

Tillett v. Ward must be taken to establish an exception to the general rule in the case of an animal trespasser from a highway.

A by-law prohibiting animals being at large upon the highways of this municipality was proved; but it did not advance the plaintiff's case. This animal was not at large in the sense of the by-law. It had escaped from the custody of those in charge without negligence on their part. The by-law was aimed at preventing the turning of cattle loose on the highway without attendants.

In the result, the plaintiff failed because: (a) if the action was founded on trespass, the damage was too remote; (b) the trespass was from a highway and was not voluntary nor the result of negligence, and even in this case the damage would be too remote; (c) if the action was founded on a duty arising from the keeping of the animal, it was a domestic animal and not vicious, and there was no scienter.

The learned Judge regretted being driven by the cases to this conclusion. It would, in his opinion, be more in accordance with sound reason and principle to make the defendant answerable for the risks incident to taking his beasts to market, rather than to leave this unfortunate woman a cripple, without remedy for that which happened to her without the least fault on her part.

Action dismissed without costs.

MIDDLETON, J., IN CHAMBERS.

OCTOBER 27TH, 1920.

*REX v. FEDDER.

Criminal Law—Magistrate's Conviction—Failure of Magistrate to File Depositions Taken at Trial—Ontario Summary Convictions Act, R.S.O. 1914 ch. 90, sec. 8—Effect of Failure to Obey Statutory Command—Motion to Quash Conviction—Absence of Prejudice.

Motion to quash the conviction of the defendant, by a magistrate, for an offence against the Ontario Temperance Act.

R. W. M. Chitty, for the defendant.

F. P. Brennan, for the magistrate.

MIDDLETON, J., in a written judgment, said that the only thing alleged against the conviction was, that the magistrate did not