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Comment on Recent Decisions

ANIMALS—WHO CONSTITUTES "KEEPER" OF A DOG ON EXHIBITION AT A SHOW.—The plaintiff, a patron of an agricultural society, was bitten by a dog on exhibit. At the time the owner held the chain on the dog, and had actual physical control over it. *Held*, the society could not be assessed double damages under statute as "owner or keeper" of the dog. *Cruickshank v. Brockton Agricultural Society*, 157 N. E. 357. (Mass., 1927.)

Whether or not a person is the keeper of a dog depends on the peculiar facts and circumstances of each individual case. *Boylan v. Everett*, 172 Mass. 453, 52 N. E. 541; *Snyder v. Patterson*, 461 Pa. 98, 28 Atl. 1006. To be keeper of a dog, one must harbor the animal, and the word "harbor" in its meaning signifies protection. *Hagenan v. Millard*, 182 Wis. 544, 195 N. W. 718. Thus one who treats a dog as being at his home, and undertakes to control his actions or allows a child, wife or servant to control his actions is undoubtedly the "keeper" within the meaning of the statute. *Strouse v. Leiff*, 101 Ala. 433, 14 So. 667; *Chicago Ry. Co. v. Kuckkuck*, 197 Ill. 304, 64 N. E. 358; *O'Donnell v. Pollock*, 170 Mass. 441, 49 N. E. 745; *Jenkinson v. Coggins*, 123 Mich. 7, 81 N. W. 974; *Holmes v. Murray*, 207 Mo. 413, 105 S. W. 1085; *Duval v. Barnaby*, 77 N. Y. S. 337; *Schaller v. Conners*, 57 Wis. 321, 15 N. W. 389.

However, in the case under consideration the owner had possession and physical control of the animal at the time of the accident. It has been said that to charge one as the harbinger of a dog he did not own, it must appear that he harbored it and treated it in the same manner as owners usually treat their own dogs. *Trumble v. Happy*, 114 Iowa 624, 87 N. W. 678. Certainly the mere casual presence of the dog on the defendant's premises could hardly be said to constitute the defendant the "keeper" under the statute. *Fitzgerald v. Brophy*, 1 Pa. Co. Ct. 142; *Boylan v. Everett*, 172 Mass. 453, 52 N. E. 541; *McCosker v. Weatherbee*, 100 Me. 25, 59 Atl. 1019; *O'Donnell v. Pollock*, 170 Mass. 441, 49 N. E. 745.

The decision in this case is in line with the holding on this point in *Buch v. Wathen*, 104 Ky. 548, 47 S. W. 599, in which the facts are the same.

F. A. E., '28.

AUTOMOBILES—INJURIES FROM OPERATION OR USE OF HIGHWAY—NATURE AND GROUNDS OF LIABILITY—RIGHT OF WAY AT CROSSING.—Plaintiff was driving south on a highway while defendant was proceeding north on the same road; defendant, while proceeding north, ran into and injured plaintiff's car, which was being turned left into an intersecting highway. This suit is for damages incident to that collision. *Held*, that it is the position of the cars as their paths cross and not priority in reaching the intersection that determines the application of the rule prescribed by ordinance here that the driver on the left shall yield the right of way, and therefore defendant is not liable since he had the right of way. *Boyd v. Close*, 257 Pac. 1079 (Colo., 1927).

At old common law before the modern days of the many and speedy horseless carriages, the right of way rule now generally prescribed by statute throughout this country was unknown, and it was generally held that where two persons are approaching each other at a crossing of two streets, their rights are equal and each is bound to exercise reasonable care to avoid any and all injuries. *Gilbert v. Burke*, 72 N. H. 521, 57 A. 927. Of course, with the development of