

ANIMALS ON HIGHWAYS.

Perplexity may well be felt by the ordinary person as he studies the decisions on this subject. Why, he is inclined to ask, is a farmer who drives domestic animals along, or allows them to stray on to a highway to be regarded with so much favour, and at the expense of those who may have suffered damage thereby? The classical decision of *Cox v. Burbidge* (13 C.B.N.S. 430) affirmed, or perhaps it would be more accurate to say reaffirmed, this immunity on the part of the owner of domestic animals unless, indeed, *scienter* can be proved. The same was laid down afresh in *Heath's Garage v. Hodges* (115 L.T. Rep. 129; (1916) 2 K.B. 370), a case of damage to a motor-car by a sheep which had been allowed to stray on to the highway. Despite a finding by the County Court Judge in that case that it is the natural tendency of sheep which are untended to run across or otherwise endanger vehicles in the road the Divisional Court and the Court of Appeal both came to the conclusion that the owner of the sheep was not liable. There it was said by the Master of the Rolls that "an animal like a sheep, by nature harmless, cannot fairly be regarded as likely to collide with a motor-car, and the owner of the sheep cannot be held liable on that footing." In view of the County Court Judge's finding, the ordinary reader might think that with sheep running about a highway this would not be so unlikely a contingency as the Master of the Rolls imagined; and in this view he would find support in the decision of the Divisional Court in the case of *Turner v. Coates* (*post* p. 77) where the owner of an unbroken colt, which was being driven along a highway in the dark and collided with and injured a cyclist, was held liable on the ground that in the case of an unbroken colt such an accident was likely to happen. This may be, and we think it is, excellent sense, but it seems hard to reconcile with *Heath's Garage v. Hodges* (*supra*). The rule that in the case of an ordinary domestic animal the owner is not liable for such an accident is qualified by this decision, and seems now only to apply where the animal has reached years of discretion!

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