

# Michigan Law Review

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Volume 36 | Issue 5

---

1938

## AUTOMOBILES - EFFECT OF VIOLATION OF PENAL LICENSING STATUTE

Michigan Law Review

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### Recommended Citation

Michigan Law Review, *AUTOMOBILES - EFFECT OF VIOLATION OF PENAL LICENSING STATUTE*, 36 MICH. L. REV. 834 (1938).

Available at: <https://repository.law.umich.edu/mlr/vol36/iss5/9>

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AUTOMOBILES — EFFECT OF VIOLATION OF PENAL LICENSING STATUTE — Plaintiff sued to recover for damages sustained when a negligent defendant collided with plaintiff's car. An unlicensed operator was driving plaintiff's car at the time. A state statute<sup>1</sup> prohibited the operation of an automobile by an unlicensed driver, and specifically provided that no person shall "permit" operation of his car by such a driver. *Held*, plaintiff may recover, as he reasonably believed that the driver was licensed. *Bowdler v. St. Johnsbury Trucking Co.*, (N. H. 1937) 189 A. 353.

The conflicting theories as to the effect of violation of penal statutes, in tort cases, is nowhere better illustrated than in the cases involving the registration and licensing statutes. An earlier New Hampshire case, *Johnson v. Boston & Maine R. R.*,<sup>2</sup> involving an unlicensed plaintiff-owner-driver, had resulted in a denial of recovery, whereas in Massachusetts the owner of an

<sup>1</sup> N. H. Pub. Laws (1926), c. 101, § 9.

<sup>2</sup> 83 N. H. 350, 143 A. 516 (1928); but for a contrasting treatment of the statute regulating non-resident drivers, see *L'Esperance v. Sherburne*, 85 N. H. 103, 155 A. 203 (1931).

unregistered car may not recover<sup>3</sup> but the unlicensed owner may.<sup>4</sup> Often, it is said, the real question in the case is that of proximate cause;<sup>5</sup> in fact, in at least one case similar to the principal case, recovery has been permitted on that basis.<sup>6</sup> In New Hampshire, after the *Johnson* case,<sup>7</sup> the court had to determine the effect of the presence of an unlicensed driver in a case in which plaintiff was merely a passenger, and the court refused to extend the doctrine of the *Johnson* case to such a situation.<sup>8</sup> Now, in the instant case, the plaintiff was the owner of a car which was damaged while being driven by an unlicensed operator, and the court was therefore confronted with the second provision of the statute as well as the first.<sup>9</sup> Again, as in the *Vidal* case,<sup>10</sup> the court found no legislative intention to bar the plaintiff where, as in the principal case, it appeared that there was a reasonable belief that the operator was licensed. It is submitted that on the basis of lack of proximate cause there will be but few jurisdictions denying recovery under similar circumstances, as a matter of law, even though the owner does have knowledge of the driver's failure to have a license. The dissent would extend the doctrine of the *Johnson* case to the principal case on the theory that there is a duty on the owner to ascertain whether or not the driver has a license, and that a penal statute can set up a dual standard of conduct. It is submitted that this would extend the interpretation beyond the probable intent of the legislature, and would not be supported by logic.<sup>11</sup>

<sup>3</sup> *Brown v. Alter*, 251 Mass. 223, 146 N. E. 691 (1925), but the majority of jurisdictions hold contra. See BERRY, AUTOMOBILES, 5th ed., § 267 (1926).

<sup>4</sup> *Bourne v. Whitman*, 209 Mass. 155, 95 N. E. 404 (1911). This is the majority rule; see BERRY, AUTOMOBILES, 5th ed., § 291 (1926).

<sup>5</sup> *Opplé v. Ray*, 208 Ind. 450, 195 N. E. 81 (1935); *De Vite v. Connecticut Co.*, 112 Conn. 670, 151 A. 320 (1930); *Spencer v. Phillips*, 219 Mich. 353, 189 N. W. 204 (1922); 35 L. R. A. (N. S.) 699 (1912).

<sup>6</sup> *Halsan v. Johnson*, 155 Ore. 583, 65 P. (2d) 661 (1937); and see *Gordon v. Bedard*, 265 Mass. 408, 164 N. E. 374 (1929), where the owner had knowledge that the driver had no license, and it was held a question of causation for jury.

<sup>7</sup> *Johnson v. B. & M. R. R.*, 83 N. H. 350, 143 A. 516 (1928).

<sup>8</sup> *Vidal v. Errol*, 86 N. H. 1, 162 A. 232 (1932).

<sup>9</sup> N. H. Pub. Laws (1926), c. 101, § 9.

<sup>10</sup> *Vidal v. Errol*, 86 N. H. 1, 162 A. 232 (1932).

<sup>11</sup> Standards of conduct set up by penal statutes are carried over to civil actions on the theory that such a standard was intended to govern the conduct of persons toward each other, as well as to the state. To say that a different standard shall apply to the civil case, is to deny the premise of the reason for which the criminal statute is made applicable to civil rights and duties.