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Criminal Law -- Automobiles -- Manslaughter -- Failure to Stop at Highway Intersection

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graduated scale based on the number of stores owned to be unconstitutional.[9] The judge in so holding said, "All persons engaged in the operation of one or more stores or mercantile establishments within the state of Indiana belong to the same class for occupational tax purposes, as the plaintiff."

The North Carolina decision is opposed to the above holdings, but it is submitted that the result is correct. The court recognizes as a proper basis for classification the protection of the independent merchant class.

MOORE BRYSON.

Criminal Law—Automobiles—Manslaughter—Failure to Stop at Highway Intersection.

Defendant, in violation of a statute,[1] failed to stop before turning into a highway from a side road. Just as his car straightened out in the highway it was struck from the rear by a bus. The bus skidded, turned over, and a passenger was killed. Defendant was charged with manslaughter. The pavement was slippery with snow and ice, and the defendant's car was first seen by the bus driver when it was five or ten feet away. A person coming into the highway from the side road could see to the left—the direction from which the bus came—for a distance of 175 yards. *Held,* the purpose of the statute is to allow motorists to gain a knowledge of conditions on the highway. Since the defendant already had such knowledge, the purpose of the statute had been accomplished, and there was no proximate

[9] Jackson v. State Board of Tax Commissioners of Indiana *et al.*, 38 F. (2d) 652 (S. D. Ind. 1930). ACTS IND. 1929, c. 207, §5, (The validity of the classification in such section being the main question of the case.) is as follows: "Every person, firm, corporation, association, or copartnership opening, establishing, operating or maintaining one or more stores or mercantile establishments, within this state, under the same general management, supervision, or ownership, shall pay the license fees hereinafter prescribed for the privilege of opening, etc. . . .

The license fees hereinafter prescribed shall be as follows:

(1) Upon one store the annual license fee shall be three dollars for each such store;

(2) Upon two stores or more, but not to exceed five stores, the annual license fee shall be ten dollars for each such additional store;

(3) Upon each store in excess of five, but not to exceed ten, the annual license fee shall be fifteen dollars for each such additional store;

(4) Upon each store in excess of ten, but not to exceed twenty, the annual license fee shall be twenty dollars for each such additional store;

(5) Upon each store in excess of twenty, the annual license see shall be twenty-five dollars for each such additional store."

[1] N. C. ANN. CODE (Michie, 1927), §2621 (63).

causal relation between the breach of the statute and the death of the passenger.[2]

A majority of the courts, frequently on the basis of a statutory definition of the crime, hold that a simple violation of a statute, resulting in a homicide, will support a conviction of manslaughter.[3] Others hold there must in addition be an element of reckless disregard for human life.[4] There is no statutory definition of manslaughter in North Carolina. The supreme court of this state has taken the view that a simple violation of a statute will support such a conviction if the statute was designed to prevent injury to the person.[5] It has been intimated by the court that traffic regulations meet this condition.[6] The general purpose of the particular regulation here involved, which authorizes the Highway Commission to designate through highways by erecting stop signs at entrances thereto, and makes a failure to stop at signs so erected unlawful, seems to bring it within the qualification. Apparently, this is assumed in the decision.

In construing the statute, the court comes to the conclusion that its purpose is simply to give a driver on a side road an opportunity to inform himself of conditions on an intersecting highway. It logically follows that if this particular driver already had such knowledge, compliance with the statute would have been a useless procedure without effect on the situation, and the violation was not the proximate cause of the accident.

However, one might differ with the court's construction, which practically nullifies this remedial statute as to "open" intersections. The view might be taken that the duty imposed on the defendant was not only to inform himself of conditions on the highway, but also to act on such information; that the duty was not only to *determine* whether he could enter the highway with reasonable safety to himself and others, but also *not to enter* unless it could be done with such reasonable safety. It seems likely that the legislative intent was to

[2] State v. Satterfield, 198 N. C. 682, 153 S. E. 155 (1930).

[3] Kimmel v. State, 198 Ind. 444, 154 N. E. 16 (1926); State v. Schaeffer, 96 Ohio St. 215, 117 N. E. 220 (1917); McBride v. State, 20 Ala. App. 434, 102 So. 728 (1925).

[4] People v. Falkovitch, 280 Ill. 321, 117 N. E. 398 (1917); People v. Barnes, 182 Mich. 179, 148 N. W. 400 (1914).

[5] State v. Vines, 93 N. C. 493 (1885) (pointing gun in sport); State v. Turnage, 138 N. C. 566, 49 S. E. 913 (1905) (pointing gun); State v. Stitt, 146 N. C. 643, 61 S. E. 566, 17 L. R. A. (N. S.) 308 (1918) (pointing pistol); State v. Whaley, 191 N. C. 387, 132 S. E. 6 (1926) (violating speed law).

[6] State v. Whaley, *supra* note 5.

give traffic on a through highway the right of way[7] and prevent just what happened in this case—a car turning from a side road into a highway immediately in front of a car thereon. The court says, ". . . the object of the statute is not to delay or impede travel. . . ." This is no doubt true. In fact, it is probable that the legislature was seeking to speed up travel. But it is also probable that it had in mind travel on the main highway.

If it be admitted that the purpose of the statute was to give traffic on main highways the right of way, the instant situation then becomes similar to that in the New York case of *Shirley v. Larkin Co.*,[8] in which *X* entered an intersection immediately in front of *Y*, who had the right of way. The court there said that in disregard of the statute, *X* "recklessly went on when it was his duty to wait for the other car" and "precipitated the accident."

It is a familiar rule of bailments that when a carrier has deviated from his proper course, and goods in his possession have been damaged, ". . . he cannot set up as an answer to the action the bare possibility of a loss if his wrongful act had never been done."[9] It is interesting to speculate as to what would be the result if a rule analogous to this were applied in situations like the present one, and a defendant were required to show that compliance with the statute would not have prevented the result complained of instead of the prosecution being required to show that compliance would have prevented such result.[10]

HUGH L. LOBDELL.

Damages—Measure of Recovery on Dissolution of Injunction Restraining Foreclosure Sale

A recent North Carolina case raises the interesting question as to the measure of damages that should be allowed to a defendant who has been restrained from selling land under a power contained in a deed of trust.[1]

[7] See Roe v. Kurtz, 203 Iowa 906, 210 N. W. 550 (1926).

[8] 239 N. Y. 94, 145 N. E. 751 (1924). A fact situation very similar to the instant case is involved in Lasene v. Syvanen, 123 Ore. 629, 263 Pac. 59 (1928). But *cf.* Teissier v. Stewart, 11 La. App. 164, 123 So. 174 (1929).

[9] Davis v. Garrett, 6 Bing. 716 (1830).

[10] In Conrad v. Springfield Con. Ry. Co., 240 Ill. 12, 88 N. E. 180 (1909) it is said that one charged with a tort resulting from violation of an ordinance may show *in defense* that compliance would not have prevented the injury complained of.

[1] Gruber v. Ewbanks, 199 N. C. 335, 154 S. E. 318 (1930).