

Michigan Law Review

Volume 36 | Issue 5

1938

TORTS - VIOLATION OF PENAL STATUTE AS CIVIL WRONG - BUCKETING - INTENTIONAL WRONG

Michigan Law Review

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



Part of the [Securities Law Commons](#), and the [Torts Commons](#)

Recommended Citation

Michigan Law Review, *TORTS - VIOLATION OF PENAL STATUTE AS CIVIL WRONG - BUCKETING - INTENTIONAL WRONG*, 36 MICH. L. REV. 868 (1938).

Available at: <https://repository.law.umich.edu/mlr/vol36/iss5/22>

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.

TORTS — VIOLATION OF PENAL STATUTE AS CIVIL WRONG — BUCKETING — INTENTIONAL WRONG — A statute prohibited bucketing operations by dealers in securities and commodities, and provided penalties for such offenses. Plaintiff alleges that, acting without knowledge of defendant's illegal operations, he gave the defendant an order for the purchase of stock, which, he says, was not executed, as defendant reported, but "bucketed" in a manner prohibited by statute. Plaintiff sued to recover damages. Defendant demurred on the grounds (1) that the transaction referred to was not bucketing, but (2) that if it was, defendants were not liable to this plaintiff as the latter was not within the class of persons intended to be benefited by the statute. *Held*, plaintiff had stated a cause of action. (One justice concurred specially, on the ground that plaintiff had stated a good cause of action in contract or for conversion.) *Kaiser v. Butchart*, (Minn. 1937) 274 N. W. 680.

As was suggested in the court's opinion, most of the cases in this general field involve negligence actions. Defendant has, in the usual case, violated a penal statute, and plaintiff has suffered some injury. The statute does not specifically call for civil liability, and the cases involve discussions of such questions as these: Is the statute penal only, or shall it have some effect in a civil suit? ¹ Was there a duty at common law, or did the statute create a duty? ² Was the plaintiff one of a class to be benefited by the statute? ³ Is violation of the statute negligence per se,⁴ prima facie negligence,⁵ or evidence of negligence? ⁶ Did the statutory violation bear the necessary causal relation to the injury? ⁷ In the instant case, however, the court was faced with an entirely different situa-

¹ *Taylor v. Lake Shore & M. S. Ry.*, 45 Mich. 74, 7 N. W. 728 (1881).

² See cases collected in 45 A. L. R. 505 (1926).

³ *Taylor v. Lake Shore & M. S. Ry.*, 45 Mich. 74, 7 N. W. 728 (1881).

⁴ *Osborne v. McMasters*, 40 Minn. 103, 41 N. W. 543, 12 Am. St. Rep. 698 at 700 (1889).

⁵ *Mitchell v. Raleigh Electric Co.*, 129 N. C. 166, 39 S. E. 801 (1901).

⁶ *Gearing v. Berkson*, 223 Mass. 257, 111 N. E. 785 (1916).

⁷ For a general discussion, see Smith, "Legal Cause in Actions of Tort," 25 HARV. L. REV. 103 (1911).

tion. This was a statutory mandate against the commission of an intentional wrong, providing only criminal penalties for its violation. Was there a statutory civil right of action which arose from its enactment? Cases on this point are indeed rare, for in practically all instances where statutes enjoin intentional wrongs we find the plaintiff resorting to his common-law right to be free from intentional injuries rather than claiming any civil right by reason of the criminal statute. Interesting from our point of view are the "forcible entry and detainer" statutes, for while their mandates are directed against acts whose nature is that of the intentional tort, because of the fact that under the ancient common law an owner had a privilege to use force to enter his land now out of his possession, there was no common-law right of action in the one for whose benefit they were passed. The courts generally have held that these criminal statutes against retaking land by force give the one in peaceable possession of the premises no cause of action for the trespass to the land,⁸ for it is felt that even though the one entering does so unlawfully, he has a better claim in the land than the possessor. It is held on the other hand, however, that in using force against the person or chattels of the possessor, the owner makes himself liable in damages, for while courts hesitate to give redress for reentry to one's own land, they have no hesitation when the offense is another breach of the statute in attempting to enforce that unlawful possession.⁹ The criminal statute is held to make one liable in damages for those acts he was formerly privileged to do. As the court remarks, in Minnesota there are analogous cases arising under the statute which makes it a felony for the director of a bank to take deposits knowing that the bank is insolvent. At common law this was actionable as fraud,¹⁰ and the Minnesota courts have consistently held that the statute gives a right of action in itself.¹¹ Thus, while it is unusual to find a case where one desires to claim a right as here, it may be entirely proper to allow such right.

⁸ *Turner v. Meymott*, 1 Bing. 158, 130 Eng. Rep. 64 (1823); *Taunton v. Coster*, 7 Term Rep. 431, 101 Eng. Rep. 1060 (1797).

⁹ *McIntyre v. Murphy*, 153 Mich. 342, 116 N. W. 1003, 15 Ann. Cas. 802 at 804 (1908). Cases collected: 45 A. L. R. 313 at 316 (1926); 11 L. R. A. (N. S.) 468 (1908). Contra: *Low v. Elwell*, 121 Mass. 309, 23 Am. Rep. 272 (1876).

¹⁰ *Cassidy v. Uhlmann*, 171 N. Y. 660, 63 N. E. 554 (1902).

¹¹ *Frederick v. McRae*, 157 Minn. 366, 196 N. W. 270 (1923); *Aichele Bros. v. Skoglund*, 194 Minn. 291, 260 N. W. 290 (1935).