appeals reversing a judgment of nonsuit by the Superior Court.

One of the defendants had parked their car in downtown San Francisco. She left the car unlocked and the keys in the ignition. This was a violation of a municipal ordinance which prohibited leaving a car unattended, "without first stopping the engine and taking the ignition key from the vehicle."[2] Shortly thereafter a thief stole the car and by his negligent operation thereof injured the plaintiff. The plaintiff contended that the defendants were negligent in leaving the car in such a condition, and that their negligence was the legally responsible cause of the injury

The trial court granted the defendants' motion for a nonsuit. The District Court of Appeals reversed the trial court and remanded the cause holding that the issues of negligence and proximate cause were questions for the triers of fact. On appeal before the Supreme Court of California, speaking for the court, Justice Traynor held that as a matter of law, the defendant had no duty to protect the paintiff from injury Therefore there was no question of negligence or proximate cause for the trier of fact to pass upon.

Given these facts, was the court correct in so ruling or should the issues of negligence and causation have been left to the jury? The question develops in the following manner·

Where *A* is injured by the negligence of *B* as a result of a situation created by *C*, *C's* liability to *A* depends on whether *C*, as a "reasonable man," should have foreseen *B's* act.[3] If *B's* act is foreseeable *C* owes a duty of care to *A*, and will be liable for the breach of that duty

"Foreseeability" of an intervening act is normally a question of fact to be determined by the trier of fact.[4] However, where the evidence is uncontested and there is only one reasonable conclusion that can be reached, the court may, as a matter of law, resolve the question and find that *C* had no duty to protect *B* from *A's* negligence.[5] With this in mind we shall examine the position of the court in the present case.

The court, in holding that the defendant owed no duty to the plaintiff to protect him from the injury caused by the thief, relied chiefly on the proposition that:

> "the owner of an automobile is under no duty to persons who may be injured by its use to keep it out of the hands of a third person in the absence of facts putting the owner on notice that the third person is incompetent to handle it."[6]

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[1] 43 A.C. 58, 271 P.2d 23 (1954).

[2] S. F MUNICIPAL (TRAFFIC) CODE § 69.

[3] RESTATEMENT, TORTS § 453 (1939), 38 AM. JUR., Negligence, § 352, p. 1060.

[4] *Ibid.*

[5] Cuneo v Connecticut Co., 124 Conn. 647, 2 A.2d 220 (1938), Armiger v. Baltimore Transit Co., 173 Md. 416, 196 Atl. 111 (1938), Wax v Co-operative Ass'n, 154 Neb. 42, 46 N.W.2d 769 (1951).

[6] 43 A.C. at 62, 271 P.2d at 27 Lane v Bing, 202 Cal. 590, 262 Pac. 318 (1927). Here the plaintiff sustained injury by the negligent operation of a car by a minor. It was held that there was no duty on the parents to protect the plaintiff where there was no knowledge that their minor son was incompetent.

For further support of his decision Justice Traynor pointed out the inconsistency of holding that the defendant owed a duty to the plaintiff in view of Section 402 of the Vehicle Code which states:

> "Every owner of a motor vehicle is liable and responsible for the death of or injury to person or property resulting from negligence in the operation of such motor vehicle, by any person using or operating the same *with the permission,* express or implied, of such owner, and the negligence of such person shall be imputed to the owner for all purposes of civil damages." (Emphasis added.)

Another part of the section restricts the owner's liability to $5,000 in some cases and $10,000 in others. Justice Traynor concludes that liability would produce an anomaly; that is, the owner of an automobile would bear the burden of *unlimited* liability when a *thief stole* his car and subsequently injured another, while his liability is *restricted* where he *voluntarily allows* another to use his automobile.

Justice Spence wrote a dissenting opinion. Citing two District of Columbia cases (discussed below) he maintained that whether the leaving of the key in the ignition switch of the defendants' unlocked car on a downtown street was negligence, and if so, whether it was a proximate cause of plaintiff's injuries were questions on which reasonable minds might differ, and so were for the jury's determination.

There have been no previous cases directly in point decided in California. Therefore it will be of value to see how other jurisdictions have resolved cases involving similar facts.

In the District of Columbia and Illinois there is support for Justice Spence's contention. In *Schaff v. Claxton*[7] the defendant left the keys in his car, and a thief stole it, subsequently injuring the plaintiff. The court held the question of the foreseeability of the thief's act was for the jury This case relied upon an earlier decision in *Ross v. Hartman.*[8] In this case there was the added fact that the act of leaving the keys was in violation of a statute. The court held that this was negligence per se. The defendant's liability was predicated on the reasoning that the statute was intended to protect the public from the negligent operation of stolen vehicles. In the principal case there was a violation of a similar statute. But this ordinance expressly stated, *"nor shall this section or any violation thereof be admissable as evidence affecting recovery in a civil action."*[9] (Emphasis added.)

In *Ostergard v. Frisch*[10] the Illinois Appellate Court, citing *Ross v. Hartman,*[11] held the owner liable for the thief's act on the basis of negligence per se in the violation of a similar statute. A subsequent Illinois Appellate decision, *Cockrell v. Sullivan,*[12] disapproved this holding and overruled it in favor of no liability of the owner, regardless of the violation of the statute. The Supreme Court of Illinois resolved the conflict between these cases in *Ney v. Yellow Cab Co.*[13] Here an employee of the defendant taxicab company, while in the scope of his employment, left the taxicab unattended with the key in the ignition and the motor running.

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[7] 144 F.2d 532 (D.C. Cir. 1944).
[8] 139 F.2d (D.C. Cir. 1943).
[9] See note 2 *supra.*
[10] 333 Ill.App. 359, 77 N.E.2d 539 (1948).
[11] See note 8 *supra*
[12] 344 Ill.App. 620, 101 N.E.2d 878 (1951).
[13] 2 Ill.2d 74, 117 N.E.2d 74 (1954).

This was a violation of the Uniform Traffic Act. A thief stole the cab and in making his escape negligently drove into a parked automobile. The Supreme Court of Illinois said that under the facts presented there was no persuasive authority and no impelling reason for the court to hold, as a matter of law that negligence could not exist and therefore the question was for the trier of fact.

As the above cases strengthen the dissent of Justice Spence, so do the following uphold the majority opinion. In Massachusetts the court in *Slater v. Baker,*[14] on facts similar to the principal case, held, as a matter of law that the act of the thief was a superseding cause precluding the owner's liability This decision was followed in *Sullivan v. Griffin*[15] where the owner not only left the ignition keys in the car but also parked it blocking a sidewalk, in violation of a statute. However, in the case of *Malloy v. Newman*[16] the court, though approving the above cases, sent the question of the foreseeability of the thief's act to the jury on the distinguishing fact that the car was unregistered, in violation of a state statute. The most recent Massachusetts case in point, *Galbraith v. Levin,*[17] held this dubious distinction to be invalid and overruled *Malloy v. Newman.*

Minnesota also is in accord with the California decision. In *Wannebo v. Gates,*[18] where the injury took place sometime after the theft, the court held the owner not responsible but implied by way of dictum that they might hold otherwise if the thief was "in flight" from the scene of crime. However, when the same court was presented with such a case in *Anderson v. Theisen*[19] it refused to put the question of foreseeability to the jury

Besides the above jurisdictions the courts of New York,[20] Maine,[21] New Jersey,[22] and Louisiana[23] have passed on the question in point. They have all taken the position that the thief's act is a superseding cause and that there is no question of the owner's liability for the jury

Thus, in the light of the authorities of other states, the holding of the California court on the facts of the principal case is with the majority However, it is more important that these cases bear out two underlying, conflicting, judicial policies. These, in the last analysis, determine whether a duty could be present; whether the thief's act is a question about which reasonable men may differ. One is the view that a car owner's liability for acts of third parties should be confined to those situations over which he has some substantial degree of control. The other view would place the burden of loss upon the car owner who negligently created the situation conducive to theft and injury

An illustration of the latter view is to be found in the opinion of the court in *Ross v. Hartman.*

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[14] 261 Mass. 424, 158 N.E. 778 (1927).

[15] 318 Mass. 358, 61 N.E.2d 330 (1945).

[16] 310 Mass. 269, 37 N.E.2d 1001 (1941).

[17] 323 Mass. 255, 81 N.E.2d 560 (1948).

[18] 227 Minn. 194, 34 N.W.2d 695 (1948).

[19] 231 Minn. 369, 43 N.W.2d 272 (1950).

[20] Lotitov v. Kyriacus, 272 App.Div. 635, 74 N.Y.S.2d 599 (1947), Wilson v. Harrington, 269 App.Div. 891, 56 N.Y.S.2d 157 (1945), *aff'd,* 295 N.Y. 677, 65 N.E.2d 101 (1946).

[21] Curtis v. Jacobsen, 14 Me. 351, 54 A.2d 520 (1947).

[22] Saracco v. Lyttle, 11 N.J. Super. 254, 78 A.2d 288 (1950).

[23] Midiff v. Wakins, 52 So.2d 573 (La. 1951), Costay v. Bestoff, 148 So. 76 (La. 1933). *But see* Maggiore v. Laundry & Dry Cleaning Service, 150 So. 394 (La. 1933).