

negligence *per se* I might quote the following sentence in the judgment of Lord Atkinson speaking for the Judicial Committee of the Privy Council in *McAlpine v. The Grand Trunk Ry. Co.* (1913) A.C. 838. At page 846 he says: "Where a statutory duty is imposed upon a railway company in the nature of a duty to take precautions for the safety of persons lawfully travelling in its carriages, crossing its line or frequenting its premises, it will be responsible in damages to a member of any one of these classes who is injured by its negligent omission to discharge or secure the discharge of that duty properly, *but the injury must be caused by the negligence of the company or its servants.*" Lord Atkinson evidently did not think that the breach of the statutory duty was negligence *per se*.

At the beginning of this paper I said that I would give my reasons for the opinion that legislation directing an act to be done might, but that prohibiting an act could not, produce civil liability. I now proceed to do so.

One of the essential elements of the Law of Negligence is, that the person causing injury must owe a duty to the person injured. That duty is, I think, entirely expressed in the legal maxim *sic utere tuo ut alienum non lædas*. Then legislation directing something to be done may create a duty the non-observance of which may produce civil liability. To take the example suggested by Mr. Thayer in the second part of his article, a municipal ordinance compels every householder to remove the snow from the sidewalk in front of his premises. At common law the householder was not charged with the duty of keeping the sidewalk free from danger to pedestrians; by the ordinance he is and a person injured by neglect of that duty has a remedy by action. But by a statute or ordinance prohibiting something no duty is created. In the case of the ordinance as to unhitched horses the duty existed when it was enacted. According to the above maxim the owner of a horse must use it so as not to injure others.

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