NEGLIGENCE - VIOLATION OF A STATUTE AS NEGLIGENCE PER SE -- TYPE OF HARM PREVENTED AND CLASS OF PERSONS TO BE BENEFITED

Michigan Law Review

Follow this and additional works at: https://repository.law.umich.edu/mlr

Part of the Agriculture Law Commons, and the Torts Commons

Recommended Citation

Available at: https://repository.law.umich.edu/mlr/vol38/iss5/20

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.
Negligence — Violation of a Statute as Negligence per se — Type of Harm Prevented and Class of Persons to Be Benefitted —

Plaintiff's automobile was damaged when it collided with a horse belonging to the defendant. The animal's running at large upon the highway claimed to be in violation of a statute which required owners of stock and domestic animals to restrain and prevent such animals from running at large.\(^1\) Held, the purpose of the statute is to protect agricultural crops from the ravages of straying animals, and not to protect motorists on the highway; therefore, the plaintiff is not of the class of persons sought to be protected by the statute, nor his injuries of the type sought to be prevented; thus its violation is not prima facie evidence of negligence, and plaintiff must affirmatively prove negligence on the part of the defendant. *Champlin Refining Co. v. Cooper*, 184 Okla. 153, 86 P. (2d) 61 (1938).

If a plaintiff is to recover from a defendant because of defendant's violation of a statutory duty, the plaintiff must show that he is of the class of persons intended to be protected by the statute,\(^2\) and that he has suffered the type of harm which the legislature sought to prevent.\(^3\) This is a well-settled principle of law.\(^4\) In the principal case, the court affirms this doctrine, finding that the statute involved was not enacted to protect motorists on the highway for injuries received by collisions with animals running at large. Courts in other jurisdictions, in interpreting similar statutes under similar circumstances, have reached contrary results.\(^5\) The arguments advanced by the court in the prin-

---

\(^1\) Okla. Stat. (1931), § 9006: “The owner of any stock or domestic animal prohibited by law, from running at large within the district at any time shall be liable for all damages done thereby while wrongfully remaining at large. . . .”


\(^3\) Gorris v. Scott, L. R. 9 Ex. 125 (1874); Central of Georgia Ry. v. Griffin, 35 Ga. App. 161, 132 S. E. 255 (1926). This same result has been attained on the basis of causation. Falk v. Finkelman, 268 Mass. 524, 168 N. E. 89 (1929).

\(^4\) Harper, Torts, § 78 (1933); 2 torts Restatement, § 286, comments e, h (1934); 20 R. C. L. 38, 41 (1918); Thayer, “Public Wrong and Private Action,” 27 Harv. L. Rev. 317 (1914); Lowndes, “Civil Liability Created by Criminal Legislation,” 16 Minn. L. Rev. 361 (1932).

\(^5\) Stewart v. Wild, 196 Iowa 678, 195 N. W. 266 (1923); Moss v. Bonne Terre Farming & Cattle Co., 222 Mo. App. 808, 10 S. W. (2d) 338 (1928). At common law an owner of domestic animals was held strictly liable for their trespasses on the lands of others irrespective of presence or absence of negligence on the part of the owner. In the field of personal injuries, absolute liability is imposed if the animal is (a) a wild beast, known from its nature to be dangerous, or (b) a domestic animal,
principal case to support its position are not insuperable. Although it may be admitted that the legislature could not have contemplated injuries to drivers of automobiles, because such vehicles were not in widespread use at the time of the statute's enactment, nevertheless the legislature might have anticipated harm to a broader class of persons, namely, travelers on the highway. Before the Oklahoma statute was enacted, courts of other states had decided a number of cases in which users of the highway were given the protection of "running at large" provisions. In light of these decisions, it is arguable that the court in the principal case may have taken too restricted a view as to the persons intended to be protected. Moreover, other courts have held that it is unreasonable to believe that the legislature intended to provide for an injury to fields and crops by an elaborate law, and did not mean to provide for injury to persons occasioned by violation of the same law. However, inasmuch as liability in any case is a matter of statutory construction, it is not difficult to deny liability on the same grounds. The position taken by the court in the principal case is not without authority, but it should be recognized that such a position is in the numerical minority of cases of this sort.

ordinarily harmless, but actually known to be dangerous. With respect to personal injuries by animals of neither of these classes, i.e., domestic animals not actually known to be dangerous, the usual rules of negligence apply. Cases such as the principal one fall within last-named category. For a discussion of the liability of owners of animals, see HARPER, TORTS 350-370 (1933).

The court relies on two arguments: (a) the legislature could not have intended the statute to be for the protection of motorists, since it was enacted in 1903, at which time there were few, if any, automobiles traveling on the highway; (b) the statute provided that the injured party could distrain the animal. The court contends that this indicates an intent to protect farmers only, because damages to agricultural crops as a rule are small and not worthy of a suit, which fact the legislature recognized by providing an inexpensive and expeditious remedy. 184 Okla. 153 at 155.

Barnes v. Chapin, 4 Allen (86 Mass.) 444 (1862) (plaintiff's colt was attacked by defendant's mare while plaintiff was leading the colt on the highway); Jewett v. Gage, 55 Me. 538 (1868) (plaintiff's wagon was damaged and his daughter injured when his horse took fright at defendant's hog on the highway); Bowyer v. Burlew, 3 Thomp. (N. Y.) 362 (1874) (plaintiff, while passing in a carriage, was injured by defendant's horse); Shipley v. Colclough, 81 Mich. 624, 45 N. W. 1106 (1890) (plaintiff's son, while riding in a buggy, was injured when defendant's cows overturned the vehicle).

Wigginton & Sweeney v. Bruce's Guardian, 174 Ky. 691, 192 S. W. 850 (1917); Decker v. McSorley, 111 Wis. 91, 86 N. W. 554 (1901).

Marsh v. Koons, 78 Ohio St. 68, 84 N. E. 599 (1908).

See 45 A. L. R. 498 at 505 (1926), where the cases are collected.