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tion 5611-2 of the Ohio General Code, governing appeals from the Board of Tax Appeals, forbade reliance upon its Rule as to cross-appeals. But, as the Chief Justice noted in his dissent, the court's decision may foreclose a cross-appeal where the notice of appeal is filed toward the end of the 30 day period.[13]

Kelch v. Sutton[14] is a good example of the "harmless error rule" being invoked in an appeal to the courts from an administrative agency's decision. The court of appeals upheld a joint trial before a civil service commission of two police officers alleged to have made false reports during a police investigation. Although the officers did not act in concert in any way, the court held their concurrent trial was not a ground for reversal, even though it constituted "technical error." The court emphasized that the officers were represented by counsel, were fully advised of the charges and were not prejudiced from having a fair trial.

The question of service of a tax assessment by registered mail under Section 5546-9a of the Ohio General Code was considered in *State* ex rel. *Sherrick v. Peck*.[15] The court of appeals held that service will be presumed to have been received on the date appearing on the registered return card purporting to bear the signature of the vendor or consumer. Evidence may be introduced, however, to show that notice was not actually received by the taxpayer until a later date. On the other hand, under Section 5546-9a, the taxpayer may file objections with the Tax Commissioner by registered mail. If registered mail is used and there is adequate postage, the date of filing is the date of deposit with the post office.

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In *Sams v. Hughes*[1] the issue before the court was whether the owner of an automobile, which had been left at a garage for repairs, was liable for

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[13] Goldman v. Harrison, 156 Ohio St. 403, 405, 102 N.E.2d 848, 849 (1951)

[14] 107 N.E.2d 352 (Ohio App. 1952). This case was reversed on another ground. On another evidentiary question see State v. Columbus Green Cabs, 91 Ohio App. 164, 104 N.E.2d 709 (1950) in which it was held that the Bureau of Unemployment Compensation must offer proof of the actual amount of tips earned by cab drivers. An assumed 10 per cent tip is not sufficient evidence, although Bureau's determination is prima facie correct and the law requires tips to be reported by employer as part of wages received.

[15] 158 Ohio St. 122, 107 N.E.2d 145 (1952). Another familiar rule, the exhausting of administrative remedies, was considered in Renner v. Gordon, 91 Ohio App. 208, 107 N.E.2d 889 (1951), *appeal dismissed*, 157 Ohio St. 93, 104 N.E.2d 182 (1952). It was held that taxpayer could not contest an assessment of personal property tax in a collection action because she did not contest the assessment first before the Board of Tax Appeals.

the negligent driving of the car by the garage owner's employee which resulted in an accident on the way to the owner's home.

The court stated that the delivery of an automobile creates a contract of bailment, an implied condition of which is the redelivery of the automobile to its owner, and where the owner reserves no control over the means of redelivery the bailee is an independent contractor rather than an agent of the owner. Therefore, the owner of the auto incurred no liability for the negligent operation of the automobile by the garageman in making the redelivery.

In *Angel v. Leech*[2] it was held that upon proper motion of the defendant the plaintiff must elect to proceed either against the principal or the agent as the party defendant where the evidence discloses that the principal's liability is based on the doctrine of respondeat superior. In this situation the court must order the plaintiff to elect since it is an established rule in Ohio that the liability of the principal is several only and not joint with the servant.[3]

The case of *Senn v. Lackner*[4] involved the liability of a master under the doctrine of respondeat superior. The defendant master had loaned an automobile to an employee to be used for his convenience in traveling between his home and his place of work. While driving to work the employee collided with another car killing its driver. In affirming judgment for the defendant, the Ohio Supreme Court relied on a principle previously established in Ohio, namely, that the test of a master's liability is not whether the tortious act was done during the existence of the servant's employment, but whether it was done by the servant while engaged in the service of, and while acting for the master in the prosecution of the master's business.[5] The court stated that the mere fact that the defendant owned the automobile in question was not sufficient to charge him with liability in the absence of proof that the employee was acting within the scope of his employment and that the right to control his conduct was in the defendant.

Although the case was decided on a failure of proof in support of the

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[1] 90 Ohio App. 199, 105 N.E.2d 460 (1950)

[2] 90 Ohio App. 301, 106 N.E.2d 85 (1950)

[3] See the basic discussion of this problem by Circuit Judge William Howard Taft in Warax v. Cincinnati, N.O.&T. Ry., 72 Fed. 637 (1896); French, Adm'r v. Central Construction Co., 76 Ohio St. 509, 81 N.E. 751 (1907); Clark v. Fry, 8 Ohio St. 358 (1858)

[4] 157 Ohio St. 206, 105 N.E.2d 49 (1952)

[5] Lima Ry. v. Little, 67 Ohio St. 91, 65 N.E. 861 (1902)

[6] 106 N.E.2d 587 (Ohio App. 1951).

[7] The leading case in support of this doctrine is Davis v. Merrill, 133 Va. 69, 112 S.E. 628 (1922). See MECHEM, OUTLINES OF THE LAW OF AGENCY § 403 (4th ed. 1952).