Criminal Law—Manslaughter—Liability of Non-driving Automobile Owner— [New York].—The defendant, aware of the defective condition of the brakes on his car, lent it to another who was also familiar with the condition of the brakes. While using the car in the commission of his own business, the borrower, because of the faulty brakes, struck the deceased and inflicted injuries which caused her death. *Held*, both the defendant and the borrower guilty of manslaughter in the second degree. *People v. Rauch.*[1]

Although this seems to be a case of first instance, it does not present any inherently new problems which have not been dealt with by both tort and criminal law. Formerly, non-driving automobile owners were held liable in tort only where the principle of *respondeat superior* could apply.[2] Increased development and use of automobiles and the dangers created thereby accentuated the need for a more exacting liability. To meet this need, the fiction of *respondeat superior* was stretched, by many courts, beyond its normal borders[3] in the development of the family car doctrine.[4] Moreover, in many cases, where the facts paralleled those in the instant one, the owner was held liable in tort.[5]

This expansion of social responsibility was not confined to tort law, but also has found expression in the criminal law. It has been held that an officer of a railroad could be guilty of manslaughter where negligence was shown in hiring of incompetent engineers or the control of train operations.[6] Similarly, an owner, who knowingly permitted an intoxicated driver the use of his car, has been held guilty of manslaughter.[7] Since an accident may be caused either by an incompetent driver or a defective car, and since there seems to be no significant difference between lending a defective car to a competent driver or lending a good car to an incompetent driver, the result in the instant case appears correct. Unless perhaps the driver of the car intentionally caused the homicide, a court, as in the tort cases,[8] should have no difficulty in establishing the necessary causal relationship.[9] Such could be found in the defendant's reckless disregard of the safety of others in permitting the use of his defective car.

The trend suggested by the decision in the instant case would not make criminal

[1] County Court of Queens County, N.Y. (No opinion—appeal pending.)

[2] See Fallon v. Swackhamer, 226 N.Y. 444, 123 N.E. 737 (1919); Halverson v. Blosser, 101 Kans. 683, 168 Pac. 863 (1917).

[3] See Babbitt, The Law Applied to Motor Vehicles § 1178 (3d ed. 1923), 36 Harv. L. Rev. 102 (1922).

[4] Typical of such distortion is King v. Smythe, 140 Tenn. 217, 204 S.W. 296 (1918); also see Lynch v. Dobson, 108 Neb. 632, 188 N.W. 227 (1922); Graham v. Page, 300 Ill. 40, 132 N.E. 817 (1921) (dictum); Babbitt, The Law Applied to Motor Vehicles § 1179 (3d ed. 1923).

[5] Donovan v. Garvas, 121 Misc. 24, 200 N.Y. Supp. 253 (1923); Foster v. Farra, 117 Ore. 286, 243 Pac. 778 (1926); Hinsch v. Amirkanian, 145 Atl. 232 (N.J.L. 1929); also see 7–8 Huddy's Cyclopedia of Automobile Law § 88 (9th ed.).

[6] People v. Smith, 56 Misc. 1, 105 N.Y. Supp. 1082 (1907).

[7] State v. Hopkins, 147 Wash. 198, 265 Pac. 481 (1928) *certiorari* denied, 278 U.S. 617 (1928); *Ex parte* Liotard, 47 Nev. 169, 217 Pac. 960 (1923).

[8] See note 5 *supra*.

[9] 1 Wharton's Criminal Law § 194, 204 (12th ed. 1932); see Cahill's Consol. Laws of N.Y. 1930, c. 41, § 1052 (3).

liability coextensive with that in tort. The directed verdict[10] and the statutory necessity for the jury to find "culpable"[11] negligence would afford sufficient safeguards against any extreme applications,[12] whatever meaning may be given "culpable."

Declaratory Judgment—Alternative or Exclusive Remedy—[Ohio].—The plaintiff lessor, having given due notice of default in payment of rent and taxes on the part of the defendant lessee, served him with notices of intention to terminate their ninety-nine year lease and to reenter the premises as stipulated in the forfeiture clause. Demand for possession not being complied with, the lessor brought an action under authority of the Uniform Declaratory Judgment Act[1] asking the court to declare, (a) the lease terminated, (b) that the lessor had the right to reenter the premises, and (c) that the lessee be ordered to surrender possession thereof. The lower court refused a declaration on the ground that the plaintiff has full and complete remedies in either statutory action of forcible entry and detainer or an action of ejectment. The plaintiff appeals. *Held*, judgment affirmed. Proceeding for declaratory judgment is not substitute or alternative for common-law actions. *Eiffel Realty & Investment Co. v. Ohio Citizens Trust Co. et al.*[2]

The majority opinion seems to have lost sight of the purpose and intent underlying the Uniform Declaratory Judgment Act. The requirements of modern practice demand a liberal interpretation of the Act. The declaratory judgment includes, but is not to be confined to, cases which are justiciable but which are not yet ripe for coercive relief. In this type of case declaratory judgment is exclusive. However, there is another type of case which was meant to be included under the Uniform Declaratory Judgment Act, namely, that in which the plaintiff has a right to ask for consequential relief, but, because of a desire to maintain relations with the defendant or a belief that a mere declaration of rights would suffice, he does not wish to demand the exacting and final results of ordinary coercive relief. English practice,[3] the terms of the Uniform Declaratory Judgment Act,[4] and the majority of the American state decisions[5] affirm this option of declaratory or coercive relief. To the contrary are New York decisions on which the Ohio court heavily relied. However, while broad discretion is granted New York courts by the New York Civil Practice Act,[6] in Ohio discretion of the court is restricted to refusing a declaratory judgment only when it will not terminate the controversy or remove uncertainty.[7]

[10] 1 Wharton's Criminal Law § 397 (12th ed. 1932).

[11] See Cahill's Consol. Laws of N.Y. 1930, c. 41 § 1052 (3).

[12] Note possible application by analogy to doctrine of MacPherson v. The Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916).

[1] Throckmorton's Ohio Code 1936, § 12102-1 to 12102-16.

[2] 8 N.E. (2d) 470 (1937). *Contra*, Stephenson v. Equitable Life Assurance Soc. 5 U.S. Law Wk. 141 (U.S.C.C.A. 4th 1937).

[3] English Order XXV, Rule 5 of Supreme Court Rules of 1883, Statutory Rules and Orders 110.

[4] Throckmorton's Ohio Code 1936, § 12102-1, 12102-5, 12102-6, 12102-8, 12102-12, 12102-15.

[5] For full citation of cases see Borchard, Declaratory Judgment 151-153 (1934).

[6] N.Y.C.P.A. 1931, § 473, Rules of Practice 212.

[7] Throckmorton's Ohio Code 1936, § 12102-6.