Chapter 608

Fences to Prevent Damage by or to Animals

608.015

NOTES OF DECISIONS

1. Under former similar statute

Since sheep were not included within the statute, a landowner was not, in counties to which the law applied, required to fence against them in order to recover damages for trespass. The common-law rule in that regard obtained. French v. Cresswell, (1886) 13 Or 418, 11 P 62; Bileu v. Paisley, (1889) 18 Or 47, 21 P 934, 4 LRA 840; Strickland v. Geide, (1897) 31 Or 373, 49 P 982; Pacific Livestock Co. v. Murray, (1904) 45 Or 103, 76 P 1079; Jones Land & Livestock Co. v. Seawell, (1918) 90 Or 236, 176 P 186.

Under the 1870 laws, the common-law rule that every man was required to keep his cattle within his own close, under the penalty of answering in damages for all injuries arising from their running at large, did not prevail in Oregon. Campbell v. Bridwell, (1874) 5 Or 311.

In an action for trespass by cattle under the 1870 laws, the complaint had to set forth facts showing an inclosure built in substantial compliance with the statute. Id.

In the absence of a statute changing the common-law rule, a party was not obliged to fence his lands before he could maintain an action of damages for trespass by cattle. French v. Cresswell, (1886) 13 Or 418, 11 P 62.

A plaintiff, whose lands were fenced in a common inclosure with defendants' lands, could not recover for trespass of defendants' cattle, not having separated his lands from theirs by a fence, in the absence of malicious prevention by defendants. Oliver v. Hutchinson, (1902) 41 Or 443, 447, 69 P 139, 1024.

The measure of damages for trespass by sheep was the reasonable value of the verdure eaten or destroyed, and the injury to the freehold. Pacific Livestock Co. v. Murray, (1904) 45 Or 103, 76 P 1079.

Whether a pond three and one-half feet deep was a lawful fence was for the jury to determine. Meier v. Northern Pac. Ry., (1908) 51 Or 69, 93 P 691.

In an action for trespass by animals, a landowner had to bring himself within the conditions imposed by statute, else he could not prevail, even though the county had voted against stock running at large. Ball v. Croisan, (1914) 68 Or 455, 137 P 225.

Steep banks of a river in a proper case, would be treated as a lawful fence. Seavey v. Williams, (1920) 97 Or 310, 191 P 779.

Evidence that accused shot and killed the cow of another because she was breaking into his hay corral did not justify conviction of a criminal offense, but was merely proof of civil liability under the statute. State v. Klein, (1920) 98 Or 116, 193 P 208.

The distrainer had the right to defend his possession to the same extent that the sheriff had to defend the possession of property taken by him on legal process if the statute was strictly complied with. Brown v. Becker, (1931) 135 Or 353, 295 P 1113.

The owner of distrained trespassing animals could not maintain replevin until he had complied with the conditions imposed on him by the statute. Id.

Sheep were subject to distraint for damages done to realty and where disclaimed, a lien for their keep or charges incident to the distress attached. Hall v. Marshall, (1933) 145 Or 221, 27 P2d 193.

FURTHER CITATIONS: Siglin v. Coos Bay Co. (1899) 35 Or 79, 56 P 1011, 76 Am St Rep 463; Fry v. Hubner, (1899) 35 Or 184, 57 P 420; Smith v. Chipman, (1960) 220 Or 188, 197, 348 P2d 441.

608.310

NOTES OF DECISIONS

There is not duty to fence a railroad right of way, in the absence of statute. Todd v. Pac. Ry. & Nav. Co., (1911) 59 Or 249, 110 P 391, 117 P 300; Swensen v. So. Pac. Co., (1918) 89 Or 275, 174 P 158.

A railroad company is not liable for injuries suffered by animals in its station grounds within an incorporated town. Harvey v. So. Pac. Co., (1905) 46 Or 505, 80 P 1061.

An agreement on the part of the company to construct a cattle crossing under or over its tracks does not absolve it from the obligation of fencing the right of way. Dibblee v. Astoria & Columbia River R.R., (1910) 57 Or 428, 111 P 242, 112 P 416.

This statute relates to operating railroads only, and is not applicable to roads under construction. Todd v. Pac. Ry & Nav. Co., (1911) 59 Or 249, 110 P 391, 117 P 300.

The title of this statute indicates that it was enacted for the benefit of the traveling public. Swensen v. So. Pac. Co., (1918) 89 Or 275, 174 P 158.

An order suspending operation of this section in respect of a particular line of road does not relieve the company from liability arising out of the killing of domestic animals coming upon its tracks. Id.

FURTHER CITATIONS: Butcher v. Flagg, (1949) 185 Or 471, 203 P2d 305.

608.320

NOTES OF DECISIONS

See cases under ORS 608.310.

608.330

NOTES OF DECISIONS

See cases under ORS 608.310.

608.340

NOTES OF DECISIONS

1. In general
2. Liability of railroad
3. Point of entry of stock
4. Station grounds
5. Evidence

1. In general

Contributory negligence defeats recovery under this statute. Hindman v. Ore. Ry. & Nav. Co., (1889) 17 Or 614, 619, 22 P 116; Eaton v. Ore. Ry. & Nav. Co., (1890) 19 Or 371, 24 P 413.

Where the want of a fence sustains no relation to or connection with the injury caused by a moving train, this statute has no application. Meeker v. No. Pac. R. Co., (1892) 21 Or 513, 28 P 639, 28 Am St Rep 758, 14 LRA 841.

Prior to enactment of this statute, a railroad company was liable for an injury to stock only if it was negligent; and failure to fence its right of way was not negligence. Todd v. Pac. Ry. & Nav. Co., (1911) 59 Or 249, 110 P 391, 117 P 300.

This section was not repealed by enactment of LOL 6979 to 6982 [ORS 608.310 to 608.330]. Swensen v. So. Pac. Co., (1918) 89 Or 275, 174 P 158.

The title of this statute indicates that it was enacted for the benefit of individual stock owners. Id.

Suspension of LOL 6979 [ORS 608.310] as therein authorized, does not relieve a railroad company from liability arising out of the killing of domestic animals coming upon its tracks. Id.

2. Liability of railroad

Under this statute a plaintiff is entitled to recover against a railroad company for the killing or injury of his stock, by alleging and proving that the company owned or operated the railroad; that its track was unfenced; and that the plaintiff's cattle or horses were killed or injured, as the case might be, on or near the track by a moving train, engine, or cars upon such track. Hindman v. Ore. Ry. & Nav. Co., (1889) 17 Or 614, 619, 22 P 116; Sullivan v. Ore. Ry. & Nav. Co., (1890) 19 Or 319, 328, 24 P 408.

The purpose of this statute is to make the railroad company owning the road, or the company operating the road, liable, so that either may be sued as the plaintiff may elect, who has sustained injury to his livestock by a moving train upon its unfenced track. Eaton v. Ore. Ry. & Nav. Co., (1890) 19 Or 391, 24 P 413.

The animal need not be actually touched by the engine or cars of the train in order to render the railroad company liable. Meeker v. No. Pac. R. Co., (1892) 21 Or 513, 28 P 639, 28 Am St Rep 758, 14 LRA 841.

Whether the train is operated carefully is immaterial when there is an omission to fence by reason of which stock get on the track and injury to them results. Id.

No agreement between a railroad company and an adjoining owner whereby he agrees to maintain fences will absolve the company from liability to persons not parties or in privity for injury resulting from the landowner's failure to keep his engagement. Brown v. So. Pac. Co., (1899) 36 Or 128, 58 P 1104, 78 Am St Rep 761, 47 LRA 409.

That a right of way deed provides for an open crossing does not release a railroad company of its statutory duty to fence. Dibblee v. Astoria & Columbia River R.R., (1910) 57 Or 428, 111 P 242, 112 P 416.

Where plaintiff's horse strayed on defendant's unfenced railroad track, it was immaterial to defendant's liability whether the horse was struck by a train and thrown on to a fence and injured, or whether he was so frightened that he jumped on the fence in an effort to escape from the train. Meier v. No. Pac. R. Co., (1908) 51 Or 69, 93 P 691.

3. Point of entry of stock

If stock enter upon a railway at a point where this statute requires the road to be fenced, and are injured by a moving train, the company will be liable in damages regardless of whether it was negligent or not. Eaton v. McNeill, (1897) 31 Or 128, 49 P 875.

If stock enter on the right of way at a place where the company is not bound to fence, and are injured, negligence must be shown to justify a recovery. Id.

4. Station grounds

For animals killed on depot grounds or on public road or street crossings, there is no liability under this statute. Moses v. So. Pac. R. Co., (1890) 18 Or 385, 23 P 498, 8 LRA 135; Harvey v. So. Pac. Co., (1905) 46 Or 505, 80 P 1061; Wilmot v. Ore. R. Co., (1906) 48 Or 494, 87 P 528, 120 Am St Rep 840, 11 Ann Cas 18, 7 LRA(NS) 202; Swensen v. So. Pac. Co., (1918) 89 Or 275, 174 P 158.

It is the duty of the judge to take the case from the jury as a question of law, where it appears clearly that animals entered upon station grounds and were killed by moving cars; but where the evidence is conflicting as to whether the point of entry is within the station grounds, the question should be submitted to the jury. Wilmot v. Ore. R. Co., (1906) 48 Or 494, 87 P 528, 120 Am St Rep 840, 11 Ann Cas 18, 7 LRA(NS) 202; High v. So. Pac. Co., (1907) 49 Or 98, 88 P 961.

The depot or station grounds of a railroad company is the place where passengers get on or off the train and where freight is loaded and unloaded, including all grounds reasonably necessary or convenient to that purpose, together with the necessary tracks, switches and turnouts thereon, or adjacent thereto, necessary for handling and making up trains, storage of cars, etc., and so much of the maintrack outside the switches as is necessary for the proper handling of trains at the station. Wilmot v. Ore. R. Co., (1906) 48 Or 494, 87 P 528, 120 Am St Rep 840, 11 Ann Cas 18, 7 LRA(NS) 202.

A switch or siding near a station where no passengers get on or off, and no freight is loaded or unloaded, and where the public has no right of access, is not depot grounds so as to excuse the railroad from fencing. Jackson v. Sumpter Valley R. Co., (1908) 50 Or 455, 93 P 356.

The question whether plaintiff was guilty of contributory negligence in turning the stock out to graze on uninclosed lands near the depot, was for the jury. Wilmot v. Ore. R. Co., (1906) 48 Or 494, 87 P 528, 120 Am St Rep 840, 11 Ann Cas 18, 7 LRA(NS) 202; Jackson v. Sumpter Valley R. Co., (1908) 50 Or 455, 93 P 356.

5. Evidence

Proof of the place of entry of the stock only devolves on the plaintiff when stock is killed or injured at a place where the railroad company is not bound to fence, as a public highway, and which stock has entered where its track was unfenced and the duty to fence existed, and such killing or injury is the direct consequence of an omission to fence. Sullivan v. Ore. Ry. & Nav. Co., (1890) 19 Or 319, 24 P 408; Eaton v. Ore. Ry. & Nav. Co., (1890) 19 Or 371, 24 P 413.

Proof that a gate was negligently left open does not support an allegation that a railroad track was not fenced there. High v. So. Pac. Co., (1907) 49 Or 98, 88 P 961.

Circumstantial evidence was sufficient to support a finding that plaintiff's horse was on the right of way of defendant railroad company, and was either struck and thrown on a fence by a moving train or was so frightened in his effort to get away that he jumped upon the fence and was killed. Meier v. No. Pac. R. Co., (1908) 51 Or 69, 93 P 691.

608.350

NOTES OF DECISIONS

See also cases under ORS 608.340.

The court cannot say, as a matter of law, that a pond about three and a half feet deep is a complete natural defense against the entrance of stock. Meier v. No. Pac. R. Co., (1908) 51 Or 69, 93 P 691.

608.360

NOTES OF DECISIONS

See also cases under ORS 608.340.

1. In general

Whether or not the death or injury is caused by actual contact with the train, the railroad company is liable for death or injury of stock caused by a moving train upon or near its unfenced track. Meeker v. No. Pac. R. Co., (1892) 21 Or 513, 28 P 639, 28 Am St Rep 758, 14 LRA 841.

2. Contributory negligence

Contributory negligence defeats recovery under the statute. Hindman v. Ore. Ry. & Nav. Co., (1889) 17 Or 614, 619, 22 P 116; Eaton v. Ore. Ry. & Nav. Co., (1890) 19 Or 371, 373, 24 P 413.

Permitting animals to run at large upon common unfenced range, or upon inclosed land owned or in possession of the owner of the animals is not contributory negligence defeating recovery. Hindman v. Ore. Ry. & Nav. Co., (1889) 17 Or 614, 619, 22 P 116; Keeney v. Ore. Ry. & Nav. Co., (1890) 19 Or 291, 24 P 233.

3. Evidence

Negligence is established by proof that the company failed to fence and that the animals were killed or injured upon or near such unfenced track. Eaton v. Ore. Ry. & Nav. Co., (1890) 19 Or 371, 24 P 413.

Animals killed near a point that the company was required to fence, but neglected to do, may be presumed to have entered at that point. Id.

The plaintiff is not required to prove where his animals entered the right of way unless the injury took place at point that was not required to be fenced. Meier v. No. Pac. R. Co., (1908) 51 Or 69, 93 P 691.

608.370

NOTES OF DECISIONS

This section was not repealed by enactment of LOL 6979 to 6982 [ORS 608.310 to 608.330]. Swensen v. So. Pac. Co., (1918) 89 Or 275, 174 P 158.