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AUTOMOBILES -VIOLATION OF PARKING STATUTE

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AUTOMOBILES — VIOLATION OF PARKING STATUTE — Defendant, in violation of a statute and ordinance prohibiting parking "within ten feet upon the approach to any flashing beacon, stop sign, or traffic control signal located at the side of a roadway," parked his truck within the prohibited area, thus blocking the sign from the view of the traffic it was intended to warn. A third party, approaching the stop street, being unable to see the sign, proceeded into the intersection without stopping, and struck the car in which plaintiff was a passenger, injuring him. Defendant demurred to the petition on the ground of lack of causal connection. *Held*, in reversing the lower court which had sustained the demurrer, that the jury could find that defendant's act was the proximate cause of plaintiff's injury. *Blessing v. Welding*, (Iowa, 1939) 286 N. W. 436.

Although defendant, for the purposes of the demurrer, admitted the duty and its breach, which precluded the court's consideration of negligence, it is of interest to speculate on the result had the court been called on to determine the existence of negligence. Generally, for an individual harmed by violation of a statute to have an action thereon, the statute must have been designed to protect him as one of a general class of persons from a general type of harm which he

has suffered.[1] Under a fact situation as in the principal case, there were two possible bases on which to attack the statute as not being one, the violation of which would constitute negligence towards the plaintiff. It could have been argued that the statute was intended to protect, not a general class of persons, but rather the entire public.[2] Thus, its scope would be too broad to give every member of the public an action based on its violation.[3] Though attempt may be made to set aside potential victims of motor accidents as a class distinct from the general public, the shallowness of calling the entire walking and riding citizenry only a class among the public is discernible. The second basis on which the existence of negligence might have been controverted is that the statute was not passed to prevent this type of harm, namely, obstruction of stop signs from cars parked too close thereto. Banding together all three phrases describing the points from which the prohibited parking area is measured, it seems likely that the legislature must have had in mind a purpose common to each of the three types of situations. To say that the purpose was to keep such signs from being blocked from the view of approaching motorists is to deny this common purpose, for, though such an objective would be feasible with regard to stop signs, it would have no relation to flashing beacons or traffic control signals, placed higher in the air than stop signs, where no parked car can hide them. It is likely that the three phrases of the statute were not chosen for any special significance they may have had in themselves; instead the phrases appear to have been used as land marks to set off the prohibited area in order to keep the right hand view visible for drivers stopping at the intersection, that they may see pedestrians who are crossing or about to cross in front of them, as well as traffic moving into the intersection at right angles to their direction. Such a construction may be readily gleaned when the statute is read as a whole, and if followed, would have prevented a recovery in the principal case, since the harm that plaintiff suffered was not the type that the legislature sought to prevent.[4]

[1] HARPER, TORTS 188-189 (1933); 9 L. R. A. (N. S.) 338 at 343 (1907); L. R. A. 1915E 500 (1915). Often courts and lawyers alike ignore this general principle by either talking legal causation, Lowndes, "Civil Liability Created by Penal Legislation," 16 MINN. L. REV. 361 at 373 (1932), or by stretching interpretations of the statute's purpose far beyond their elastic endurance. Morris, "The Relation of Criminal Statutes to Tort Liability," 46 HARV. L. REV. 453 at 475-476 (1933). It is often difficult to determine whether the breach of a statutory duty gives a right of action to a private individual injured by such breach.

[2] That the statute was penal in its purpose and that the state or municipality could prosecute for its violation, is, of course, plain. This discussion entails the further consideration of whether any private individual may have an action for its violation, and if so, which such individuals.

[3] Bourke v. Butterfield & Lewis Ltd., 38 Commonwealth L. R. 354, 27 S. R. New So. Wales 339 (Australian High Court, 1926); Parman v. Lemmon, 119 Kan. 323 at 325, 244 P. 227 (1925); Tingle v. C. B. & Q. R. R., 60 Iowa 333, 14 N. W. 320 (1882); 29 CYC. 438 (1908); Taylor v. Lake Shore & M. S. R. R., 45 Mich. 74, 7 N. W. 728 (1881). Contra, however, is Whittaker v. Rozelle Wood Products Ltd., 36 S. R. New So. Wales 204 at 208 (S. Ct. 1936).

[4] Thayer, "Public Wrong and Private Action," HARVARD LAW REVIEW ASSOCIATION, SELECTED ESSAYS ON THE LAW OF TORTS 276 at 297 (1924), says, "He [de-

fendant] should be held to act at peril only as to the kind of harm which the legislature sought to prevent. Any other conclusion would mean giving the statute an operation beyond the interests it was designed to protect."