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COMMENTS

LIABILITY OF OWNER UNDER CAR KEY LEGISLATION

On the 10th of March, 1954, at the suggestion of Chief John W. Polcyn of the Milwaukee Police Department, in view of the alarming growth of juvenile delinquency caused directly by car thefts,¹ the Milwaukee Common Council adopted an ordinance making it unlawful for a person to park a passenger car and leave it unattended without first removing the keys. The ordinance reads as follows:

“Ordinance No. 723. 1101-83.1 of the Milwaukee Code. LEAVING OF IGNITION KEYS IN A PARKED CAR. It shall be unlawful for any person to park a motor vehicle within the city limits of Milwaukee that is not equipped with a lock suitable to lock either the starting lever, throttle, steering apparatus, gear shift lever or ignition system; furthermore, no person shall allow a motor vehicle in his custody or control to stand or remain unattended on any street, alley, highway or in any other public place within the city limits of Milwaukee, except on an attended parking area, unless either the starting lever, throttle, steering apparatus, gear shift or ignition of said vehicle is locked and the key for such lock is removed from the vehicle. Any person having custody or control of a vehicle and violating any of the provisions of this section shall upon stipulation or conviction thereof be punished by a fine of not less than \$1.00 nor more than \$10.00, and in default thereof shall be imprisoned in the House of Correction or County Jail of and for Milwaukee County for not less than one day nor more than ten days.”

Previous to the passage of this ordinance, the Milwaukee Police Department would leave a bright orange ticket on the windshield of unattended cars from which keys had not been removed. The total number of automobiles so ticketed by the members of the Milwaukee Police Department for the period from July 1, 1947, to February 1, 1953, was 40,996. This orange ticket warned:

“90% of all cars stolen have ignition keys left in switches or switches unlocked!

60% of all thefts are by juveniles!

You are encouraging juvenile delinquency when you leave your key in a parked car!”

It should also be noted that the number of car thefts are on the increase. There is a 100% increase, comparing 1951 and 1952 with 1946 and 1947 in Milwaukee alone.

¹ In a letter to Wisconsin Senator Bernhard Gettelman from Milwaukee's Police Chief, John W. Polcyn, dated March 26, 1953, Chief Polcyn said: “I am convinced that the absence of this law from the Statute Books of this state is one of the greatest causes of juvenile delinquency and crime. Certainly by far greater than that attributed to liquor, tobacco, or narcotics. Because of the easy acquirement of the automobile on the part of the juvenile, it plays a great part in juvenile delinquency and crime.”

MILWAUKEE POLICE DEPARTMENT²

JUVENILE ARRESTS

AUTO THEFT

1946	—	163
1947	—	138
1948	—	232
1949	—	194
1950	—	282
1951	—	356
1952	—	352
TOTAL		1717

Almost simultaneously with the passage of Milwaukee's ordinance, the Illinois Supreme Court in *Ney v. Yellow Cab Co.*,³ a case arising under a similarly worded statute,⁴ held a taxicab owner liable for damages inflicted by a thief. Simply, the facts were as follows: An employee of a taxicab company while in the scope of employment left a taxicab unattended in a Chicago street with the motor running and the keys in the ignition, contrary to the statute. While it was so standing, a thief stole the taxicab and in escaping struck a parked car. The owner of the parked car sued the taxicab company to recover damages. Judgment was entered for the owner of the parked car in the Municipal Court, affirmed in the Appellate Court and again affirmed in the Supreme Court, with one dissent.

The question raised by the *Ney* case and proposed for discussion in this article is: Will a violator of such an ordinance be civilly liable to one injured by the automobile while the same is being operated by a thief. The question has two facets: (1) Is the ordinance a so-called "safety" ordinance so that a violation of it imposes negligence per se? (2) Is such violation a legal cause of the eventual injury?

In determining what kind of statute the legislature intended in the *Ney* case, the Illinois Court looked at the location of the subparagraph in question, which prohibited leaving keys in an unattended car, in relation to the context of the whole paragraph. The second subparagraph prohibits persons under fifteen years of age from operating a vehicle. The Court reasoned from the very fact that these two subparagraphs were in the same paragraph that the legislature was thinking

² Facts and figures compiled by Milwaukee Police Department, John W. Polycn, Chief.

³ 2 Ill. 2d 74, 348 Ill. App. 161, 108 N.E. 2d 508 (1952), 117 N.E. 2d 74 (1954).

⁴ ILL. REV. STAT. (1953) c. 95½, par. 189; "Unattended motor vehicle—Persons under 15 not to drive. (a) No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition and removing the key, or when standing on any perceptible grade without effectively setting the brake thereon and turning the front wheels to the curb or side of the highway. (b) No person shall operate or drive a motor vehicle who is under fifteen years of age." Also sec. 92 of art. XIV of Uniform Traffic Act.

about the danger to the public in permitting unqualified persons to drive "a dangerous instrumentality", and concluded that this was a public safety measure rather than a traffic regulation. Perhaps, if the subparagraph relating to taking keys out of the ignition had been inserted in a paragraph dealing with parking as a traffic regulation, a different result could have been reached.

In concluding just what kind of statute was intended, the Illinois Courts in previous cases have said, it "is not to protect the owner against theft, but is a safety measure intended to protect the public"⁵ (unrealistically arguing that removal of the keys does not stop a thief from crossing ignition wires, a simple and speedy process) and "designed to prevent injury which might result from children's meddling with unattended motor vehicles".⁶

Logic of this sort has rendered car owners liable in one other jurisdiction, namely Washington, D. C., where the U. S. Court of Appeals decided that this type of legislation is a safety statute designed for the public safety to make the streets safer. In fixing liability, the U. S. Court of Appeals declares that it is fairer to hold the defendant responsible for harm than to deny remedy to an innocent victim, since the defendant created the risk intended to be prevented, and that the violation in itself creates liability. Two qualifications were expressed:

"This does not mean that one who violates a safety ordinance is responsible for all harm that accompanies or follows his negligence. He is responsible for the consequences of his negligence but not coincidences." (For example, if a key was left in the ignition and a third party loosened the brake thereby causing the harm, the lever of the key would not be liable.)

"Neither do we suggest that the ordinance should be interpreted as intended to apply in all possible circumstances. In some emergencies, no doubt, the act of leaving a car unlocked and unattended in a public place would not be a violation of the ordinance, fairly interpreted, and would therefore entail no responsibility for consequences." (Parenthetical matter ours).⁷

Even in Illinois and Washington, D. C., under certain circumstances, no liability would attach because the acts giving rise to the injury would be too remote from the apprehended risk. Examples of this would be where the injury occurred twelve hours after the theft,⁸ or where there is insufficient evidence of foreseeability.⁹ If liability would attach regardless of intervening time or distance, the owner of the stolen car would be an insurer to an indeterminate number of per-

⁵ *Ostergard v. Frisch*, 33 Ill. App. 359, 77 N.E. 2d 537 (1948).

⁶ *Moran v. Borden Co.*, 309 Ill. App. 391, 33 N.E. 2d 166 (1941).

⁷ *Ross v. Hartman*, 139 F. 2d 144 (D.C. Cir. 1943), cert. denied, 321 U.S. 796, 64 S.Ct. 790, 88 L.Ed. 1080.

⁸ *Howard v. Swagart*, 161 F. 2d 651 (D.C. Cir. 1947).

⁹ *Cockrell v. Sullivan*, 344 Ill. App. 320 (1916).

sons for an indeterminate amount. It could happen that the thief would transport the car out of town, sell it to another thief who two months later would negligently run into a parked automobile. This type of situation gives rise to the minority "flight doctrine", adhered to by Illinois and Washington, D.C., which theorizes that the violator may be liable only for damages caused by the thief in flight.

In Washington, D.C., violation of such a statute is negligence *per se*, while in Illinois, it is *prima facie* negligence, under the decided cases. No other jurisdictions, outside of Illinois and Washington, D. C., have decided the cases coming up under similar laws with so much emphasis on legislative intent.

Massachusetts construed this type of legislation as being an anti-theft measure, finding injury to the plaintiff not within the harm intended to be prevented, stating:

"Theft of automobiles was a consequence intended to be prevented. It is quite another thing to say that injuries sustained through operation of the automobile by thieves were consequences intended to be prevented."¹⁰

Minnesota has not specifically decided whether such a law was designed for the members of a particular class of the public, but the Massachusetts view seems to be supported in *Anderson v. Theisen*.¹¹ The Rhode Island court commented in *Kelly v. Davis*:¹²

". . . it is not to be presumed that the legislature intended to abrogate the general rule that there must be a causal relationship between the violation of a duty and the injury to render a defendant liable and that such violation must be a proximate cause of injury."

No state statute expressly rules out or includes civil liability as a consequence of violation of the statute, and only one state, Missouri, mentions "civil action" in the statute:

"Vernon's Mo. Stat. Ann. 1952, sec. 304.150; Unattended vehicle. No person shall leave a motor vehicle unattended on the highway without first stopping the motor and cutting off the electric current and no person shall leave a motor vehicle except a commercial motor vehicle, unattended on the highway of any city having a population of more than 75,000 unless the mechanism, starting device or ignition of such motor vehicle shall be locked: Provided, however, that failure to lock such motor vehicle shall not mitigate the offense of stealing same, nor shall such failure be used to defeat a recovery in any *civil action* for the theft of such motor vehicle for insurance thereon, or have any other bearing in a *civil action*." (Emphasis added).

¹⁰ 318 Mass. 359, 61 N.E. 2d 330 (1945).

¹¹ 231 Minn. 369, 43 N.W. 2d 272 (1950).

¹² 48 R.I. 944, 135 A. 602 (1927).

¹³ The statute is commented on in 19 KAN. CITY L. REV. 112 (1951).

No interpretation of the wording in the Missouri statute has as yet been attempted.¹³

The Milwaukee Common Council, while in session and in hearings, did not discuss the extent of liability of the owner of a car when a thief steals it and causes damages, or the intent of the ordinance in this field. They did, however, obtain an opinion from the Commissioner of Insurance of the State of Wisconsin that a conviction under the ordinance, as it stood, would not be a policy defense under the standard automobile theft insurance policy.¹⁴ Later, in reply to an inquiry by the writer, the Commissioner, in view of the devious decisions handed down, reserved opinion concerning the liability question, saying that the question of negligence resulting from a violation of the ordinance would be a jury question.¹⁵

Milwaukee's ordinance was passed pursuant to a state enabling statute which provides that any city may pass an ordinance requiring passenger cars to be locked or keys to be removed from the ignition, and imposing a fine.¹⁶ The history of the state statute goes back to at least 1945,¹⁷ when John W. Polcyn, Chief of Milwaukee Police, supported by the International Association of Chiefs of Police throughout the nation, and the Milwaukee Metropolitan Crime Prevention Commission, recommended adoption of a state law. They had in mind making the offense stipulatable and setting the penalty at \$1.75, which included fine and costs, "the same as exists now for most parking law violations", and permitting the offenders to pay such penalty by mail.¹⁸

¹⁴ In a letter from John R. Lange, Commissioner of Insurance of the State of Wisconsin, by G. J. Hatchell, Insurance Examiner, dated February 11, 1954 to John F. Cook, Assistant City Attorney for Milwaukee.

¹⁵ In a letter from John R. Lange by G. J. Hatchell to writer, dated May 11, 1954.

¹⁶ WIS. STATS. (1953) §66.95:

"Prohibiting operators from leaving keys in parked motor vehicles. The governing body of *any* city may by ordinance require every *passenger* motor vehicle to be equipped with a lock suitable to lock either the starting lever, throttle, steering apparatus, gear shift lever or ignition system; prohibit any person from permitting a motor vehicle in his custody from standing or remaining unattended on any street, alley or in any other public place, except an attended parking area, unless either the starting lever, throttle, steering apparatus, gear shift or ignition of said vehicle is locked and the key for such lock is removed from the vehicle; and provide forfeitures for such violations." (Emphasis added).

Note that the statute is limited to passenger vehicles, and allows any city regardless of size to enact an ordinance.

¹⁷ There are a number of newspaper articles on the subject. *Milwaukee Journal*: Nov. 15, 1945; Jan. 8, 1946; Jan. 18, 1946 editorial; Feb. 10, 1946; Feb. 12, 1946; Oct. 6, 1946; Mar. 24, 1947; Apr. 10, 1947; May 28, 1947; July 13, 1947; Aug. 4, 1947; Oct. 21, 1948; Oct. 22, 1948 editorial; Nov. 7, 1948; Feb. 10, 1949; Apr. 18, 1949; Dec. 12, 1949; Aug. 33, 1950; Aug. 10, 1950; Mar. 1, 1951; Nov. 1, 1952 greensheet; Dec. 2, 1952; Apr. 19, 1953; Apr. 23, 1953; May 9, 1953; May 13, 1953; Feb. 2, 1954; Feb. 15, 1954; Mar. 11, 1954; Mar. 21, 1954; May 4, 1954 letter from people column. *Milwaukee Sentinel*: Feb. 10, 1949; Feb. 2, 1954.

¹⁸ Letter from Chief Polcyn to Senator Bernhard Gettelman, dated January 26, 1953, and a letter to Senator John C. McBride, dated January 31, 1947.

The Milwaukee Metropolitan Crime Prevention Commission, in September of 1946, issued the pamphlet, "Here, Kid, Take My Car!" In March of 1947, they also published, "Keys Of Another Kingdom", recommending a program of education to prohibit leaving keys in the car, and a state law, stating that seven states and the District of Columbia already had such laws. The 1953 Wisconsin statute is an enabling or option statute, based on Bill 357, S., 1951 which in turn was based on Bill 313, S., 1947.¹⁹ These two earlier Bills called for a non-optional state-wide law, but met with opposition from rural interests, who felt it was unnecessary to lock their tractors, reporting that there was no car theft problem in rural communities. The motor carriers opposed the Bill because they would have to go to great expense to install locking mechanisms.

Throughout the history of the state legislation, in committee, by correspondence, or on the floor of the senate or assembly, there was no discussion relating to the liability for damage caused by a thief. Since the legislative intent as to persons intended to be within the risk, and as to extending absolute civil liability to the situation under discussion has not been expressly spelled out in either our State law, or in ordinances passed thereunder, it should be noted, in order to ascertain just what persons are within the risk, that the purpose of this law is to:

1. ". . . add greatly toward the prevention of automobile thefts thereby saving the owners a great deal of inconvenience and assuring them of finding their automobiles where they parked them.
2. Take away temptation from teen-agers to take these automobiles for joy rides.
3. Save the heartaches of hundreds of fathers and mothers whose sons were arrested for automobile larceny, thereby bringing disgrace upon the family."²⁰

From authorities examined and cited, it is the writer's conclusion that safety statutes or ordinances are differentiated from general statutes or ordinance by a comparison of the specific public dangers attempted to be guarded against by each. It is apparent that a parking ordinance has in view no more than the orderly flow of traffic, whereas a speed ordinance seeks to protect the safety of the public in the use of the highways.

Primarily then, the Milwaukee Ordinance and other similarly worded city ordinances should be construed to be anti-theft measures. From the foregoing, the writer concludes that serious accidents, loss of life, and property damage are incidents not intended to be covered by the statutes and ordinances under discussion.

¹⁹ Amendment and Bill history from Wisconsin Legislative Library, M. G. Toepel, Chief Librarian.

²⁰ Letter from Chief Polcyn to Senator Bernhard Gettelman dated January 26, 1953.

SOUTH CAROLINA, UTAH, AND WYOMING have simple model key statutes. New Hampshire and Rhode Island have statutes saying the car must be locked up, meaning keys must be removed, but do not actually use the words "remove the keys from the vehicle." Milwaukee, New Orleans, Kansas City (Mo.), and Minneapolis have key ordinances.²¹ All but a few states require that when parking brakes must be set, wheels turned toward curb on a perceptible grade, and the motor turned off, or a combination of all of these three.²²

INDIANA—In a lone Indiana case, *Kiste v. Red Cab, Inc.*,²³ the court sustained a demurrer under almost the identical facts of *Ney v. Yellow Cab Co.*^{23a} The Indiana court found the cab company not liable, saying that violation of the statute against leaving a key in the car was not a proximate cause of the injury. The dicta following in this case outlines the majority construction of a key statute.

MASSACHUSETTS—Four applicable cases of importance have been decided in Massachusetts. The most recent is *Gailbraith v. Levin*,²⁴ where keys were left, as requested, on the visor, by an employee of the defendant. A unanimous court found the owner of the unregistered car not liable for damages caused by a thief, expressly repudiating *Malloy v. Newman*,²⁵ which erroneously found liability, and reaffirming *Slater v. T. C. Baker Co.*²⁶

The Slater case said:

(conceding the defendant's negligence) ". . . the larceny and use of the automobile by the thief were intervening independent acts

²¹ The following states and Washington, D. C. have key statutes: ALA. CODE (1940) Tit. 36, §27 as amended by 1949. ARK. STATS. (1947) 76-651. COLO. STAT. ANN. (1935) c. 16, §232. TRAFFIC AND MOTOR VEHICLE REGULATIONS FOR THE DISTRICT OF COLUMBIA, §58. IDAHO CODE (1947) §449-560.1, 1953 Supp. ILL. REV. STATS. (1953) c. 95½, §189. BURNS' IND. ANN. STATS. (1933) §47-2124 (1952 Replacement). BALDWIN'S KEN. REV. STATS. ANN. (1943) §189. 430. MD. CODE (1951) Art. 66½, §212. MASS. ANN. LAWS (1954) c. 90, §13. MISS. CODE (1942) §8219. VERNON'S MO. STATS. ANN. (1952) §304.150. N.H. REV. LAWS (1942) c. 119, §24. N.M. STATS. (1941) §68-2460 (1953 Supp.). N.C. GEN. STATS. (1943) §20-163. R.I. GEN. LAWS (1938) c. 88, §15. S.C. CODE (1952) §46-491. UTAH CODE ANN. (1953) §41-6-105. WASH. STATS. ANN. (1952) 46.48.280. WIS. STATS. (1953) §69.95. WYO. COMP. STAT. (1945) §60-530.

²² ARIZ. CODE ANN. (1939) §66-118. CAL. VEHICLE CODE (1944) (Deering). CONN. GEN. STATS. (1949) c. 110, §2414. DEL. CODE ANN. (1953) Tit. 21, §4147. IOWA CODE (1950) §321.362. LA. REV. STATS. (1950) Tit. 32, §241 (D). ME. REV. STATS. (1944) c. 19, §84. MICH. STATS. ANN. (1952) §9.2376. NEB. REV. STATS. (1952 Reissue) §39-759. N.J. REV. STATS. (1937) 39.4-137. N.D. REV. CODE (1943) Vol. 4, 39-1024. ORE. COMP. L. ANN. (1940) §115-355. PURDON'S PA. STATS. ANN. (1953) 3 Tit. 75, §613. S.D. CODE (1939) Vol. 3, §44.0326. WILLIAM'S TENN. CODE ANN. (1934) §2691. VERNON'S TEX. STATS. (1948) Art. 6701 d, §97. VT. STATS. REV. (1947) §10.251. VA. CODE (1950) §46-287. WASH. STATS. ANN. (1952) 46.48.280.

²³ 122 Ind. App. 587, 106 N.E. 3d 395 (1952).

^{23a} *Supra* note 3.

²⁴ 323 Mass. 255, 81 N.E. 2d 560 (1948).

²⁵ 310 Mass. 269, 37 N.E. 2d 1001 (1941). It was said in the Gailbraith case, 81 N.E. 2d at 563: "The state of being unregistered is more an abstract conception that it is a fact in nature. As a causal element it is inherently weak."

²⁶ 261 Mass. 424, 158 N.E. 778 (1927).

which the defendant was not bound to anticipate or guard against. Causal connection between the defendant's negligence and subsequent injuries was broken by the thief's larceny and use of the automobile."

*Sullivan v. Griffin*²⁷ involves violation of a key ordinance where two boys removed the keys from the ignition of an illegally parked car, gave the keys to two other boys who then took the automobile and drove around for an hour at reckless speeds before striking a pedestrian. The administratrix could not recover from the car owner as the injuries were held not be a proximate result of the defendant's negligence.

MINNESOTA—In *Wannebo v. Gates*²⁸ it was decided on the facts, that an accident happening several hours and five miles from the place of theft was too remote to charge the defendant with responsibility in spite of his violation of a Minneapolis key ordinance. Until *Anderson v. Thiesen*²⁹ it was undecided in Minnesota whether a defendant would be liable for damages caused by a thief in flight. In the *Anderson* case, it was decided that the negligent driving by the thieves while fleeing in the defendant's automobile was an intervening efficient cause, breaking the chain of causation between the defendant's act of leaving his key in the ignition switch (contrary to the Minneapolis ordinance) and the collision with decedent's automobile.

Historically, in *Kennedy v. Hedberg*,³⁰ the plaintiff administrator was denied recovery when a car owner left his friend in the car with the motor running when the friend started it in motion running over and killing plaintiff's decedent. Defendant was held to have violated Section 2632 of the Minnesota Statutes (1917), now repealed, which provides that, "No . . . motor vehicle shall be permitted to remain . . . unattended . . . with the motor running."

LOUISIANA—In Louisiana, *Maggiore v. Laundry & Dry Cleaning Service, Inc.*,³¹ is the single case decided under a key ordinance. Defendant in this case was found liable when plaintiff pushed defendant's unlocked truck from in front of plaintiff's blocked driveway where the truck started up and ran over plaintiff. The court remarked it is expected people would push trucks from their driveway. Theft was not involved.

In a later Louisiana case, *Midkiff v. Watkins*,³² although no key statute or ordinance was violated, recovery was denied and the *Maggiore* case distinguished. In this case defendant left the keys in the ignition, and a mentally incompetent youth stole the auto, killing

²⁷ 318 Mass. 359, 61 N.E. 2d 330 (1945).

²⁸ 227 Minn. 194, 34 N.W. 2d 695 (1948).

²⁹ 231 Minn. 369, 43 N.W. 2d 272 (1950).

³⁰ 159 Minn. 76, 198 N.W. 302 (1924).

³¹ La. App., 150 So. 394 (1933).

³² La. App., 52 So. 2d 5773 (1951).

plaintiff's decedent. In denying recovery, the court distinguished the *Maggiore* case, warning against making key ordinance violators insurers. In future cases, including those which deal with ordinances or statute violations, the *Midkiff* case will probably be followed.

In *Castay v. Katz and Besthoff*,³³ a truck was left unattended with the motor running. Five and one-half blocks from the parking place the thief injured the plaintiff. No statute was violated. The court stated that it is not to be expected or reasonably foreseen that a thief or third party will steal or do damage. The act of the thief is a superseding cause.

Weiss v. King,³⁴ followed in *Midkiff v. Watkins*, does not involve a theft or key ordinance. Here the ignition was left unlocked and a stranger pushed the car causing it to start and run across the street into a glass window. Recovery was denied.

ILLINOIS—Three Illinois cases have been decided where a key statute was violated and the injury was inflicted by a thief in flight. Most recently (1954) in *Ney v. Yellow Cab. Co.*,^{34a} following *Ostergard v. Frisch*,³⁵ the violator was held liable on the theory that the violation in itself creates liability, since criminal acts do not necessarily interrupt cause and effect between negligence and injury when the theft is foreseen. This is the prevailing rule in Illinois. Whether the violator is liable is left for the jury. Strong dissents in both cases were founded on the ground that flight was not shown, the defendant being liable only when damages occur in flight.

In *Cockrel v. Sullivan*,³⁶ on the ground that there was insufficient evidence of foreseeability to get to the jury, plaintiff could not recover. In *Moran v. Borden Co.*,³⁷ where a theft was not involved, but where the driver's children tampered with an electric milk truck, with the key in the ignition, starting it and injuring a child, plaintiff recovered \$5000.00.

WASHINGTON, D. C.—Oldest of the four cases arising in Washington, D. C., is *Squires v. Brooks*.³⁸ It found that the act of the thief was an intervening efficient cause. Twenty-seven years later on similar facts and law this case was overruled in *Ross v. Hartman*³⁹ which found that the act of the thief was not an intervening cause. In the *Ross* case it was held that an owner of a vehicle was liable to plaintiff who was injured when struck by the vehicle driven by a thief who stole it

³³ La. App., 148 So. 76 (1933).

³⁴ La. App., 151 So. 681 (1934).

^{34a} *Supra* note 3.

³⁵ 33 Ill. App. 359, 77 N.E. 2d 537 (1948).

³⁶ 344 Ill. App. 620, 101 N.E. 2d 878 (1951).

³⁷ 309 Ill. App. 391, 33 N.E. 2d 166 (1941).

³⁸ 44 App. D. C. 320 (1916).

³⁹ 139 F. 2d 14 (D.C. Cir. 1943), cert. denied 321 U.S. 796, 64 S. Ct. 790, 88 L.Ed. 1080.

from a public alley, where it had been left unattended, with the key in the ignition, by owner's agent, in violation of a traffic regulation.

*Schaff v. Claxton*⁴⁰ extended liability to the owner of a vehicle where his employee left the truck with the key in the ignition in a private parking space beside a restaurant. Recovery was also had in *Bullock v. Dahlstrom*,⁴¹ where a lady Marine, a passenger in a cab, stole it when the driver went to make a phone call and get cigarettes.

MARYLAND AND RHODE ISLAND—A single case in Maryland, *Hochschild Kohn & Co. v. Canoles*,⁴² awarded plaintiff \$29,000 when an oil truck with its motor running to pump oil rolled and struck plaintiff's automobile. A key statute was violated, but actually negligence in that respect was not decided. The truck had bad brakes and the truckdriver was aware of it. The Maryland key statute has still to be tested.

*Kelly v. Davis*⁴³ is the lone case decided in Rhode Island. In that case the defendant was found not liable when plaintiff was struck by a car found to be properly secured by defendant. No cases involving theft have been tried under the Rhode Island key statute.

WISCONSIN—In Wisconsin, in order to establish negligence, it must be determined whether the defendant lived up to a legally-imposed standard of care, which, in the case of safety statutes and ordinances, is the standard prescribed by the statute or ordinance. If the defendant violated such statute or ordinance, he is guilty of negligence. Leaving aside, now, the question of whether Milwaukee's key ordinance is a safety ordinance, and assuming there is negligence, the next question is, "Was the negligence the legal cause of the injury?" Legal cause is defined as a substantial factor causing injury. It is not a question of whether the defendant could have foreseen that his negligence would cause the harm or any harm. Foreseeability is not an element of causation. Foreseeability does, however, bear on the question of intervening forces. Granted that an actor is negligent, and that his negligence contributed to the plaintiff's injury, the question often is whether the defendant could have reasonably foreseen the intervening force. If the intervening force could have been foreseen, it is not a superseding force cutting off liability.⁴⁴

Liability of a car owner who leaves his keys in a car which is stolen by a thief who causes damage has not been decided in Wisconsin. But a parallel line of cases have been adjudged under a comparable statute.

Section 176.30 (1) of the Wisconsin statutes is a penal statute pro-

⁴⁰ 144 F. 2d 532 (D.C. Cir. 1944).

⁴¹ 46 A. 2d 370 (1946).

⁴² 193 Md. 276, 66 A. 2d 780 (1949).

⁴³ 48 R.I. 94, 135 A. 602 (1927).

⁴⁴ *Osborne v. Montgomery*, 203 Wis. 223, 234 N.W. 372 (1931); *Pfeifer v. Standard Gateway Theater, Inc.*, 262 Wis. 229, 55 N.W. 2d 29 (1952); RESTATEMENT, TORTS §441.

hibiting sale of liquor to an intoxicated person with a prescribed penalty for its violation. Two cases tried under this statute have concluded that a tavern keeper in Wisconsin who sells liquor to an intoxicated person contrary to the law is not liable for damages caused by the vendee.⁴⁵

"The cases are overwhelmingly to the effect that there is no cause of action at common law against a vendor of liquor in favor of those injured by the intoxication of the vendee. In view of the common law rule, it has been necessary where opinion favors the creation of such a cause of action to enact civil damage laws."⁴⁶

"The common law holds the man who drank the liquor liable and considers the act of selling it as too remote to be a proximate cause of an injury caused by the negligent act of the purchaser of the drink."⁴⁷

Although the sale of liquor to the person was a violation of the statute, the Wisconsin court held that the defendant was not liable for damages sustained since that penal statute does not expressly impose civil liability. This leads us to the logical conclusion that the same would be true in the case of a statute or ordinance penalizing a person for leaving the keys in his car, and that, in order to establish liability, an express civil liability should be imposed by the legislature.

THEFT—NO STATUTE OR ORDINANCE VIOLATED—In the absence of a statute or ordinance, leaving a key in a car may or may not be negligent, and may or many not be held to be a substantial factor in causing the plaintiff's harm.⁴⁸ The majority opinion holds the car owner not liable, even if the damage occurs when the thief is in flight.⁴⁹

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⁴⁵ Discussed in 1941 *Wis. L. Rev.* 419.

⁴⁶ *Demge v. Feierstein*, 222 *Wis.* 203, 268 *N.W.* 210 (1936).

⁴⁷ *Siebel v. Leach*, 233 *Wis.* 66, 288 *N.W.* 774 (1939).

⁴⁸ Discussed in 1951 *Wis. L. Rev.* 740.

⁴⁹ 22 *N.C.C.A.* 633 and supplemental case table; 26 *A.L.R.* 912; 158 *A.L.R.* 1374 and supplemental *Blue Books*; *RESTATEMENT, TORTS* §448; 5 *AM. JUR., Automobiles*, §338, p. 683.