appears between the law of real property and the law of personal property. The law of finders requires the land owner to take through his prior possession of the chattel. The intervener-remainderman was never in possession of the Haney farm; and, consequently, could never have had prior possession of the canoe. Under the doctrine of *Elwes v. Briggs*, as it is normally applied by the courts, the plaintiffs, as assignees of the life tenant, should recover. However, if the principles applicable to the life tenant-remainderman relationship are used, an opposite result would be reached.

The practical results in the instant case are not unfair. The important relationship of life tenant-remainderman may have been preferred to the special rules of the law of finders. Also the court may have wished to settle the conflict between finder and landowner, whether life tenant or remainderman, in accord with the concepts of personal property; and then, with these claims quieted, proceed to settle the interests between life tenant and remainderman on the basis of real property law. However, it did not mark this approach with sufficient clarity[14] to avoid the confusion arising from the fact that the *Elwes* case contained a basic element (prior possession) which was not present in the instant case.

FRANK M. MAYFIELD, JR.

TORTS—APPLICABILITY OF CRIMINAL STATUTE IN CIVIL CASE—WHAT CONSTITUTES BREACH OF STATUTE. In a recent Minnesota case,[1] a mining company was held liable for injuries sustained in an accident occurring on the highway below its railroad bridge. Ore falling from the railroad cars had partially obscured a sign warning of the bridge. The bridge, used exclusively by the mining company for transportation of its ore, was supported by a pier, in the middle of the highway. Signs had been erected on the bridge itself to warn of the pier, but in the use of the bridge, ore had fallen out of the cars onto the bridge and the rain had caused a mud-like mixture

14. "We have found no case wherein the doctrine announced in Elwes v. Briggs has been criticized. It rests upon sound principles, is logical, and should be the law in this jurisdiction." Alfred v. Biegel, 219 S.W.2d 665, 666 (Mo. App. 1949).

1. Robinson *et al.* v. Duluth, M. & I. R. Ry., 38 N.W.2d 183 (Minn. 1949).

to drip down onto the sign. One snowy night a car, in which plaintiffs were passengers, struck the pier. The plaintiffs claimed that the sign was so obscured that the driver couldn't see it.

A Minnesota statute provided:

> No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down or remove any official traffic control device or any railroad sign or any signal or any inscription, shield or insignia thereon, or any part thereof.[2]

The court justified the jury's finding that the drippings from the ore cars of the defendant so smeared the warning sign as to be a contributing cause of the driver's failure to see and avoid the pier. This, they held, was a violation of the statute, and of itself prima facie evidence of negligence. But, said the court, even without the statute, it would have been common law negligence, as the obscuring of the sign showed a lack of ordinary care.

The statute involved in the case is a criminal one. However, civil liability may extend to the violation of a criminal statute where the plaintiff is one of the class of persons whom the statute was designed to protect, and the injury was the kind the statute was designed to prevent.[3] Here, there is no doubt that users of the highway were among the group of persons intended to be protected by the statute, and further that the statute was intended to prevent the very type of injury which the plaintiff sustained. Therefore, civil liability should attach for injury arising out of the violation of the statute here involved, if the statute is applicable at all in a civil case.

Hence, the question arises, did the mining company violate the Minnesota statute? To answer this, the aspect of intent arises. It is a well established principle of law that unless the statute is such as to do away with intent, the act must be accompanied by an intent to commit the act.[4] Therefore, one must ask, what intent is required by the statute?

Malice is sufficient to supply the necessary intent, but there must be an intentional act intended to cause harm. This is

2. MINN. STAT. ANN. § 169.08 (1939).
3. PROSSER, TORTS 264 (1941).
4. State v. Shedoudy, 45 N.M. 516, 118 P.2d 280 (1941); MILLER, CRIMINAL LAW 52-67 (1934).

commonly called specific intent in regards to criminal acts. Had the mining company deliberately defaced the warning sign, it would, without a doubt, be liable for all the consequences of its act. However, the facts of the case fail to show such an intent on the part of the defendant. Usually statutes requiring such an intent include the words "knowingly" or "willfully."

Normally, a bare general intent is sufficient to establish liability, except in those cases where specific or other particular intent is required. That is, the mere intent to do the act which results in the end effect of said act, supplies the intent for the end result. Here a distinction exists between criminal guilt and tortious liability. In connection with criminal guilt, general intent has been defined thus:

> When a person capable of entertaining criminal intent, acting without justification or excuse, commits an act, prohibited as a crime, his intention to commit the act constitutes criminal intent. In such cases the existence of the intent is presumed from commission of the act, on the ground that a person is presumed to intend his voluntary acts and their natural and probable consequences.[5]

This definition is applied to those acts which the person committing them knows are wrong—such as firing a gun into a crowd. Thus, such a general criminal intent can't be found here, as there is nothing inherently wrong about operating a railroad, nor any reckless disregard for the safety of others.

In certain instances, the state of mind requirement may be met by proving a negligent act or omission. Such negligence must be gross and consist of reckless or indifferent omission to do what a reasonable person would do. In these instances, there must be a duty owing, the person must know of the duty, and the negligent act must cause the injury.[6]

The one exception to the rule that either intent or criminal negligence is necessary in order to establish the violation of a criminal statute is found in those statutes which completely dispense with any state of mind requirement.[7] In such instances the lack of any state of mind requirement should be clearly expressed in the statute. Such statutes are ordinarily enacted only where the prohibited activity is inherently likely to be

5. MILLER, CRIMINAL LAW 57 (1934).
6. *Id.* at 66.
7. *Id.* at 72.

detrimental to public welfare,[8] for example, the selling of unwholesome food for human consumption; or where convenience of administration and difficulty of proof make a state of mind requirement impractical.[9] Such a statute in effect imposes strict liability, for proof of the commission of the act alone establishes its violation.[10]

Turning to the statute in the instant case, it seems clear that if that statute contains any state of mind requirement in order for a criminal offense to be proved, it was not violated in this case. There was clearly no specific nor general intent to deface the sign, nor was there any evidence of criminal negligence. The Minnesota court seems to say that there was no necessity for proving any particular state of mind in order to establish violation of the statute. In arriving at that conclusion, the court relied heavily on the following language in the statute:

> No person shall . . . attempt to or *in fact alter*[11] . . . [italics added]

The court concluded that the words "in fact" indicated that the legislative intent was that anytime a sign was in fact defaced, etc., by a voluntary act on the part of a human being, that person was guilty of a criminal offense. It is submitted that a more logical construction would be to say that the legislature intended to make it an offense not only actually to deface (intentionally), but also to attempt to deface signs of this type.[12]

Certainly there is nothing inherently dangerous about running ore cars over an overhead bridge, and it would not seem that

8 State v. Dombroski, 145 Minn. 278, 176 N.W. 985 (1920).

9. United States v. Greenbaum, 138 F.2d 437 (1943).

10. People v. Player, 377 Ill. 417, 36 N.E.2d 729 (1941); PROSSER, TORTS 467 (1941).

11. MINN. STAT. ANN. § 169.08 (1939).

12. An Arkansas statute, which is almost identical to the Minnesota statute, has a further provision which would seem to require specific intent for a violation thereof:

"(a) No person shall without lawful authority, attempt to or in fact alter, deface, mutilate, injure, knock down, destroy or remove any official highway traffic control device, road marker, lighting equipment or any railroad crossing sign or signal, or any inscription, shield or transcription thereon, or any part thereof. It is a misdemeanor for any person or persons to violate any of the provisions of this section.

"(b) There is hereby posted a standing reward of $10 to be paid by the State Highway Commission . . . for information leading to the arrest and conviction of any person or persons willfully or maliciously violating any provision of this section with respect to official signs upon the State Highway system." ARK. STAT. § 75-508 (1947).

convenience of administration would be sufficiently increased nor difficulty of proof sufficiently obviated to justify the imposition of absolute liability in a situation such as this where grave injustice could easily result. But, even if the court is correct in its interpretation of the Minnesota statute, there is no compelling reason for the court to hold that a criminal statute of the absolute liability type is applicable at all in a civil action. As Professor Clarence Morris has indicated, only those criminal statutes which are founded on a wrong-doing theory should be considered applicable in a civil case unless some other reason exists for shifting the loss.[13] No such reason is apparent here.

The Minnesota court also indicated that there could be liability on these facts even in the absence of the statute, i.e., liability based on common law negligence. It is difficult to find any foreseeable risk of harm to any person merely from overloading the cars or from failing to remove the drippings as often as they could have been removed. In the absence of foreseeability of some harm to some person, it would seem that the conduct could not be characterized as negligent.[14]

Since the statute does not seem to be one which results in criminal guilt in the absence of a showing that the actor intended to deface a sign, and since, even if the court were correct in construing the statute as one imposing liability on the basis of conduct alone there is no compelling reason for applying such a statute in a civil case, it is submitted that the court erred in allowing the jury to find negligence based on a breach of the statute. It also appears that since there is no foreseeability of any harm to any person, the court was in error in saying that common law negligence could be found.

PAUL V. LUTZ

TORTS-VIOLATION OF CRIMINAL STATUTE AS NEGLIGENCE *Per Se* OR MERE EVIDENCE OF NEGLIGENCE

Defendant's truck-driver was driving along the highway with the intention of turning left at an intersection. He failed to yield the right of way to the plaintiff who approached from the

13. Morris, *The Role of Criminal Statutes in Negligence Actions*, 49 COL. L. REV. 21 (1949).
14. PROSSER, TORTS 341 (1941).