parties, yet the necessary effect of the decision noted is to give new life to an old and technical refinement of very shadowy substance.

Today more and more states are reflecting a far broader policy toward pleading in general by adopting provisions similar to those contained in the new proposed federal rules which repudiate the strict, cumbersome, legalistic techniques of a former day in favor of a system better adapted to a more efficient administration of justice. Therefore, since the ground has already been broken by the *Townsend* case, and since a joinder of these two causes is within the letter and spirit of our law, it would seem that the way is clear for the courts of Ohio to place themselves in accord with the more liberal trend of the day. This should be done as soon as conveniently possible so as to permit such a joinder as was attempted in the principal case.

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TORTS

JUDICIAL NOTICE — NEGLIGENCE OF BAILEES — ORDINANCES AS SAFETY AND INDEMNITY MEASURES

Plaintiff filed an action in Municipal Court of Cincinnati against defendant for personal injuries sustained in an automobile accident caused by a car owned by defendant and rented to one Jesse Dunn. The city enacted an ordinance, No. 50-1927, in Feb., 1929, which provided in effect, that no license to operate any public vehicle should be issued by City Treasurer until the applicant should deposit with the City Treasurer a policy of liability insurance, providing for indemnity for or protection to the insured against loss as provided under this ordinance. It also provided that it should be unlawful to operate any such public vehicle, or permit such vehicle to be operated until the requirements of the ordinance had been complied with, and imposed a fine for its violation. The defendant in violation of the above ordinance rented a car to Jesse Dunn against whom the present plaintiff had obtained a judgment which was not satisfied. The plaintiff in the present action was denied relief by the Municipal Court, and on appeal the appellate court reversed the judgment. The Supreme Court reversed the Court of Appeals and affirmed the judgment of the trial courts, denying plaintiff recovery. *Orose* v. *Hodge Drive-It-Yourself Co.*, 132 Ohio St. 607, 9 N.E. (2d) 671 (1937).

One of the defenses offered was that the upper court would not take judicial notice of the ordinance, since it was not contained in the record.

The Ohio Supreme Court had not previously passed on this question. The lower courts of the state and the courts of other states are in conflict. Courts which refuse to notice the ordinance usually base their decisions on the inconvenience that would result to an upper court if it were required to search for municipal ordinances. *Nelson* v. *Berea*, 21 Ohio C.C. 781, 12 C.D. 329 (1901); *Gates* v. *Cleveland*, 18 Ohio C.C. (N.S.) 349, 33 C.D. 80 (1911); *State* v. *McCoy*, 14 Ohio L.A. 363 (1933); *Esch* v. *Elyria*, 7 Ohio C.C. (N.S.) 9, 17 C.D. 446 (1905); *Euclid* v. *Bramley*, 20 Ohio C.C. (N.S.) 453, 31 C.D. 396 (1915). Courts taking the contrary view usually rely on an analogy to the Federal rule. *Akerman* v. *Lima*, 7 Ohio N.P. 92, 80 O.D. (N.P.) 430 (1898); *Strauss* v. *Conneaut*, 3 C.C. (N.S.) 445, 13 C.D. 320 (1902); *Jackson* v. *Copelan*, 50 Ohio App. 414, 198 N.E. 596 (1935); *Town of Moundsville* v. *Velton*, 35 W. Va. 217, 13 S.E. 373 (1891); *City of Spokane* v. *Knight*, 96 Wash. 403, 165 Pac. 105 (1917). The United States Supreme Court will take judicial notice of a state statute in a case on appeal from the state court. *Hanley* v. *Donoghue*, 116 U.S. 1, 6 Sup. Ct. 242 (1885); *Western Life Indemnity Co.* v. *Rupp*, 235 U.S. 261, 35 Sup. St. 37 (1914). In a previous note in 2 O.S.U. L. J. 164, the two lines of decision were compared and a conclusion reached that the view favoring the taking of judicial notice was to be preferred. The Ohio Supreme Court in this case by a four-to-three vote reached the same conclusion.

The Supreme Court agreed with defendants' contention that the bailor was not liable at common law for an injury to a third person caused by the negligence of the bailee. This is in accord with the great weight of authority in the absence of statute. *McColligan* v. *Penna. R. Co.*, 214 Pa. St. 229, 63 Atl. 792 (1906); *New York etc. Ry. Co.* v. *New Jersey Elec. Ry. Co.*, 60 N.J.L. 338, 38 Atl. 828 (1897); *Thompson* v. *New Orleans R. Co.*, 10 La. Ann. 403 (1885); *Herlihy* v. *Smith*, 116 Mass. 265 (1874); *Rockford* v. *Nolan*, 316 Ill. 60, 146 N.E. 564 (1925); 3 R.C.L. 145, 92 Am. St. Report 547 note. In Ohio an early case imputed the negligence of the bailee to the bailor so as to bar the latter's action against a third party. *Puterbaugh* v. *Reasor*, 9 Ohio St. 484, 6 A.L.R. 316 N. (1859). The modern trend is decidedly against the doctrine of *Puterbaugh* v. *Reasor*. A.L.I. Restatement of Torts, sec 489, *Gfell* v. *Jefferson*, 31 Ohio C.A. 214 (1917); *Victor Tea Co.* v. *Walsh*, 38 Ohio App. 516, 34 O.L.R. 418 (1931).

But did the ordinance change the common law? The ordinance, in effect, imposed a penalty for renting a car without first taking out

insurance. The ordinance did not provide that a party injured by a negligent driver could maintain an action against the defendant. An ordinance designed for the protection of a certain class of people may set a standard of care and the plaintiff may maintain an action although that statute does no more than prescribe the penalty. *Schell* v. *Dubois*, 94 Ohio St. 93, 113 N.E. 664 (1916); *Corbett* v. *Scott*, 243 N.Y. 66, 152 N.E. 467 (1926); *Drake* v. *Fenton*, 237 Pa. St. 8, 85 Atl. 14 (1912); *Berdos* v. *Tremont etc. Mills*, 209 Mass. 489, 95 N.E. 876 (1911). These are usually denominated safety statutes. The Court of Appeals regarded this as a safety measure and argued that compliance with the statute would keep incompetent drivers off the road. But the Supreme Court held that this was not a safety, but an indemnity ordinance, and that the failure to obtain a license was not the proximate cause of the injury. The court drew an analogy to cases in which it was decided that a plaintiff who operated a car without proper license plates was not liable to third party for non-compliance with the ordinance or statute. *Gonchar* v. *Kelson*, 114 Conn. 262, 158 Atl. 545 (1932); *Kurtz* v. *Morse Oil Co.*, 114 Conn. 336, 158 Atl. 906 (1932); *Ham* v. *Greensboro Ice and Fuel Co.*, 204 N.C. 614, 169 S.E. 180 (1933). The Massachusetts rule is contra. *Bellenger* v. *Nally*, 282 Mass. 523, 185 N.E. 346 (1933); *Emeneau* v. *Doyle*, 282 Mass. 280, 184 N.E. 720 (1933).

It would seem that this ordinance would not ordinarily be regarded as a safety measure and that the purpose of the statute was more accurately stated by the Supreme Court than by the Court of Appeals. But the analogy to the car license cases is not perfect. Such statutes are passed for the primary purpose of obtaining revenue. This was an indemnity ordinance and the plaintiff is without indemnity. The case is unusual on its facts and does not fall into any of the accepted classifications. The case can be justified on the ground that where the ordinance does not specifically give the injured party a cause of action, the plaintiff must show that this was a safety measure, which he can not do. The rule might conceivably be relaxed to include indemnity measures. Another view would be that since some ordinances in cities of other states have declared that the injured party may maintain an action, and since such ordinances and statutes have been held constitutional, *Levy* v. *Daniels U-Drive-Auto Renting Co.*, 108 Conn. 333, 143 Atl. 163, 61 A.L.R. 846 (1928), the remedy lies with the legislature.

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