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Operation Without Fault

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CRIMINAL LAW—MOTOR VEHICLES—OPERATION WITHOUT FAULT.—[Massachusetts] A state which we have been taught to be proud of in connection with its laws and courts one day chanced to pass the following legislation:

"Whoever upon any way operates a motor vehicle recklessly, . . . or so that the lives or safety of the public might be endangered, . . . shall be punished by a fine of not less than twenty nor more than two hundred dollars or by imprisonment for not less than two weeks, nor more than two years, or both. . . ."¹

There is more by way of penalty in the possibility of the person's license being revoked.

In *Commonwealth v. Gurney*² the defendant testified (correctly we assume) that he was driving a five and a half ton truck on a highway, the macadam part of which was twenty-one feet, ten inches wide. There was a four inch white line in or near the center. About twenty or thirty feet away he saw another truck, stationary, and facing the same direction that defendant was moving. The stationary truck was on the gravel shoulder of the highway with its left wheels about even with the macadam. At the same time defendant saw about one hundred or one hundred and twenty-five feet away a closed car traveling forty miles per hour with its left wheels over on the left side of the white line. To avoid this car he turned his truck to the right. At this time he was from five to ten feet from the rear end of the other truck which he struck a heavy blow and killed a man who was standing at the rear end of the stationary truck. Defendant was convicted under the statute set forth, not for recklessness, but for the reason that he operated a motor vehicle "so that the lives or safety of the public might be endangered." The Supreme Judicial Court overruled exceptions.

At first reading it seemed that Massachusetts had evolved a curious and indefinite penal statute, one where no person of ordinary wisdom, at least, could know the duty which it imposed.³ Any sort of driving *might* endanger the lives or safety of the public. Danger lurks everywhere and injury happens sometimes when there is no particular occasion to expect it.

However an examination of the few Massachusetts opinions on this particular penal provision rather inclines the writer to believe that the standard of conduct is definite rather than indefinite.⁴ We are told that before a person is adjudged guilty all the circumstances surrounding the affair are to be considered

1. Gen. Laws of Mass. (1921) ch. 90 sec. 240.

2. (Mass. 1927) 158 N. E. 832.

3. For discussions as to the validity and practicability of indefinite expressions in statutes see: *Aigler* "Legislation in Vague Terms" 21 Mich. Law Rev. 831, 843; *Freund* "Indefinite Terms in Statutes" 30 Yale Law Jour. 437, 443.

4. The reader is warned that: "A word is not crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and time within which it is used," Holmes, J., in *Towne v. Eisner* (1918) 245 U. S. 418, 425.

but in no event is he to be judged by the skill or lack of it which he displayed. This might seem to mean that in Massachusetts a person operates a motor vehicle at his peril and that the chief protection he has, when his own due care has not met an emergency, is the possible good nature of the jury which confronts him. In what extremes the court will permit the jury to indulge cannot be known at this time⁵ and speculation is rather idle.

It is interesting to notice, however, in *Commonwealth v. Vartanian*⁶ that the jury found that the defendant was *not* guilty of manslaughter and *not* guilty of operating a motor vehicle recklessly. But he was found guilty of operating "so that the lives or safety of the public might be endangered." The trial judge had instructed the jury among other things that: "This belongs to a class of cases which has put the burden upon the individual of ascertaining at his peril whether his conduct is within the sweep of the prohibition contained in the statute." The same judge refused defendant's request that: "The fact that an accident happened and the deceased was killed by the defendant's truck is not enough to convict the defendant of operating so that the lives and safety of the public might be endangered." The Supreme Judicial Court in overruling exceptions stated specifically that the quoted part of defendant's request "was not an accurate statement of the law."⁷

There is at least one hope for the middle western motorist who prefers to spend his vacation in the vicinity of Cape Cod. The third annual report⁸ of the Massachusetts Judicial Council sets forth that the legislature requested a report upon the suggestion that the words willfully or negligently be added to the statutory provision under discussion. The recommendation was that the word negligently should be inserted in the statute.⁹

KENNETH C. SEARS.¹⁰

PROPERTY—ESTATES—CLASS—VESTING.—[Illinois] *People v. Northern Trust Co.*¹ involved a trust by which X, the grantor, conveyed to trustees to collect and accumulate the income until the death of X, but not longer than twenty-one years and at the death of X, or, if he should be living at the end of twenty-one years, then at the end of twenty-one years, to distribute the in-

5. *Commonwealth v. Pentz* (1924) 247 Mass. 500, 143 N. E. 322; *Commonwealth v. Vartanian* (1925) 251 Mass. 355, 146 N. E. 682; *Commonwealth v. Guillemette* (1923) 243 Mass. 346, 137 N. E. 700.

6. (1925) 251 Mass. 355.

7. See also *Commonwealth v. Klosek* (Mass. 1928) 160 N. E. 252 (seven-year-old girl ran out from a crowd into a street; "the question whether the defendant did everything in his power to avoid the accident was immaterial").

8. 11 Jour. of Amer. Jud. Soc. 120.

9. Since the above was written the writer has seen a certified copy of Ch. 281 of the Laws of Mass. for the year 1928. It therein appears that the recommendation of the Massachusetts Judicial Council has been followed. The amended law became effective September 1, 1928.

10. The assistance of Leon M. Despres is gratefully acknowledged.

1. (1928) 330 Ill. 238.