

MIDDLETON, J.

OCTOBER 26TH, 1920.

*STREET v. CRAIG.

Animals—Injury Done by Domestic Animal Trespassing from Highway—Escape of Animal from Railway Yard upon Highway—Absence of Negligence of Owner—Person Injured upon Land Adjoining Highway—Absence of Fence—Damage—Remoteness—Character of Animal—Scienter—Municipal By-law.

Action by a woman against a farmer for damages sustained by the plaintiff while in the garden of her brother, with whom she lived, by reason of an attack upon her by a cow owned by the defendant, which entered the garden from the highway, knocked her down, and inflicted most serious injury.

The action was tried without a jury at Orangeville.

W. D. Henry, for the plaintiff.

C. R. McKeown, K.C., for the defendant.

MIDDLETON, J., in a written judgment, said that the defendant had sold some of his cattle to a drover and engaged to drive them from his farm to the town-line of Orangeville, where the purchaser was to meet him and take charge of the animals. These cattle had been on the defendant's farm for a long time, and were not accustomed to being driven, and so were likely to give trouble when brought into the town. The cow which injured the plaintiff was in no sense vicious, but had become nervous and excitable. This cow was driven with others into a railway yard; it escaped therefrom, and had become so wild and excited as to be dangerous; it ran through the streets and entered the unfenced garden where the plaintiff was and did the injury of which she complained; it then returned to the highway, and, after other acts of violence, was eventually captured.

The law relating to the liability of the owner or keeper of animals for injury done by them is in an unsatisfactory condition.

Reference to Robson on Trespasses and Injuries by Animals (1915); Osborne v. Chocqueel, [1896] 2 Q.B. 109, 110, 111; Ellis v. Loftus Iron Co. (1874), L.R. 10 C.P. 10, 13, 14; Lee v. Riley (1865), 18 C.B.N.S. 722; Cox v. Burbidge (1863), 13 C.B.N.S. 430, 436, 437; Hudson v. Roberts (1851), 6 Ex. 697; May v. Burdett (1846), 9 Q.B. 101; Filburn v. People's Palace and Aquarium Co. (1890), 25 Q.B.D. 258; Tillett v. Ward (1882), 10 Q.B.D. 17; and other cases.