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so as to preserve the requirements of due process. Justice Rutledge of the United States Supreme Court, appears to have summed up the situation quite nicely when he said, " . . . restrictions upon authority for securing personal liberty, as well as fairness in trial to deprive one of it, are always inconvenient—to the authority so restricted."[29]

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LIABILITY OF A CAR OWNER FOR A THIEF'S NEGLIGENCE

An interesting question of tort liability arises when an automobile owner, upon parking his car, fails to remove the keys from the ignition, the car is stolen, and the thief subsequently negligently injures a third party. Should the car owner be held liable to the third party for his carelessness in failing to take adequate precautions against the theft of his car?

In answering this question, the courts have shown little agreement, in either approach or solution to the problem. In general, decisions have been rendered on the basis of proximate cause, emphasizing intervening factors, or a duty owed by the car owner to the third party, usually legislatively imposed. Courts talking in terms of proximate cause have ordinarily denied recovery from the defendant, often holding that the theft and later negligence of the thief were intervening factors, breaking the casual connection between the owner's original negligence and the plaintiff's injury.[1] The Minnesota court has held that the plaintiff could not recover because his injury was too far removed in time and place from the scene of the theft,[2] suggesting directness of harm as a test for proximate cause. In none of these decisions did the courts look to the applicable statute or ordinance prohibiting leaving ignition keys in a parked auto, in defining the extent of the defendant's liability.

In the absence of statutes or ordinances prohibiting such conduct, courts have also used proximate cause extensively. Two New York decisions,[3] without elaborating, held that the plaintiff's injury was not proximately caused by the defendant's negligence. In contrast is a 1944 District of Columbia decision,[4] unusual in that it is the only case to have held, without citing a statute, that the question of defendant's negligence and whether it was the proximate cause of the plaintiff's injury, should be submitted to the jury.

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29. See In Re Oliver, 333 U. S. 257, 68 Sup. Ct. 499, 511, 92 L. Ed. 491 (1948) (concurring opinion).
1. Galbraith v. Levin, 81 N.E. (2d) 560 (Mass., 1948); Sullivan v. Griffin, 318 Mass. 359, 61 N.E. (2d) 330 (1945); Slater v. T. C. Baker Co., 261 Mass. 424, 158 N. E. 778 (1927); Squires v. Brooks, 44 App. D.C. 320 (1916), cited 3-3 Decennial Digest 939 (1926).
2. Wannebo v. Gates 227 Minn. 194, 34 N.W. (2d) 695 (1948).
3. Walyer v. Bond, 292 N.Y. 574, 54 N.E. (2d) 691 (1944); Wilson v. Harrington, 295 N.Y. 667, 65 N.E. (2d) 101 (1946).
4. Schaff v. R. W. Claxton, Inc., 79 App. D.C. 320, 144 F. (2d) 532 (1944).

Massachusetts has adjudicated the question more often than any other state, four times, and has denied recovery on the basis of intervening factors in three of those decisions.[5] The remaining case allowed plaintiff to recover,[6] but the factual situation there was complicated by the defendant's violation of the state automobile registration statute, and the decision has thus been distinguished by the Massachusetts court in later opinions.[7]

It is thus seen that among the courts considering the problem as one of proximate cause, three distinct approaches emerge: 1. The Massachusetts view that the thief's activities are independent, intervening factors, relieving the defendant from liability; 2. The Minnesota view that recovery will not be allowed when the plaintiff's injury is far removed in time and place from the scene of the theft; and, 3, the Distrcit of Columbia view that the question of proximate cause should be left to the jury, thus not disqualifying plaintiff, as a matter of law, from recovery.

Courts that have considered the problem on the basis of defendant's special duty to the plaintiff fall into two general categories. The first of these is based on a legislatively imposed duty, arising out of the particular statute or ordinance that prohibits leaving the ignition keys in a parked automobile. A 1943 District of Columbia decision,[8] overruling an earlier case that had denied plaintiff recovery on proximate cause considerations,[9] held that the ordinance imposed a duty on the defendant, reasoning that a purpose of the ordinance was to protect society from a thief's reckless management of a stolen car. The Illinois court in a 1948 case of first impression,[10] adopted the District of Columbia reasoning, holding the defendant liable because of a state statute, though the statute, like the ordinance, by its terms did not specifically disclose that one of its purposes was to protect the public from negligently managed cars stolen from careless owners.

Other courts to apply the duty concept have done so in the absence of statutes. An early Louisiana case[11] and a 1947 Maine decision[12] reasoned in terms of foreseeability, holding that the defendant could not reasonably be expected to foresee the theft of his car and subsequent careless operation by a thief, and thus had violated no duty he owed the plaintiff. This view, when added to the District of Columbia and Illinois holdings, and the three different approaches taken by courts along proximate cause lines, makes a total of five distinct ways in which the courts have dealt with the problem.

Whether the Wyoming court would adopt any of these methods of approach were the question to arise in this state, is a matter of pure conjecture, since

5. See note 1, supra, Galbraith v. Levin; Sullivan v. Griffin; Slater v. T. C. Baker Co.
6. Malloy v. Newman, 310 Mass. 269, 37 N.E. (2d) 1001 (1941).
7. See note 1, supra, Galbraith v. Levin; Sullivan v. Griffin.
8. Ross v. Hartman, 44 App. D.C. 320, 139 F. (2d) 14 (1943), cert, denied 321 U.S. 790.
9. See note 1, supra, Squires v. Brooks.
10. Ostergard v. Frisch, 333 Ill. App. 359, 77 N.E. (2d) 537 (1948).
11. Castay v. Katz and Besthoff, Ltd., 147 La. 504, 148 So. 76 (1933).
12. Curtis v. Jacobson, 54 A. (2d) 520 (Me., 1947).

helpful dicta is scarce, although the Wyoming court has stated that violation of a statute is at least evidence of negligence.[13] Unfortunately, however, Wyoming's pertinent statute[14] is similar to those cited in the cases discussed in that it gives little indication of the express purpose for which it was passed, so that the Wyoming court could cite the statute as creating a duty, or not consider it at all, and have authority from other jurisdictions for so doing.

In determining which of the five approaches used thus far by the courts is most desirable, it is submitted that considerations of public policy should be controlling. With 35,000,000 automobiles on our roads and a correspondingly great number of car thefts taking place, it is desirable, in view of the great number of car accidents, that the car owner be under a strict duty to exercise reasonable care to prevent the theft of his car for the protection of those using streets and highways. With the imposition of a strict duty, it is reasonable to expect a reduction in car thefts and accidents caused by a thief's haste to leave the scene of his crime. When the car owner fails to fulfill his duty and an injury results, holding the owner liable will serve to protect the innocent plaintiff and at the same time tend to distribute the loss over society as a whole, since liability automobile insurance will cover the defendant's loss, provided he is thoughtful enough to have purchased it.

Until the legislatures impose such a duty on the car owner in explicit terms, use of existing statutes by the courts, as has been done in Illinois and the District of Columbia, is a possible solution to the difficulty encountered in finding liability when concepts of proximate cause are adhered to. An alternative approach which can be used in the absence of statute or ordinance is the finding of a special duty arising out of the plaintiff's being within the zone of defendant's foreseeability of harm, since it can reasonably be contended that a car owner can foresee the possibility of the theft and later negligent management of his car, and the danger he is thus exposing persons to within the zone of the thief's area of escape, when the owner has failed to safeguard his car from theft.

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13. Hester v. Coliseum Motor Co., 41 Wyo. 345, 285 Pac. 781 (1930).

14. Wyo. Comp. Stat. 1945, sec. 60-530. "Duty of Operator when Leaving Vehicle Standing.—No person driving or in charge of motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, and removing the key, . . ."