

CATTLE TRESSPASS

The owner of the capital may be held liable if his cattle commit trespass on the land of another person. **It is** an ancient common law tort whereby the keeper of livestock was held strictly liable for any damage caused by the straying livestock. The liability in such case is strict and the owner of the cattle is liable even if the vicious propensity of the cattle and, owner's knowledge of the same are not proved. There is also no necessity of proving negligence on the part of the defendant.

Liability for cattle trespass is similar to, but conceptually distinct from, the old common law *scienter* action in relation to strict liability for animals which are known to be vicious. In many of the reported cases, claims for cattle trespass and *scienter* are pleaded in the alternative.

Cattle for the purpose include bulls, cows, sheep, pigs, horses, asses and poultry. Dogs and cats are not included in the term and, therefore there cannot be cattle trespass by dogs and cats. In *Buckle v. Holmes*,¹ the defendant's cat strayed into the plaintiff's land and there it killed thirteen pigeons and two bantams. Killing of birds was nothing peculiar to this cat alone, therefore, the liability under the *scienter* rule did not arise. There was no liability even for cattle trespass because cat is no 'cattle' for the purpose of this rule. The same is the position in case of a dog.²

The liability for cattle trespass is strict, *scienter* or negligence on the part of the owner of the cattle is not required to be proved. In *Ellis V. Loftus Iron Co.*³ the defendant's horse kicked and bit the plaintiff's mare through the wire fence which divided their properties. This damage could not have been caused without the horse's body having crossed the boundary. There was cattle trespass and the defendant was held liable without any proof of knowledge of the vicious nature of the horse or negligence on the part of defendant.

When there is a cattle trespass, the defendant is liable for the damage which directly results from that trespass .

¹ (1916) 2 K.B. 125

² *TALLENTS V. BELL*, (1944) 2 ALL. E.R. 474

³ (1874) L. R. 10 C.P.

The personal injuries caused to the occupier of the land by the trespassing animal even by its natural propensity will make the owner of the trespassing cattle liable.⁴

POSITION IN INDIA

Cattle trespass act, 1871 deals with cattle trespass in India. Section 10 of the act says that The cultivator or occupier of any land, or any person who has advanced cash for the cultivation of the crop or produce on any land, or the vendee or mortgagee of such crop or produce, or any part thereof, may seize or cause to be seized any cattle trespassing on such land, and doing damage thereto of to any crop or produce thereon, and [send them or cause them to be sent within twenty four hours] to the pound established for the village in which the land is situated.

A person is not entitled to seize cattle which has not done any damage. A clear finding of damage done by the trespassing cattle is essential to a conviction under section 24. AIR Patna 299

Further section 11 provides that persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments and the like, and officers of police, may seize, or cause to be seized, any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments, and the like, or the sides or slopes or such roads, canals, drainage-works, or embankments, or found straying thereon. and shall [send them or cause them to be sent within twenty-four hours] to the nearest pound.

Fine can also be imposed under section 12 by the pound-keeper

⁴ WORMALD V. COLE (1954) 1 Q.B. 614