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# Torts--Violation of Statute of Ordinance as Prima Facie Negligence

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ered at least in part replaces money the parent must otherwise expend for the child. Thus indemnity insurance against injuries to third persons is made to serve the function of accident insurance for the child. Second, under the terms of its contract, the insurance company assumed the risk of liability which obviously was to be determined independently of the existence of the contract. But the court looks to the existence of this insurance contract as determinative of the primary liability. Thus liability under the contract is controlled by the contract's existence rather than by its terms.

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TORTS — VIOLATION OF STATUTE OR ORDINANCE AS PRIMA FACIE NEGLIGENCE. — Plaintiff, a motorcycle officer, turned left at an intersection from street A, passed to the right of a line of automobiles that were waiting in the middle of street B for traffic light to change, and was injured in attempting to pass between the second car in line and defendant's automobile, parked at an angle to the curb in violation of a municipal ordinance requiring all motor vehicles to be parked parallel with the curb. It was found that the plaintiff was without fault. *Held*: Defendant's violation of the ordinance was *prima facie* neligence.[1]

There is general judicial adherence to the principle that the violation of a statute enacted for the protection of others will afford a right of recovery, when the violation was the natural and proximate cause of an injury; but there is no uniformity as to the legal effect of such conduct. A majority of the decisions hold a violation is negligence *per se*,[2] a minority that it is *prima facie* negligence,[3] and in a few cases it is only evidence of negligence.[4] In Kentucky the violation of an ordinance is not even evidence of negligence.[5]

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[1] Oldfield v. Woodall, 166 S. E. 691 (W. Va., 1932).

[2] U. S. Brewing Co. v. Stoltenberg, 211 Ill. 531, 71 N. E. 1081 (1904); see citation in 20 R. C. L. 33. In a very recent case, State v. Cope, 167 S. E. 456 (N. C., 1933), it was held that the intentional or willful violation of a statute or ordinance, causing injury to another, is negligence that imports criminal responsibility.

[3] McRickard v. Flint, 114 N. Y. 222 (1889); Southern Ry. Co. v. Johnson, 151 Va. 345, 143 S. E. 887 (1928).

[4] Richmond Traction Co. v. Clarke, 101 Va. 382, 43 S. E. 618 (1903); Murphy v. Philadelphia Rapid Transit Co., 285 Pa. 399, 132 Atl. 194 (1926).

[5] Ford's Adm'r. v. Paducah City Ry., 124 Ky. 488, 99 S. W. 355 (1907); Louisville & N. R. Co. v. Dalton, 102 Ky. 290, 53 S. W. 431 (1897).

Sometimes a distinction is made between the disregard of a statute and an ordinance,[6] but the weight of authority is otherwise.[7] The minority view, however, is apparently based on a sound principle; namely, a city cannot regulate civil relations in the absence of express delegation of the power by the legislature.[8]

The West Virginia Supreme Court of Appeals has at various times rendered decisions representing the three mentioned rules,[9] the only consistency being in the child labor cases where the *prima facie* rule has been repeatedly applied.[10] The inconsistency was recognized for the first time, apparently, in the instant case. After referring to the fact the court concludes with the statement: "We believe that the better rule considers the fact of the violation of a statute or ordinance as prima facie negligence, sufficient to cause a directed verdict in the absence of any other showing, but rebuttable."

Viewed simply as a common law problem of negligence,[11] it is

[6] Philadelphia & Reading Ry. v. Erwin, 89 Pa. 71 (1879); Bade v. Nies, 239 Mich. 37, 214 N. W. 171 (1927). See also Malburn, *The Violation of Laws Limiting Speed as Negligence* (1911) 45 AM. L. REV. 220. In the principal case the court simply declares that there is no distinction and cites U. S. Brewing Co. v. Stoltenberg, *supra* n. 3.

[7] Prest-O-Lite Co. v. Skeel, 182 Ind. 593, 106 N. E. 365 (1914); Cornell v. Burlington R. Co., 38 Ia. 120 (1874); Bott v. Pratt, 33 Minn. 323, 23 N. W. 237 (1885; and Virginia M. Ry. Co. v. White's Adm'r., 84 Va. 498, 5 S. E. 573 (1888).

[8] Bain v. Ft. Smith Light & Traction Co., 116 Ark. 125, 172 S. W. 834 (1915), where it was said that a city could not enlarge the common law or statutory liabilities of its citizens.

[9] Evidence of negligence, Krodel v. B. & O. R. Co., 99 W. Va. 374, 128 S. E. 824 (1925).

*Prima facie* negligence, Tarr v. Lumber Co., 106 W. Va. 99, 144 S. E. 878 (1929), and cases cited *infra*, n. 10.

Negligence *per se*, Ambrose v. Young, 100 W. Va. 452, 130 S. E. 810 (1925) (driving an automobile past speed limit set by city ordinance); Melton v. C. & O. Ry. Co., 71 W. Va. 701, 78 S. E. 369 (1913) (backing a car over a crossing without warning in violation of an ordinance); Bowles v. C. & O. Ry. Co., 61 W. Va. 272, 57 S. E. 131 (1907); Ashley v. Kanawha Valley Traction Co., 60 W. Va. 306, 55 S. E. 1016 (1906) (where a street car was moving beyond speed limit set by city council).

[10] Bowling v. Guyan Lumber Co., 105 W. V. 309, 143 S. E. 86 (1928); Thompson v. Coal & Coke Co., 104 W. Va. 135, 139 S. E. 642 (1927); Wills v. Gas Coal Co., 104 W. Va. 19, 138 S. E. 749 (1927); Bobbs v. Morgantown Press Co., 89 W. Va. 206, 108 S. E. 879 (1921); Waldron v. Garland Pocahontas Coal Co., 89 W. Va. 426, 109 S. E. 729 (1921); Mangus v. Coal Co., 87 W. Va. 718, 105 S. E. 909 (1921); Griffith v. American Coal Co., 75 W. Va. 686, 84 S. E. 621 (1915); Dickinson v. Stewart Colliery Co., 71 W. Va. 325, 76 S. E. 654 (1912); Blankenship v. Coal Co., 69 W. Va. 74, 70 S. E. 863 (1911); Daniel v. Big Sandy C. & C. Co., 68 W. Va. 491, 69 S. E. 993 (1910); Norman v. Coal Co., 68 W. Va. 405, 69 S. E. 875 (1910). See Note (1922) 28 W. VA. L. Q. 233.

[11] As a matter of statutory interpretation there is serious doubt that an enactment of the sort involved in the principal case regulates civil relations.

believed that the *per se* rule imposes too much faith in a statutory standard supported solely by a criminal sanction by accepting it as an unvarying civil standard.[12] The *prima facie* rule is not open to this objection nor is it subject to the criticism that it makes the civil effect of a violation of a statutory criminal standard an unknown quantity calculated to add to the uncertainty of jury litigation, a charge that may fairly be made against the evidence of negligence view.

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The courts are inclined to confuse this phase of the problem with the common law angle discussed in the text. See Norman v. Coal Co., 68 W. Va. 405, 69 S. E. 857 (1910). See generally, Thayer's article, *Public Wrongs and Private Wrongs* (1914) 27 HARV. L. REV. 317; Lowndes, *Civil Liability Created by Criminal Legislation* (1932) 16 MINN. L. REV. 361 and Morris, *The Relation of Criminal Statutes to Tort Liability* (1932) 46 HARV. L. REV. 453.

[12] The nuisance situation is a suggestive analogy. It is common learning that courts will not accept as final the judgment of municipal bodies as to what is a nuisance, apart from nuisances *per se* under common law standards. See JOYCE, LAW OF NUISANCES (1906) § 330 *et seq.* Why impose greater confidence in the judgment of municipal bodies in the negligence set-up?