

JURISPRUDENCE

BY

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TENTH EDITION

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CHAPTER 15

PERSONS

§ 111. The Nature of Personality

THE purpose of this chapter is to investigate the legal conception of personality. It is not permissible to adopt the simple device of saying that a person means a human being, for even in the popular or non-legal use of the term there are persons who are not men. Personality is a wider and vaguer term than humanity. Gods, angels, and the spirits of the dead are persons, no less than men are. And in the law this want of coincidence between the class of persons and that of human beings is still more marked. In the law there may be men who are not persons; slaves, for example, are destitute of legal personality in any system which regards them as incapable of either rights or liabilities. Like cattle, they are things and the objects of rights; not persons and the subjects of them. Conversely there are, in the law, persons who are not men. A joint-stock company or a municipal corporation is a person in legal contemplation. So also, in Hindu law, idols are legal persons, and this has been recognised by the Privy Council (a). What, then, is the legal meaning of a "person" ?

So far as legal theory is concerned, a person is any being whom the law regards as capable of rights or duties (b). Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is a person, even though he be a man. Persons are the substances of which rights and duties are the attributes. It is only in this respect that persons possess juridical significance, and this is the exclusive point of view from which personality receives legal recognition.

Persons as so defined are of two kinds, distinguishable as natural and legal. A natural person is a human being. Legal persons are beings, real or imaginary, who for the purpose of

(a) *Pramatha Nath Mullick v. Pradyumna Kumar Mullick* (1925), L. R. 52 Ind. App. 245. See Duff, "The Personality of an Idol" (1927), 3 C. L. J. 42; Vesey-Fitzgerald, "Idolon Fori" (1925), 41 L. Q. R. 419.

(b) For a full discussion see Alexander Nékám, *The Personality Conception of the Legal Entity* (1938).

legal reasoning are treated in greater or less degree in the same way as human beings (c).

§ 112. The Legal Status of the Lower Animals

The only natural persons are human beings. Beasts are not persons, either natural or legal. They are merely things—often the objects of legal rights and duties, but never the subjects of them. Beasts, like men, are capable of acts and possess interests. Yet their acts are neither lawful nor unlawful; they are not recognised by the law as the appropriate subject-matter either of permission or of prohibition. Archaic codes did not scruple, it is true, to punish with death in due course of law the beast that was guilty of homicide. “If an ox gore a man or a woman that they die: then the ox shall be surely stoned and his flesh shall not be eaten” (d). A conception such as this pertains to a stage that is long since past; but modern law shows us a relic of it in the rule that a trespassing beast may be distrained damage feasant, and kept until its owner or some one else interested in the beast pays compensation (e). Distress damage feasant does not, however, in modern law involve any legal recognition of the personality of the animal.

A beast is as incapable of legal rights as of legal duties, for its interests receive no recognition from the law. *Hominum causa omne jus constitutum* (f). The law is made for men, and allows no fellowship or bonds of obligation between them and the lower animals. If these last possess moral rights—as utilitarian ethics at least need not scruple to admit—those rights are not recognised by any legal system. That which is done to the hurt of a beast may be a wrong to its owner or to the society of mankind, but it is no wrong to the beast. No animal can be the owner of any property, even through the medium of a human trustee. If a testator vests property in trustees for the maintenance of his favourite horses or dogs, he will thereby create no valid trust enforceable in any way by or on behalf of these non-human beneficiaries. The only effect of such provisions is to authorise the trustees, if they think fit, to expend the property

(c) Legal persons are also termed fictitious, juristic, artificial, or moral.

(d) Exodus xxi. 28. To the same effect see Plato's *Laws*, 873.

(e) Williams, *Liability for Animals*, chaps. 1, 7.

(f) D. I. 5. 2.