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Compulsory Automobile Liability Insurance in South Carolina

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of the state has been reached in the original trial and the accused has himself procured a new trial? In either event the salient fact remains that the accused *was* in danger after jeopardy attached during the original trial, and that he *remains* in danger on a second trial — even at his own instance — until he is declared "Not Guilty". And may it not be said that an accused is being tried for the same offense when he procures a second trial because of error in the former trial? He has committed no successive crime; and to attempt to apply the rule of former jeopardy when the state wishes to appeal is to hide, in the words of Justin Miller, "behind convenient terminology".[61]

M. A. SHULER, JR.

COMPULSORY AUTOMOBILE LIABILITY INSURANCE IN SOUTH CAROLINA?

Editor Duluth News-Tribune:

I notice in your paper where a farmer writes that he can't afford liability insurance on his auto but he wants the right to use it without insurance.

My wife was killed by a car driven by a young fellow who admitted he was to blame and was very sorry but hadn't anything with which to help us out. I work on a small salary as a barber and have a family to bring up . . . .

I wonder what would become of this farmer if he should be crippled by a car with no one to pay the damage . . . . If a farmer can't pay $10 or $12 a year to have the other fellow's car insured how can he get along if hurt or killed, or how could he help a person situated like I am if such a farmer was driving the car and was to blame? This thing works both ways . . . .

I write because my story is like thousands of others and I don't like to hear a man complain about the things he needs most.

Duluth s/ John A. Shanoff.[1]

Here is an example of the tragedy that may strike any home in South Carolina tomorrow and probably will occur in several homes today. There is no need for these regrettable accidents to be entirely crippling to the farmer, small businessman or salaried worker.

61. MILLER, APPEALS BY THE STATE IN CRIMINAL CASES, note 1, p. 496, *supra*.
1. 27 MINN. L. REV. 103 (1942).

The situation in South Carolina today is more critical than in Michigan of ten years past when the letter quoted above was written. There are more cars on the road and more of older vintage. It follows that there are also more financially irresponsible people driving today, who, although they would be free to admit blame and would be very sorry, could only wish to help the victim and his family.

The State of South Carolina which has the absolute control of the highways[2] should for the protection of its citizens, the licensors of its highways, enact legislation to cope with the problem of financially irresponsible drivers. Sober reflection on this point should make the obvious need for such legislation clear to the public and to the law makers.

The law in South Carolina today leans toward such protective legislation. Section 437 of the Code of 1942 states that any nonresident using the highways of this state, as a condition precedent, appoints the director of the motor vehicle division of the state highway department as his attorney for the service of summons in any action resulting from an accident.

The courts of South Carolina have also taken steps toward reducing the number of financially irresponsible drivers on the highways by adopting the family purpose doctrine[3] which employs a fictional agency relationship to make the father, or head of the house, responsible for torts committed by anyone in his family through the use of a car furnished by him. This shows the intent of the judiciary of South Carolina to protect the users of the highways from financially irresponsible drivers as "a judgment for damages against an infant daughter or infant son, who is living as a member of the family would be but an empty form".[4]

The legislature, perhaps seeing the great need for such enactments, has made a small, but worthy start toward the desired enactments. Section 8511 of the Code of 1942 states that all taxis, buses and other common carriers must either post surety with a casualty company or carry a prescribed amount of liability insurance.

Section 8792 of the Code of 1942 makes the following provision:

> When a motor vehicle is operated in violation of the provisions of law, or negligently and carelessly, and when any person receives personal injury thereby, or when a buggy or wagon or

2. Edgefield County v. Georgia-Carolina Power Company, 104 S. C. 311, 88 S. E. 801 (1915).
3. Family purpose doctrine as applied to automobiles is recognized in South Carolina. Hewitt v. Fleming, 172 S. C. 266, 173 S. E. 808 (1933).
4. Van Blaricom v. Dodgson et al., 220 N. Y. 111, 115 N. E. 443 (1917).

other property is damaged thereby, the damages done to such person or property shall be and constitute a lien next in priority to the lien for state and county taxes upon such motor vehicle . . . .[5]

This further illustrates that the tendency of the South Carolina Legislature is toward the passage of an Act to prevent *all* victims of financially irresponsible drivers from being destitute of relief.

Other states have made efforts to meet this need in various ways. The State of Florida rules that an automobile is a dangerous instrumentality and that the owner may be held liable for any damages it may cause, no matter who is actually driving.[6]

Pennsylvania, Washington and Hawaii have adopted the Uniform Automobile Liability Security Act.[7] This Act, although adopted by the two states and Hawaii, has been withdrawn from the Uniform Laws Annotated and returned to committee for further study.[8]

The State of Virginia has enacted the Motor Vehicle Safety Responsibility Act[9] and similar Acts have been adopted in many other states.[10] The Virginia Act declares that its provisions shall be applicable to residents and non-residents alike. Some of the more essential provisions of that Act are as follows: When a driver's license has been revoked for conviction of one of certain crimes, *i. e.,* habitual recklessness or negligence, driving while intoxicated or causing or contributing to automobile accident through reckless or unlawful driving, such driver must prove his financial responsibility before the license is reinstated.

A driver's license will be revoked for failure to satisfy a judgment of fifty dollars or more resulting from the ownership, operation or use of an automobile. The license will not be revoked if the driver is allowed by the court to satisfy the judgment in installments and also gives proof of his financial responsibility.

The license will also be revoked upon notice of a motor vehicle

5. Constitutionality upheld. Merchants Planters Bank v. Brigman et al., 106 S. C. 362, 91 S. E. 332 (1916).

6. Southern Cotton Oil Company v. L. J. Anderson, 80 Fla. 441, 86 So. 621 (1920). South Carolina has also held that the automobile is a dangerous instrumentality. Heslep v. State Highway Dept. of South Carolina et al., 171 S. C. 186, 171 S. E. 913 (1933). However, the South Carolina courts do not extend the family purpose doctrine to the extent of the principle announced in the *Southern Cotton Oil Company* case.

7. 11 U. L. A. 124.

8. This Act was withdrawn by the National Conference of Commissioners of Uniform State Laws. HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS OF UNIFORM STATE LAWS AND PROCEEDINGS, p. 69.

9. VA. CODE, c. 90, § 46-386 through § 46-501 (1950).

10. Florida, North Carolina, Iowa, Illinois, New Mexico, Indiana, Arizona, Maine, Nebraska and New Jersey.

accident causing injury, death or property damage of fifty dollars or more, unless the driver furnishes or has furnished sufficient security to meet resulting judgments and until he provides proof of his financial responsibility for the future.

Financial responsibility has been defined by the Act as the ability to meet judgments resulting from traffic accidents in the sum of five thousand dollars for injury or death of one person and ten thousand dollars for injury or death of two persons. Proof of financial responsibility may be furnished in one of four ways: (1) producing a liability policy, (2) posting bond with a surety company, (3) depositing money or securities or (4) producing a self-insurers certificate.

Although a financial responsibility act of the Virginia type has many merits and is a great improvement over the present laws of South Carolina, it is not the complete protection desired. For, what of the *first victim* of a financially irresponsible driver?

Massachusetts pioneered compulsory automobile liability insurance by enacting an exceedingly workable provision in 1925. The present Massachusetts insurance Act[11] provides that in order to register a motor vehicle, the operator must produce a certificate. This certificate may be obtained in three ways. (1) The registrant may deposit five thousand dollars in money or securities or other evidences of indebtedness. (2) He may post bond with a surety company authorized to do business in Massachusetts. (3) Or the applicant may obtain the certificate from an insurance company, such certificate stating that the required liability insurance has been taken out and that a binder has been given to be effective until the policy is actually delivered.

The policy must be at least coterminous with the period of registration. It must have at least five thousand dollars coverage for injuries or death of one person and ten thousand dollars for injuries or death of two persons. The policy cannot be cancelled except upon proof by the insured of a sale, theft, fire or loss of the automobile.

Failure to secure such a certificate will prevent an automobile owner from securing registration. If he drives without registration in Massachusetts, the driver is liable to a fine of from one hundred to five hundred dollars and imprisonment of not more than two years.

Upon close perusal of both the Massachusetts and Virginia Acts, it can easily be seen that the legislation of Massachusetts is superior to that of Virginia in one very important respect. The Massachusetts Act affords *complete* protection to the motorists of the state

11. MASS. GEN. LAWS, c. 90, § 34A etc. (1932).

whereas the Virginia statute affords only partial protection in that the victim may be the first unfortunate to fall prey to that particular financially irresponsible driver and thus would only receive an empty and useless cause of action.

In jurisdiction where such legislation has been proposed, opposition has been resolved into six categories. These objections are that (1) there is no need for such legislation, (2) it would cause a raise in premiums of insurance, (3) it would not give the injured party relief, but merely a cause of action, (4) it would tend to increase accidents and cause the fraudulent submission of false claims, (5) it is unconstitutional and (6) it would force those vehicles classed as "poor risks" off the road.

There is no doubt that these objections are well founded, but in every case they can be overcome by the merits of a compulsory automobile liability insurance act. Obviously in South Carolina today there is a great need for this type of legislation. In 1949 there were 10,716 accidents, in which 548 persons were killed, 4,223 injured and 7,563 suffered property damages.[12] Furthermore, it is common knowledge that less than sixty per cent of motor vehicle accidents are reported.

As to the second category of objections, that there would be a raise in premiums: It seems that this slight extra money would be well spent by the victims of financially irresponsible drivers. Further, in Massachusetts, which enacted a liability insurance act in 1925, a Gallup Poll of 1938 indicated that eighty-four per cent of the people were in favor of the Act.[13] This seems proof enough that such legislation is well worth the extra cost.

The objection that the injured party would only have a cause of action and not a remedy can be rebutted, for this would be a great improvement over the fruitless cause of action that the victims of financially irresponsible drivers now have.

Perhaps the main objection to compulsory automobile liability insurance is the question of constitutionality. This question was answered in the affirmative by the Massachusetts Supreme Court.[14] In answer to this question the court in declaring the Act constitutional based its decision on several grounds.

The most important of these was that the power to license the operation of a car upon the public roads implied the power to with-

12. S. C. STATE HIGHWAY DEPART., SUMMARY OF MOTOR VEHICLE TRAFFIC ACCIDENTS (1949).
13. Note 1, p. 108, *supra.*
14. In Re Opinion of Justices, 147 Mass. 569, 147 N. E. 681 (1925); See note, 39 A.L.R. 1028.

hold the license unless certain conditions were met by the applicant. The condition that every driver must provide security for the discharge of his liability was held to be reasonable. Another ground set forth was the assumption that the automobile was a dangerous instrumentality and the court quoted Massachusetts law to the effect that every holder of property holds it under the implied liability that its use may be regulated so as not to be injurious to others.

Subsequently a measure was proposed in Massachusetts whereby the motorists of that state would contribute to a state controlled fund. From this fund, automobile liability claims arising out of the compulsory insurance act were to be paid. This Act, however, was held to be unconstitutional[15] on the ground that it would create a monopoly, as the insurance was compulsory and the private insurance companies would thus be excluded.

The objection that many automobiles, classed as "poor risks" by insurance companies and therefore unable to secure coverage will be forced off the road has already been overcome in South Carolina with regard to common carriers. A plan has been worked out to cover such carriers. If a common carrier makes application unsuccessfully to three insurers for coverage, this carrier may submit this fact to the South Carolina Compensation Rating Bureau and this agency will assign the risk. The Rating Bureau is an agent of the National Council on Workman's Compensation Insurance which is a volunteer organization made up of a number of liability insurance companies of the United States. There is no reason why such a plan may not be worked out with regard to compulsory liability insurance for automobiles.

At the present time in South Carolina the motorist is only slightly protected from financially irresponsible drivers by the family purpose doctrine and the statutes heretofore mentioned. These measures, although undeniably helpful, fall far short of the desired protection. This could be easily remedied by the adoption of some form of compulsory automobile liability insurance plan.

The national tendency seems to be toward the enactment of this type of legislation. The State of South Carolina whose laws now approach the desired result could easily adopt and apply compulsory automobile liability insurance with a minimum of trouble and confusion. Thus, it would seem logical that this compulsory insurance be enacted into law in South Carolina for the much needed and long over-due protection of the citizens of the state. The writer feels that

15. In Re Opinion of Justices, 271 Mass. 582, 171 N. E. 294 (1930); See note, 69 A.L.R. 388.

this legislation would meet with the approval of a large portion of the public. As for the few people who would complain at the adoption of compulsory automobile liability insurance, let them consider the laconic remark of Mr. Shanoff — "I hate to see a man complain about the thing he needs most".

M. M. WEINBERG, JR.
