

The Hit and Run Statute

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A law that in case of accident to person or property on the highway due to the operation of a motor vehicle, a person so operating the vehicle shall stop and upon request shall give his name, first appears in the Ohio statutes in 1908. The statute, somewhat revised in 1929, is Section 12606 of the General Code. No successful challenge of the constitutionality of the act has been made but it has not received much consideration in the Ohio Supreme Court. A municipal court has upheld it,¹ however, as has the court of appeals.²

The United States and Ohio Constitutions provide that no person shall be compelled in any criminal case to be a witness against himself. A Cleveland ordinance provided that every person involved in an accident which caused injury to any person or which resulted in a vehicle becoming disabled should make a full report to the Cleveland police department. This ordinance was declared unconstitutional and in violation of the privilege against self-incrimination in the cases of *Rembrandt v. Cleveland*,³ and *James v. Cleveland*.⁴ In other jurisdictions, both before and after these cases it has been quite generally held that no constitutional provision is violated. The theory in favor of constitutionality is that under the police power the state and municipalities within its authority may enact reasonable rules for the safety of the citizens; that the use of streets for automobiles is a privilege which the state may grant or deny; and that it may grant such use upon conditions which will be binding upon all who accept the privilege.⁵

It is not likely that any serious attack will be made on the "Hit and Run" Statute at this late date. In fact the Ohio Supreme Court has said, "There is no issue in this case as to the validity of the provisions of the ordinance upon which the charge against the defendant was based. It contains substantially the same provisions as are embodied in Section 12606, General Code"⁶ But

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¹State v. Sclaro, 14 Ohio Op. 384 (1939).

²Moore v. State, 36 Ohio L. Rep. 579 (1931).

³28 Ohio App. 4, 161 N.E. 364 (1927).

⁴28 Ohio App. 178, 162 N.E. 617 (1923).

⁵State v. Sterrin, 78 N.H. 220, 98 Atl. 482 (1916); *People v. Rosenheimer*, 209 N.Y. 115, 102 N.E. 530 (1913); *Ex parte Kneedler*, 243 Mo. 632, 147 S.W. 983 (1912); *Ule v. State*, 208 Ind. 255, 194 N.E. 140 (1935); *State v. Razey*, 129 Kan. 328, 282 Pac. 755 (1929).

⁶*Cleveland v. Jorski*, 142 Ohio St. 529, 53 N.E. 2d 513 (1944), conviction reversed because no request made that defendant give his name.

the Cleveland ordinance which was struck down required a report to the police and the new statute, Section 6298, the Motor-Vehicle Safety Responsibility Act, (discussed elsewhere in this issue) requires a report to the Registrar. Similar statutes have been upheld in other states,⁷ and probably will be here, but it is a hurdle which must be surmounted.

The Ohio statute provides that in case of accident to or collision with persons or property upon the highway, the driver shall stop and upon request of the person injured or any person, give his name and address. Most states have statutes to this effect. Some are almost identical.⁸ But most of them go further. *State v. Razey*, *supra* note 5, says defendant shall give his name and says nothing about a request. *Ule v. State*, *supra* note 5, says he shall give his name to the injured party or some one with him. Some statutes say that he shall give his name to the injured party or a police officer.⁹ And some statutes declare that he shall not leave the scene without making known his true name.¹⁰ Many states require that defendant shall give aid or render assistance.¹¹

Some statutes require that under certain circumstances a report shall be made to a police officer or at a police station. The following are typical: If the injured party is unconscious and there is no one with him, and there is no police officer in the vicinity, report must be made to the nearest police station.¹² If death or serious injury or other vehicle disabled, report to nearest police station.¹³ In case of death or serious injury, report to sheriff or chief of police.¹⁴

Section 12606 provides that in case of accident or collision the driver shall stop. There is no qualification that the driver be at fault. Some statutes specifically say that the driver must stop whether he be at fault or not. For example: "Regardless of whether the injury was done through the negligence or carelessness of the person inflicting the injury."¹⁵ Any person who while driving a motor vehicle, although he may not be at fault, shall strike, wound

⁷*Lawyers v. Nadeau*, 136 Me. 361, 10 A. 2d 357 (1940); *State v. Clark*, 67 S.D. 133, 290 N.W. 237 (1940).

⁸*Cf State v. Sterrin*, *supra* note 5.

⁹*People v. Rosenheimer*, *supra* note 5; *Ex parte Kneedler*, *supra* note 5.

¹⁰*In re Jones*, 130 Fla. 667, 178 So. 424 (1938).

¹¹*People v. Scofield*, 203 Cal. 703, 265 Pac. 914 (1928); *People v. Hoaglin*, 262 Mich. 162, 247 N.W. 141 (1933); *Olson v. State*, 36 Ariz. 294, 285 Pac. 282 (1930); *Scott v. State*, 90 Tex. Cr. Rep. 100, 233 S.W. 1097 (1921); *Ule v. State*, *supra* note 5; *In re Jones*, *supra* Note 10 (render all possible assistance).

¹²*People v. Rosenheimer*, *supra* note 5; *Ule v. State*, *supra* note 5; *Olson v. State*, *supra* note 11.

¹³*People v. Hoaglin*, *supra* note 11.

¹⁴*State v. Razey*, *supra* note 5.

¹⁵*In re Jones*, *supra* note 10.

or injure any person."¹⁶ But even if the statute says no more than the Ohio Act, and does not discuss fault or the lack of it, the rule is the same. "It does not matter whether the person leaving the scene caused the injury by a culpable act, or whether it occurred through pure accident."¹⁷ "It will be noted that it matters not whether the striking of the person was avoidable or unavoidable."¹⁸ "It is clear, we think, the statute here invoked does not contemplate that in a prosecution thereunder the court shall be concerned in determining where the fault lies."¹⁹

A time-honored distinction in the law of Torts is made between acts and omissions, between misfeasance and nonfeasance. Section 322 of the Restatement of the Law of Torts declares: "If the actor by his tortious conduct has caused such bodily harm to another as to make him helpless, the actor is under a duty to use reasonable care to prevent any further harm which the actor then realizes or should realize as threatening the other." Then follows: "Caveat: The Institute expresses no opinion as to the existence or nonexistence of a similar duty to aid or protect one whom the actor's non-tortious conduct has rendered helpless to aid or protect himself." It has been held that one who without fault injures another is under no legal duty to assist him.²⁰ Assuming that for practical consideration, the law will continue to support the doctrine that there is no affirmative duty to act when there is no legal relation between the parties, the doctrine seems even more extreme when the plaintiff's injury was brought about by the defendant's act even though the defendant was without fault. It is unlikely that the defendant would long continue to escape liability in such cases. The beginnings of the breach in the doctrine are evidenced here. Failure to stop makes the defendant liable to punishment though he was without fault in causing the accident. While these are criminal cases and may be justified on the argument that acceptance of the privilege of using the highway creates the duty, they indicate the modern tendency to impose a duty on the defendant to aid one whom he has injured regardless of fault.

In the last session of the Legislature, Section 12606-1 was duly passed and added to the Hit and Run Statute. It provides that the driver of any vehicle involved in an accident resulting in damage to real property or personal property attached thereto, legally on

¹⁶Ule v. State, *supra* note 5.

¹⁷State v. Hudson, 314 Mo. 599, 285 S.W. 733 (1926).

¹⁸Oney v. State, 145 Tex. Cr. Rep. 613, 170 S.W. 2d 738 (1943).

¹⁹Weiderspon v. People, 118 Colo. 529, 198 P. 2d 301 (1948).

²⁰Griswold v. Boston & Maine, 183 Mass. 434, 67 N.E. 354 (1903); Union Pacific Ry. v. Cappier, 66 Kan. 649, 72 Pac. 281 (1903).

or adjacent to a highway, shall stop and take reasonable steps to notify the owner of such property of the accident and of his name, address, and registration number of the vehicle, and, upon request and if available, exhibit his operator's license. If the owner cannot be found, he shall within twenty-four hours forward the same information to the sheriff of the county and also give the location of the accident and a description of the damage.

Section 12606 deals with accident to or collision with persons or property "upon the highways." Section 12606-1 deals with "an accident resulting in damage to real property or personal property attached to such real property." Obviously this adds subject matter not included in the General Code. Section 12606 declares that the driver, "having knowledge of such accident or collision, shall stop and upon request of the person injured or any person, give such person his name and address . . ." Section 12606-1 provides that the driver shall "stop and take reasonable steps to notify the owner . . . and of his name and address . . ." The Ohio Supreme Court in construing an ordinance similar to Section 12606, has ruled that there is no legal duty to give his name or identify himself unless request is made.²¹ Most statutes in other jurisdictions contain no such limitation. Section 12606-1 requires that he make a reasonable attempt to notify the owner. Of course the owner of real property is less likely to be present at the accident. Yet the damage is usually much less than in a collision. Section 12606 might well have been amended so as to impose the same duty in both situations.

In 1929 the Legislature amended the previous statute by adding that it applied to a driver "having knowledge of such accident or collision." Nothing is said about knowledge in the new Act and a strict construction of it could hold the defendant liable without such knowledge, but it is a penal statute and may not be so strictly construed.

The new Act contains a clause, not found in Section 12606, that the driver "shall, upon request and if available, exhibit his operator's or chauffeur's license." The land owner is no police officer and there may be some doubts as to the justification for this regulation.

Section 12606-1 provides that if the owner cannot be located, the driver within twenty-four hours shall forward the same information to the sheriff as well as the location of the accident and description of the damage. There is nothing relating to this in Section 12606. But Section 6298, the Motor-Vehicle Safety Responsibility Act, now provides that a driver involved in a motor

²¹Cleveland v. Jorski, *supra* note 6.

vehicle accident shall forward a report to the Registrar within five days;²² that the Registrar may suspend the license of one who fails to report;²³ and that failure to report may be punished by a fine not exceeding \$100.²⁴ More time is allowed in the Safety Responsibility Act, and the report is to the Registrar of Motor Vehicles and not the sheriff.

The new Act, Section 12606-1, for injuries to realty, imposes more requirements and duties upon the motorist than the older one, Section 12606, for injuries to persons on the highway. But a return to normalcy is observed when the penalty provisions are considered. For accidents to or collisions with persons or property on the highway, the motorist may be fined not more than \$200 or imprisoned in the county jail for not more than six months, or both. For damage to real property or attached personal property, the driver may be fined not more than \$100 or imprisoned in the county jail not more than thirty days, or both.

²² OHIO GEN. CODE § 6298-17.

²³ OHIO GEN. CODE § 6298-21.

²⁴ OHIO GEN. CODE § 6298-85.