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Recent Cases

K. G. S.

drawn and the acceptance of drafts in payment would afford the bank considerable protection, but of course would not protect the bank where it was the owner of the instrument forwarded for collection. The remedy seems to be the enactment in every state in the Union of a statute giving the owner of the paper a preferred claim upon the assets of the insolvent drawee bank. In the meantime banks should forward their items for collection with instructions that they must not be forwarded direct to drawee banks.

ROBERT W REID.

RECENT CASES

AUTOMOBILES — NEGLIGENCE — DANGEROUS INSTRUMENTALITIES. — Hickey, owner of an automobile, met Bullock, and together they had two or three drinks of intoxicating liquor. Thereafter, Hickey notifed the man in charge of his car to allow Bullock to have it at any time. Hickey went to his home, after which Bullock returned, took the car, met the plaintiffs and invited them to ride to a restaurant with him. Bullock, over the protests of the plaintiffs, began speeding. After going four or five blocks, the automobile struck an iron button in the street, careened into a pole and seriously injured the plaintiffs. Plaintiffs sued both the driver and the owner of the car. *Held*, that one given to drinking intoxicating liquor must be regarded as an unsafe and a potentially incompetent and dangerous driver, and that the owner of an automobile who knows of such habits and intrusts his automobile to such a driver may be liable for resulting injuries to third persons. *Trotter v. Bullock*, 148 Wash. 516, 269 Pac. 825 (1928)

The instant case is decided chiefly on the authority of *Crowell v. Duncan*, 145 Va. 489, 134 S. E. 576 (1926) and *Mitchell v. Churches*, 119 Wash. 547, 206 Pac. 6 (1922) both of which rest upon the doctrine that a person who loans his automobile to one who he knows uses intoxicants, is liable for injuries resulting from the negligence of the driver while under the influence of liquor.

Automobile are not be classed with such highly dangerous agencies as dynamite or ferocious animals, and are not dangerous *per se*. *Moore v. Roddie*, 106 Wash. 548, 180 Pac. 879 (1919). In *Mitchell v. Churches*, 119 Wash. 547, 206 Pac. 6 (1922), it was held that while an automobile is not a dangerous instrumentality, yet it may become such in charge of one known to be incompetent by reason of addiction to intoxicants. In *Dixon v. Haynes*, 146 Wash. 163, 262 Pac. 119 (1927) it was held that where a drunken servant is driving a truck load of coal in the business of the master, the master is liable for a wrongful death which is the proximate result of the servant driving an automobile even though the master had no knowledge of his intoxication. The foregoing case involves the direct liability of a master to a third person for the act of an intoxicated servant, and rests squarely upon the doctrine of *respondeat superior* in the application of which knowledge of the master is not an essential factor. Cases like the instant case, however, in which the permissive use of an automobile is granted to another, do not rest upon any master-and-servant or principal-and-agent relationship; they rest rather upon the theory that one must not knowingly subject third parties to persons or instrumentalities which under certain circumstances may become dangerous. In this respect an analogy may be found in the general principle of the common law sustaining the liability of a master to a servant injured by the negligence of a fellow servant, who the master knew or had reasonable grounds to believe was incompetent. K. G. S.

BILLS AND NOTES—CHECKS—FRAUDULENT INDORSEMENT—LIABILITY OF PAYING BANK.—One C., while acting as bookeeper and cashier of the plaintiff corporation, without authority, indorsed checks payable to the corpora-

tion by writing the name of the corporation over his own name. The checks were cashed by C. at various stores, which in turn deposited them with the defendant bank, which in turn received the proceeds of the checks on their presentation to the banks on which they were drawn. The plaintiff sues the bank on the theory that by collecting the proceeds of the checks it had been guilty of conversion, in that it acquired no title to the checks by virtue of the unauthorized indorsements. *Held*, that the plaintiff could recover. *California Stucco Co. v. Marine National Bank*, 148 Wash. 341, 268 Pac. 891 (1928).

The holding of the court in this instance is supported by ample authority. It is generally held that one cashing a check on a forged or unauthorized indorsement and collecting it from the drawee must account to the payee. *Grafton & Knight Manufacturing Co. v. Redelsheimer* 28 Wash. 370, 68 Pac. 879 (1902) *Allen v. Mendelsohn & Son*, 207 Ala. 527, 93 S. W 416 (1922), *Merchants Bank v. National Capital Press*, 288 Fed. 265 (1923) *Independent Oil Men's Ass'n v. Fort Dearborn National Bank*, 311 Ill. 278, 142 N. E. 458 (1922) *Buena Vista Oil Co. v. Park Bank*, 39 Cal. App. 710, 180 Pac. 12 (1919) *Farmer v. People's Bank*, 100 Tenn. 187, 47 S. W 234 (1897). A few courts held an opposing doctrine. The case of *Tibby Bros. Glass Co. v. Farmer's and Merchant's Bank*, 220 Pa. 1, 69 Atl. 280, 15 L.R.A. (N. S.) 519 (1908), is the leading case typical of the latter class.

In the instant case there was no apparent authority in the clerk to make the indorsement, such as was present in the case of *Hill Syrup Co. v. American Savings Bank & Trust Co.*, 133 Wash. 501, 234 Pac. 11 (1925). In that case it was the president of the corporation who wrongfully signed the corporation name over his name in drawing on corporate funds. Consequently they held in the *Hill Syrup* case that the bank was not liable, since the signature was apparently authorized and there was no circumstance to put the defendant on inquiry

An interesting feature of the principal case is the theory on which recovery is had. The Washington court seems to hold that by bringing the action, the plaintiff (the owner and payee) ratified the collection made by the defendant bank from the drawee banks and consequently the defendant bank hold the proceeds of the checks for the plaintiff. It cites *United States Portland Cement Co. v. United States National Bank of Denver*, 61 Colo. 336, 157 Pac. 202 (1916), in support of this theory. Other courts assign different reasons as the basis for the payee's right of recovery. The generally accepted theory is that in the case of paper negotiable only by indorsement, if the indorsement is forged or unauthorized, title does not pass to the transferee; consequently the intermediate bank on collecting the proceeds holds them for the payee, and they may be recovered either by an action for conversion or by an action for money had and received, *Independent Oil Men's Ass'n v. Fort Dearborn National Bank, supra, Standard Steam Specialty Co. v. Corn Exchange Bank*, 220 N. Y. 478, 116 N. E. 386 (1917) *Knoxville Water Co. v. Bank*, 123 Tenn. 364, 131 S. W 447 (1910)

A. O.

PROCESS—IMMUNITY FROM—CONSTRAINT.—The defendant, a non-resident of this state, in driving an automobile while visiting in Seattle collided with another automobile, killing a pedestrian, for whose death he was sued in this action. Defendant was taken in custody of police but was subsequently permitted to go on his own recognition upon agreeing to remain in Seattle until after the inquest. Three days after the accident defendant accepted service of a verbal subpoena to attend the inquest the next day. While at the inquest and before being discharged defendant was served with summons in this action. The question was whether or not defendant was entitled to immunity from service of civil process by reason of the fact that he was then held in this state under constraint and was attending the coroner's inquest as a witness. *Held*, the defendant was not immune from the service of civil process on the ground that where one is being held in tentative custody in a foreign jurisdiction the rule of immunity from service of civil process does not apply. *Husby v. Emmons*. 148 Wash. 333, 268 Pac. 886 (1928).