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NEGLIGENCE--PROXIMATE CAUSE--EFFECT OF NON-REGISTRATION OF AUTOMOBILE

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NEGLIGENCE—PROXIMATE CAUSE—EFFECT OF NON-REGISTRATION OF AUTOMOBILE—Defendant *X* owned a non-registered automobile which was parked on a public way by defendant *Y*, an agent of *X*. The keys were left in the car in violation of a statute.[1] Later in the same day the car was stolen. Plaintiff, a pedestrian, was injured by the thief's negligent operation of the car. In an action to recover for the injury, a verdict was directed for defendants. On appeal, *held*, affirmed. As a matter of law, defendant's action in allowing a non-registered automobile containing its keys to remain on a public way was not the proximate cause of plaintiff's injury. *Galbraith v. Levin, Galbraith v. Cohen*, (Mass. 1948) 81 N.E. (2d) 560.[2]

In many states, including Massachusetts, when keys are left in a registered car parked on a public way, in violation of a statute, the owner is not liable to persons injured by the negligent driving of a thief who has stolen the car, because violation of the statute is not considered the proximate cause of the injury.[3] It is difficult to see why the owner's failure to comply with a registration statute

[1] Mass. Gen. Laws (Ter. Ed.) 1932, c. 90, § 13.

[2] The principal case overruled Malloy v. Newman, 310 Mass. 269, 37 N.E. (2d) 1001 (1941), which involved very similar facts.

[3] Sullivan v. Griffin, 318 Mass. 359, 61 N.E. (2d) 330 (1945); one of the most recent cases so holding is Wannebo v. Gates, (Minn. 1948) 34 N.W. (2d) 695. See 46 MICH. L. REV. 271 (1947) for an analysis of the duty and causation problems involved in this type of case, and 158 A.L.R. 1374 (1945), where it is stated that some states let the jury determine whether the criminal act of the intermeddler or the negligence of the owner is the proximate cause of the injury.

should alter the result. In order to found a cause of action for negligence on the breach of a statutory requirement, the plaintiff must show that he was in the class which the statute was intended to protect,[4] and that the injury he suffered was one which the statute was intended to prevent.[5] Courts are justified in finding a statutory duty to highway users and pedestrians when the legislative intent is to prevent automobiles which do not meet prescribed standards of operating fitness from using the highways.[6] In general, however, it is held that registration statutes create no duty to this class of persons,[7] being enacted primarily for revenue and identification purposes,[8] with a view to the control and prevention of theft.[9] Registration cannot affect the proficiency of the driver or the mechanical performance of the car; hence there is little justification for a finding of negligence in mere non-registration. Assuming, however, that non-registration is evidence of negligence, the plaintiff must show that violation of the statute was the proximate cause of his injury.[10] The human and physical elements which contribute to an injury are not affected by mere non-registration, so that no direct causal chain can be established. Moreover, where the causation is indirect, it should be particularly clear that a condition of non-registration does not affect foreseeability of intervening acts or of harm. It follows, therefore, that liability should not be founded on non-registration in negligence cases even in the absence of criminal intervention. The majority of jurisdictions do not attribute any causal significance to non-registration.[11] The principal case reaches the same result where there is criminal intervention, refusing to extend the consequence of non-registration, which would warrant liability in this jurisdiction in the absence of the intervening criminal act. This case may mark the beginning of a revaluation of the basis of the Massachusetts decisions[12] in the light of the above analysis.

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[4] PROSSER, TORTS, 266 (1941).

[5] De Haen v. Rockwood Sprinkler Co., 258 N.Y. 350, 179 N.E. 764 (1932).

[6] Gonchar v. Kelson, 114 Conn. 262, 158 A. 545 (1932).

[7] PROSSER, TORTS, 266 (1941). A much better argument for the creation of a duty can be based on statutes which require specific measures to be taken when leaving an automobile unattended. See note 2, supra.

[8] Holmes v. Lilygren Motor Co., 201 Minn. 44, 275 N.W. 416 (1937).

[9] Anderson v. Commercial Credit Co., 110 Mont. 333, 101 P. (2d) 367 (1940).

[10] Gonchar v. Kelson, 114 Conn. 262, 158 A. 545 (1932).

[11] See, 163 A.L.R. 1375 (1946).

[12] In Dudley v. Northampton Street Ry. Co., 202 Mass. 443 at 446, 89 N.E. 25 (1909), the court recognized the distinction between unlawful acts which are merely attendant conditions and those which are contributing causes, but refused to apply the distinction because the automobile was ". . . a peculiar kind of vehicle which has only recently come into use. . . ." It is submitted that this reason no longer has the strength it had in 1909.