The main argument of policy advanced by the courts is that the purpose of the Bankruptcy Act is to give the bankrupt a "new start in life," which he cannot obtain if his earnings are tied up.[21] On the other hand, it is also the clear policy of the act to preserve for the creditor the rights which the bankrupt has given him in his property, collateral to his personal obligation.

Probably the best reason for recognizing a lien is that it is what the parties thought they were creating.[22] The purpose of the transaction was to give the creditor some assurance of payment other than the personal obligation of the debtor.[23]

The federal courts in Illinois have had to take account of the determined stand of the Illinois Supreme Court in recognizing wage assignments as liens on wages earned after bankruptcy.[24] For a while there were different decisions by different judges in the District Court for the Northern District of Illinois.[25] The Circuit Court of Appeals for the Seventh Circuit, however, has recently repudiated the rule of the Illinois Court and adopted that prevailing in the other federal courts.[26]

FRED MARSHALL MERRIFIELD

RECENT CASES

Bills and Notes—Checks—Presentment for Payment—Negotiable Instruments Law—[Massachusetts].—Defendant drew a check dated Dec. 9th in favor of plaintiff on a Boston bank and procured its certification before delivery. Plaintiff's attorney received the same in Boston and mailed it to the plaintiff on the 10th. Plaintiff lived about 50 miles from Boston getting his mail only by making irregular trips to the local post office. On the 15th, plaintiff sent the check by messenger to a local bank for deposit and collection. Check was refused deposit because of the failure of the drawee bank on the morning of the 15th. Plaintiff brought suit against the defendant drawer. *Held*, decree dismissing the bill affirmed. *Seager v. Daughines et al.*, 187 N.E. 94 (Mass. 1933).

Although a check is a bill of exchange drawn on a bank payable on demand, it is not intended to circulate as a promissory note. *Mussey v. Eagle Bank*, 9 Metc. 314 (Mass. 1846); *Gordon v. Levine*, 194 Mass. 418, 80 N.E. 505 (1907). At the expiration of a reasonable time after issue, the risk of the drawee bank's solvency terminates as to the

[21] See particularly, In re Home Discount Co., *supra*, note 2.

[22] In re Lind, *supra*, note 4. [23] Note, 11 Boston L. Rev. 126 (1931).

[24] Mallin v. Wenham, and other cases cited *supra*, note 2.

[25] Injunctions were refused by Barnes, Dist. J., in Matter of Jackson, Case No. 49,545 (March, 1932), and Matter of Custin, *supra*, note 20 (both cases unreported); an injunction was granted by Carpenter, Dist. J., in Matter of Skorcz, Case No. 50,215 (October, 1932) (unreported).

[26] In re Skorcz, 67 F. (2d) 187 (C.C.A. 7th, 1933); Matter of Hunt, C.C.A. 7th, Case No. 4936 (Nov., 1933).

drawer and becomes the risk of the holder. N.I.L. § 186; *Gage Hotel v. Union Natl. Bank*, 171 Ill. 531, 49 N.E. 420 (1898); *Carroll v. Sweet*, 128 N.Y. 19, 27 N.E. 763, 13 L.R.A. 43 (1891); 2 Daniel, Negotiable Instruments (5th ed. 1903), 610, § 1590. But the drawer is discharged only to the extent of the loss resulting from the holder's negligence in presentment. *Stevens v. Park*, 73 Ill. 387 (1874); *Gordon v. Levine*, 194 Mass. 418, 80 N.E. 505 (1907); *Rosenbaum v. Hazard*, 235 Pa. 206, 82 Atl. 62, 38 L.R.A. (N.S.) 255 (1911); *Searle v. Norton*, 2 M. & R. 401 (1793); Brannan, Negotiable Instruments Law (4th ed. 1926), 885, § 186.

It was early determined that where the payee receives the check at or near the place where the drawee bank is situated, "reasonable time" for presentment means only until the close of banking hours on the day after receipt. *Watt v. Gans*, 114 Ala. 264, 21 So. 1011, 62 Am. St. Rep. 99 (1897); *Bickford v. First National Bank*, 42 Ill. 238, 89 Am. Dec. 436 (1866); *Carroll v. Sweet*, 128 N.Y. 19, 27 N.E. 763, 13 L.R.A. 43 (1891); *Rickford v. Ridge*, 2 Campb. 537 (1810). Where the payee receives the check in the country, it has been held that the rule of diligence may not be so exacting. *Hamlin v. Simpson*, 105 Ia. 125, 74 N.W. 906 (1898); *Freiberg v. Cody*, 55 Mich. 108 (1884); *Nebraska Natl. Bank v. Logan*, 35 Neb. 182, 52 N.W. 808 (1892); *Prideaux v. Criddle*, L.R. 4 Q.B. 455 (1869); but see *McDonald v. Mosher*, 23 Ill. App. 206 (1897).

In the principal case, the court ruled that where the payee receives the check at a place distant from the place of payment, he must, in the absence of unusual circumstances, forward it by post or other recognized methods of transportation to some person at the place of payment on the next secular day after it is received, and that person to whom it is thus forwarded must present it for payment on the next secular day after it has reached him in regular course. This rule has been widely accepted. Byles, Bills of Exchange (5th Am. ed. 1874), 92; 2 Daniel, Negotiable Instruments (6th ed. 1913), 786, § 1593; Parsons, Notes and Bills (2d ed. 1876), 72–74; 8 C.J. 542; 5 R.C.L. 510 n. 18, 19. And has been affirmed, despite the court's recognition that in the collection of checks the usual banking practice may require more time than that allowed by this rule. *First Natl. Bank v. Grafton*, 80 Md. 475, 31 Atl. 302 (1895); *Holmes v. Roe*, 62 Mich. 199, 28 N.W. 864; *Natl. Bank v. Miller*, 37 Neb. 500, 40 Am. St. Rep. 499 (1893); *Gifford v. Hardell*, 88 Wis. 538, 60 N.W. 1069 (1894); *Gregg v. Beane*, 69 Vt. 22, 37 Atl. 248 (1895). On the other hand, some courts have lessened the rigidity of the rule and have held that presentment for payment in accordance with established business custom will be due diligence. *Merchants' Bank v. State Bank*, 10 Wall. (U.S.) 604, 651, 19 L. Ed. 1008, 1020 (1870); *Marrett v. Bracket*, 60 Me. 524 (1872); *Taylor v. Wilson*, 11 Metc. 45 (Mass. 1848); *Hare v. Henty*, 30 L.J.C.P. 302 (1861). Both the Negotiable Instruments Law and the English Bills of Exchange Act adopt this view. Negotiable Instruments Law § 186; Bills of Exchange Act § 74 (1). In England after the Bills of Exchange Act, it has been consistently held that "reasonable time" under the statute is purely a question of fact for the jury. *Wheeler v. Young*, 13 T.L.R. 468 (1897); Brannan, Negotiable Instruments Law (4th ed. 1926), 928. American courts, notwithstanding enactment of the Negotiable Instruments Law, prefer to regard "reasonable time" as a question of law so long as the facts are not in dispute. *Sheffield v. Cleland*, 19 Ida. 612, 115 Pac. 20 (1911); *First Natl. Bank v. Korn*, 179 S.W. 721 (Mo. App. 1915); *Commercial Bank v. Zimmerman*, 185 N.Y. 210, 77 N.E. 1020 (1906); but see *Citizen's Bank v. First Natl.* 135 Ia. 605, 113 N.W. 481, 13 L.R.A. (N.S.) 303 (1907); Brannan, Negotiable Instruments Law (4th ed. 1926), 927. A number of courts have

based their results upon business custom and usage in accordance with the spirit of the Negotiable Instruments Law. *Plover Savings Bank v. Moodie*, 135 Ia. 685, 110 N.W. 29 (1907); *Sublette Exchange v. Fitzgerald*, 168 Ill. App. 240 (1912); *Gordon v. Levine*, 194 Mass. 418, 80 N.E. 505 (1907). The last case cited, a leading case on the subject, established the rule that deposit for collection within one day after receipt and transmission for collection through the usual course adopted by that bank should be regarded as due diligence. The rule of the present case, though not required for the decision, seems to restrict unnecessarily the more liberal view of the *Gordon* case.

WILLIAM L. FLACKS

Bills and Notes—Contract upon a Negotiable Instrument—Negotiable Instruments Law § 16—[Massachusetts].—Defendant was made the payee of a note, secured by a mortgage, in order to defraud the creditors of the actual owner of the note. Defendant then assigned the note and mortgage to the actual owner by a separate instrument under seal without consideration or delivery of the note or mortgage. The assignment was not in fraud of the defendant's creditors, nor were debts created in reliance on the apparent ownership of the note. The negotiability of the note did not clearly appear. Suit was brought to reach the note in payment of certain debts of defendant. *Held*, the plaintiff could not recover as the assignment was valid and irrevocable. *O'Gasapian v. Danielson*, 187 N.E. 107 (Mass. 1933).

This decision represents the prevailing view as to the assignment of non-negotiable instruments in the jurisdictions where the seal is effective. *Connor v. Trawick's Adm'r*, 37 Ala. 289 (1861); *Newell v. Newell*, 34 Miss. 385 (1857); *Tarbox v. Grant*, 56 N.J. Eq. 199, 39 Atl. 378 (1898); see also Contracts Restatement (1932), § 157; Williston, Contracts (1920), § 440. This effect was given to a seal even in a jurisdiction that has so far reduced the formalities of a sealed instrument that not even a scroll is required. Mass. Acts of 1929, c. 377, § 2. See 15 Am. Bar Ass'n Jour. 460. Where, however, the rights of an assignee are regarded as merely equitable, Williston, Contracts (1920), § 447; but see Cook, Alienability of Choses in Action, 29 Harv. L. Rev. 816 (1916) and 30 *id.* 449 (1917), it would seem that a court of equity would hold an assignment under seal as revocable in compliance with the maxim that equity will not aid a volunteer, the seal being a product of the common law courts. *Borum v. King's Adm'r*, 37 Ala. 606 (1861).

While the validity of the assignment of a negotiable instrument is governed by the common law rather than the law merchant, *Bullitt v. Scribner*, 1 Blackf. (Ind.) 14 (1818), the negotiability of the instrument may be significant in determining the legal power retained by the assignor. See Williston, Contracts (1920), §§ 440, 1042. It is generally recognized that for an assignment to be effective there must be a parting with all present and future legal power and dominion over what is assigned. *McCutchen v. McCutchen*, 9 Port. (Ala.) 650 (1839); *Walker v. Crews*, 73 Ala. 412 (1882); *Calvin v. Free*, 66 Kan. 466, 71 Pac. 823 (1903); 20 Cyc. 1195, 1196. Thus, if the instrument were negotiable it would seem that the legal power of negotiation would make the purported assignment ineffectual so far as *bona fide* purchasers from the assignor are concerned.

The court in the principal case held the Negotiable Instruments Law inapplicable even if the instrument were negotiable, because there was no delivery of the note to the assignee. But the Negotiable Instruments Law, § 16, Ann. Laws of Mass. (1933), c.

107 § 38, states that, "*Every* contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto." See *Horn v. Nicholas*, 139 Tenn. 453, 201 S.W. 756 (1917). It is not certain, however, that there was no delivery. The Negotiable Instruments Law, § 191, clause 6, provides: "Delivery means transfer of possession, actual or constructive, from one person to another." Common law cases have held that for a constructive delivery of an instrument there need be no manual transfer or possession. *Noble v. Fickes*, 230 Ill. 594, 82 N.E. 950 (1907); *Kelsa v. Graves*, 64 Kan. 777, 68 Pac. 607 (1902); *Bone v. Holmes*, 195 Mass. 495, 81 N.E. 290 (1907); *Ehrlich v. Sklamberg*, 65 Misc. 5, 119 N.Y.S. 337 (1909).

An undoubtedly true statement in the principal case would be that the assignee obtains none of the advantages of a "holder" under the Negotiable Instruments Law because he was not an indorsee. Negotiable Instruments Law, § 191, clause 7. In regard to the rights of a transferee the Negotiable Instruments Law, § 49, provides: "Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein." Because the words "for value" are in the statute, some courts take the narrow interpretation that a gratuitous transferee does not have title even as between the maker and the assignee. *Bond v. Maxwell*, 40 Ga. App. 679, 150 S.E. 860 (1929); *Moore v. Moore*, 35 Ga. App. 39, 131 S.E. 922 (1926), where the assignment was by a separate instrument. This requirement of value was made even in a state giving a seal the effect of a conclusive presumption of consideration. Code of Georgia, 1926, §§ 4219, 4241. However, section 49 might be extended by analogy to cover a gratuitous transferee. Brannan, Negotiable Instruments Law (5th ed. 1932), 472. The term "for value" may be interpreted as a requisite solely for the continuing clause: "and the transferee acquires in addition the right to have the indorsement of the transferor." See *Elmore v. Harris*, 134 Okla. 282, 273 Pac. 892 (1928). Where a transferee is required to give value to obtain title to a negotiable instrument a mere technical consideration will be sufficient if value be defined as in the Negotiable Instruments Law, § 25: "any consideration sufficient to support a simple contract." This definition has been followed by some courts by disregarding the Negotiable Instruments Law, § 191, clause 12: "Value means valuable consideration." *Judy v. Steer's Adm'x*, 199 Ky. 221, 250 S.W. 859 (1923); *Jackson v. Carter*, 128 S.C. 79, 121 S.E. 559 (1924); *Marling v. Fitzgerald*, 138 Wis. 93, 120 N.W. 388 (1909).

ASHLEY FOARD

Conflict of Laws—Determination of Validity of *Inter Vivos* Trust of Movables—[New York].—*H* and *W*, domiciled in Quebec, entered into an antenuptial agreement settling a sum of money on *W*. Subsequent to their marriage they entered into an agreement whereby *W* gave up all rights under the previous settlement, and *H* conveyed to her an interest in a more valuable trust consisting of securities then in the possession of a New York trust company, which was named trustee, and other securities turned over to the trustee by the agent of *H* in New York. Plaintiff, trustee in bankruptcy of *H*, the settlor, brought an action against *W* to have the trust set aside as void in its inception, on the ground that, by the law of Quebec where husband and wife agree to maintain separate estates, neither spouse can transfer to the other, directly or in trust, a substantial part of his or her property. *Held*, two judges dissenting, that the law of the *situs* of the trust *res* and the place in which the parties had intended

the trust to be administered controls; judgment for defendant affirmed. *Hutchison v. Ross*, 262 N.Y. 381, 187 N.E. 65 (1933); for opinions below see *Ross v. Ross*, 137 Misc. 795, 243 N.Y.S. 418 (1930); 233 App. Div. 626, 253 N.Y.S. 871 (1931), noted in 32 Col. L. Rev. 371 (1932); *Hutchison v. Ross*, 233 App. Div. 516, 253 N.Y.S. 889 (1931).

At an early date Anglo-American law seized upon the maxim *mobilia sequuntur personam* and used it to decide the validity of *inter vivos* transfers of movables. See Story, Conflict of Laws (Bigelow's 8th ed., 1883), §§ 376–81; Beale, Equitable Interests in Foreign Property, 20 Harv. L. Rev. 382, 394 (1907); Beale, Living Trusts of Movables in the Conflict of Laws, 45 Harv. L. Rev. 969, 970 (1932). The maxim has been rejected in favor of the *situs* theory as to transfers of tangibles and commercial specialties. *Disconto Gesellschaft v. U.S. Steel Corp.*, 267 U.S. 22, 45 Sup. Ct. 207, 69 L. Ed. 495 (1925); *Goetschius v. Brightman*, 245 N.Y. 186, 156 N.E. 660 (1927); Conflict of Laws Restatement (Proposed Final Draft No. 2, 1931), §§ 275, 277, 282, 379. It is now confined chiefly to transfers upon death or by operation of law upon marriage; see Conflict of Laws Restatement (Proposed Final Draft No. 2, 1931), §§ 310, 325, 328.

Due chiefly to the strong precedents in favor of the domiciliary rule set forth in the testamentary trust cases, *Liberty National Bank v. New England Investors Shares*, 25 F. (2d) 493, 495 (D.C.D. Mass. 1928); see Cavers, Trusts *Inter Vivos* and the Conflict of Laws, 44 Harv. L. Rev. 161, 162–63, 188–89 (1930); but see *Bouree v. Trust Francais*, 14 Del. Ch. 332, 346, 127 Atl. 56, 62 (1924), the law as to the validity of *inter vivos* trusts has lagged behind in abandoning the domiciliary test. Cf. *Mercer v. Buchanan*, 132 Fed. 501 (C.C.W.D. Pa., 1904); *Swetland v. Swetland*, 105 N.J. Eq. 608, 149 Atl. 50 (1930), affd. 107 N.J. Eq. 504, 153 Atl. 907 (1931); see *Maynard v. Farmers' Loan & Trust Co.*, 208 App. Div. 112, 116, 203 N.Y.S. 83, 86 (1924), affd. 238 N.Y. 592, 144 N.E. 905 (1924); but see *Hullin v. Fauré*, 15 La. Ann. 622 (1860); *Greenough v. Osgood*, 235 Mass. 235, 237–38, 126 N.E. 461, 462 (1920); Conflict of Laws Restatement (Proposed Final Draft No. 2, 1931), § 315. The problem is further complicated by the addition of a third possible jurisdiction whose law might govern the validity of an *inter vivos* trust—the place in which the trust is to be administered; *Robb. v. Washington & Jefferson College*, 185 N.Y. 485, 78 N.E. 359 (1906); cf. *Equitable Trust Co. v. Pratt*, 117 Misc. 708, 193 N.Y.S. 152 (1922), affd. 206 App. Div. 689, 199 N.Y.S. 921 (1923); but cf. *Fowler's Appeal*, 125 Pa. 388, 17 Atl. 431 (1889). Some recent cases place strong emphasis on the intent of the settlor, when it can be determined: *Liberty National Bank v. New England Investors Shares*, 25 F. (2d) 493, 495 (D.C.D. Mass. 1928); cf. *Swetland v. Swetland*, 105 N.J. Eq. 608, 149 Atl. 50 (1930), affd. 107 N.J. Eq. 504, 153 Atl. 907 (1931). The law of the jurisdiction in which the trust agreement was executed, although rejected in *Equitable Trust Co. v. Pratt*, 117 Misc. 708, 193 N.Y.S. 152 (1922), affd. 206 App. Div. 689, 199 N.Y.S. 921 (1923), is considered in some cases in which it coincides with other factors on which the court relies; see *Mercer v. Buchanan*, 132 Fed. 501 (C.C.W.D. Pa., 1904); *Fowler's Appeal*, 125 Pa. 388, 17 Atl. 431 (1889).

The court in the instant case was also influenced by a New York statute, enacted after the execution of the trust instrument, effectuating express declarations of settlors that New York law should govern trusts of personal property located in New York. N.Y. Cahill's Consol. Laws (1930), c. 42, § 12-a. Further, inasmuch as the trust had been created to replace a marriage settlement, the emphasis on the *situs* and intent of the settlor in the English cases construing such settlements, as contrasted with other

types of *inter vivos* trusts, may have been persuasive; see Cavers, Trusts *Inter Vivos* and the Conflict of Laws, 44 Harv. L. Rev. 161, 183–86 (1930).

The case is interesting as illustrating the judicial technique of handling such problems; all factors present are weighed, and no single element is permitted to control the decision as to what law will be applied. See 33 Col. L. Rev. 1251, 1252 (1933). Apparently situs is at present the most persuasive single element, administration and intent are increasing in importance, and domicile and place of execution are declining in value. It is as yet impossible to assure prospective settlors that any given trust will definitely be held valid, and this result may be deplored; see 47 Harv. L. Rev. 350 (1933); however, if a substantial number of the factors enumerated point to the law of a particular jurisdiction as controlling, it seems reasonably certain that that law will be applied.

GERALDINE W. LUTES

Conflict of Laws—Validity of Marriage Contracted in Violation of *Lex Fori*—[Federal].—Plaintiff, divorced in the District of Columbia on grounds of adultery, was prohibited by statute (D.C. Code 1929, title 14, c. 3, § 63) from remarrying, but married again in Florida. Her second husband later returned to the District of Columbia, and there died. Plaintiff sued in the District of Columbia to enforce her dower interest in his estate and recovered. *Held*, the decision of the District Supreme Court be reversed. Plaintiff, having contracted this second marriage in violation of the statute, could not use the courts of the District to gain for herself any of the incidents of the second marriage. *Loughran v. Loughran*, 66 F. (2d) 567 (D.C. 1933).

The court relies completely on *Olverson v. Olverson*, 54 App. D.C. 48, 293 Fed. 1015 (1923), where a divorced adulteress who had remarried was denied a divorce *a mensa et thoro* from her second husband. There the court held that though the marriage would be treated as valid to protect the interests of children or third persons, they would not consider it as establishing any marital obligations between the parties. But the parties in that case went outside the state for the wedding solely to evade the statute and returned immediately thereafter. In the present case, although it is not entirely clear from the report, it appears that the parties had removed their domicil from the District of Columbia prior to their wedding. Thus the court on the facts goes beyond *Olverson v. Olverson*, 54 App. D.C. 48, 293 Fed. 1015 (1923), for the element of intentional evasion of the law of the domicil is here missing. "The fact of such an intended evasion has been repeatedly recognized as the basis of invalidity when otherwise validity would have been declared." *In re Stull's Estate*, 183 Pa. 625, 630, 39 Atl. 16, 17, 39 L.R.A. 539, 542, 63 Am. St. Rep. 776, 778 (1898). *Nelson v. Nelson*, 200 Ill. App. 584 (1916); *Lincoln v. Riley*, 217 Ill. App. 571 (1920); *People v. Steere*, 184 Mich. 556, 151 N.W. 617 (1915); *State v. Fenn*, 47 Wash. 561, 92 Pac. 417 (1907); *Pierce v. Pierce*, 58 Wash. 622, 109 Pac. 45 (1910); Uniform Marriage Evasion Act, 9 U.L.A. 225.

The statute of the District of Columbia here involved only prohibits the marriage of the guilty party to the divorce and is penal in nature. It follows that it is not entitled to extraterritorial effect and was no impediment to the validity of the second marriage when celebrated. *Ponsford v. Johnson*, 2 Blatchf. 51, Fed. Cas. No. 11,266 (1847); *Inhabitants of Phillips v. Inhabitants of Madrid*, 83 Me. 205, 22 Atl. 114, 12 L.R.A. 862, 23 Am. St. Rep. 770 (1891); *Commonwealth v. Lane*, 113 Mass. 458, 18 Am. Rep. 509 (1873); *In re Crane*, 170 Mich. 651, 136 N.W. 587, 40 L.R.A. (N.S.) 765,

Ann. Cas. 14A 1173 (1912); *Van Voorhis v. Brintnall*, 86 N.Y. 18 (1881); *People v. Chase*, 28 Hun. 310 (N.Y. 1882); see *Warter v. Warter*, L.R. 15 Prob. Div. 152 (1890), distinguishing *Scott v. Att'y. General*, L.R. 11 Prob. Div. 128 (1886).

It is clear, then, that the case is treated as an exception to the general rule that a marriage valid where celebrated is valid everywhere. One exception to this rule is recognized in cases of polygamy. *Hyde v. Hyde*, L.R. 1 Prob. and Div. 130 (1866); Beale, Laughlin, Guthrie and Sandomire, Marriage and the Domicil, 44 Harv. L. Rev. 501, 508 (1931); Conflict of Laws Restatement (Proposed Final Draft 1930), § 140. Another class of exceptions includes incest, *United States v. Rodgers*, 109 Fed. 886 (1901); see *Sturgis v. Sturgis*, 51 Ore. 10, 93 Pac. 696, 15 L.R.A. (N.S.) 1034, 131 Am. St. Rep. 724 (1908); *State v. Fenn*, 47 Wash. 561, 92 Pac. 417 (1907); Conflict of Laws Restatement (Proposed Final Draft 1930), § 140, and miscegenation, *State v. Tutty*, 41 Fed. 753 (C.C.S.D.Ga. 1890); *Dupre v. Boulard*, 10 La. Ann. 411 (1855); *State v. Kennedy*, 76 N.C. 251, 22 Am.St.Rep. 683 (1876); *Kinney v. Commonwealth*, 30 Grat. (Va.) 858, 32 Am. St. Rep. 690 (1878); Conflict of Laws Restatement (Proposed Final Draft, 1930), § 140; but see *Medway v. Needham*, 16 Mass. 157, 8 Am. Dec. 131 (1819). Usually included among the exceptions to the general rule are those cases involving interlocutory decrees. In these the foreign marriage never had any validity since one of the parties, being married, lacked the capacity to contract a valid marriage. *McLennan v. McLennan*, 31 Ore. 480, 50 Pac. 802, 38 L.R.A. 863, 65 Am. St. Rep. 835 (1897); *Sanders v. Industrial Commission*, 64 Utah 372, 230 Pac. 1026 (1924); *Heflinger v. Heflinger*, 136 Va. 289, 118 S.E. 316, 32 A.L.R. 1088 (1923); *White v. White*, 167 Wis. 615, 168 N.W. 704 (1918). The foreign marriage is also generally regarded as void where there is an express statutory prohibition against marrying in another state in evasion of the laws of the domicil. *Wright v. Wright*, 264 Mass. 453, 162 N.E. 894 (1928); *Wheelock v. Wheelock*, 103 Vt. 417, 154 Atl. 665 (1931); *Peerless Pacific Co. v. Burckhard*, 90 Wash. 221, 155 Pac. 1037, L.R.A. 1917C 353, Ann. Cas. 18B 247 (1916); *Knoll v. Knoll*, 104 Wash. 110, 176 Pac. 22, 11 A.L.R. 1391 (1918); but see *Horton v. Horton*, 22 Ariz. 490, 198 Pac. 1105 (1921).

The weight of authority, however, is in favor of applying the general rule in cases of a violation of some statutory prohibition by remarriage in another state when there is no statute which expressly prohibits such evasion. *Ponsford v. Johnson*, 2 Blatchf. 51, Fed. Cas. No. 11,266 (1847); *Wilson v. Holt*, 83 Ala. 528, 3 So. 522, 3 Am. St. Rep. 768 (1887); *Smith v. Goldsmith*, 223 Ala. 155, 134 So. 651 (1931); *Putnam v. Putnam*, 8 Pick. 433 (Mass. 1829); *Commonwealth v. Lane*, 113 Mass. 458, 18 Am. Rep. 509 (1873); *Van Voorhis v. Brintnall*, 86 N.Y. 18 (1881); *Moore v. Hegeman*, 92 N.Y. 521, 44 Am. Rep. 408 (1883); *Fisher v. Fisher*, 250 N.Y. 313, 165 N.E. 460, 61 A.L.R. 1523 (1929); *State v. Shattuck*, 69 Vt. 403, 38 Atl. 81, 40 L.R.A. 428, 60 Am. St. Rep. 936 (1897); *Scott v. Att'y. General*, L.R. 11 Prob. Div. 128 (1886); *contra, Wilson v. Cook*, 256 Ill. 460, 100 N.E. 222, 43 L.R.A. (N.S.) 365 (1912); *In re Stull's Estate*, 183 Pa. 625, 39 Atl. 16, 39 L.R.A. 539, 63 Am. St. Rep. 776 (1898); *Pennegar and Haney v. State*, 87 Tenn. 244, 10 S.W. 305, 2 L.R.A. 703, 10 Am. St. Rep. 648 (1889); *Newman v. Kimbrough*, 59 S.W. 1061 (Tenn. 1900); *McManus v. State Compensation Commissioner*, 169 S.E. 172 (W.Va. 1933). Yet, although there was no express statute prohibiting such evasion here, the court in relying on *Olverson v. Olverson*, 54 App. D.C. 48, 293 Fed. 1015 (1933), speaks of it as "sustained by the great weight of authority."

BRIMSON GROW

Constitutional Law—Referendum on Act Calling Conventions to Ratify Amendments to the Federal Constitution—[Ohio].—An action in prohibition and mandamus was brought to prevent the Ohio Secretary of State from submitting to a referendum an act of the Ohio General Assembly providing for the calling of conventions to pass on amendments to the Federal Constitution. *Held*, one justice dissenting, the act setting up machinery for the assembling of a convention was not within the referendum provision of the Ohio constitution. *State ex rel. Donnelly v. Myers, Secretary of State*, 186 N.E. 918 (Ohio 1933).

In *Hawke v. Smith*, 253 U.S. 221, 40 Sup. Ct. 495, 64 L. Ed. 871 (1919) approved in *Nat. Prohibition Cases*, 253 U.S. 350, 40 Sup. Ct. 486, 64 L. Ed. 946 (1919); *Leser v. Garnett*, 258 U.S. 130, 42 Sup. Ct. 217, 66 L. Ed. 499 (1921), upon which the Ohio court relied, it was decided that there could be no referendum on a state legislature's ratification of an amendment to the Federal Constitution. Since *Hawke v. Smith*, such statements as "ratifying a proposed amendment to the Federal Constitution . . . . is a federal function derived from the Federal Constitution and it transcends any limitation sought to be imposed by the people of a state" have been made by the courts suggesting that by necessity the state constitutional provisions cannot control in the federal amending process. *Leser v. Garnett*, 258 U.S. 130, 137, 42 Sup. Ct. 217, 66 L. Ed. 505 (1921). But the court in the *Hawke* case in holding that ratification is a federal function recognized that it is a federal function delegated to the state for performance. See Dodd, Amending the Federal Constitution, 30 Yale 321, 344 (1921); Frierson, Amending the Constitution of the U.S., 33 Harv. L. Rev. 659 (1920). The decisive point in the *Hawke* case was the court's interpretation that "legislatures" in Art. V meant the "ordinary" legislative body of the states and not the law-making power, thus excluding the people acting through the referendum. See Wm. H. Taft, Can Ratification of an Amendment Be Made to Depend on a Referendum?, 29 Yale L. Jour. 821, 822 (1920); 33 Harv. L. Rev. 287 (1919). But "legislature" as used in Art. I, § 4, is held to mean the law-making power so as to include the referendum and participation of the governor, provided for by the state constitution, as to acts redistricting a state for congressional purposes. *Davis v. Hildebrandt*, 241 U.S. 565, 569, 38 Sup. Ct. 708, 60 L. Ed. 1172 (1916); *Smiley v. Holm*, 285 U.S. 355, 52 Sup. Ct. 397, 76 L. Ed. 795 (1932); *State ex rel. Schrader v. Polley*, 26 S.D. 5, 127 N.W. 848 (1910). Also, as to a more liberal interpretation of "legislature" than that given in the *Hawke* case, see 2 Farrand, Records of the Federal Constitution (1911), 152, 159, 467, 558, for the possible intent of the framers of the Constitution.

The decision in the present case rests on the court's analysis that since according to *Hawke v. Smith* the legislative ratification of a federal amendment is not subject to the referendum provision of the state constitution, then by analogy there can be no referendum on ratification by a convention, and that "by a parity of reasoning" there can be no referendum on an act providing the method of electing the convention. But the analogy provides a strong argument for a result contrary to the present case, for the method of electing representatives to the General Assembly is subject to referendum, as the dissenting judge pointed out. The answer that the convention, unlike the legislature, is called to consider a particular question and then adjourns, and thus should be treated differently, is not entirely satisfactory and indicates the analogy is somewhat defective. Moreover it is not clear that by a "parity of reasoning" the mode of calling a convention must be treated in the same manner as ratification by the convention itself, since the calling of the convention is not limited by any express pro-

vision of Article V. Furthermore, calling a constitutional convention has always been regarded as a type of fundamental legislation and since 1850, with comparatively few exceptions, has been submitted to the people, *Bennett v. Jackson*, 186 Ind. 533, 116 N.E. 921 (1917); 27 Yale L. Jour. 132 (1917), and in the absence of contrary provision, it would seem that policy should prevail.

JOSEPH T. ZOLINE

Libel and Slander—Intra-corporate Communication as Privileged Publication or as No Publication—[Federal].—The assistant general manager of the defendant corporation communicated to defendant's general manager and superintendent an alleged libel. Defendant demurred to the complaint asserting there had been no publication. The district court sustained the demurrer. *Held*, judgment affirmed, the court pointing out that lack of publication foreclosed any issue of privilege and malice. *Briggs v. Atlantic Coast R. Co.*, 66 F. (2d) 87 (C.C.A. 5th 1933).

Dictation by an individual to a stenographer and typing by the stenographer is now generally considered to be publication of a libel. *Nelson v. Whittier*, 272 Fed. 135 (1921); *Ferdon v. Dickens*, 161 Ala. 181, 49 So. 888 (1909); *Gambill v. Schooley*, 93 Md. 48, 48 Atl. 730, 52 L.R.A. 87 (1909); *Ostrowe v. Lee*, 256 N.Y. 36, 175 N.E. 505 (1931). But dictation by a corporate employee to a fellow-employee is not a publication, the process of writing the letter being but "one act" of the corporation. *Cartwright-Caps Co. v. Fischel & Kaufman*, 113 Miss. 359, 74 So. 278 (1917); *Owen v. Ogilvie*, 32 App. Div. 465, 53 N.Y.S. 1033 (1898); *Wells v. Belstrat Hotel Corp.*, 212 App. Div. 366, 208 N.Y.S. 625 (1925); *Freeman v. Dayton Scale Co.*, 159 Tenn. 413, 19 S.W. (2d) 255 (1929); *Chalkey v. Great Atlantic Coast Line R. Co.*, 150 Va. 301, 143 S.E. 631 (1928); *contra*, *Berry v. City of N.Y. Ins. Co.*, 210 Ala. 369, 98 So. 290 (1928); *Edmondson v. Birch & Co.*, [1907] 1 K.B. 371; *Osborn v. Thomas Boulter & Son*, [1930] 2 K.B. 226. When the communication is not a part of "one act," as when the letter is sent from one officer of the corporation to another, the dictum in the New York case of *Owen v. Ogilvie*, 32 App. Div. 465, 53 N.Y.S. 1033 (1898) that such *is* publication, may be followed as was done by the highest court of New York. *Kennedy v. James Butler Inc.*, 245 N.Y. 204, 156 N.E. 666 (1927). Other cases hold that even here there is no publication. *Central of Ga. R. Co. v. Jones*, 18 Ga. App. 414, 89 S.E. 426 (1916); *George v. Ga. Power Co.*, 43 Ga. App. 596, 159 S.E. 756 (1931); *Prins v. Holland-N.A. Mortgage Co.*, 117 Wash. 206, 181 Pac. 680, 5 A.L.R. 451 (1919). These cases *contra* to the *Kennedy* case apply the more consistent theory and deny that any communication between corporate employees constitutes a publication, whether considered "one act" or not, for since a corporation can act only through agents, no third party is involved, it being analogous to a person uttering a libel to himself. See *Prins v. Holland-N.A. Mortgage Co.*, 107 Wash. 206, 181 Pa. 680, 5 A.L.R. 451 (1919). Such a theory supports the present case. But upon this corporate fiction notion, the unsatisfactory but logical result might well be reached that as against the corporate employee sued as an individual there might be a publication, but not as against the corporation as defendant.

A more satisfactory and equally consistent theory is that of considering all intra-corporate communications, whether deemed to be "one act" or not, as published, thus introducing the privilege issue. The principle has been applied in the telegraph company cases. *Western U. Tel. Co. v. Brown*, 294 Fed. 167 (C.C.A. 8th 1923); *Peterson v.*

Western U. Tel. Co., 65 Minn. 18, 67 N.W. 646, 33 L.R.A. 302 (1896); *Paton v. Great Northwestern Tel. Co. of Canada*, 141 Minn. 430, 170 N.W. 511 (1919); *Flynn v. Western U. Tel. Co.*, 199 Wis. 124, 225 N.W. 742, 63 A.L.R. 113 (1929); *Archambault v. Great N.W. Tel. Co.*, Montreal L. Rep., 4 Q.B. 122; see 5 Wis. L. Rev. 297 (1929); 43 Harv. L. Rev. 144 (1929). The recent English case of *Osborn v. Boulter & Son*, [1930] 2 K.B. 226 adopted this attitude though it was unnecessary to decide whether the publication was of libel or slander as the defamation was held privileged.

RICHARD LAWRENCE LINDLAND

Searches and Seizures—Right of Owner of Equity of Redemption to Disclosures—[Illinois].—In a suit for foreclosure by the trustee under a deed of trust given to secure a bond issue, the owner of the equity of redemption sought by answer and cross bill to obtain a list of the names of the bondholders. This is an appeal from an order adjudging the trustee guilty of contempt and committing him to jail for noncompliance with a decree ordering him to produce the list sought. *Held*, that the decree violated his constitutional protection against unreasonable search and seizure. (Ill. Const. Art. 2, Par. 6.) *Firebaugh v. Traff*, 353 Ill. 82, 186 N.E. 526 (1933).

Though the court in reaching its result may have expanded somewhat the traditional construction placed upon the "searches and seizures" clause (see J. E. Wood, Scope of the Constitutional Immunity against Searches and Seizures, 34 W.Va. L. Quar. 1, 137 (1927), the interest in the case lies not in its specific facts or decision but rather in the bearing it may have on the similar problem arising when bondholders or creditors seek the names of others similarly situated.

To preserve properly their interest and to secure unity of action, unorganized bondholders and creditors require information enabling them to contact with others in like positions. 15 Fletcher, Corporations (1932), § 7302; Dewing, Financial Policy of Corporations (1926), 901–1133; note, 42 Yale L. Jour. 984 (1933).

Though there is no clear precedent for a decree ordering the production of the bondholder list, *Bergelt v. Roberts*, 144 Misc. 832, 258 N.Y.S. 905 (1932); *Marx v. Merchants' Nat. Prop.*, 265 N.Y.S. 163 (1933), two analogies suggest the innovation. See note, 32 Col. L. Rev. 1435 (1932). *First*, the unquestioned but carefully qualified right of the stockholders to inspect the books, *Varney v. Baker*, 194 Mass. 239, 80 N.E. 524 (1907); *Henry v. Babcock & Wilson Co.*, 196 N.Y. 302, 89 N.E. 942 (1909); 5 Fletcher, Corporations (1931), § 2213, has for certain purposes extended to include access to plans and names of other stockholders. *Chable v. Nicaragua Canal Constr. Co.*, 59 Fed. 846 (1894); *Otis-Hidden Co. v. Scheirich*, 187 Ky. 423, 21 S.W. (2d) 191, 22 A.L.R. 19 (1920); *Cameron v. Havemeyer*, 12 N.Y.S. 126, 25 Abb. 438 (1890); *Mawhinney v. Converse*, 102 N.Y.S. 297, 117 App. Div. 255, affd. 189 N.Y. 501, 81 N.E. 1169 (1907). The drawing together of the economic positions of the stockholders and bondholders, Berle and Means, Modern Corporation and Private Property (1932), 279, may well result in a more common legal position. *Second*, the relation between bondholder and corporate obligor may be assimilated to that of trustee and cestui. This analogy was accepted in *Bergelt v. Roberts*, 144 Misc. 832, 258 N.Y.S. 905 (1932), noted in 46 Harv. L. Rev. 713 (1933) and rejected in the later case of *Marx v. Merchants' Nat. Prop.*, 265 N.Y.S. 163 (1933). See also *In re International Match Corp.*, 59 F. (2d) 1012 (D. C., S. D., N.Y. 1932) where a similar problem was considered under the National Bankruptcy Act, §§ 21a, 39, 11 U.S.C.A., §§ 44a, 67.

JOSEPH J. ATTWELL, JR.

Taxation—Exemption—Young Men's Christian Association Dormitory—[Massachusetts].—The Board of Assessors taxed a Young Men's Christian Association dormitory which occupied one-third of the Association's building, and operated at a profit. This profit was devoted to the purposes of the corporation which lost money on the building. The Board of Tax Appeals abated the tax, finding that the dominant purpose of the Association in maintaining the dormitory was benevolent and charitable. *Held*, the dormitory was exempt from taxation. *Springfield Young Men's Christian Association v. Board of Assessors*, 187 N.E. 104 (Mass. 1933).

Young Men's Christian Associations are generally exempt from taxation as charitable institutions. *Little v. City of Newburyport*, 210 Mass. 414, 96 N.E. 1032, Ann. Cas. 1912D 425 (1912); *Young Men's Christian Association of Lincoln v. Lancaster County*, 106 Neb. 105, 182 N.W. 593, 34 A.L.R. 1060 (1921). They are not usually considered religious organizations. *Hamsher v. Hamsher*, 132 Ill. 273, 23 N.E. 1123 (1890); *Young Men's Christian Association v. New York*, 113 N.Y. 187, 21 N.E. 86 (1889); cf. *Commonwealth v. Young Men's Christian Association*, 116 Ky. 711, 76 S.W. 522, 25 Ky. L. Rep. 940, 105 Am. St. Rep. 234 (1903). Their dormitories are customarily exempt. *In re Syracuse Young Men's Christian Association*, 126 Misc. 431, 213 N.Y.S. 35 (1925); *Young Men's Christian Association's Appeal*, 15 D. & C. (Pa.) 421 (1930), even though a profit is made. *Young Women's Christian Association of Brooklyn v. New York*, 137 Misc. 321, 243 N.Y.S. 294, affd. 227 App. Div. 742, 236 N.Y.S. 926, affd. 254 N.Y. 558, 173 N.E. 865 (1928); *Commonwealth v. Lynchburg Young Men's Christian Association*, 115 Va. 748, 80 S.E. 589, 50 L.R.A. (N.S.) 1197 (1913).

The dominant use must be for charitable purposes. If part of a Young Men's Christian Association building is rented to independent businesses for profit, that part, at least, is taxable, even though the entire income is used for the association's purposes. *Young Men's Christian Association v. Douglas County*, 60 Neb. 642, 83 N.W. 924, 52 L.R.A. 123 (1900); *Young Men's Christian Association v. Keene*, 70 N.H. 223, 46 Atl. 186 (1900). Although the association operates the business itself, and applies all the profit to its aims, the business is not exempt when chiefly patronized by non-members. *Young Men's Christian Association v. New York*, 217 App. Div. 406, 216 N.Y.S. 248, affd. 245 N.Y. 562, 157 N.E. 858 (1926). Profit is always an element to be considered, but the fact that a profit is made does not determine that an institution is not charitable. *Congregational Sunday School & Publishing Society v. Board of Review*, 290 Ill. 108, 125 N.E. 7, 90 Cent. L. Jour. 74 (1919) (corporation not for profit selling religious tracts was exempt although in some years a profit was made); *School of Domestic Arts and Science v. Carr*, 322 Ill. 562, 153 N.E. 669 (1926) (restaurant used as training school for waitresses and as outlet for products of cooking school held not taxable); *House of the Good Shepherd v. Board of Equalization*, 113 Neb. 489, 203 N.W. 632 (1925) (institution "to reform fallen women . . . . to accustom them to habits of industry and self-respect" ran a laundry and sewing business which was held exempt).

The principal case is consistent with older Massachusetts decisions and similar cases in other jurisdictions. While the courts repeat with approval the rule requiring strict construction of exemption statutes, only a few, notably Missouri, have shown consistent restraint in granting exemptions. *St. Louis Lodge No. 9 v. Koeln*, 262 Mo. 444, 171 S.W. 329 (1914); *St. Louis Young Men's Christian Association v. Gehner*, 329 Mo. 1007, 47 S.W. (2d) 776, 81 A.L.R. 1449 (1932). Yet tax exemptions bid fair to become increasingly unpopular. Atkins, Tax Exemption—A Key to Tax Reduction, 9 Tax Magazine 19 (1931); Baker, Tax Exemption Statutes, 7 Tex. L. Rev. 50 (1928);

Stimson, Tax Exemption in Illinois, 11 Tax Magazine 17–20; 36–40 (933). This feeling is believed to have been reflected in some late decisions abolishing existing exemptions. *People ex rel. Thompson v. Dixon Masonic Building Assn.*, 348 Ill. 593, 181 N.E. 434 (1932), 6 So. Cal. L. Rev. 168 (1932), expressly overrules *People ex rel. Wagner v. Freeport Masonic Temple*, 347 Ill. 180, 179 N.E. 672 (1931), which held a masonic building exempt. A dissent in the *Dixon* case points out a long line of decisions *contra*. *Alpha Tau Omega Fraternity v. Board of County Commissioners*, 136 Kan. 675, 18 P. (2d) 573 (1933); 17 Minn. L. Rev. 678 (1933), held unconstitutional a statute exempting land and buildings used exclusively by college or university societies as literary halls or dormitories; but compare *Kappa Kappa Gamma House Assn. v. Pearcy*, 92 Kan. 1020, 142 Pac. 294, 52 L.R.A. (N.S.) 995 (1914), which is not cited in the *Alpha Tau Omega* case. Because of the state of tax collections and the oppressiveness of taxes, it is probable that in the future the courts will severely limit exemptions.

HUBERT C. MERRICK

Torts—Breach of a Criminal Statute as a Bar to Recovery—Interpretation of Licensing and Safety Acts—[South Dakota, Wisconsin].—Plaintiffs were towing a thirty-foot wide airplane on a public road in violation of a statute requiring a permit to do so. Driving in what the jury found to be a negligent manner, defendant crashed into the plane. When the jury turned in a verdict that the plaintiff was free from contributory negligence, the trial court entered judgment in plaintiff's favor. *Held*, judgment affirmed. *Harvison v. Herrick*, 248 N.W. 205 (S.D. 1933).

Plaintiff was riding on the front fender of an automobile in violation of a statute. The jury found the defendant negligent in driving his car against the car on which plaintiff was riding but found that breach of the statute, which the court considered "contributory negligence as a matter of law," had not "proximately contributed" to his damage, the court entering judgment on the verdict for the plaintiff. *Held*, judgment reversed. *Wiese v. Polzer*, 248 N.W. 112 (Wis. 1933).

The South Dakota decision is supported by the majority view in breach of licensing-statute cases. *Armstrong v. Sellers*, 18 Ala. 582, 62 So. 28 (1913); *Atlantic etc. R. v. Weir*, 63 Fla. 69, 58 So. 641 (1912); *Brown v. Shyne*, 242 N.Y. 176, 151 N.E. 197 (1926); *Southern Ry. v. Vaughn*, 118 Va. 692, 88 S.E. 305 (1916). In at least two such cases, however, courts have based liability on failure to comply with the licensing statutes. *Whipple v. Grandchamp*, 261 Mass. 40, 158 N.E. 270 (1927) and *Goodwin v. Rowe*, 67 Ore. 1, 135 Pac. 171 (1913). Although these cases involve breach of a statute as basis of liability, rather than defense, they are in point for the issue remains unchanged though the breach occurs on part of plaintiff rather than the defendant. *Martin v. Herzog*, 228 N.Y. 164, 126 N.E. 814 (1920).

The proper way of deciding those cases is by application of the so called "legislative purpose" formula. As has been pointed out in 27 Ill. L. R. 318 (1932), this method depends more on the way courts think the statute should operate in particular cases than on what they believe the legislature actually had in mind in passing it. Courts usually regard licensing statutes as either revenue measures or sanctions to compel the effective organization of social activities.

This attitude seems justifiable in as much as these statutes do not, like most so-called safety statutes, establish a standard of conduct, the failure to observe which

might be said to constitute, without more, a basis of liability or a bar to recovery analogous to negligence or contributory negligence. The statute involved in the principal Wisconsin case, on the other hand, does establish such a standard of conduct. In that statute the legislature indicates that riding on the outside of automobiles is imprudent. It is true that the statute does not refer to the dangers it was to avoid, and that a similar statute in another jurisdiction was held to guard against falling off the vehicle and not against the greater likelihood of injury from collisions with other cars. *Stout v. Lewis*, 123 So. 346 (La. 1929). This disagreement, however, simply indicates a difference of opinion between the Wisconsin and Louisiana courts as to the practical meaning it is politic to give the statutes under the "legislative purpose" technique mentioned above and well described in the note referred to there.

This problem of legislative purpose is, as above indicated, the vital one in these two cases. Another issue, however, on which this type of case is often decided is causation. Violation of a statute is immaterial when damage would have occurred even if there had been no violation. Use has been made of this requirement in two ways. One, it is often urged that if a licensing statute had been obeyed, the harm would not have occurred and that the violation was therefore the *cause* of the harm. Thus in the principal South Dakota case defendant argued that if plaintiff had obeyed the statute he would not have been on the road, overlooking the fact that the license probably would have been granted and, as the court showed, the presence of the piece of paper evidencing permission in plaintiff's pocket could have had no effect on the course of events. See *Brown v. Shyne*, 242 N.Y. 176, 151 N.E. 197 (1926), for a discussion of this aspect of causation in connection with breach of a statute requiring doctors to be licensed.

The other aspect of causation alluded to is the tendency on the part of some courts to evade the question of legislative purpose by saying that the breach of the statute was not a cause but a condition of the accident. In a Wisconsin case, for instance, a statute made it unlawful to stop a freight train at a public crossing for more than ten minutes. *Hendley v. Chicago R. R. Co.*, 198 Wis. 569, 225 N.W. 205 (1929). After the train in question had been so parked for more than ten minutes the plaintiff ran into it with his car. On demurrer to the complaint the court held for defendant because breach of the statute was a *condition* and not a *cause* of the collision. Cf. *Patterson v. Detroit R. R. Co.*, 56 Mich. 172, 22 N.W. 260 (1885).

It seems unfortunate that the issue of causation should predominate in these cases. The conduct of the defendant was an obvious causal factor in either case. The purpose of the legislature in the statute, whether as a safety measure or as a means of avoiding traffic congestion, seems more pertinent. This criticism is amply justified by the two principal cases, wherein the South Dakota and Wisconsin courts refused to allow their decisions to hinge on the causal issue and correctly disposed of them under the "legislative purpose" formula.

SAMUEL EISENBERG