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Negligence—Contributory Negligence Not a Defense for Violation of Highway Statute

corporation is forced to act by agents. One case distinguishes between situations where the libellant and stenographer are employed by a common employer and those where the libellant is the employer. In the former no publication is held to occur, while in the latter an unprivileged publication takes place. *Owen v. Ogilvie Pub. Co.* (1898) 32 App. Div. 465, 53 N. Y. S. 1033. Such a distinction seems highly superficial and impractical, but has been followed expressly by *Central of Georgia R. Co. v. Jones* (1916) 18 Ga. App. 414, 89 S. E. 429, although repudiated in *Berry v. City of N. Y. Ins. Co.* (1923) 210 Ala. 369, 98 So. 290. *Globe Furniture Co. v. Wright* (1920) 49 App. D. C. 315, 265 F. 873, held that a communication to an employee other than a stenographer—the communication here being more than a mere mechanical one for the purpose of typing a letter—was privileged.

The weight of modern authority seems to regard publication to a stenographer as privileged, but hardly justifies such publication to libellee's attorney or agent unless the recent New York decisions cited are followed. It is, of course, a serious question whether the plaintiff's reputation should be sacrificed, in either of these situations, to modern business methods.

G. E. S., '31.

NEGLIGENCE—CONTRIBUTORY NEGLIGENCE NOT A DEFENCE FOR VIOLATION OF HIGHWAY STATUTE.—In an action for damages for the killing of a dog, the facts showed that plaintiff violated a statute declaring it unlawful for the owner of a dog to allow it on the highway, and defendant violated an act regulating the operation of motor vehicles on the highway in driving on the wrong side of the road. *Held*, that the contributory negligence of plaintiff was no defence in view of defendant's "gross negligence" in driving on the wrong side of the road. *Craig et al. v. Stagner* (Tenn. 1929) 19 S. W. (2d) 234.

The case is unusual in declaring a violation of a highway statute "gross negligence." It must be noted that it was not shown that defendant was conscious of the peril of the dog. The court relied entirely on the findings of fact of the trial court which characterized defendant's conduct as "gross negligence." The opinion merely says that defendant was driving on the wrong side of the street. Plaintiff's negligence is found in the violation of the statute relating to the presence of dogs on the highway. The violation of a statute or ordinance is generally held to amount either to *prima facie* negligence or negligence *per se*. *Cauldwell v. Bingham & Shelley Co.* (1917) 84 Ore. 257, 163 Pac. 827; *Alexander v. Industrial Board* (1917) 281 Ill. 201, 117 N. E. 1040. In the principal case, the court followed the decision in *Cincinnati N. O. & T. R. Co. v. Ford* (1918) 139 Tenn. 291, 202 S. W. 72, and declared that the statute was designed to eliminate a public nuisance and a violation of it was therefore negligence *per se*.

A host of authorities announce the rule that when defendant's conduct amounts to wanton disregard of life or property, akin to willful misconduct, the plaintiff's negligence is immaterial. *Evans v. Illinois Cent. R. Co.*

(1921) 289 Mo. 493, 233 S. W. 397; *Havel v. Minneapolis & St. L. R. Co.* (1913) 120 Minn. 195, 139 N. W. 137. The sort of negligence which will outweigh plaintiff's contributory negligence has most often been characterized as "willful and wanton," although the term "gross negligence" has been used in some cases under this rule. *Simon v. Detroit United Ry.* (1917) 196 Mich. 586, 162 N. W. 1012; *Davis v. Saginaw-Bay City Ry. Co.* (1916) 191 Mich. 131, 157 N. W. 390. Therefore the court was reasonably justified in placing "gross negligence," as defined in the opinion, in the same category with willful and wanton negligence as the phrase is used in the cases where the plaintiff's negligence is discounted. The feature of the case which is rather strange, as appears only from the opinion, is the designation of a mere violation of a highway statute as "gross negligence." In the cases supporting the rule excusing contributory negligence, willful misconduct, or misconduct so wanton and in reckless disregard of life and property as to raise a presumption of intention, has been the controlling consideration. In several cases, the violation of a highway statute has been expressly declared not to amount to "gross negligence." *Hopkins v. Droppers* (1924) 184 Wis. 400, 198 N. W. 738; *Ludke v. Burck* (1915) 160 Wis. 440, 152 N. W. 190; *Riggles v. Priest* (1916) 163 Wis. 199, 157 N. W. 755; Huddy, AUTOMOBILES (8th ed.) sec. 364. It would seem that something more is required to constitute gross negligence than the mere fact of driving on the wrong side of the street, since the violation of statutes and ordinances of this type are regularly held to amount only to negligence *per se*. *Cabanne v. St. Louis Car Co.* (1913) 178 Mo. A. 718, 161 S. W. 597; *Yellow Cab Co. v. Carlsen* (1918) 211 Ill. App. 299; *Baird v. Ridgeway* (Tex. Civ. App. 1925) 268 S. W. 1058; *Alexander v. Industrial Board* (1917) 281 Ill. 201, 117 N. E. 1040; Huddy, AUTOMOBILES (8th ed.) sec. 360. W. V. W., '30.

TRUSTS—RETENTION OF CONTROL BY SETTLOR—TESTAMENTARY DISPOSITIONS.—To what extent may the settlor of a trust wherein the beneficiaries are to take after his death retain control over the property during his life without conforming to the requirements for the execution of a will? Since the practice of entrusting the management of property and its disposition after death to trust companies has become common, the question of the amount of power which the settlor may validly reserve has become increasingly important. A recent Illinois case holds that the reservation to the settlor of the rights to the net income of the property for life, to approve loans made by the trustee, to have his debts paid out of the trust estate, to make a division of the real estate among his children which should bind the trustee, and to revoke or alter the deed in whole or in part, does not make the instrument a testamentary disposition, and void for lack of proper execution. *Bear v. Millikin Trust Co.* (Ill. 1929) 168 N. E. 349.

It is elementary that the fact that the settlor reserves a life estate in the property does not make the disposition testamentary. *Lewis v. Curnutt*