

4605.

MOTOR VEHICLES FINANCIAL RESPONSIBILITY LAW—
REGISTRAR OF MOTOR VEHICLES UNABLE TO INVOKE
PROVISIONS OF AM. S. B. NO. 67, UNLESS JUDGMENT
RENDERED IN COURT OF RECORD WHEN.

SYLLABUS:

1. *Under the provisions of Amended Senate Bill No. 67 of the 91st General Assembly, the Registrar of Motor Vehicles of Ohio has no authority to revoke the right to operate a motor vehicle on the public roads and highways of this state, nor to revoke a license certificate or permit to operate a motor vehicle as chauffeur or otherwise, nor to revoke a certificate of registration for a motor vehicle, where the person having such right, permit or certificate has had final judgment rendered against him in an action for wrongful death, personal injury, or damage to property caused by such person's individual operation of a motor vehicle and has not shown proof of ability to respond in damages as provided by Section 6298-6, General Code, unless such judgment has been rendered in a court of record in this state, rather than in a justice of the peace court.*

2. *The Registrar of Motor Vehicles has jurisdiction to cause such revocation when such person has been convicted in a justice of the peace court of the offense of (a) operating a motor vehicle while under the influence of intoxicating liquor or narcotic drugs, or (b) failing to stop after an accident when required so to do by law, and such person has entered a plea of not guilty and waived his right to a jury trial in writing and submitted to be tried by the justice of the peace, or where the accused has entered a plea of guilty and the complaint has been made by the party injured.*

COLUMBUS, OHIO, September 3, 1935.

HON. FRANK WEST, *Registrar, Bureau of Motor Vehicles, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

“Directing your attention to Amended Senate Bill No. 67, or Section 6298-1 to 6298-25, inclusive, of the General Code of Ohio, and especially to the first four sections thereof, I kindly request your opinion on the following question.

Is the Registrar of Motor Vehicles required to act, or does he obtain jurisdiction to act, on the report of any of the criminal offenses set forth in Section 1 from a Justice of the Peace Court, and if so, in what instances, or is it only on reports of a Court of Record?”

Section 6298-1, General Code, effective as of August 20, 1935, provides:

“The registrar of motor vehicles of the state of Ohio is hereby authorized and empowered to and shall, in accordance with the provisions of this act, revoke and terminate the right and privilege of operating a motor vehicle upon the public roads and highways of this state, each license, certificate, or permit to operate a motor vehicle, as chauffeur or otherwise, and each certificate of registration for a motor vehicle of or belonging to any person, who has hereafter either

(a) Been convicted of or pleaded guilty to any of the following offenses, to wit

1. Manslaughter, resulting from the operation of a motor vehicle;

2. Operating a motor vehicle while under the influence of intoxicating liquor or narcotic drugs;

3. Failing to stop after an accident when required so to do by law;

4. A felony in the commission of which a motor vehicle was used; or

(b) Failed within thirty (30) days after the entry of the same, to satisfy or stay the execution of any final judgment hereafter rendered against him *in any court of record* within this state, in an action for wrongful death, personal injury, or damage to property, caused by such person's individual operation of a motor vehicle.” (Italics the writer's).

Section 6298-3, General Code, provides:

“The trial court, which passes sentence or imposes a fine upon a person for any of the offenses set forth in section 1 (a) of this act, or renders a final judgment which remains unsatisfied and not stayed as set forth in section 1 (b) of this act, shall forward immediately to the registrar of motor vehicles, a certified copy or transcript of such conviction or judgment, together with such other information as the registrar may prescribe.”

Section 6298-4, General Code, provides among other things, that the Registrar should then notify the person convicted or person who fails to satisfy or stay the execution of judgment to show cause why his right and privilege of operating a motor vehicle upon the roads and highways of this state should not be revoked, and provides that within thirty (30) days after

such notification such person must show "his ability to respond in damages" in order that his license may not be revoked by the Registrar of Motor Vehicles. Section 6298-5, General Code, defines "ability to respond in damages."

Section 6298-6, General Code, provides that such convicted person or judgment debtor may show "proof of ability to respond in damages" in any one of four ways: (1) by a prescribed motor vehicle liability policy; (2) a bond of a surety company in the sum of \$11,000 authorized to do business in this state, or (3) a bond with individual sureties owning unencumbered real estate within this state worth above all exemptions, the sum of \$11,000, (4) by a deposit with the Registrar of Motor Vehicles of the sum of \$11,000 in money, or certain bonds.

Directing your attention to the language employed in Section 6298-1 (b), supra, it should be noted that with respect to the failure within thirty (30) days after the entry of a final judgment in an action for wrongful death, personal injury, or damage to property, to satisfy or stay the execution thereof that such judgments must have been rendered in any "court of record" within this state. Consequently with respect to judgments in actions for wrongful death, personal injury, or damage to property, such judgments must be rendered in courts of record rather than in justice of the peace courts following the well established rule of *expressio unius est exclusio alterius*, before the Registrar of Motor Vehicles obtains jurisdiction for the purpose of making revocations. However, with respect to the four criminal offenses in Section 6298-1 (a) the Act states "any person, who has hereafter either been convicted of or pleaded guilty to any of the following offenses" and does not limit the convictions to convictions in courts of record. Although it is manifest that a justice of the peace has no final jurisdiction in the offense of manslaughter or any "felony in the commission of which a motor vehicle was used", still in certain instances the justice of the peace may have final jurisdiction in the offenses of "operating a motor vehicle while under the influence of intoxicating liquor or narcotic drugs" and "failing to stop after an accident, when required so to do by law." Inasmuch as it is my opinion that Section 6298-1 (a), is not limited to convictions in courts of record, and since a justice of the peace may have final jurisdiction in some instances in offenses 2 and 3 thereof, it becomes necessary to ascertain when a justice of the peace would have final jurisdiction in such cases.

Section 12628-1, General Code, provides:

"Whoever operates a motor vehicle of any kind upon any public highway or street while in a state of intoxication, or under the influence of alcohol, narcotics or opiates, upon conviction thereof shall be punished by a fine not less than one hundred dollars nor more than five hundred dollars or imprisonment in the county jail for not

less than thirty days nor more than six months, or both, and shall be suspended from the right to operate a motor vehicle for not less than six months nor more than one year; and whoever operates a motor vehicle upon any public highway or street, during the time he or she has been suspended from such operation, under the provision of this section, shall be guilty of a misdemeanor and shall be imprisoned in the county jail for not less than six months nor more than one year.

For a second or subsequent offense of driving while intoxicated, shall be suspended from the right to operate a motor vehicle for not less than one year nor more than five years. No person shall be charged with a second or subsequent offense unless such fact is set forth in the affidavit charging the offense."

Section 12606, General Code, provides:

"In case of accident or collision with persons or property upon any of the public roads or highways, due to the driving or operation thereon of any motor vehicle, the person so driving or operating such motor vehicle, and 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 and in addition thereto if not the owner, the name and address of the owner of such motor vehicle, together with the registered number of such motor vehicle.

Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not more than two hundred dollars or imprisoned in the county jail or workhouse not more than six months, or both."

In the recent case of *Ex Parte Stahl*, 49 O. App. 105, 195, N. E. 410, Section 12628-1, General Code, supra, relative to operating a motor vehicle while in the state of intoxication or under the influence of alcohol, narcotics or opiates, was involved and it was held by the Court as disclosed by the syllabus:

"Where a person is accused of violating a penal section of the Motor Vehicle Act (Sections 12603 to 12628-1, General Code, inclusive) and is brought before a justice of the peace upon a complaint which is not made by the party injured, and such accused pleads *guilty*, said justice is without jurisdiction to render final judgment and sentence the accused, although the accused, after pleading guilty, subscribes a writing waiving a jury and submitting to be tried by the justice. Under such circumstances the justice has juris-

diction only to 'require the accused to enter into a recognizance to appear before the proper court', as provided in Section 13433-9, General Code."

This case cites *Hanaghan vs. State*, 51 O. S., 24, 36, N. E., 1027, in which the Supreme Court of Ohio held as disclosed by the first and second branches of the syllabus:

"1. An examining magistrate is not authorized to pass sentence upon the accused on his plea of guilty of a misdemeanor, except when the complaint is made by the party injured.

2. By 'the party injured', as that phrase is used in Section 7146, of the Revised Statutes, it is meant the person who suffers some particular injury from the commission of the misdemeanor, as distinguished from that which results to the public, or local community where it was committed."

The law stated in these two cases would, of course, be applicable to both the criminal offenses of (1) operating a motor vehicle while under the influence of intoxicating liquor or narcotic drugs, as well as to the offense of (2) failure to stop after an accident or collision with persons or property upon the public roads due to the driving or operating thereon of any motor vehicle. However, where there is not a plea of "guilty" by the accused, Section 13433-10, General Code, provides:

"When the accused is brought before the magistrate and there is no plea of guilty, he shall inquire into the complaint in the presence of such accused. If it appear that an offense has been committed, and there is probable cause to believe the accused guilty, he shall order him to enter into a recognizance with good and sufficient surety, in such amount as he deems reasonable, for his appearance at a proper time and before the proper court, otherwise, he shall discharge him from custody. *If the offense is a misdemeanor, and the accused in a writing subscribed by him and filed before or during the examination, waive a jury and submit to be tried by the magistrate, he may render final judgment.*" (Italics the writer's).

Since each of the offenses enumerated in paragraphs 2 and 3 of Section 6298-1 (a) is a misdemeanor, and inasmuch as the penalty for each crime is in excess of fifty (\$50) dollars, the accused thereby being entitled to a jury trial, if the accused enters a plea of "not guilty" and waives his right to a jury trial in writing and submits to be tried by the justice of the peace,

such justice may render final judgment, and if there is a conviction, the justice of the peace should forward immediately to the Registrar of Motor Vehicles a certified copy or transcript of such conviction in accordance with Section 6298-3, General Code, and the Registrar of Motor Vehicles would then obtain jurisdiction to act under Section 6298-4, General Code. However, as noted supra, in the case of *Ex Parte Stahl*, such justice of the peace would have no final jurisdiction if there is a plea of "guilty" entered except when the complaint is made by the party injured. Summarizing it is my opinion that the Registrar of Motor Vehicles is required to revoke the right of a person to operate a motor vehicle upon the public roads and highways of this state as provided in Sections 6298-1 et seq., General Code, where such person has been found in a justice of the peace court to be guilty of (a) "operating a motor vehicle while under the influence of intoxicating liquor or narcotic drugs;" or (b) "failing to stop after an accident when required so to do by law", under the following circumstances:

First, in cases where the accused has entered a plea of "not guilty" and waived his right to a jury trial in writing and submitted to be tried by the justice of the peace,

Second, in cases where the accused has entered a plea of "guilty" and the complaint has been made by the party injured.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4606.

TAX AND TAXATION—AUTHORITY OF TAX COMMISSION
IN APPEAL FROM COUNTY BOARD OF REVISION RE-
SPECTING VALUATION OR ASSESSMENT OF REAL
PROPERTY FOR TAXATION.

SYLLABUS:

Although the Tax Commission in acting upon an appeal from a County Board of Revision with respect to the valuation or assessment of real property for purposes of taxation, may dispose of such appeal upon the report of the examiner designated by the Tax Commission to hear such appeal, it is not required to do so; and the Tax Commission before determining the valuation or assessment of the property affected by the appeal may hear additional evidence on the question before it, and to this end the Tax Commission may call before it, by subpoena or otherwise, such person or persons, officially or otherwise, who may be able to give the Tax Commission the evidence required to