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Torts--A Summary and Critique of the Law of Statutory Negligence in Kentucky

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TORTS—A SUMMARY AND CRITIQUE OF THE LAW OF STATUTORY NEGLIGENCE IN KENTUCKY

The method of interpreting criminal statutes so as to extend civil liability to those violating them has long been a problem to the courts and to legal writers. In spite of all the work which has been done on the subject, no general statement can be made which would point out all the variations in the law.[1] A case may turn upon the particular terms of the statute involved,[2] and an apparent inconsistency in decisions from the same jurisdiction may be explained away by the variations in the statutes.

Before proceeding into a discussion of the general law in the United States, it might be well to consider the reasons why the courts find civil liability under criminal and penal statutes. In one of the best known articles on the subject, Thayer said, "That an ordinary prudent man, knowing of the ordinance—for upon familiar principles he can claim no benefit from his ignorance of the law—would not have chosen to break it, reasonably believing that damage would result from his action."[3] In other words, a reasonable man would obey the criminal law, and one who does not has failed to meet set standards of care imposed by the community.[4]

Since very few criminal statutes have a specific provision to include civil liability, the courts must "find" an intent on the part of the legislature to extend it. Although the courts do find such an "intent", it is merely presumed in most cases and is at best a legal fiction. If the legislature had intended such liability, they would have included it, and it may well be argued that the absence of such a provision shows a deliberate omission.

The best explanation of the interpretation of the courts in these cases seems to rest on a type of public policy designed to protect the individual by making it easier to prove negligence. Prosser suggests that " the courts are seeking, by a species of judicial legislation, to further the ultimate policy for the protection of individuals which they find underlying the statute, and which they believe the legislature must have had in mind."[5]

The term most frequently applied by the courts when a person is held under a violation of a statute is negligence *per se*.[6] In a majority of jurisdictions, violation of a penal or criminal statute is held to be negligence *per se*, or "negligence as a matter of law."[7] In a minority of courts, the violation is thought to be merely evidence of negligence.[8] The question as to what weight this violation should have is then left up to the jury. Other courts simply refer to it as a prima facie case of negligence.[9]

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[1] See 1 REST. TORTS, Secs. 258-290, especially sec. 286.

[2] See 38 AM. JUR., Negligence, sec. 162.

[3] Thayer, *Public Wrong and Private Action*, 27 HARV. L. REV. 317, 322 (1914).

[4] HARPER, A TREATISE ON THE LAW OF TORTS, sec. 78, p. 191: "The legislature had declared certain conduct to be so unreasonable that it falls below the standard of what reasonably prudent people will require and is, therefore, negligent as a matter of law."

[5] PROSSER, TORTS, sec. 39, p. 265.

[6] *Id.*, sec. 39, p. 274.

[7] *Ibid.* See e.g., Steele v. Commercial Milling Co., 50 F. 2d 1037, (C. C. A. 6th, 1931); Osborne v. McMasters, 40 Minn. 103, 41 N. W. 543, 12 Am. St. Rep. 698 (1889); Martin v. Herzog, 228 N. Y. 164, 126 N. E. 814 (1920); Schell v. DuBois, 94 Ohio St. 93, 113 N. E. 664 (1916); Klatt v. N. C. Foster Lumber Co., 97 Wis. 641, 73 N. W 563 (1897).

[8] Kimball v. Davis, 117 Me. 187, 103 A. 154 (1918); Guinan v. Famous Players-Lasky Corp., 267 Mass. 501, 167 N. E. 235 (1929). For an excellent argument advocating this point of view, see Lowndes, *Civil Liability Created by Criminal Legislation*, 16 MINN. L. REV., 361.

[9] Illinois Central R. R. v. Gillis, 68 Ill. 317 (1873); McElhinney v. Knittle, 199 Iowa 278, 201 N. W. 586 (1925).

There are certain requirements that under the majority rule must be met before the doctrine of negligence *per se* can be successfully invoked.[10] The injury to the plaintiff must have been such as was intended to be prevented by the enactment of the statute;[11] the plaintiff must be a member of the class of persons for whose benefit the act was intended;[12] and there must also have been a causal connection between the violation of the statute and the injury to the plaintiff, as is required in other negligence cases.[13] In addition, most jurisdictions require the plaintiff to be free from contributory negligence.[14] A generally recognized exception to this last requirement is in cases involving the infraction of child labor laws when the plaintiff is a child under the minimum age who is injured in the couse of his employment.[15]

One of the most unusual and most criticized variations of the law of statutory negligence is the somewhat artificial distinction which some courts draw between the violation of a statute as contrasted to the violation of a municipal ordinance.[16] In a jurisdiction drawing such a distinction, the court may follow the majority rule in regard to the violation of a statute, but it will not give the ordinance the same dignity, as its violation is usually considered to be only evidence of negligence.[17]

The writer will consider the Kentucky cases on statutory negligence in two phases, one dealing with the violation of Kentucky statutes and the other dealing with the violation of municipal ordinances. As will be seen, many characteristics are common to both, but for the purpose of historical development this breakdown is a more clear-cut way of pointing out the phases of the law.

Violation of Statutes in Kentucky

Few cases of civil negligence involving violations of criminal statutes were decided in Kentucky before the year 1892. It was then that the legislature enacted the following statute:

> "A person injured by the violation of any statute may recover from the offender such damages as he sustained by reason of the violation, although a penalty of forfeiture is imposed for such violation."[18]

It will be observed from the wording of the statute that the requisite "intent" of the legislature to extend civil liability was supplied to all statutes. No longer did the court have to resort to a legal fiction to create civil liability.

Perhaps the first case of any importance to be decided under this statute was

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[10] See 1 REST. TORTS, sec. 286, *supra*, note 1.

[11] Exner v. Sherman Power Const. Co., 54 F 2d 510, 80 A. L. R. 686 (1931); Atlanta & C. Airline R. R. v. Gravitt, 93 Ga. 369, 20 S. E. 550, 20 L. R. A. 553 (1894); DiCaprio v. New York Central R. R., 231 N. Y. 94, 131 N. E. 716, 16 A. L. R. 940 (1921).

[12] Williams v. Chicago & A. R. Co., 135 Ill. 491, 26 N. E. 661 (1891); Tingle v. Chicago B. & Q. R. R., 60 Iowa 333, 14 N. W 320 (1880); DiCaprio v. New York Central R. R., 231 N. Y. 94, 131 N. E. 746, 16 A. L. R. 940 (1921).

[13] Milbury v. Turner Centre System, 274 Mass. 358, 174 N. E. 471, 73 A. L. R. 1070 (1931); Ridge v. City of High Point, 176 N. C. 421, 424, 97 S. E. 369, 370 (1918); Bjornsen v. Northern Pac. R. R., 84 Wash. 220, 146 P 575 (1915).

[14] Ensley Mercantile Co. v. Otwell, 142 Ala. 575, 38 So. 839, 4 Ann. Cas. 512 (1905); Portage Markets C. v. George, 111 Ohio St. 775, 146 N. E. 283 (1924).

[15] Lenehan v. Pittston Mining Co., 218 Pa. 311, 67 Atl., 642, 12 L. R. A. (N. S.) 461 (1907); Pinoza v. Northern Chair Co., 152 Wis. 473, 140 N. W. 84 (1913). 1 REST. TORTS, sec. 286 (a).

[16] Temple v. Walker, 127 Ark. 279, 192 S. W 200 (1917); Knupfle v. Knickerbocker Ice Co., 84 N. Y. 488 (1881). For the rationalization of this point of view, see note, 39, W VA. L. Q., 268.

[17] 38 AM. JUR., Negligence, sec. 168.

[18] KY. R. S. 446.070 (1948).

City of Henderson v. *Clayton*.[19] A state statute provided that cities set aside a specific place for the location of pest houses, a minimum of one mile from the city limits. The statute only provided for an action against the city officers. As a result of the city having placed a pest house within one mile of the corporation line, the plaintiff contracted smallpox. The court, in finding liability because of the violation of the statute, said: "From time immemorial, where a statutory duty for the protection of individuals had been violated, an action at common law might be maintained."[20] After stating that such was the common law rule, the court went on to say, "The same common law rule is also recognized in section 466, KENTUCKY STATUTES "[21] Thus the court based liability on two sources: (1) the common law precedents and (2) the 1892 statute.

After the precedent was established, many cases involving the violation of a statute were decided with the aid of the 1892 statute. Many of the earlier cases dealt with automobiles, hotels, mines and trains.[22] It will be noted that there were several Kentucky statutes dealing with these subjects. Around the turn of the century, the legislature desired to control, as much as was possible, the expansion in these fields, particularly in regard to automobiles and trains where development was proceeding rapidly. Apparently, there was a desire to set high standards of performance in order to protect the public interest.

One of the leading cases in Kentucky is *Pirtle's Administratrix* v. *Hargis Bank and Trust Company*.[23] In this case the defendant bank operated a hotel as trustee. The deceased was occupying a room on the fifth floor of the hotel when a fire broke out. Since there was no fire escape, as required by statutes,[24] he was unable to escape and was burned to death. The defendant's liability was predicated on the violation of a statutory duty imposed on the defendant to maintain a fire escape. After quoting the 1892 statute, the court said:

> "We have often held that by virtue of this section when damages or injury result from the violation of another section of the statute, the persons sustaining the resulting injury may recover same from the offender."[25]

From this point on, the cases follow with great consistency the application of the 1892 statute to a violation of criminal and penal statutes. The subjects covered by the Kentucky cases have been varied and extensive.[26] Although the

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[19] 22 Ky. L. Rep. 283, 57 S. W. 1 (1900); For a case under similar facts, *see* City of Henderson v. O'Haloran, 114 Ky. 186, 70 S. W 662 (1902).

[20] 22 Ky. L. Rep., at 284, 57 S. W at 2.

[21] *Ibid.*

[22] Collett's Guardian v. Standard Oil Co., 186 Ky. 142, 216 S. W 352 (1919); Moore v. Hart, 171 Ky. 725, 188 S. W 861 (1916); Low v. Clear Creek Coal Co., 140 Ky. 754, 131 S. W 1007 (1910); National Casket Co. v. Powar, 137 Ky. 156, 125 S. W 279 (1910); Smith's Adm'r. v. National Coal & Iron Co., 135 Ky. 671, 117 S. W. 280 (1909); Illinois Central R. R. v. McIntosh, 118 Ky. 145, 80 S. W 496 (1904).

[23] 241 Ky. 455, 44 S. W 2d 541 (1931).

[24] CARROLL'S KY. STATUTES, secs. 2059a-5, 2059a-6, and 2059-7. (1918).

[25] 241 Ky. 455, 464, 44 S. W 2d 541, 544, and authorities therein cited.

[26] Maysville Transit Co. v. Ort, 296 Ky. 524, 177 S. W 2d 369 (1944); Humphrey v. Mansbach, 215 Ky. 66, 64 S. W. 2d 454 (1933); Shields v. Booles, 238 Ky. 673, 38 S. W 2d 677 (1931) (criminal slander); Palmer Corp. v. Collins, 214 Ky. 838, 284 S. W. 95 (1926) (plugging of abandoned oil wells); Falls City Ice & Beverage Co. v. Scanlan Coal Co., 208 Ky. 820, 271 S. W 1097 (1925) (state speed statute); Hardware Mutual Casualty Co. v. Union Transfer & Storage Co., 205 Ky. 651, 266 S. W 362 (1924) (truck parked without lights); Wigginton & Sweeney v. Bruce, 174 Ky. 691, 192 S. W 850 (1917) (personal injury from cattle running loose); New Bell Jellico Coal Co. v. Sowders, 154 Ky., 101 156 S. W. 1046 (1913); Thayer v. Kitchen, 145 Ky. 554, 140 S. W. 1052 (1911); Andricus' Adm'r. v. Pineville Coal Co., 121 Ky., 724, 90 S. W 233 (1906); Sutton's Adm'r. v. Wood, 120 Ky. 23, 85 S. W 201 (1905) (druggist's improper labeling of poison). For a case calling violation of a state speed statute only prima facie evidence of negligence, *see* Utilities Appliance Co. v. Toon's Adm'r., 241 Ky. 823, 45 S. W 2d 478 (1932).

Kentucky court has recognized the fact that violation of a statute is negligence *per se*, it has specified that the violation of the statute must have been the proximate cause of the accident. In one of the first cases dealing with statutory negligence,[27] the court, in speaking of this problem, said:

> "There is also a plain elementary principle of negligence law that to constitute actionable negligence there must be a concurrence of two things; First, negligence; and, second, injury resulting as a proximate cause of it. It matters not how negligent a person be, his negligence, unless the injuries complained of were the proximate cause of it, will not authorize a recovery."[28]

Thus it can be seen that the court retained this basic principle of the law of negligence, even though the violation of the statute as a basis for recovery was relatively new in the law of negligence. As the law developed, the courts maintained this requirement. In one of the most illustrative cases on this point, *Louisville Trust Company* v. *Morgan*,[29] a statute and an ordinance provided that hotel buildings should be equipped with fire escapes and that the doors and passage-ways should be arranged so as to facilitate egress in case of fire. The Plaintiff's testator was killed in a fire which razed the building, and it was shown that the statute and the ordinance had not been complied with. In considering the question of proximate cause, the court felt that direct or circumstantial evidence of proximate cause could be used. The court said that the failure of Morgan to escape was not caused by fright or delay on his part, or by the rapidity with which the fire spread, but by the unsafe and dangerous construction of the interior of the hotel. The court stated:

> " there can be no recovery for injury or loss occasioned by negligence, unless the complaining party can show that the negligence charged contributed to or brought about the injury or loss complained of."[30]

The court has since followed this reasoning.[31]

Another requirement that the Kentucky court has applied, although not in all cases,[32] is that the plaintiff must be within the class of persons intended to be

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[27] Conway v. Louisville & Nashville R. R., 135 Ky. 229, 119 S. W 206 (1909).

[28] *Id.*, at 238, 119 S. W at 208.

[29] 180 Ky. 609, 203 S. W 555 (1918).

[30] *Id.*, at 618, 203 S. W at 559.

[31] Greyhound Terminal of Louisville v. Thomas, 307 Ky., 44, 209 S. W 2d 478 (1948); Brown Hotel v. Levitt, 306 Ky. 804, 209 S. W 2d 70 (1948); Berry v. Jorris, 303 Ky. 799, 199 S. W 2d 616 (1947); Murphy v. Homans; 286 Ky. 191, 150 S. W 2d 14 (1940); Langston v. Kelly, 272 Ky. 109, 113 S. W 2d 471 (1938); Turner v. Taylor's Adm x., 262 Ky. 304, 90 S. W 2d 73 (1936); Phillips v. Scott, 254 Ky. 310, 71 S. W 2d 662 (1934); Pirtle's Adm'x. v. Hargis, 241 Ky. 455, 44 S. W 2d 541 (1931); Louisville & Nashville R. R. v. Cooper, 164 Ky. 489, 175 S. W. 1034 (1915).

[32] In two cases the Ky. courts have ignored one or more of the requirements for recovery in violation of statutes. In Louisville & Nashville R. R. v. Haggard, 161 Ky. 317 170 S. W 956 (1914), the defendant violated a statute requiring a spark arrester to be placed on all engines. As a result of the violation, a fire started, and the smoke caused the plaintiff, bed-ridden in her house some one hundred feet from the tracks, to become ill. Although the statute was passed for the protection of property, and her house was not damaged, recovery was granted. In a later case, Louisville & Nashville R. R. v. Epley, 203 Ky., 461, 262 S. W 626 (1924), involving a violation of the same statute, the plantiff was riding in a buggy near the railroad tracks when a spark from a train fell on the horse, causing it to bolt. The plaintiff was injured and recovered judgment. Here, the plaintiff was not one of the class of persons intended to be protected by statute and her injury was not of the type against which the statute intended to protect. However, these cases have not been followed on this point, and the rule in Kentucky seems to be that of Howard v. Fowler, *infra*, note 33.

protected by the statute. In a recent case,[33] the defendant's bus was parked on a state highway in a triangular area commonly used for parking, located between the fork of two roads. The plaintiff, a prospective passenger, stood near the door of the bus when a car driven by a third person sped into the parking area and struck a parked truck which hit the plaintiff. The claim of negligence was based upon the fact that the defendant violated a statute which forbade parking at an intersection.

Although the court found that a violation of the statute was not proved, it said, by way of dictum:

> "Even if appellee had proved a violation of one or more of the statutes, it does not follow that this constituted negligence *as to appellee*. While as a general rule the violation of a motor vehicle law with reference to operation of an automobile is *negligence per se*, this rule is not applicable if the violation does not constitute a breach of duty *owed the injured party*. In this case the position of the bus did not constitute a violation of any duty owed appellee."[34]

The court has also held this to be the rule in cases where the statute was passed to protect property.[35]

The last of the general requirements, *i.e.*, that the injury be of the type against which the statute was intended to protect, has not found much application in Kentucky. However, it is felt that the case of *Phoenix Amusement Company* v. *White*[36] states the rule as it exists. In that case the court stated:

> "It is true that to afford a cause of action in favor of one injured as the result of the violation of a statute or ordinance, or a regulation made in conformity thereto, the plaintiff's injury must have been such as the statute, ordinance or regulation was intended to prevent."[37]

One of the best statements of the law concerning contributory negligence as a defense in cases of negligence arising from the violation of a statute is to be found in *Louisville and Nashville Railroad Company* v. *Cooper*.[38] Here the plaintiff had left her home one cold night to mail a letter. Upon returning, she found that a train was parked across the road, blocking her passage. The train stood there for fifteen minutes, and she waited in the cold for it to move. As a result, the plaintiff contracted a severe cold and was bed-ridden for some time. A statute forbade trains from blocking roadways for more than five minutes. Finding that the plaintiff could have gone back to the post office, or into a nearby restaurant to keep warm, the court held her guilty of contributory negligence and said:

> "Another principle, which underlies a right of recovery of damages, either for an injury sustained by reason of the violation of a statute is that the one seeking the recovery must have exercised such care as an ordinarily prudent person would have exercised under like or similar circumstances to have avoided receiving the injury."[39]

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[33] Howard v. Fowler, 306 Ky. 567, 207 S. W. 2d 559 (1947).

[34] *Id.*, at 571, 207 S. W. 2d at 561.

[35] Illinois Central R. R. v. McIntosh, 118 Ky. 145, 80 S. W. 496 (1904). For a case preventing any recovery except from the violator of the statute, see Bryant v. Ellis, 222 Ky., 272, 300 S. W. 610 (1927); Bray-Robinson Co. v. Higgins, 210 Ky. 432, 276 S. W. 129 (1925).

[36] 306 Ky. 361, 208 S. W. 2d 64 (1948). See also Cin. N. O. & T. P. R. W. v. Baxter, 33 Ky. L. Rep., 305, 110 S. W. 248 (1908).

[37] 306 Ky. 361, 365, 208 S. W. 2d 64, 67 (1948).

[38] 164 Ky. 489, 175 S. W. 1034 (1915).

[39] *Id.*, at 494, 175 S. W. at 1036.

This reasoning has been followed consistently in Kentucky.[40]

Originally it was held in Kentucky that contributory negligence was a good defense even in cases of child labor violations. In the case of *Smith's Administrator* v. *National Coal and Iron Company*,[41] it was held that although the defendant had employed the plaintiff's intestate, a boy under the age of fourteen years, in violation of a statute, if the jury found the latter guilty of contributory negligence, the plaintiff would be barred by this negligence.

In a later and better reasoned case reflecting a more modern view, *Louisville, Henderson and St. Louis Railway* v. *Lyons*,[42] the court laid down the doctrine that contributory negligence is not a defense in cases of child labor violations. In this case, the plaintiff, a boy under fifteen years of age, was employed as a section hand by the defendant railway company. While riding down hill in a car, the boy was thrown off and, falling under the wheels of the car, was severely injured. The defendant pleaded contributory negligence. In a well reasoned opinion, the court distinguished the case of *Smith's Administrator* v. *National Coal and Iron Company* and proceeded under the assumption that this question had never been actually decided before. The conflicting views taken by other courts were stated, and the court proceeded to adopt the rule which does not make contributory negligence available as a defense in this type of case. The court examined the intent of the legislature in enacting such a statute and determined that it was for the purpose of protecting the lives and limbs of children from accidents caused by their own heedlessness. The court stated:

> "This being the very purpose of the statute, if the defense of assumed risk or contributory negligence could be relied on in an action brought by the child to recover damages for injuries sustained, the object of the statute would, in a large measure, be defeated."[43]

Thus the "public-policy" idea of other courts was established in Kentucky law.

Violation of Municipal Ordinance

The problem of whether the violation of a municipal ordinance is negligence *per se* is a subject upon which there has been much controversy and criticism in Kentucky.[44] In *Dolfinger* v. *Fishback*,[45] an early Kentucky case, the driver of a wagon belonging to the defendant company in Louisville stopped to deliver parcels at a house. There being no hitching post, the driver tied the horse to a tree. When he was some distance from the wagon, the horse bolted, overtook the plaintiff, who was riding in a small wagon, and injured her severely. The plaintiff read in evidence an ordinance of the city of Louisville which forbade a driver of a team of horses to be more than ten feet away from it while on a street. The court of appeals, in declaring it error for the ordinance to have been read in evidence, explained:

> "The general council of the city has no general power of legislation. It no doubt has the power to pass the ordinance and to enforce it as a mere police regulation, but further than that it had no power. It may be dangerous for a driver to leave his team upon the street, and the city council no doubt had the authority to prohibit

[40] Turner v. Taylor's Adm'x., 262 Ky. 304, 90 S. W 2d 73 (1936); Louisville Trust Co. v. Morgan, 180 Ky. 609, 203 S. W 555 (1918); Louisville & Nashville R. R. v. Cooper, 164 Ky. 489, 175 S. W 1034 (1915); Conway v. Louisville & Nashville R. R., 135 Ky. 229, 119 S. W 206 (1909); Smith's Adm'r. v. National Coal & Iron Co., 135 Ky. 671, 117 S. W 280 (1909).

[41] 135 Ky. 671, 117 S. W 280 (1909).

[42] 155 Ky., 396, 159 S. W. 971 (1913). *See* Emery v. Jewish Hospital Ass'n., 193 Ky. 400, 236 S. W 577 (1922).

[43] 155 Ky., 396, 404, 159 S. W. 971, 975 (1913).

[44] See 14 VA. L. REV., 591; 46 HAR. L. REV., 453, 469.

[45] 15 Ky. 474 (12 Bush) (1876).

> such an act; but the simple fact that they did prohibit it does not prove or even tend to prove that appellant's driver was guilty of such negligence as renders them liable for an injury resulting from their team having been left standing upon the street in violation of the ordinance."[46]

This case thus enunciated the doctrine that in Kentucky a violation of an ordinance is not even evidence of negligence. For many years this rule was followed without question. It was strongly reaffirmed in the two leading cases of *Louisville and Nashville Railroad Company* v. *Dalton*[47] and *Ford's Administrator* v. *Paducah City Railway*.[48] In the former case the court's reason for applying the doctrine was stated thus:

> "Negligence can not be fastened on the carrier by some local police regulation. Punishment may be imposed for violation of such ordinances, but in civil suits there are well-defined methods of establishing the facts which authorize a recovery, and we can not depart from these methods without doing violence to well-settled principles."[49]

It may be wondered what effect the 1892 statute had on such an interpretation. The court, in *Baker* v. *White*,[50] answered the question, "Is a city ordinance a statute within the meaning of KRS 446.070?", in the negative by means of a rather narrow construction of the word statute. It said:

> "While an ordinance adopted by the duly constituted authorities of a municipality has the force of law within the corporate limits thereof it is not a statute in the ordinary sense of the word."[51]

Thus the court refused to let the 1892 statute be used to hold violation of an ordinance negligence *per se*.

Later, a group of cases showing a transition from the old rule began to appear. In one case,[52] it would seem that the court treated a violation of an ordinance of the city of Louisville as negligence *per se* because it was in accordance with a provision of the Kentucky Constitution. In another case,[53] a violation of an ordinance of a city requiring people to keep fowl penned up was held to be negligence *per se*, but the court apparently made such a case an exception to the rule because of the old common law doctrine of absolute liability for the trespass of animals. In a later case, *Louisville and Nashville Railroad Company* v. *Louisville Provision Company*,[54] the defendant violated a city ordinance which was similar to a state statute. The court, in effect, made the violation of the ordinance actionable because of the statute. It is submitted that these cases show a trend away from the old rule.

In the case of *Pryor's Administrator* v. *Otter*,[55] the Kentucky court finally broke away from the old rule concerning the violation of city ordinances. The plaintiff's decedent was crossing a boulevard in Louisville one dark evening. Al-

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[46] *Id.*, at 480, 481.

[47] 102 Ky. 290, 43 S. W. 431 (1897). *See* E. L. & B. S. R. R. v. Gartnell, 10 Ky. L. Rep., 777 (1889); E. L. & B. S. R. R. v. Beam, 10 Ky. L. Rep., 682 (1888).

[48] 124 Ky. 488, 99 S. W. 355 (1907).

[49] 102 Ky. 290, 296, 43 S. W. 431, 432 (1897).

[50] 251 Ky. 691, 65 S. W. 2d 1022 (1933). *See* Equitable Life Assurance Soc. of U. S. v. McClellan, 286 Ky. 17, 149 S. W. 2d 730 (1941).

[51] 251 Ky. 691, 695, 65 S. W. 2d 1022, 1024 (1933).

[52] Mullins v. Nordlow, 170 Ky. 169, 185 S. W. 825 (1916).

[53] Adams Bros. v. Clark, 189 Ky. 279, 224 S. W. 1046 (1920).

[54] 212 Ky. 709, 279 S. W. 1100 (1926). This case interpreted in Illinois Central R. R. v. McGuire's Adm'r., 239 Ky. 17, 38 S. W. 2d 913, 916 (1931).

[55] 268 Ky. 602, 105 S. W. 2d 564 (1937).

though several other cars slowed down for her, the defendant testified that he did not see her. She was killed when struck by his car. A municipal ordinance required that a pedestrian be given the right of precedence at intersections and that a motorist be always on the lookout. In holding the defendant liable, it was stated:

> "Statutes and ordinances defining duties and regulating traffic are regarded as declaratory of the common law and supplementary thereto a violation of the terms of a statute or ordinance is in this jurisdiction held to be negligence per se. But, of course, that negligence must have been the proximate cause of the injury in order to authorize a recovery of compensation. [56] A municipality, as a valid exercise of its police power, may regulate the use of its streets by motorists and may designate places where pedestrians may cross them and control their movements. The ordinance determines the precedence [of pedestrian and driver] and must be given force and effect."[57]

Since the above case, there has been a steadily increasing number of cases holding that the violation of a municipal ordinance is negligence *per se*.[58] In one of the better reasoned recent cases, *Greyhound Terminal of Louisville* v. *Thomas*,[59] the plaintiff was descending the stairs in the defendant's building when she slipped and fell suffering injuries. The defendant had failed to have a handrail on the stairs as was required by an ordinance in Louisville. Finding that the plaintiff would not have fallen but for the fact that there was no handrail, the court said, "The violation of the terms of an ordinance is negligence *per se* the failure to maintain the handrail in accordance with the terms of the ordinance must be considered to have been the proximate cause of appellee s injuries."[60]

From the above, it can be seen that Kentucky law on statutory negligence is similar to the law in the majority of jurisdictions in the United States. A violation of a statute or ordinance is negligence *per se*, provided that the violation was the proximate cause of the injury, that the plaintiff was among the class of persons intended to be protected by the statute, and that the injury was of the type against which the statute was intended to protect.[61]

It is felt by the writer that the rule making the violation of a statute or an ordinance negligence *per se* represents the more desirable view. Even if a statute or ordinance is violated, certain requirements must be met before the plaintiff can succeed. These requirements are all part of the common law rules of negligence. Thus a criminal or a penal statute supplements the common law. Such a statute sets up a standard by which the defendant's conduct can be determined. It takes this often difficult problem out of the hands of the jury and leaves them only the question of whether the defendant did, in fact, violate the statute or ordinance.

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[56] Authorities cited by the court are: Hardware Mutual Casualty Co. v. Union Transfer & Storage Co., 205 Ky. 651, 266 S. W 326 (1924); Collett's Guardian v. Standard Oil Co., 186 Ky. 142, 216 S. W 352 (1919); Cumberland Tel. & Tel. Co. v. Yeiser, 141 Ky. 15, 131 S. W 1049, 31 L. R. A. (N. s.), 1137 (1910); National Casket Co. v. Powar, 137 Ky. 156, 125 S. W 279 (1910); Hart v. Roth, 186 Ky. 535, 217 S. W 893 (1920).

[57] 268 Ky. 602, 606, 105 S. W 2d at 566, 567 (1937).

[58] Linder v. Davis, 309 Ky. 668, 218 S. W 2d 673 (1949); Brown Hotel v. Levitt, 306 Ky. 804, 209 S. W 2d 70 (1948); Durham v. Maratta, 302 Ky. 633, 195 S. W 2d 277 (1946); Murphy v. Homan's Adm'r., 286 Ky. 191, 150 S. W 2d 14 (1941); Home Laundry v. Cook, 277 Ky. 8, 125 S. W 2d 763 (1939).

[59] 307 Ky. 44, 209 S. W 2d 478 (1947).

[60] *Id.*, at 45, 209 S. W 2d at 479.

[61] See Kepner, *Violation of a Municipal Ordinance as Negligence Per Se in Kentucky*, 37 KY. L. J., 358 (1949).