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PIG—FEMALE—ABOUT TO FARROW—IS CHASED BY DOG  
NOT PROPERTY OF OWNER OF PIG—RESULT—PIG CAUSED  
TO ABORT—INJURY WITHIN MEANING OF SECTION 5840  
ET SEQ., G.C.

SYLLABUS:

Where a female pig, which is about to farrow, is chased by a dog, not belonging to the owner of the pig, and as a result of such chase, the pig is caused to abort, such result constitutes an injury within the meaning of Section 5840 et seq., of the General Code.

Columbus, Ohio, March 14, 1952

Hon. Marlowe Witt, Prosecuting Attorney  
Henry County, Napoleon, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“The county commissioners have asked me to answer the following question, and I am writing to you in regard to the interpretation of the word ‘injured’ under G. C. 5840, which says as follows:

'Any owner of horses, sheep, cattle, swine, mules, goats and domestic fowls or poultry having an aggregate value of ten dollars or more which have been *injured* or killed by a dog not belonging to him or harbored on his premises \* \* \*.'

"A claim has been filed with the county commissioners based upon the following facts: The claimant had several pigs who were due to farrow. These pigs were chased by a dog not belonging to him. Shortly thereafter, these pigs aborted. The question which I have is: If the investigation shows that this abortion was caused by these dogs chasing the pigs, is this an *injury* under G. C. 5840, for which the county commissioners would be authorized to pay damages?"

Section 5840, General Code, to which you refer, is a part of a chapter dealing with animals. Section 5838, General Code, provides in part, as follows:

"A dog that chases, worries, injures or kills a sheep, lamb, goat, kid, domestic fowl, *domestic animal*, \* \* \* or person, can be killed at any time or place; \* \* \*"  
(Emphasis added.)

It will be noted here that a dog incurs the extreme penalty of the law if he merely *chases* a domestic animal. While swine are not specifically mentioned in this section, as in section 5840, still there can be no question that a hog is a domestic animal. Section 5839, General Code, which is part of the same act whereby Section 5838 was enacted, authorizes the court or justice before which recovery is had for "such injury," to declare such dog to be a common nuisance, and order the defendant to kill it or cause it to be killed within twenty-four hours, or the constable may be ordered to act as executioner. Section 5840 reads in part as follows:

"Any owner of horses, sheep, cattle, swine, mules, goats and domestic fowls or poultry having an aggregate value of ten dollars or more which have been injured or killed by a dog not belonging to him or harbored on his premises, in order to be entitled to enter a claim for damages must notify a county commissioner or dog warden in person or by registered mail within forty-eight hours after such loss or injury has been discovered, and if a commissioner was notified he shall immediately notify the dog warden or other enforcing officer of such loss or injury, whose duty it shall be to have the facts of such loss or injury investigated at once. \* \* \* The owner of such horses, sheep, cattle, swine, mules, goats, or domestic fowls or poultry having a value of ten dollars or more, may present to the township trustees of the township

in which such loss or injury occurred, within sixty days a detailed statement of such loss or injury done, supported by his affidavit that it is a true account of such loss or injury. \* \* \*

I am not called upon to speculate whether extreme fright or strain sustained by a porcine expectant mother, caused by being chased by a dog, would or could have the result stated in your letter. Your letter says: "If the investigation shows that this abortion was caused by these dogs chasing the pigs, is this an *injury*, "etc. Therefore, for the purpose of this opinion I am assuming that the chasing by the dog did have that result.

The only question, therefore, as I see it, is: If a dog chases a pig which is about to farrow, and thereby causes her to suffer an abortion, does that fact constitute *an injury* to the pig within the contemplation of Section 5840, for which the owner of the pig is entitled to claim damages from the county?

I believe I may assert, without invading the realm of medicine, veterinary or otherwise, that an artificially produced abortion, either in the human or animal world, would constitute an injury to the victim. This, I believe, is a matter of common knowledge. The birth of offspring in the natural course is fraught with a certain degree of danger to the prospective mother, but certainly the natural process when precipitated prematurely by violent means, results in great suffering and in many cases impairs the health or causes the death of the victim.

In the law relating to homicide, it appears clear that the manner by which death is caused, is not necessarily dependent upon any direct physical contact with the victim; one might set a trap or dig a pit into which the victim walks; or leave poison where he is likely to eat or drink it; or the victim might be locked in a room or closet, and starve to death; or he might be pursued in a menacing manner, until he dies from fright or sudden heart failure or from sheer exhaustion. See 21 Ohio Jurisprudence, page 22.

It seems manifest that injuries which do not result in death may be caused in the same manner, without any physical contact with the victim.

That injuries caused by stress or strain are compensable within the purview of the Workmen's Compensation Law, is well settled. These have been held to include hernia, cerebral apoplexy, spinal injury, heart

lesion, rupture of a blood vessel, etc. See 42 Ohio Jurisprudence, page 651, and numerous cases cited. Certainly a miscarriage produced from like cause would fall within the same rule.

If an injury such as the one mentioned, or any other personal injury is caused by the wrongful act of some person, and a suit for damages is brought, the animus of the offender would have an important bearing on the question of liability. There would be involved either an intentional act or such a degree of negligence as would form the basis for recovery. However, in the case here presented, the conduct of the dog, which may subject the county to liability for damages, depends in no wise on the question of whether the dog was either guilty of an intentional wrong or of negligence. The statute brands him as a wrongdoer, quite regardless of his intentions in the matter. It is reasonable to assume that a dog regards the chasing of an animal as innocent play, and in the case here presented, the dog, if interrogated, might insist that what he did was all in fun, and further that he had no knowledge of the pig's condition. The law makes no distinction between a dog which is merely playful and one which is known to be vicious and dangerous. If the dog injures a domestic animal or kills it, the statutes allow for no excuses, but condemn the dog to possible death, and create a liability in favor of the owner of the animal killed or injured.

As to the injury which has resulted in the present case, it appears to me to be real and substantial. Even if we assume that the pig in question was not permanently injured, yet it seems obvious that the value of the pig immediately before the unfortunate happening, must have been very considerably more than her value immediately afterward. That is clearly indicated by the statement in your letter, that the pig in question was "due to farrow." That would mean that the owner of the pig, and the pig herself, were not merely indulging the hope of possible increase at some time, but rather were congratulating themselves on the assurance that a litter of little pigs were already in being and about due to emerge as young porkers, an outcome which would be a source of great pride to the mother and of unquestionable value to the owner.

After all, the whole purpose of the statute is to save the owner of an animal from sustaining a loss by reason of the action of a dog, and the situation which you present has all the elements which should entitle him to be reimbursed.

It is accordingly my opinion and you are advised that where a female pig, which is about to farrow, is chased by a dog, not belonging to the owner of the pig, and as a result of such chase, the pig is caused to abort, such result constitutes an injury within the meaning of Section 5840 et seq., of the General Code.

Respectfully,

C. WILLIAM O'NEILL

Attorney General