

MASTEN, J.

MAY 28TH, 1919.

GOSNELL v. TOWNSHIP OF SOUTHWOLD.

Highway—Nonrepair—Injury to Passenger (Owner) in Motor Vehicle—Statutory Obligation of Township Corporation (Municipal Act, sec. 460)—Failure to Fulfill—Cause of Injury—Effect of Possible Negligence of Driver (Daughter of Owner)—Absence of Control—Competence of Driver—Damages.

This action was brought to recover damages for injury to the plaintiff, who was a passenger on the same occasion, in the motor vehicle referred to in *Walker v. Township of Southwold*, supra. The plaintiff in this action was the owner of the motor vehicle and the father of the girl who was driving it when the accident occurred.

The action was tried without a jury at St. Thomas.
O. L. Lewis, K.C., and R. L. Gosnell, for the plaintiff.
W. K. Cameron, for the defendants.

MASTEN, J., in a written judgment, said that the circumstances with regard to one issue, viz., the breach of statutory duty, were the same in this case as in the *Walker* case, and it was not necessary to repeat what had been said in that case. Even if there were contributory negligence on the part of the driver, Miss Gosnell, as to which the learned Judge expressed no opinion whatever, the plaintiff was not affected by it.

An occupant of a motor vehicle who has no right of control over the driver, and exercises no control over him, is not chargeable with the negligence of such driver: *Foley v. Township of East Flamborough* (1899), 26 A.R. 43; *Mills v. Armstrong* (1888), 13 App. Cas. 1; *Berry on Automobiles*, 2nd ed., sec. 318, note 1.

The fact that the occupant and driver of a motor-vehicle are closely related and members of the same family, does not affect the rule that the driver's negligence is not imputable to the occupant: *Gaffney v. City of Dixon* (1910), 157 Ill. App. 589; *Henry v. Epstein* (1912), 53 Ind. App. 265; *Parmenter v. McDougall* (1916), 156 Pac. Repr. 460.

If the occupant has the right of control over the operation of the motor vehicle and permits it to be negligently driven, he is chargeable with his negligent failure to exercise his right to require the driver to operate the car properly: *Bryant v. Pacific Electric R. Co.* (1917), 164 Pac. Repr. 385.

Here the car was owned by the plaintiff, and he was the father of the driver and sitting beside her, but the occurrence was a sudden emergency occupying no more than a second or two of