

Full Court.]

TEMPLETON v. WADDINGTON.

[Mar. 5.

*Negligence—Liability of stablekeeper for injury to horse kept in his stable  
—Contract.*

Appeal from County Court. Plaintiff's claim was for damages for the loss of a valuable mare kept at defendant's feed stable for reward in the usual way. The mare was kept in an ordinary open stall next to a horse known as the "Harris" horse, which was also in an open stall. A few days before the injuries that resulted in the death of the mare occurred she was found to have a slight injury on one of her legs. Plaintiff's son hearing of this, his father being absent from the city, went to defendant and arranged with him to have the mare put in a box stall, saying that his father would fix it up with defendant on his return to town for the extra charge. The mare was then put in a box stall and kept there some days, but shortly before the fatal injuries occurred defendant put her back into the open stall that she had previously occupied next the "Harris" horse. On the night of the injuries this horse got loose from his stall by breaking his halter shank, and it was assumed that he had kicked the mare and so caused her death.

It was not contended on the trial in the court below that there had been a contract to keep the mare in a box stall. Defendant had tied both animals in their stalls that night, as he thought, securely.

The evidence shewed that it was a common thing for horses to break loose in defendant's stables, as many as five having done so in a single night, and the "Harris" horse had a proclivity, well known to the defendant, of breaking loose at night. Defendant also had reason to believe and did believe that it was the same horse that had kicked the mare on the previous occasion while loose.

*Held*, upholding the nonsuit in the County Court, PERDUE, J., dissenting, that there was no proof of any contract binding on defendant to keep the mare in a box stall, as plaintiff's son had no authority to enter into any such contract, and there was no satisfaction of it by the plaintiff, and that defendant had not been guilty of that degree of negligence which would render him liable for the damages claimed, but had used reasonable and ordinary care with regard to the plaintiff's mare.

Per PERDUE, J., 1. The defendant was bound, under the circumstances, to take special care to see that the "Harris" horse was securely tied in view of his mischievous habit, with a halter strong enough to hold him, and was guilty of such negligence that he ought to be held liable.

2. Defendant after acting on the arrangement as to the box stall made with plaintiff's son, could not dispute the son's authority to act for his father, and was liable in damages for breach of that arrangement.

*Mulock*, K.C., for plaintiff. *Daly*, K.C., for defendant.