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.

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