

Washington University Law Review

Volume 13 | Issue 1

January 1927

Weapons—Pistols—Airguns

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Recommended Citation

Weapons—Pistols—Airguns, 13 ST. LOUIS L. REV. 090 (1927).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol13/iss1/14

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view is that the city, for the protection of the public, has established a standard of care, to which it is the duty of the defendant to conform. The carrier owes this duty to the injured party, as a part of the public, and a breach of it gives rise to a cause of action in his favor.

Besides these two main rules there is an intermediate holding in Illinois, that the violation of the ordinance creates a *prima facie* case of negligence rebuttable by other evidence, *C. & E. I. R. Co. v. Crose*, 214 Ill. 602. The Illinois rule is followed in *McElhinney v. Knittle*, 201 N. W. 586 (Iowa). Kentucky has an extreme holding that the ordinance is inadmissible for any purpose in a civil action. *Ford v. Paducah City Ry. Co.*, 99 S. W. 355, and *L. & N. R. Co. v. Dalton*, 102 Ky. 290.

Logically the Massachusetts rule is correct. A public wrong does not create a private right, and violation of a police regulation is mere evidence of want of care. But as a matter of public policy, the doctrine of negligence *per se* is more likely to enforce obedience to municipal ordinances, and the tendency is to change that rule.

The history of this ruling in Missouri shows a rather interesting development. The early cases, *Liddy v. Ry. Co.*, 40 Mo. 516, and *Karle v. R. R. Co.*, 55 Mo. 476, held that the violation of a statute was negligence *per se*. Then came the case of *Fath v. Tower Grove etc. Ry. Co.*, 105 Mo. 537, in which the court said that the ordinance, when accepted by the railway company, became a contract between it and the city and under the authority of *Mayor of Lime Regis v. Henley*, 1 Bing. 222, held that the city's right of action for the breach of this contract inured to the benefit of the plaintiff, Fath. This case was followed by *Byinton v. St. L. & Sub. Ry. Co.*, 147 Mo. 673, in which the plaintiff was not allowed to recover because it was not shown that the railway had ever accepted the ordinance in question. *Murphy v. Lindell Ry. Co.*, 153 Mo. 252, and *Holwerson v. St. L. & Sub. Ry. Co.*, 157 Mo. 245, in accord.

Shortly after the Holwerson case, *supra*, the case of *Jackson v. Ry. Co.*, 157 Mo. 635, was decided, expressly overruling *Fath v. Ry. Co.*, *supra*, and re-establishing the doctrine of *Karle v. Ry. Co.*, *supra*. It held that an ordinance is a police regulation and not a contract; and its violation is negligence *per se*. This rule has been followed down to date in Missouri. *Sluder v. Transit Co.*, 189 Mo. 107, *Henderson v. St. L. & S. F. R. Co.*, 248 S. W. 987, and *Unterlachner v. Wells*, 296 S. W. 755. C. J. E. '28.

WEAPONS—PISTOLS—AIRGUNS.—The defendant was convicted under a New York statute for having a "pistol, revolver, or other firearm of a size which may be concealed upon the person, without a written license therefor." Upon appeal his conviction was reversed and he was discharged. An examination of the "pistol" proved that the projectile used was propelled by compressed air, and was in no way connected with a projectile moved by gun powder or other similar inflammable material. *Held*, that the possession of an air pistol does not warrant conviction of unlawfully possessing a firearm. The basis of this distinction was that the court felt unwilling to read a forced or subtle meaning into the statute as it used the term "firearm." *In re People v. Schmidt*, 222 N. Y. S. 647 (1927).

In *Harris v. Cameron*, 81 Wis. 239, 51 N. W. 437 (1892), the supreme court was called upon to make a distinction between an air gun and a firearm in deciding on the negligence of a father in buying an air gun for a minor son. They held that an air gun was not a firearm, on the ground that a firearm is a weapon which acts by the force of gun powder, and that it was intended as a toy and did not have a dangerous character.

The two foregoing decisions have for their bases the following quotation from *Cooper-Snell Co. v. State*, 230 N. Y. 249: "One of the cardinal rules to be applied in construing statutes is that they are to be read according to the natural and obvious import of their language, without restoring to a subtle or forced construction either limiting or extending their effect." This strict view is not taken in all cases, although most definitions of "weapons" do not ordinarily include air guns.

By way of an interesting side-light on the problem of whether the air gun is a firearm, we have the decision of *Cada v. The Fair*, 187 Ill. 111, where the court held a toy air gun to be a toy firearm within the meaning of an ordinance forbidding the sale to minors of "any gun, pistol, or other firearm, or any toy gun, toy pistol, or other toy firearm in which any explosive substance can be used." The court qualifies its opinion and declares this air gun to come under the statute prohibiting firearms because it is a "toy" which is "a plaything for children," and reasons, "such a toy gun" must be manifestly different from a real gun, and the fact that children are to play with it takes it out of the hard and fast definition of a firearm as used by a grown person. Furthermore, the language of the statute qualifies this and brings us to a correct interpretation because it is a "toy gun," and the statute specifically mentions "toy guns, toy pistols, etc." However, the court goes further and qualifies its decision by explaining that compressed air is the cause of the explosion which propels the projectile, and that consequently this brings it under the statute prohibiting firearms in which any explosive substance may be used. This last qualification is in conflict with previously mentioned decisions, and upon this ground, one might quarrel with the Illinois case.

There does appear to be a certain relaxation on the part of the courts in interpreting the words of the statute in regard to weapons. For example, it was held in *People v. Gogak*, 171 N. W. 428 (1919), a Michigan case, that the legislature intended, in certain acts, relating to the carrying of concealed weapons, to go further than the specific weapons mentioned in the statute, and to embrace any "other offensive and dangerous weapons or instruments concealed upon his person." Here the court declared a knife to be a dangerous weapon.

This illustrates one tendency of the courts which seems to be based on the idea that legislative acts should be interpreted according to what the court considers their true meaning. The other tendency is to a strict interpretation, as illustrated by the New York case. C. H. W., '28.

WITNESSES—COMPETENCY—CONFIDENTIAL RELATIONS AND PRIVILEGED COMMUNICATIONS.—Defendant objected to the introduction of testimony on the part of a nurse relating to information obtained while she was so employed as nurse under the attending physician on the ground that such information was privileged. *Held*, that the objection included all the testimony of the witness and was too broad. Objection should have been made to each question calling for privileged information. The court, however, intimates that communications to the nurse as an assistant of the physician and as necessary to enable the physician to prescribe would be privileged. *Meyer et al. v. Russell*, 214 N. W. 857, (N. D. 1927).

At common law there is no privilege as between physician and patient, and this rule is still law where it has not been changed by statute, *Green v. St. Louis Terminal Railroad Association*, 211 Mo. 18, 109 S. W. 715. At the present time, however, the matter is generally controlled by statutes establishing as privileged communications between physician and patient necessary for professional care,