The Principles of the Law of Negligence

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THE PRINCIPLES

of the

LAW OF NEGLIGENCE

and the

MODERN DECISIONS UPON THE LIABILITY OF A

MUNICIPAL CORPORATION FOR ITS DEFECTIVE STREETS.

\[ \text{Naruse.} \]

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1889.
Justice Alderson in the matter of Blyth v Birmingham Water CO.
defined the law of negligence which has frequently been cited in the
subsequent cases as a high authority upon the subject, but this is
open to a criticism of Dr. Wharton who while admitting its correct-
ness so far as it excludes the accidents from the category of negli-
gence, objects to its undue extension to include with in it all
important acts; he also denies Austin's definition on the ground
that it is too broad and is founded on neither Roman nor common law
principles.

The difficulty in giving a precise and technical definition of
it, lies on the fact that it must preclude many acts and omissions
which do not violate any legal obligation as well as many others
which do.

Indeed many attempts were made by jurists to define the law,
none of which seems to be satisfactory to me; none of them have in
fact proved a satisfaction to the framers of other definitions.
In view of this fact I do not assume to offer a perfect definition; but hope that the reader, by a comparative study of it and others that have been framed and cited above, may be aided in developing another and better definition.

The definition I offer is this:

Negligence to be actionable at law must be an unintentional omission of a legal duty to the injury of the plaintiff or his property by a responsible person. To fail in using reasonable care, diligence and skill which a person of ordinary prudence under the similar circumstances would exercised his negligence; this negligence may consist either of an act or an omission.

With this definition then, there must be first a duty without
which there can be no negligence,

Carpenter v. Aboes 81 N.Y. 21

Allen v. Willard 57 Penn. St. 374

If one will assume to do or not to do a certain thing, he becomes liable thereafter for the acts or omissions caused by it while he may not be liable for not assuming it; as for instance where a town may be required to build a bridge and if even it had neglected, no individual could maintain an action for it while the town may be liable for not repairing it thereby causing an injury.

Penn. and Ohio Canal v. Graham 63 Penn. St. 290.

Bigelow on Torts p 260.

This duty implies to use care, which due skill or diligence in each particular case. The duty thus imposed must always be legal, one as contradistinguished from the moral duty and the amount of the duty thus required need not to be more than the law requires; for instance it would be most common and unexcusable moral obligation for a man if he sees a fire starting in a neighbor's house, to go and assist them in putting it down; but no human law requires it as it will produce more harm than good to enforce such a rule by an action for damages.
In regard to the amount of the duty a respect must always be had as to the particular circumstances of the case and the progress of science, era, etc.

As to the first point, a driver who is under an obligation to use ordinary care and diligence in highways, must exercise most scrupulous care if he drives through a crowd or a person passing on the wrong side of a street must use something more than ordinary care while he is only required to use ordinary care if he passes the right side of the street.

Smith on Negligence, p 23.

As to the progress of the science and era, many acts or omissions are now evidence of gross negligence which a few years ago would not have been culpable, as many acts are now consistent with great care and skill which in a few years will be considered to be the height of imprudence.

Thus the introduction of the Steam Engine has made it necessary that more care should often be used in the management of horses than was formerly necessary.

In Cleveland v Spier the defendants servant was employed in drilling a hole into a gas main in a thoroughfare, using for the
purpose a "Diamond point" chisel, which caused particles of iron to fly off, and thereby endangers passer-by. A less dangerous mode of doing the work would have been by drilling or screeing; a piece of iron was chipped off and struck the plaintiff in the eye, and injured him.

It was held that the fact that the accident would have been avoided by drilling or screeing was evidence of negligence; and therefore that the defendant was liable.

Cleveland V. Spiers 16 C. B. N S 399.

But amount of such duty may be imposed and fixed by statute in some cases; as for instance regulating the speed of vehicles or trains.

St. Louis R.R.Co. V Mathias 50 Ind. 65.

Penn. Co. V Conlon 101 Ill. 93.


Or special warning to be given at their approach.

Lane V Atlantic Works 111 Mass. 138.

The violation of such statute may be a prima facie conclusive evidence of negligence and a suit may be instituted as a basis of the action.
Carroll v Statin Island R. R. Co. 58 N. Y. 126.

One who is personally bound to do a duty cannot delegate it to another to relieve himself and the fact that he has used utmost care to select the servant would not excuse him, for instance, where a municipal corporation is required to repair its streets and if any injury will occur to a third person by negligence of the selected employee it will nevertheless be liable.

Storrs v Utica 17 N. Y. 104

Another important element of negligence is the absence of a distinct intention to produce the injury to distinguish from fraud. Now lastly there must be a damage to the plaintiff and it must be special to him; he has no right of action individually if he has suffered no special wrong. That is no damage other than every member of the community has suffered in equal measure.

PROXIMATE CAUSE.

The breach of the duty and not merely his act, must be the cause of the plaintiff's damage.

Dickey v Maine Telegraph Co. 43 Maine 492.


The mere fact that the defendant has been guilty of negligence;
followed by an action, does not make him liable for the resulting injury unless that was occasioned by the negligence and the connection of the cause and effect must be always established.

Chicago etc. R. R. Co. v Corroll 12 Ill. 643.

The proximity of the cause and effect is always a test of the liability of the defendant.

Where on the face of a complaint, in an action for negligence, it appears that the negligence charged was not the approximate cause of the injury, the complaint fails and must be dismissed.

Scheffer v R. R. Co 105 U. S. 249.

As to the natural and continuous sequences of tortuous negligence it has been held on one hand that he will be held responsible for whatever wrong he might have caused or omitted ignoring the fact whether he has anticipated it or not.

Bennett v Lockwood 20 Wend. 223.

Phillip v Dickerson 85 Ill. 11.

Lake v Milwaukee 62 Maine 240.

Ghrgott v N. Y. 96 N. Y. 264.

On the other hand, it has been held that he should not be held responsible for any act which, in the exercise of reasonable fore-
sight, he could not foresee.

Sharp V Powell L. R. 7 C. P. 253.

But the middle ground seems to have been also taken between those two schools.

Gerhard V Bates 2 Ellis & B. 490.

Wharton on Negligence. Sec. 16. 74. and on.

Better and general rule is, that a man is answerable for the consequences of a fault which are natural and probable; but if his fault happens to occur with something extraordinary and unforeseen, he will not be liable.

The maxim, causa proxima non remota speculantur, means this; one engaged in an act which the circumstances indicate may be dangerous to others, and the events whose occurrence is necessary to make the act injurious, can be readily seen as likely to occur under these circumstances, the defendant is liable if he does not take all the care which prudence would suggest to avoid injury.


Any intervening cause of another person to the injury that is if a third person has concurred or cooperated in the act, is no excuse to the defendant's liability, if the cause is distinctly
seperable as in case where he had contributed his negligence to the
act of God.

But such intervening act will be an excuse if it is inevitable
without any wrong on his part although he will be liable if he had
contributed to the intervention as where the defendant leaves a horse
loose and unattended, in a city street, is responsible for injury
done by the horse in running away, although might not have happened
but for the malicious act of a stranger in frightening it.

Lynch V Nurdin Q. B. 29.

So also where the Defendant left his cart in the street unattended
ed, and while so standing another cart came in collision with it,
in consequence of which the plaintiff was injured, it was held that
the defendant was liable.

Powell V Deveny 3 Cushing 300.

DEGREE OF NEGLIGENCE.

Dr. Wharton in his celebrated work on the Law of Negligence
after careful examination of the Roman law and the opinion of Mr.
Mommsen, conclusively has laid down two theories of degree of negli-
gence.

First, - Culpa Lata i.e. ignorance of that which every ordinary
person knows: this is to be required by one who is not and does not profess to be, a good man of business or an expert in the affairs under consideration.

Second, Culpa Levies or the Culpa which exists when a person bound to a special duty neglects to enter upon and discharge it with the diligence belonging to a Diligens. Bonus. Studios paterfamilias. This bonus pater familias he declares, is entirely different from the English paterfamilias which was considered to be merely a domestic father the Roman pater familias was a man of high responsibilities over tribes and his children; Wielding, therefore, possessions and prerogatives the due management of which required a peculiar sagacity etc, hence Roman pater familias was eminently the men of affairs.

Great care, he continues, should not be demanded in any case if it is taken for granted that the defendant has been in the exercise of due care and diligence which are to be expected from the person in the same line of business, under similar circumstances.

He expressly admits however that this theory of two degrees is in conflict with judicial decisions.

In the case of Ingall v Bill 9 Met, the plaintiff and several
other parties took the outside seats, as passengers, on the top of the defendant's coach, to be conveyed from Boston to Cambridge; and on the way, while passing at a moderate rate, and without coming in contact with anything, or meeting any obstruction, hind axeltree of the coach settled down on one side, without being overset and by jumping upon the pavement from the top of the coach, he was injured. Held that the proprietors of coaches, who carry passengers for hire, are answerable to a passenger for an injury which happens by reason of any defect in the coach, which might have been discovered by the most careful and thorough examinations, etc.

But Dr. Wharton gives a qualification upon this particular case saying that the defendant was required to use that degree of care and skill which good specialist skilled in his particular department, is accustomed to apply and if he has done so, he would not have been liable and according to Dr. Wharton, the theory of classifying the care into three degrees, is only a product of mere speculation of abstract principle without the aid of practical experience by the student of the middle ages and therefore at present only two degrees are necessary, which we may call slight and ordinary care.

This theory might have been looked upon with some favor when,
to quote Sherman and Redfield, it would have seemed preposterous to claim a greater degree of care for the preservation of the life of a slave than for the statute of an emperor. But as the modern regard for human life became more sacred than property; and side by side with the growth of this feeling, there has been a wonderful extension of human powers by means of new inventions and the courts of the United States and of Great Britain have felt the vital necessity of a special and unusual degree of care and not content with that great care and diligence for which the liability for slight negligence is a reward, they have actually invented the fourth degree of care or the uttermost care and the responsibility for the slightest negligence.

It is now a well settled rule in the United States that the carrier of persons is responsible for any injury arising from any defect in the cars etc. which could have been discovered by any known test, either while in use or in the process of manufacture.

Costello v Binghamton etc. R. R. Co. 65 Barb. 92.

Stenweg v Erie R. R. Co. 43 N. Y. 123.

Higerman v Western R. R. Co. 13 N. Y. 9.

In several cases it was held that the common carrier is bound
to accept all inventions which tended to the safety of the passenger and which are in use by some of the carriers.

Meir V Penn. R. R. Co. 64 Penn. State 225.

Knight V Portland R. R. Co. 56 Maine 234.

Also common carrier of persons is bound to use the highest degree of prudence and in some cases utmost care and diligence.

Smith V N. Y. Cent. R. R. Co. 24 N. Y. 222.

Greatest care and prudence required.

Houston, etc. R. R. Co. Gorbett 49 Texas 573.

Now after careful examinations of the recent cases of the law of common carrier of persons, we will be compelled to affirm the fourth class of care proposed or utmost care in addition to the three classes which are generally observed.

Those three classes may fairly be defined as follows:

I. Slight care is that, which persons of less than common prudence, or indeed of any prudence at all, take of their own concerns. Story cn Bailment sec. 16.

II. Ordinary care is that degree of diligence which men in general exert in respect to their own concerns under similar circumstances. ditto.
III. High or great care is of course, extraordinary diligence, or that, which very prudent persons take of their own concerns. Ditto.

But there have been many cases decided throwing some doubt of the practicability of applications of these classes. Thus Denman, C. J., doubted whether any intelligible distinction could be made “between gross negligence and negligence merely”.

Hinton V Diffin 2 Q. B. 646. and this remark was cited by Smith, J. in Perkin V. N. Y. C. R. Co. 24 N. Y. 196. and also in Wilson V Brett, 11 Meeson Wekey 113, Baron Rolf declared he could see no difference between negligence and gross negligence; that it was the same thing, with the addition of a vituperative epithet; also Mr. Justice Story says “indeed, what is common or ordinary diligence is mere a matter of fact than of law. Story on Bailment sec 119.

THE MODERN DECISIONS UPON THE LIABILITY OF A MUNICIPAL CORPORATION FOR ITS DEFECTIVE STREETS-

Before entering into a discussion of this topic we must in the first place understand the precise distinction between municipal corporations proper and quasi corporations as to which latter there
is almost an entire uniformity of decisions that they are never liable to a private person for any injuries occasioned by defective roads and bridges under their control as public agencies, unless positively so declared and as Mr. Dillon has said there is no common law obligation upon quasi corporations to repair highways, streets, etc. and they are not obliged unless by the virtue of statute.

This statement is very well adjudicated in the state of Ill. In the matter of Hedges v Madison Co. one Gillman 56. it was held that the counties were not liable to a private action for defective highways, and subsequently in case of Browning v Springfield 17 Ill. 143. it was held to be otherwise as respects charter cities or ordinary municipal corporations.

But this distinction is ignored in Indiana since the case of House v Montgomery 60 Ind. 580. holding a town liable for damages caused to travellers by reason of its defective streets in spite of there being no statute making it liable. The liability, says the court "grows out of the power conferred upon city over its streets and bridges and its duty to keep them in reasonable repair, having the power to raise means for that purpose."
This view seems to have also been followed in some of the states and we will find not much difficulty in holding the corporation liable on the general principals of law although there may not be a statute fixing the liability for its neglect to repair the streets etc. thereby causing injury, if they were provided with enough funds. It was held in New York that the absence of necessary funds, or the legal means of procuring them will excuse the performance of duty.

Hines v Lockport 50 N. Y 250.

Thus having examined briefly the present condition of the distinctions observed by different courts as to municipal corporations and quasi corporations, while in some states as in Indiana, the distinction is discarded, I shall proceed to consider first their duty to repair.

DUTY TO REPAIR.

It is generally held as we have seen that an action cannot be maintained against counties or parishes, unless authorized by statutes for damages sustained through their neglect to keep the bridges and highways in repair, although the duty of doing so is clearly enjoined upon them by law, and they have authority to collect taxes,
or make adequate assessments.

Gronger Puleski Co. 28 Ark. 37.

To the same effect that if there is no statute authorizing individuals to maintain the suit for injuries received on account of the defect of the streets, there is no remedy.

City of Arkadelphia V Windom 4. S. W. 450.

Pomfrey V Village of Saratoga 11 N. E. 43.

Sheridan V City of Salem 12 P. 925.

Albert V Johnson Co. 16 N. E. 654.

The above decisions are radically contradicted. City of Boulder V. Niles 12 P. 632.

In the matter of the City of Denver V Dunsmore 3. P. Rep. 705 the chief Justice Beck came to the following conclusion:

"The narrow general current of authority supports the view that when municipal corporations are invested with exclusive authority and control over the streets and bridges within their corporat limits, with ample power of raising money for their construction, improvements, and repair, the duty raises to the public, from the nature of the power granted, to keep the avenues of travel within their jurisdiction in a reasonably safe condition for the ordinary
mode of use to which they are subjected, corresponding liability
rests upon the corporation to responding damages to those injured
by neglect to perform the duty: that the same rule obtains in such
case whether the duty specifically imposed by the act of incorpora-
tion or not.

This holding seems to be entirely opposite to that of Justice
Battle, J. in Arcadelphia V Windhom before cited.

If such duty to keep the streets, bridges and highways in
reasonable condition is imposed upon the corporation with the accept-
ance of a charter giving the common councils power to protect streets
against defects, etc., it cannot escape the liability because the
auxilliary powers and duties are subsequently conferred by act of
legisature upon the police department.

Kunz Administrators, Etc. V City of Troy 10 N. E. 442.

It is the duty of a municipal corporation to keep every street
safe throughout its entire width regardless of location, amount of
travels and other circumstances.

Fulliam V City of Muscatine 30 N. W. 86.

But this is contradicted in Burrell V Uncapher 11 At. Rep. 619
holding that a township owes a duty to the public to keep a reason-
ably safe road at any given place, and if an injury occurs from its failure so to do, it is responsible for its negligence.

The duty to keep in safe condition also extends to sidewalk.

Dooley v. Town of Sullivan 14 N. E. 586.

WHAT CONSTITUTES DEDICATION AND ACCEPTANCE.

To constitute a strip of land, laid out as a street, by the proprietor of a tract of land, a public highway, by force of a dedication for that purpose, the dedication must be accepted by the proper authorities, or there must be a user of the street as a highway.

Bissell v. N. Y. C. R. R. Co. 26 Barb. 630. or a way may be dedicated by the owner of the land as such, and if it will be laid out as such by the constituted authorities it will become a legal highway, and also if it was used for an uninterrupted twenty years by public, it will have the same effect.


But the rule requiring the twenty years use to establish a highway by user, does not apply to highways created by dedication; then the intention of the owner, rather than the length of the user, determines the question.
State v. Marble v. Ired. L. 318 such intent must be always proved.

Remington v. Millard 1 R. I. 93. mere acquiescence on the part of the owner of the property does not create the presumption of dedication.

Hoole v. Attorney General 22 Ala. 190.

It is conclusively shown to be a highway, by proof that it has been known and used as a highway for 40 years and during that time has been repaired by the town in which it is situated.

James Reed v. Northfield 13 Pick. 94.

But in the case of Noyes v. Ward 19 Conn. it was held that in order to establish in the public a right to the use of land of the highway, by dedication, it is not requisite that they should have used it as such for the period of fifteen years, nor that the public use should have been adverse and uninterrupted.

In the state where there is no statutes authorizing the towns to accept a land by dedication, it must always be governed by the common law principles which recognize it as a gift and estop the giver from recalling it and presume an acceptance by the public where the highway is shown to be of common convenience and necessity and therefore beneficial to them.

The principal evidence of its beneficial character will be the
actual use of it as a public highway without objection by those who have occasion to use it; in such case reasonable time must be allowed for acceptance.

Guthlie v New Haven 31 Conn 308.

If an incorporated company within the limit of a town lay out a road and dedicate it to the public, the town would not thereby become liable to repair, unless it has in some way accepted or adopted as a way.

Bryant v Bidderford 9 Wis. 193.

To the same effect, in the case of Durgin and wife v City of Lowell it was held that a way constructed and kept in repair by a private corporation upon its own land for its own use and convenience of tenants occupying its houses on both sides thereof, opening in the public street, having a sign "Private Way" upon the corner but left open to public travel for more than twenty years without interruption is not thereby dedicated to the public; nor does it become a highway by prescription.

NOTICE OF DEFECT.

Notice of a defect is notice of that condition of things which constitute a defect, although the authority of town may think that
it does not constitute effect and any conversations about an accident or a defect in a highway, between persons, none of them is an officer of the town, are not competent evidence to show notice to the town of such defect, although the conversation may have been had between many different persons.

Hinckley v. Somerset 14 N. E. 166

But it is no error to charge it to the jury the fact that the accident in front of a police station, and within sight of the officers whose duty it was to have charge of the station.


Notice may be inferred where defect had existed for such a reasonable time that the county by the exercise of reasonable care, might have discovered them.

Howard v. Legg 11 N. E. 612.

Also as a supervisor of roads is agent of the county within its district, what he may know of such defect in the diligent discharge of the duties of his office he has notice of, and the county also.

But notice in the name of nobody, is no notice.

Rogers V Hoskins 14 Ga. 166

In regard to the length of time of notice to be given, it was held in Houston V Issac 3 N. W. 693 that the provision in a city charter exempting the corporation from liability to any person for damages caused by a street being out of repair through the gross negligence of the corporation, unless the same shall have remained so for ten days after special notice in writing to the mayor or street commissioner, does not apply where the city having put a contractor to work upon the street, and after he had commenced to work and made an excavation in the street, rendering it unsafe for travel, discharged him and left the work in an unfinished condition and the plaintiff may recover if he receives any injury although he has not given a notice of ten days.

Where a person falls into a hole which was left by the workingmen unguarded when they have left the work and the municipal authority had no notice after one hour and forty five minutes, they will not be liable for injury.

Warsow V Dunlap 14 N. E. 568.

CONTRIBUTORY NEGLIGENCE AS DEFENCE.
It is now too well settled, to approve by cases, for saying that one whose own negligence contributing to the injuries complained of, in conjunction with a defect in highway, will bar his right of action, also to satisfy our purpose for the present it seems hardly necessary to enter into any philosophical and technical argument upon the subject, but I will presently examine the decisions of the different states.

The cases cited below enable the author to say that the standard of care demanded of travellers passing on a highway is simply such as a person of common prudence would exercise under the similar circumstances.

Simms V S. C. R. R. Co. 3 S. I. 301.

Morrell V Peck 22 N. Y. 392.

Houfe V Fulton 29 Wis. 298.

Gillespie V Newburgh 53 N. Y. 468.

Any traveller passing along a side-walk has the right to assume that the city has performed its duty in keeping the walk in safe and proper condition, and he is required to exercise only ordinary care in passing over the place where the accident occurred, unless he knows of its dangerous condition, or might have seen it
by the exercise of ordinary care observed by citizens in working along the side of the city; he is not required to anticipate a danger nor to be on the look-out for its existence, and a degree of care and caution required of the dangerous condition always depend upon his knowledge concerning to such a defect.

Gordon V City of Richmond 2 S. E. 727.

Jamin's V VanScheick 15 N. E. 424.

The question is settled that the greater care is to be expected from person of poor or defective sight, than persons of far sight;

Perch V Utica 10 Hun 477.

But no one, whatever his infirmies may be is bound to use extraordinary care; so a person, however he may be blind, has a right to presume that the highway is reasonably safe and fit for travelling.

It was held in Smith V Wilds 143 Mass. 556 that it cannot be laid down as a universal rule that it is negligence for a blind man to walk the streets unattended; this fact taken in connection with his habit of going about alone, and his acquaintance with the locality, must be considered by jury;

It is also said that the plaintiff is not guilty of contrib-
utory negligence because he was driving a blind horse on a dark night.

Brackenridge V Fitchburg 13 N. E. 457.

If no warning is made, it is not contributory negligence even if he had fallen down in the daylight.

Cantwell V City of Appleton 37 N. W. 813. nor Crossing through abstraction, is perceived negligent, because obstruction is not always dangerous.

Evansville etc. R. R. Co. V Carvener 14 N. E. 738.

Now in regard to the burden of proving the contributory negligence on the part of the plaintiff after he made a fair presumptive case of defendants negligence, it is very well settled that it is upon corporations or defendant to prove plaintiff's contributory negligence.

Gordon V City of Richmond Supra.

Hopkins V Utah N. R. Co. 13 P. 343.

Huckshold V St. Louis I. M. and S. R. Co. 2 S. W. 794.

It was held that the falling of a building is a prime faci negligence on the part of the defendant and if he claims it to have been caused by an unavoidable cause, the burden of proof is shifted on the defendant to show such.
Giles V Diamond State Iron Co. 31 N. W. 164.

Now lastly to maintain an action for injury, the plaintiff must establish a specific defect alleged in the complaint in order to recover damages.

Armstrong V Ackley 32 N. W. 180.

It was held in Wisconsin where the statute requires notice to a town injuries from insufficient highways shall state the place where such damages occurred, describing generally the insufficiency or want of repair which occasioned it; a notice which specifically describes the location of the place of the injury, but designates the place as sufficient, though the evidence shows it to be a culvert.

Wall V Highland Supra. It is here held that not to be necessary to allege in action negligently doing an act which resulted in doing an actual injury; or the fact which contributed to the primary act complained of.

Davis V Guarmeri 15 N. E. 350.

A question incidentally comes whether the injured person could maintain an action for injury received in Sunday against a municipal corporation; there have been many cases decided and the point of
difference upon the decisions being whether it is necessary to
allege that the plaintiff was engaged in a work of necessity, etc.

In Mass., Maine, and Vermont general travel on highway on
Sunday is prohibited and the plaintiff cannot maintain an action
against municipal corporations unless he will show that he has been
engaged in the work of necessity or charity.

Reed v Boston etc. R. R. Co. 4 N. E. 227.

Hall v Ripley 119 Mass. 135.

Hyde Park v Gray 120 Mass. 589.

Lyons v Desotelle 124 Mass. 387.

Tillock v Webb 58 Maine. 100

Goetty v Jungar 57 Maine 423.

O'Connell v Lewiston 26 Maine 34.

But it was held that working for exercise in the open air on
Sunday is not a violation of the statute.

Hinckley v Penobsc 42 Maine 29.

But this application of the Sunday law has been repudiated by
almost all other states.

In Idaho Supreme Court that where an injury occurs to the
plaintiff on the Sabbath day through the negligence of the defendant
in not keeping its street in proper condition, the plaintiff is not required to show that he was engaged in a work of necessity at the time of the accident in order to entitle him to recover.

Black v City of Lewistown 12 S. 80.
Plotz v Cohoes 29 N. Y. 219.
Corroll v S. I. R. Co. 33 N. Y. 128.
Picollet v Simmer 102 Pst. 95
Smith v N. Y. S. &c R. Co. 46 N. J. L. 7.
Wentworth v Joferson 60 N. H. 158
McThur v G. Boy R. Co. 34 Wis. 139.
Knowlton v Milwaukee & Co. 59 Wis. 278.
Lewisville etc. R. Co. v Frawley 9. N. E. (108 Ind.) 594
Schmid v Humphrey 42 Iowa 552.
Commonwealth v Lewisville R. Co. 80 KY. 291.
Armstrong v Taler 11 Wheat. 252.