Automobile Accidents

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AUTOMOBILE ACCIDENTS

Automobile accidents have given rise to more litigation and nice legal problems than any other class of tort. Here is a type of litigation which does not gravitate entirely to the larger law firms. Almost every lawyer or law firm is likely to be thrust suddenly into the interesting and oft-times intricate problems of negligence, proximate cause, contributory negligence, assumption of risk, or last clear chance which arise in connection with an automobile accident. It shall be the purpose of this paper to analyze every Louisiana Supreme Court decision and most of the Louisiana appellate court opinions which have been handed down in the past twelve years—to the end that we may indicate the general pattern of our Louisiana automobile law. Some matters appear rather well settled; but, as we view those problems where factual situations are prone to vary with the individual accidents, it is only possible to approximate the line of demarcation between negligence and due care, or between liability and non-liability. Here it is important to note carefully the facts of the individual case and what the court actually decided and to use that as a basis of predicting future judicial action. It is too much to hope for a strict technical consistency in these more nebulous areas.

I. PROXIMATE CAUSE

The unanimous rule is that for liability to ensue the negligence complained of must be a proximate cause of the injury. "As to what constitutes . . . proximate cause of an accident depends largely upon the particular circumstances of each case. One of the most satisfactory definitions of proximate cause is that the accident must be the natural and probable consequence of the act of negligence, or, stated in a different way, the negligence and the resulting injury must be known by common experience to be a natural and usual sequence—that is, according to the usual course of events, the accident follows the negligence."1 "And even though one be guilty of negligence at or prior to the time of an accident, such negligence cannot possibly

be the proximate cause of the accident if the accident would have happened just the same even though that negligence had not been committed."

In a case where plaintiff, who was negligent in walking on a highway on his right side, was so startled by the horn on defendant's car that he jumped against the car, it was held that defendant's negligence in failing to honk when he was a reasonable distance away was the proximate cause of the accident. Failure to have an automobile equipped with license plates and failure of an employer to secure an age and employment certificate from an employee have not been considered as the proximate causes of highway accidents. In another case, defendant's negligent driving forced a truck against a pole which fell on plaintiff's scale on the sidewalk. The court held that plaintiff's violation of an ordinance in obstructing the sidewalk was not a contributing cause of the damages. In Hadrick v. Burbank Cooperage Company the injured plaintiff had fully extended his arm over the side of defendant's truck in which he was riding. The court concluded that defendant's negligence in driving too close to the side of a bridge was the sole proximate cause of the accident since the injury would have resulted had plaintiff's arm been extended only a few inches, as it might well have been, to hold on to the uprights of the truck. Where plaintiff cyclist struck defendant's truck parked at an angle with the curb instead of parallel as required by ordinance, resulting in plaintiff's falling beneath the wheels of a passing truck, the court held that violation of the parallel parking ordinance had a causal connection; but that violation of another ordinance prohibiting parking in front of fire hydrants had no causal connection with the injury. It has been held to be a defense that a thief had stolen the defendant's truck, parked with its motor running when de-

4. La. Act 286 of 1938, § 3 [Dart's Stats. (1939) § 5200].
7. Picou v. J. B. Luke's Sons, 11 So.(2d) 38 (La. App. 1942). On page 41 the court, in discussing negligence states: "In order to recover damages for injuries sustained through the alleged negligence of another, the negligence and connection between the negligence and injuries must be shown by reasonable certainty, or, in other words, there must be a causal connection between the negligence and injury, and also that connection must be by a natural and unbroken sequence without intervening efficient causes."
9. 177 So. 831 (La. App. 1938).
fendant's agent crossed the street to deliver a package. The court stated that it could not accept the plaintiff's theory that the truck had traveled five blocks unattended; and concluded that, even conceding the defendant's driver to be negligent, the act of the thief broke the sequence of events initiated by the primary negligence so as to become the proximate cause of the accident. The act of the thief was too remote to have been reasonably anticipated by the agent when he left the truck.¹¹

II. ACCIDENTS OCCURRING AT INTERSECTIONS

Probably the most frequent scene of accidents is the intersection.¹² The right of a driver to proceed through an intersection depends upon his having the right of way¹³—which may be accorded to him by ordinance making his roadway favored over the intersecting one,¹⁴ by traffic signal,¹⁵ by rule of the road providing that the motorist who pre-empts the intersection has the right of way,¹⁶ or by rule of the road providing that a driver to the right of the other has the right of way when they approach the intersection at about the same time on streets of equal dignity.¹⁷ A motorist who has the right of way is not relieved of the primary rules of safety for the benefit of others who may be approaching the intersection,¹⁸ that is, a right of way is not a right of pre-emption¹⁹ and in the process of approaching and crossing due care must be used. Thus, a statutory right of way does not justify dashing blindly and recklessly into the path of oncoming disaster.²⁰ "While the law accords the right of way, it requires, as well, the exercise of at least horse-sense."²¹ The rule

¹¹ Castay v. Katz & Besthoff, 148 So. 76 (La. App. 1933). The court stated that the attractive nuisance doctrine would have been applicable had the thief been a child.
¹² Defined by La. Act 286 of 1938 (Dart's Sts. (1939) § 5198(p)) to be "the area embraced within the prolongation of the lateral curb lines, or if none, then the lateral boundary lines of two or more highways which join one another at an angle, whether or not one such highway crosses the other."
¹³ Defined by La. Act 286 of 1938 (Dart's Sts (1939) § 5198(r)) as "the privilege of the immediate use of a highway."
²⁰ Murphy v. Star Checker Cab, Inc., 150 So. 79 (La. App. 1933).
that a motorist who has the right of way may assume that it will be respected is limited to ordinary circumstances. If it is obvious that the right of way is not going to be respected by another, the one who has it must act to avoid a collision. In one case plaintiff, who had the right of way, entered an intersection knowing that unless defendant slowed down there would be a collision. Had he obeyed the "SLOW" sign he could and no doubt would have stopped his car, permitting defendant to pass ahead of him. His failure to do so was held to constitute contributory negligence. What constitutes a "reasonable time" to enter an intersection varies according to the circumstances of the individual case. When a motorist stops at an intersection the implication is that he has yielded the right of way and invites the other to cross ahead of him. A motorist with the right of way must have his car under proper control when he sees a car moving jerkily through the intersection. The driver must enter the intersection only at a time when a reasonable man would believe that he had an opportunity to do so in safety. In the event he sees an approaching car, because of the impossibility of estimating the speed of such car, the "test is not the actual speed of the approaching car, but whether the one attempting to cross the intersection . . . acted as any ordinary, prudent, reasonable and cautious person would have done under like circumstances." One Louisiana appellate court decision, declaring a driver obligated to ascertain the speed of another car before deciding to enter an intersection, has been held to have cited no authority for such a conclusion. The purpose of stopping before entering a right of way street is to enable the driver to observe whether cars are approaching and whether it is safe for him to proceed into the street. The driver is required to look and listen for traffic to his right and left and, if he fails to see and hear

that which, by ordinary care, he could and should have seen and heard, his negligence is almost as great in that respect as if he had not looked and listened at all. It is elementary that not to see is tantamount to not to look. The motorist is held to see that which he could have seen had he been keeping a proper lookout. In crossing he is not required, in order to relieve himself from the imputation of negligence, to continue to look to his right for traffic. The rule that a driver may assume his right of way will be respected is especially applicable when it is granted by a traffic signal.

It is no more permissible to enter an intersection on the yellow than on the red light. One court of appeal opinion states that: "There is a kind of feeling among motorists that one has a right to cross an intersection on a yellow or caution light that immediately follows a green light. It would seem that no one should enter an intersection on such a light, but if there is such a right it should not be exercised unless the crossing can be entirely negotiated before the yellow or caution light goes out." A driver who entered the intersection on a yellow light which lasted four seconds was held contributorily negligent when hit by one who rushed in on a green light without looking. In another case plaintiff started as soon as the traffic signal became green in order to get ahead of cars on his left. He was hit by defendant who entered the intersection from his left on a red light. The court held that plaintiff was negligent in failing to look for the approach of other vehicles crossing his path. Where a plaintiff entered an intersection on a green light at 12-15 miles an hour, and the defendant entered on red at 30-40 miles an hour, defendant's negligence was held to be the proximate cause of the accident. A car entering the intersection on a green light may proceed regardless of change in the light and cars waiting to cross its path are charged with a knowledge of its possible presence and with the necessity of avoiding a collision. When the light changes to green and cars to the driver's left do not proceed

41. Loraine Transfer Co., Inc. v. Foster, 144 So. 251, 282 (La. App. 1932).
43. Thomas v. Roberts, 144 So. 70 (La. App. 1932).
44. Moore v. Christoffersen, 147 So. 914 (La. App. 1933).
45. Molerio v. Wilson, 147 So. 74 (La. App. 1933); Capillon v. Lengsfeld, 171 So. 194 (La. App. 1936).
It is always important to determine whether the car struck had reached a position of danger when there was yet time for the other to avoid the collision, or whether there had been a sudden attempt to cross in front of the oncoming car so that there was no opportunity to avoid the collision. The fact that a car driven slowly was struck in the rear, near the back fender, and when almost across the intersection, is a circumstance tending to show that the other had time to stop and avoid the collision. When a car had almost completed crossing an intersection before being hit, it was held that there must have been sufficient time for the other to have stopped or diverted its course. The fact that a driver had nearly cleared the intersection when a collision occurred is conclusive evidence that he entered first and had the right of way across the intersection. However, the right of way by pre-emption must have been acquired while driving at a lawful rate of speed, and the mere fact that a driver had crossed more than one-half the width of a right of way street is not sufficient to show he entered the intersection when it was reasonably safe to do so.

An ordinance that one intending to turn left at an intersection must yield the right of way to one coming from the opposite direction has been applied in a case where the one coming from the opposite direction was a bicycle rider. Where an ordinance made streets with street-car rails right of way streets, it was held that a driver may rely on the fact that the rails are there even though use of them has been discontinued. A statute prohibiting passing another vehicle going in the same direction "at any ... intersection of the highway" means within a reasonable distance of the intersection. Violation of the statute was held a proximate cause of the accident when the offender's car collided with a car making a left turn into the street from the right.

It is negligence to turn a blind corner without giving warn-

The fact that the amount of traffic on one street is greater than on the other will not of itself confer a right of way. A driver on the highway may presume that one coming up a steep embanked side road will stop at the highway or not come onto his side.

III. TRAILING A LEAD CAR

A 1938 statute provides “The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard to the speed of such vehicle and the traffic upon and condition of the highway” and that a driver shall not stop in the lane of traffic without giving any signal or warning. Cases announce the rule that a driver should follow the lead car at such a distance that he can meet any usual and ordinary movements. He may anticipate a reasonable observance of the rules of the road by the driver ahead of him. A driver need not turn out onto the shoulder of the highway in slowing down preparatory to stopping, but when he has stopped a statute requires him to be on the shoulder if practicable, and if not then to leave an unobstructed clearance of fifteen feet to his left.

“According to the law and jurisprudence of this state, when two automobiles are being driven along a public road in the same direction, on a country road, the driver of the front car holds no duty to the car in the rear, except to use the road in the usual way in keeping with the laws of the road, and until he has been made aware of the presence of such rear car, by signal or otherwise, he has a right to assume that there is no other vehicle in close proximity in his rear or, if there is one, it is under such control as not to interfere with his free use of the road in any lawful manner and in the absence of facts or circumstances that would put the driver of an automobile on notice of the near approach of another machine from the rear, he may drive slow or fast, select the parts of the road best suited to travel, start or stop at will. And where two automobiles are being driven along

60. La. Act 286 of 1938, § 3, rule 8(a) [Dart's Stats. (1939) § 5213 (a)].
61. La. Act 286 of 1938, § 3, rules 10, 15(a) [Dart's Stats. §§ 5215, 5220(a)].
65. La. Act 286 of 1938 [Dart's Stats. (1939) §§ 5196-5289].
a highway in the same direction the forward car has the superior right."\textsuperscript{66} This rule, which has been held especially applicable to country roads, does not relieve the lead driver of the duty of not creating sudden emergencies.\textsuperscript{67} A car may be expected to be immediately in the rear in the country almost as often as in the city.\textsuperscript{68} Thus it has been held to constitute negligence to follow another car at a distance of 25-30 feet at 35 miles an hour when a car is coming from the opposite direction, making it impossible to go around the lead car.\textsuperscript{69} Where plaintiff was trailing a car at a distance of 75 feet at 35 miles an hour on a gravel road which required a distance of 83 feet for him to stop at his speed, the court held that his negligence was a proximate cause of a collision with the lead car after it had crashed into a truck on a narrow bridge.\textsuperscript{70} Recovery was allowed, however, to a driver following a truck at a distance of fifteen feet at twenty miles an hour on city streets, outside the congested area, when her car ran into the truck which suddenly stopped six to eight feet from the curb. The court stated that "had defendant's driver slowed down gradually, pulled in to the curb, looked behind, or held out his hand in warning signal, plaintiff would have avoided the collision."\textsuperscript{71}

IV. OVERTAKING AND PASSING

A Louisiana statute expressly provides that "the driver of any vehicle overtaking another vehicle proceeding in the same direction shall pass at a safe distance to the left thereof and shall not again drive to the right side of the highway until safely clear of such overtaken vehicle."\textsuperscript{72} And "the driver of an overtaking vehicle shall give audible and sufficient warning of his intention before overtaking, passing or attempting to pass a vehicle proceeding in the same direction."\textsuperscript{73}

One who attempts to pass a vehicle on the road is called upon to exercise an extraordinary degree of care, and assume any risk inherent in the action.\textsuperscript{74} The driver of the forward car is not held liable for not hearing the horn of a car to his rear;\textsuperscript{75}

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\item \textsuperscript{66} Greer v. Ware, 187 So. 842 (La. App. 1939).
\item \textsuperscript{67} Weitkam v. Johnston, 5 So.(2d) 582 (La. App. 1942).
\item \textsuperscript{68} Brown v. Perkins, 144 So. 176 (La. App. 1932); Sandoz v. Beridon, 150 So. 25 (La. App. 1933).
\item \textsuperscript{69} Boudreaux v. Iseringhausen, 177 So. 412 (La. App. 1937).
\item \textsuperscript{70} Smith v. Chadwick-Hayes Co., 139 So. 689 (La. App. 1932).
\item \textsuperscript{71} Hill v. Knight, 163 So. 727, 729 (La. App. 1935).
\item \textsuperscript{72} La. Act 286 of 1938, § 3, rule 7(a) [Dart's Stats. (1939) § 5212(a)].
\item \textsuperscript{73} La. Act 287 of 1938, § 3, rule 7(b) [Dart's Stats. (1939) § 5212(b)].
\item \textsuperscript{74} Ravare v. McCormick & Co., 166 So. 183 (La. App. 1936).
\item \textsuperscript{75} McCain v. Pan-American Petroleum Co., 142 So. 376 (La. App. 1932).
\end{itemize}
but any act, even though inadvertent on his part, making it appear that he has heard will justify the rear driver in believing that he did. These “overtaking and passing” cases present a wide variety of fact situations. One case held that the defendant driver, after honking, was not justified in passing the plaintiff who had continued at the same speed up to a bridge narrower than the highway. Another held the defendant liable when he cut back too soon and struck the overtaken car causing its driver to lose control.

It is the duty of the overtaking driver to see that the way is clear on the left side of the road for him to pass safely, without interfering with the vehicle ahead, so long as it is using the road in a lawful manner. Where a driver hit a pedestrian in passing another car the court stated that “ordinarily, in driving a car on the wrong side of the road even for the purpose of passing another car, the driver is held to the utmost care, and should be able to see a sufficient distance ahead to prevent running into an object or a person on that side of the road.” Motorists coming from the opposite direction are not held to anticipate the intention of a driver to pass a vehicle in front of him. Where defendant’s attempt to pass a car which was in the act of passing a motorcycle resulted in defendant’s going off the highway and skidding back against the motorcycle, the court held that the defendant’s negligence was the sole cause of the accident.

V. Driving on Wrong Side

Rules of the road, established by both statute and judicial decision, require the drivers of vehicles to drive on the right half of the road, except when overtaking and passing another vehicle; and further require the drivers of vehicles proceeding in opposite directions to pass each other to the right, each giving the other one-half the traversed portion of the road for a distance of at least two hundred feet before meeting. It is not negligence...
per se for one to drive in the center, or on the wrong side of the road, but it is clearly negligence for one who is on the wrong side of the road to fail to pull over to the right on meeting another vehicle. A motorist has the right to assume that the driver of a vehicle coming from the opposite direction will obey the law, and he may act upon such assumption in determining his own manner of using the road.84 The doctrine of sudden emergency is frequently applied in cases where a motorist was confronted with another car on his side of the road.85 Thus, in a case where plaintiff traveling east and defendant west collided on plaintiff's side of the road, the court concluded that defendant was not negligent in cutting to the left side when a reasonably prudent person would have thought it necessary in order to avoid a collision upon seeing another motorist on his side of the road.86 However, in another case the court held that the fact that plaintiff's car, coming from the opposite direction, was straddling the center of the highway when 75-100 feet from defendant, did not justify defendant's taking the left side of the road. Plaintiff's speed was 8-15 miles an hour and defendant's speed 30-40 miles an hour.87

VI. MAKING OF LEFT TURNS

It is uniformly held that the left turn of an automobile in a street, even at intersections, is about the most hazardous movement that can be made and should never be undertaken until the operator has carefully looked in all directions and satisfied himself that he may negotiate the turn without jeopardizing the safety of others.88 However, a motorist desiring to make a left turn is not required to wait until the street is clear of all traffic in order to do so.89 A motorist has the right to assume that the driver ahead will give a signal before turning left.90 He is not charged with a duty of anticipating that another will make a left turn,91 it being the usual thing for vehicles to maintain their

85. Ibid.
course on the street. The driver of the front car is under a duty to observe or discover the approach of the rear car, if it is close enough to cause a collision when an unexpected left turn is made.\textsuperscript{92} Common experience warns us that a car may be expected to be immediately in the rear in the country almost as frequently as in the city.\textsuperscript{93} A driver making a U turn has a higher duty of care than one making a left turn.\textsuperscript{94} When the width of a vehicle prevents a driver in the rear from seeing a signal, a signal device should be installed.\textsuperscript{95}

Commencing a left turn as another motorist is passing from the rear creates a sudden emergency.\textsuperscript{96} In one case plaintiff, driving at a reasonable speed, honked and pulled leftward in order to pass when 75-100 feet in the rear of defendant's truck. However, when he was 30-40 feet away defendant commenced a left turn without signalling. The court held that the defendant's negligence was the proximate cause of the resultant collision.\textsuperscript{97} Drivers who cut to the left in order to make a sweeping right turn have also been the cause of a number of collisions. Such negligence was considered obvious in one case where the rear driver had honked twice.\textsuperscript{98} In another case defendant, when two hundred feet from the intersection, saw plaintiff two hundred feet to his rear. He pulled to his right in order to turn left and plaintiff, thinking that he was moving over in response to his honk, began to pass. The court held that defendant had the duty of determining plaintiff's position before he commenced the turn, and overruled the defense that he had the right of way by being the lead car, because such right is relative and not absolute.\textsuperscript{99} The decisions present some nice factual distinctions as to when a left turn may be legitimately made with knowledge of the approach of a car from the rear. One decision held that defendant was negligent in turning left at an intersection when plaintiff was 1¼ blocks away coming at a rapid rate of speed from the opposite direction.\textsuperscript{100} In another case plaintiff, unaware of de-
fendant's excessive speed, commenced a left turn when defendant
was 450 feet to his rear. The court held that plaintiff was justified
in believing that he was approaching in a lawful manner and
that he had sufficient time to negotiate his turn in safety. 101
“When traffic conditions at a given point warrant such a move-
ment, a motorist has the right to rely upon such conditions and
proceed. If the conditions are altered by the sudden and careless
action of another motorist, the legal aspect of the situation, so
far as concerns the motorist making the turn is not affected.” 102
The generalization has been held inapplicable when traffic was in
close proximity. 103 Also, the rear car may assume that the car
in front will proceed straight ahead, unless circumstances indi-
cate the contrary. Thus where defendant made a sudden left turn
from the extreme right side of the street without a signal, the
court held that plaintiff was not contributorily negligent in fail-
ning to consider the possibility of such action, for defendant was
not in his path and would have been of no interest to him ex-
cept for the sudden turn. 104 In another case plaintiff was travel-
ning at fifty miles an hour in the left lane of a double lane boule-
vard with intention of passing defendant who commenced a left
turn without signal when 80-100 feet from the intersection. It
was held that plaintiff’s speed was reasonable under the circum-
stances and defendant’s negligence was the proximate cause of
the accident. 105 Even where the driver ahead gives a signal, the
circumstances may be such that his sudden left turn will consti-
tute negligence. 106

VII. BACKING

Judge Janvier of the Orleans Court of Appeals stated in a
comparatively recent case: “It cannot be said that one who drives
an automobile backwards across the sidewalk is liable for any-
thing which may occur, regardless of the precautions which he
may have taken. Such movements are necessary under certain
circumstances and all that is required is that such a driver
exercise such care as a prudent person with a realization of the
extreme danger should exercise.” 107 However, pedestrians are
entitled to the right of way on the sidewalks or banquettes of

1940).
the city; and if a driver "backs onto the public thoroughfare without first looking for approaching pedestrians and without exercising extra precaution, such as giving a warning or signal of his approach, he is negligent." A pedestrian is not bound to anticipate that an automobile will be backed across the sidewalk from a driveway, whereas a motorist is bound to anticipate the presence of pedestrians on the sidewalk. These rules have been applied in numerous cases and to various situations. In one case defendant, who was backing out of a private driveway with an obscured vision to his right and left of the sidewalk, honked and looked in his rear view mirror. The court held that this constituted due care and that he was not liable when a six-year old child walked into the side of the truck as it crossed the sidewalk. In another case, where defendant backed out of a driveway with his vision of the sidewalk obscured by a wall, the court held that his failure to give warning was gross negligence; but that the eleven-year old plaintiff was contributorily negligent in riding a bicycle on the sidewalk in violation of an ordinance.

Where a defendant with knowledge that plaintiff was standing in close proximity to his car suddenly began backing and cutting his wheels at a reckless speed in such a manner as to cause a front wheel to strike plaintiff, he was held negligent and the court stated that he was under a special duty to see that his way was clear and to give the proper signal of warning before moving his car suddenly backwards as he did. It has been held that defendant, in turning off the main highway onto a side road and stopping with intent to back onto the highway and turn around, extended an invitation to plaintiff on the main highway to continue; and plaintiff could not have foreseen that she would suddenly back onto his side of the highway.

VIII. Pedestrians

The rights of a pedestrian and an automobile driver at a street intersection are reciprocal. Each must use that caution and prudence that the situation demands. This principle of equality of right was also applied in a case where plaintiff crossed the

110. Ibid.
street at a place which was not a regular crossing but which
defendant knew was customarily used by pedestrians for crossing. It was held that a pedestrian was under a special duty
to exercise care in ascertaining any possible danger before he
started across a highway at night where there was no public or
private crossing of any kind and there was nothing to require
extra precaution on the part of one using the highway. "The
driver of a vehicle on the streets of a city has no reason to an-
ticipate the presence of pedestrians between intersections, where-
as a pedestrian in the same situation has every reason to expect
the vehicle." On the other hand it is well settled that a pedes-
trian at a regular pedestrian crossing may presume that the
driver of an approaching car is not violating the law by traveling
at a speed in excess of its allowance. One court very succinctly
states: "When plaintiff started across the intersection, he saw no
cars on his left, except those a block or nearly so away. He had
the right to then undertake the crossing, and to assume that he
would be observed by operators of motor vehicles reaching the
intersection before he had completely negotiated it, and that the
law would be observed both as to rate of speed and line of travel
of cars coming from his left, and being on the west side of the
street, he assumed, and had the right to assume, that he was
secure from being run into by vehicles approaching from the
south."

A street coming into but continuing across another inter-
sects it. A motorist is not under the same duty to anticipate
pedestrians crossing from the closed side as at a complete inter-
section. The jay walking pedestrian raises additional problems.
In one case defendant argued that a person who crosses a street
other than at a regular pedestrian crossing cannot recover if
injured, unless the doctrine of last clear chance is applicable, and,
by innuendo, that the attempting of such a crossing is negligence
per se. The court concluded that in the absence of a prohibitory
statute or ordinance, a pedestrian has the right to cross a street
at any point within the block, and it is not negligence as a matter
of law to cross between intersections or at some point other than
a regular crossing. Also the rights of a pedestrian crossing on

1935).
a green light have sometimes been litigated. In affirming judgment for a plaintiff crossing an intersection on a green light when he was struck by defendant's car, the court recognized that the accident could have been averted had plaintiff looked but declared that it was taking into consideration that plaintiff had almost completed crossing the roadway and that he was crossing under the protection of a traffic light erected and operated for the specific purpose of making it safe for pedestrians and vehicles to cross on proper signals.\(^1\) In a very interesting case where plaintiff walked in front of a stopped street car and was hit by the defendant driving between the street car and the curb without honking as required by ordinance, the court held that plaintiff's failure to peer around the street car before crossing the roadway was negligence barring a recovery.\(^2\) The purpose of a statute which requires pedestrians to walk on the left side of a highway is to prevent injury to them by traffic coming from the rear and not by oncoming traffic.\(^3\)

IX. Accidents Involving Children

Children and adults whose infirmities are apparent or known to the motorist as "the lame, the halt and the blind," the aged and the intoxicated, are properly the subject of public solicitude; and the law requires that those who operate such dangerous instrumentalities as automobiles in their vicinity must do so with the utmost care.\(^4\) The duty of care owed by a motorist differs when children are on city sidewalks and when they are traveling on the side of rural highways. He may assume that children will remain on the sidewalk and not suddenly attempt to cross a street nor to use it for a sidewalk; whereas, all parts of a country highway are, to the knowledge of everyone, used by pedestrians as well as by vehicles.\(^5\) The presence of children on or near a highway imposes upon a motorist the duty of exercising extraordinary care and every reasonable precaution, to avoid injuring them.\(^6\) Thus, the court held that where defendant, driving a truck and trailer, saw a group of children playing tag on the side of the road and looking behind them as he approached, the situation called for immediate and great care. He should have slowed to a very

moderate speed and held his truck within hand, ready to stop or swerve as might be necessary to avoid the result of an impulsive act on the part of the children.\textsuperscript{129} There is, however, no liability on the part of a driver when a child emerges from a place of hiding and runs in front of his car at a time when he has no opportunity to stop or to avert an accident,\textsuperscript{130} and it has been held that defendant's speed was not a substantial or proximate cause of the accident when a child ran from behind a parked car against the side of his truck.\textsuperscript{131} In another case defendant saw children on a lawn a block away and slowed to fifteen miles an hour. Plaintiff's three year old daughter broke loose from her thirteen year old brother and ran across the street as defendant approached. In holding defendant liable, the court stated that a driver should assume children will not act prudently and operate his car accordingly, adding that had he been traveling at ten miles an hour, the accident would not have occurred.\textsuperscript{132} Where plaintiff's eleven year old son on a bicycle was struck by defendant when he cut into the path of defendant's truck in order to go around a parked car, it was held that defendant should have appreciated the necessity for the boy's action in turning and should have anticipated that he would do so. He should have made certain that his approach was known and had such control as to have been able to stop, even if at the last moment the boy in his excitement should have turned into his path.\textsuperscript{133} In one case two drivers, traveling in opposite directions on a highway, stopped in order to allow a group of children to cross the highway between them. Both cars started up and defendant hit a child who darted into his path from the rear of the other car. The court concluded that defendant was warned of the possible presence of more children and should have waited until the other car passed before starting up, at which time he would have had a clear vision of the road.\textsuperscript{134} The fact that the child is with its parent may be controlling. Thus where a five year old child walking along side the highway with its parents broke loose and ran in front of defendant's truck, the court held that defendant

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\item \textsuperscript{129} Guillory v. Horecky, 185 La. 21, 168 So. 481 (1936).
\item \textsuperscript{130} Hahn v. P. Graham & Co., 148 La. 55, 86 So. 651 (1920); Millanno v. Fatter, 138 So. 878 (La. App. 1932); Martinez v. Crusel, 148 So. 742 (La. App. 1933); Rodrigues v. Abadie, 168 So. 515 (La. App. 1936).
\item \textsuperscript{131} Jacobs v. Williams, 160 So. 861 (La. App. 1935).
\item \textsuperscript{132} Doyle v. Nelson, 11 So.(2d) 645 (La. App. 1942).
\item \textsuperscript{133} Bosarge v. Spiess & Co., 145 So. 21 (La. App. 1933).
\item \textsuperscript{134} Moreau v. Southern Bell Telephone & Telegraph Co., Inc, 158 So. 412 (La. App. 1935). The same could have been said in reverse had the child been struck by the other car which started first.
\end{itemize}
had the right to assume that the parents would exercise the care and caution for the protection of the child that the law imposes upon them, and which as parents they would naturally be expected to exercise. They had the duty of keeping the child so close to them that his movements would at all times be within their control, and their negligence barred a recovery for its death.\textsuperscript{135}

The driver who gives young children a free ride owes them the duty to exercise reasonable care and to see that they are put in a place of safety and not to expose them to unusual dangers. Thus, a truck driver who accommodated two young children by taking them home was held liable for injuries to a six year old child who jumped off as the truck passed his home.\textsuperscript{136} One decision enunciates the well settled doctrine "that, when a truck driver sees that children have climbed upon his truck while it is stopped, and knows that they intend to ride on the truck, he must not only put them off, before starting his engine, but must exercise reasonable care to see that they stay off. The younger the children are, and the more persistent they are, the more determined the truck driver ought to be to avoid injuring them."\textsuperscript{137}

Violation of an ordinance prohibiting persons under sixteen years of age from operating automobiles is negligence per se, but for liability to follow a causal connection must be shown between the violation and the accident.\textsuperscript{138} Five and six year old children have been held incapable of contributory negligence.\textsuperscript{139} An unusually bright child seven and one-half years old is just on the borderline of liability for contributory negligence;\textsuperscript{140} and a child twelve years old is subject to the ordinary rules of contributory negligence.\textsuperscript{141}

X. \textbf{RANGE OF VISION}

Louisiana decisions have uniformly held to the rule that a motorist must travel at such speed and have such control over his automobile as to be able to stop within the range of his vision.\textsuperscript{142}

\begin{itemize}
\item \textsuperscript{135} Wise \textit{v.} Eubanks, 159 So. 161 (La. App. 1935).
\item \textsuperscript{136} Guillory \textit{v.} Perkins, 6 So.(2d) 177 (La. App. 1942).
\item \textsuperscript{137} Llorens \textit{v.} McCann, 187 La. 642, 657, 175 So. 442, 447 (1937), reversing 171 So. 481 (La. App. 1937).
\item \textsuperscript{138} Millanoss \textit{v.} Fatter, 138 So. 878 (La. App. 1932).
\item \textsuperscript{139} Ibid. (six year old); Wise \textit{v.} Eubanks, 159 So. 161 (La. App. 1935) (five year old).
\item \textsuperscript{140} Moreau \textit{v.} Southern Bell Telephone \& Telegraph Co., Inc., 158 So. 412 (La. App. 1935).
\item \textsuperscript{141} O’Pry \textit{v.} Berdon, 149 So. 287 (La. App. 1933).
\item \textsuperscript{142} Mouton \textit{v.} W. J. Talbot \& Son, 161 So. 899 (La. App. 1935).
\end{itemize}
There is a presumption that when a motorist collides with a stationary object he is guilty of negligence.\textsuperscript{143} He should, when suddenly blinded by the lights of an approaching car, be able to stop in a moment.\textsuperscript{144} The rule that a driver must be able to stop within the range of his vision is of special importance and application to a driver whose vision is obstructed by fog or glaring lights. The fact that one's vision is not clear places upon him a greater degree of care than would exist under ordinary circumstances.\textsuperscript{145} When a dense fog, or any other condition, prevails which so affects the vision of a motorist as to make it unsafe to proceed, his duty is to stop and to remain stopped until such time as he can see where he is going.\textsuperscript{146} Cases dealing with the rule that a driver must be able to stop within the range of his vision hold it is not inflexible and that the facts and circumstances are to be taken into account.\textsuperscript{147} Even the judicial declarations are not entirely consistent. One court declares, “the automobile driver must keep a proper lookout ahead for obstructions in the highway, such as unlighted cars parked on the roadside, and cannot blindly drive along relying on the presumption that it is a violation of the law to leave an unlighted car parked on the roadside, and that no one will violate the law.”\textsuperscript{148} Another opinion states, “a person using a modern concrete highway in the open country and driving at so reasonable a speed as 20 or 25 miles an hour is justified in assuming and in acting on the assumption that the way is safe for ordinary travel, even at night.”\textsuperscript{149} These statements epitomize a cer-

\textsuperscript{143} Becker v. Mattel, 165 So. 474 (La. App. 1936).
\textsuperscript{144} Blahut v. McCahill, 163 So. 195 (La. App. 1935).
\textsuperscript{147} Futch v. Addison, 126 So. 590 (La. App. 1930); Stafford v. Nelson Bros., 130 So. 234 (La. App. 1930); Hanno v. Motor Freight Lines, Inc., 134 So. 317 (La. App. 1931); Goodwin v. Theriot, 165 So. 342 (La. App. 1936); Louisiana Power and Light Co. v. Sala, 173 So. 537, 538 (La. App. 1937): “There have been a great many cases in which this and other courts have considered and discussed facts similar to those which are here alleged, and in all of them it has been held that the failure of the driver of the moving vehicle to observe the obstruction—usually in the form of a stationary vehicle—constituted such negligence as would prevent recovery. . . . But in none of those cases has this result been reached regardless of surrounding circumstances and facts. In fact, in some of them the possible effect of such surrounding circumstances has been mentioned, and in all of those in which it has been mentioned the court has been careful to say that there were not such circumstances as justified the failure of the driver to see the object ahead.” Affirmed 188 La. 358, 177 So. 238 (1937). Accord: Galennie v. Cooperative Produce Co., Inc., 196 La. 417, 199 So. 377 (1940).
\textsuperscript{149} Deichmann v. Gerard, 145 So. 30, 32 (La. App. 1932).
tain flexibility of decision and it is only by a careful factual study that a fairly definite line can be approximated. In one case plaintiff traveling at a speed under which he could meet ordinary emergencies dimmed his lights when meeting an approaching car. His dim lights shone under a truck parked on the highway whose body was three or four feet above the ground and he failed to see it until too late to stop. The court held that the area in which he was driving was not thickly populated and he had no reason to expect a truck to be parked on the highway.150 Generally, however, a driver is negligent when he collides with a vehicle parked without lights on the right side of a road;151 and his negligence is much greater where he is driving on the left or wrong side of the road at the time of the collision.152 An automobile suddenly appearing without lights in the darkness ahead on the wrong side of the road and diagonally across the road is not to be expected.153 Where plaintiff turned a corner at twelve miles an hour and was confronted with defendant's truck parked fifty feet away on the wrong side of the street, the court applied the rule that a driver must be able to stop within the range of his vision.154 A speed of twenty miles an hour has been held excessive when vision was interfered with by rain or blinding lights.155 When defendant ran into a herd of goats, the court held that the rule requiring stopping within range of vision is not always applicable to such emergencies where the object precipitating the emergency suddenly comes into view of the motorist at a point between the car and the farther side of the illuminated section of the highway.156 The court refused to follow a case which did not take into consideration the emergency created by dazzling lights.157 In one case plaintiff was trailing two trucks on a gravel road which raised a cloud of dust obscuring his vision, when defendant coming from the opposite direction was blinded and went onto plaintiff's side of the road. It was held that defendant should have stopped until such time as he could see where he was driving, and that plaintiff was contributorily negligent in trailing between forty and fifty feet from the trucks and having his vision almost completely

obscured. He could have avoided the accident by pulling to his right if he had seen the defendant. In another dust-caused accident, a truck passed plaintiff going south and raised a dense cloud of dust which caused plaintiff to slow to twenty-five miles an hour. When plaintiff sued for damages caused when his car was hit by defendant passing the truck, he was found guilty of contributory negligence on the ground that since his vision was completely obscured he should have pulled to the extreme right, stopped, turned on his lights, and honked. This case is easily distinguished from another where a car had passed plaintiff, raising a cloud of dust but not completely obscuring his vision. Since plaintiff had slackened his speed and driven as near to the right as possible, he was not charged with contributory negligence when he was hit head-on by defendant on his side of the road. The purpose of headlights is to enable a driver to observe conditions in the road ahead; and a Louisiana statute requires that a motorist have such lights which will enable him to see a person two hundred feet away. In cases where defendant's negligence consists principally of the failure to have proper lights, plaintiff must show a causal connection between the failure to have proper lights and the accident. Thirty-five miles an hour is an unreasonable speed to drive an automobile on the highway at night without lights. In one instance plaintiff had motor trouble on a foggy morning, and parked on a street to the left next to a neutral ground. Defendant ran into him five minutes later, approaching from the rear at a slow speed. It was held that defendant had the last clear chance to avoid the accident. If the fog was too dense to permit a radius of vision in which his automobile could be stopped, it was his duty to proceed no farther until he could see; there is little or no excuse for running into a stationary object, particularly one which has been stationary for some time before the collision, whether it be daylight or dark, clear or foggy, misty or raining. A motorist proceeding in a fog must measure his speed by his vision. A motorist who drove off the road and down an embankment while in a heavy fog was held to be under

159. Outman v. Imperial Oil & Gas Products Co., 144 So. 749 (La. App. 1932).
162. La. Act 286 of 1938 [Dart's Stats. (1939) §§ 5198-5280].
the duty of proceeding in such a manner that he could stop the car when he became blinded by the enveloping blanket of fog. The plaintiff's failure to observe an obstruction has frequently been deemed excusable. In one case plaintiff ran into the body of a dead calf on the highway at night. He argued that its color blended into the surroundings so as to make it impossible to distinguish it from the road. A holding against plaintiff was reversed by the supreme court. In holding for a plaintiff who entered a street from a side-road and continued across it into a canal which was flush with the level of the street, the court stated that the rule requiring a driver to be able to stop within the range of his vision is subject to exceptions based on surrounding facts and circumstances and that it recognized the distinction between striking an obstruction illuminated by headlights extending above the surface of the highway and the running into a hole or depression in the road against which the lights did not shine and which might be no more noticeable than a shadow on the surface of the road. Recovery was also allowed when a car ran into a canal dug across a highway which was left unguarded at night. However, it constitutes negligence to drive a truck on a misty night at a speed over thirty miles an hour with a cardboard windshield allowing vision through a hole four by six inches.

The driver of a truck stalled on the highway was not negligent in failing to put out flares as required by statute, when the accident occurred before he had time to do so. The statute providing for vehicles to be parked off the paved or main traveled portion of a highway has been held inapplicable because of the narrowness of the shoulder and the size of the truck; the main traveled portion of a highway is the paved surface only; and the shoulder is not to be taken into consideration.

XI. DOCTRINE OF ERROR IN EXTREMIS

The doctrine of "error in extremis" or "sudden emergency" applies to the automobile driver, who, by the negligence of an-

175. La. Act 286 of 1938 [Dart's Stats. (1939) §§ 5198-5289].
other and not by his own negligence, is suddenly confronted by an emergency and is compelled to act instantly to avoid a collision or injury. He is not guilty of negligence if he makes such a choice as a person of ordinary prudence, placed in such a position, might make, even though he did not make the wisest choice. This rule presupposes that there is sufficient time after the appearance of the sudden emergency in which some kind of choice of action can be made. It requires a certain length of time to make a choice and to put it into execution; and, if this required time does not exist, certainly one cannot be charged with contributory negligence if he makes no effort to escape.\footnote{178} The cases are all in accord that for a person to benefit by the rule he must not have done anything contributing to the emergency,\footnote{179} for this rule is a shield to one who is without fault in bringing about the dangerous conditions.\footnote{180} No particular set of rules can be prescribed as to what must be done in a sudden emergency; usually the safest course is to stop.\footnote{181} In one case plaintiff swerved to left when a head-on collision with defendant became inevitable. Under the sudden emergency he was not negligent even if it would have been better to have gone onto the right shoulder.\footnote{182} Again, a driver was not considered negligent when he pulled onto the shoulder upon seeing that another car sixty feet away was skidding and out of control.\footnote{183} The general rule that a driver is to keep to the right is necessarily inapplicable when he is confronted by the sudden emergency of another being on his side of the road.\footnote{184} A bus driver was faced with a sudden emergency when a child ran in front of him 20-25 feet away;\footnote{185} and the defendant’s coming onto the highway from a side road when plaintiff was 50-75 feet away was held to create an emergency.\footnote{186} A driver traveling at 30-35 miles an hour was confronted with an emergency when defendant swung out on plaintiff’s side of the road when 40-50 feet away;\footnote{187} and another defendant was held to have created an emergency.

\footnote{178. Abel v. Gulf Refining Co., 143 So. 82 (La. App. 1932).}
\footnote{180. Adams v. Burnett, 150 So. 403 (La. App. 1933).}
\footnote{181. Mitchell v. Ernesto, 153 So. 66 (La. App. 1934).}
\footnote{182. Lacy v. Lucky, 140 So. 857 (La. App. 1932); Upton v. Bell Cabs, Inc., 154 So. 359 (La. App. 1934).}
\footnote{183. Mitchell v. Ernesto, 153 So. 66 (La. App. 1934).}
\footnote{185. Vallery v. Teche Lines, Inc., 166 So. 646 (La. App. 1936).}
\footnote{186. Hill v. Mickel, 139 So. 672 (La. App. 1932).}
\footnote{187. Leforte v. Gorum, 7 So.(2d) 733 (La. App. 1942).}
when after pulling out to go around a trolley and seeing plaintiff coming from the opposite direction in close proximity, he suddenly turned across plaintiff's path in order to go upon a vacant lot.\textsuperscript{188} Plaintiff, a pedestrian, in crossing a highway, was confronted with an emergency when he neared the center stripe and saw defendant 60-75 feet away on the wrong side bearing down on him.\textsuperscript{189} Where three negroes ran from the curb, at night, yelling and waving their arms in an attempt to warn defendant of a body in the street, the court concluded that the conduct was apprehension of imminent danger.\textsuperscript{190} A driver confronted with a car headed toward him on the wrong side within 20-25 yards was faced with an emergency;\textsuperscript{191} and a driver trailing at a distance of seventy-five feet was confronted with an emergency when the lead car was hit by a car coming from the opposite direction.\textsuperscript{192} However, a driver trailing another car at one to two lengths at an excessive speed created the emergency resulting when the forward car stopped after giving a signal.\textsuperscript{193} Likewise, where defendant was passing between plaintiff and the curb when a car to his right swerved leftward leaving defendant the alternative of hitting it or the plaintiff, the court concluded that he had contributed to the emergency.\textsuperscript{194} The court held that a car two feet over the left of the center stripe when 125 feet from plaintiff did not create an emergency.\textsuperscript{195}

\textbf{XII. Res Ipsa Loquitur}

The doctrine of res ipsa loquitur\textsuperscript{196} finds application in that class of accidents which would not have occurred in the ordinary course of events but for the negligence of someone; and where the other party is in a better position to offer an explanation of the accident.\textsuperscript{197} Thus the doctrine has been invoked where a

\textsuperscript{188}. Brown v. Dickson, 3 So.(2d) 562 (La. App. 1941).
\textsuperscript{189}. Simpson v. Hyde, 147 So. 759 (La. App. 1933).
\textsuperscript{190}. Rosen v. Lloveras, 148 So. 734 (La. App. 1933).
\textsuperscript{192}. Andrews v. Foster, 169 So. 103 (La. App. 1936).
\textsuperscript{193}. Stromer v. Dupont, 150 So. 32 (La. App. 1933).
\textsuperscript{194}. Diebel v. Bertucci, 140 So. 515 (La. App. 1932).
\textsuperscript{196}. "The thing speaks for itself."
\textsuperscript{197}. Gomer v. Anding, 146 So. 704, 707 (La. App. 1933): "It is a phrase used to express tersely a rule in the law of negligence to the effect that, where the fact of an accident exists and the attending circumstances are of themselves sufficient to justify an implication or inference of fault or negligence on the part of the defendant, making out a prima facie case as it were, the task then devolves upon the defendant to present an explanation to exculpate himself from the legal presumption that is thrown around him. It is not a shifting of the burden of proof, but the imposition of the duty of ex-
pedestrian was hit by a car coming onto the sidewalk where he was walking; where defendant ran into the rear of plaintiff's car on a straight paved road, during daylight, without any obstruction to his view; and where defendant ran into a balustrade of a white bridge lighted by an arc light fifty feet away. One Louisiana court declared: "The very fact that defendant, after losing control of his car, at a time when he was on a straight and level part of this highway, and not regaining control of it until he had traveled zigzagging from one side of the road to the other for a distance of 700 feet, and without slowing down until he had turned the car over in a ditch, makes out a prima facie case of negligence on his part, and the doctrine of res ipsa loquitur applies." In another case, plaintiff, passenger in an ambulance taking her daughter to a hospital, fell out when the door flew open, from no act or fault of plaintiff. She was unable to show the exact cause of its flying open. Since it was shown that such a door will not fly open when properly closed and locked and when the vehicle is being driven in the proper manner, evidence was admitted that it flew open because of some defect in the lock, failure to close the door properly, or the negligent operation of the ambulance. The res ipsa loquitur doctrine was held applicable in a case where plaintiff was a guest in a bus which had an accident while he was asleep. Cases involving an accident resulting from the skidding of a car seem much confused as to whether or not a presumption of negligence should arise from the fact of skidding. The supreme court has stated that the mere fact that an automobile skids is not evidence of negligence. Cases in which it has been held that negligence is not necessarily proved by a car's skidding can be distinguished on the point that in those cases the surface of the road and the conditions which made it exceedingly dangerous were not readily apparent. One court succinctly declared that "mere skidding

plaining that the accident and resulting injury was not due to his want of proper care. This duty arises from the fact that the agency or thing which caused the injury was under his control and management, and the happening was such as does not usually occur when due care has been exercised."

Loprestie v. Roy Motors, Inc., 191 La. 239, 185 So. 11 (1938).

does not necessarily evidence negligence. . . . But certainly to skid 100 feet and to lose control of the car created a grave suspicion of recklessness and placed upon the driver the duty of making a convincing explanation.206 The speed at which the skidding machine was moving is a material element in determining whether the operator was negligent.207 When an automobile is being driven carefully and cautiously at a very moderate or slow speed, it cannot be said that the car skids by reason of the negligence of its driver, but it is obvious that skidding may be due to careless or reckless driving or to excessive speed under certain conditions.208

XIII. DUTIES OWED TO GUESTS AND DUTIES OWED BY GUESTS

The rule in Louisiana and other states is that an automobile host owes his guest only the same duty as that owed to a stranger, which is the use of ordinary care. The host is not an insurer of the safety of his guest and liability rests upon Civil Code Article 2315: “Every act whatever of man that causes damage to another, obliges him by whose fault it happened to repair it.” An automobile guest is a person received and entertained in the automobile of another, and he need not have been invited by the owner.208 The invited guest in an automobile is a mere licensee—such passengers as an employee invited by his employer to ride to see a business friend,211 and a girl invited by her escort to ride from a dance for refreshments with him and the driver.212 Our Louisiana courts have been somewhat confused as to the effect of a finding that the occupants of the car were engaged in a joint enterprise. Thus where a joint enterprise was found, it was held that the negligence of the driver was attributable to the other rider so as to bar his recovery from the driver.213 This is really a misapplication of the doctrine that the negligence of one member of a joint enterprise will be imputed to his co-adventurers. Such imputation of negligence is properly effective only where rights of third parties are involved, and should not be used as a blanket of immunity where one member causes in-

207. 3 Huddy, Cyclopedia of Automobile Law, p. 122, § 68.
jury to another by his negligent act. Louisiana decisions have, however, drawn the line very accurately as to when a joint enterprise exists. A common plan and a joint control over the operation of the machine are essential to the relationship. Absence of either element will defeat establishment of a joint enterprise. Where four parties set out to go to a picture show with an agreement that one was to drive and the others had no authority, express or implied, to control the operation of the car, the arrangement did not constitute a joint enterprise. Likewise, the court did not find a joint enterprise where a prisoner under threat of a jail sentence went with a deputy sheriff to locate an illicit still; or where a party who did not know how to drive was invited to go with his expenses paid.

A 1934 case recognized that there was confusion and lack of uniformity concerning the right of a guest to recover, and stated that the correct rule is “Of course, the occupant of a vehicle will not be permitted to recover where it appears that he himself was negligent in either permitting the driver to encounter known dangers or in failing to use his senses of sight and hearing to discover the perils of the highway!” The theory behind this rule is that the guest has assented to and acquiesced in such negligence. The opportunity of the guest for discovering the negligence, his position in the car, his age, his mental development and physical condition, and his knowledge of what might constitute negligence or a dangerous situation must all be taken into consideration in determining the question of assent or acquiescence. A back seat guest ordinarily has the right to rely on the driver using ordinary care. In one case a front seat guest who allowed his host to travel in the center of the highway to within one hundred feet of an approaching car with blinding lights, without making protest, was held not entitled to recover; whereas a guest on the back seat who observed these conditions but did not protest was allowed to recover. The court pointed out that it did not want to countenance back seat driving. A back seat guest is held to a lesser degree of care than a front seat guest.

A companion in a joint enterprise has the same duty of keeping a watchout as does the driver, but a guest is not required to keep the same careful lookout at all times as the driver. To hold a guest contributorily negligent it must be shown that he was aware or as an ordinarily prudent person should have been aware of the negligence of the host. A guest who did not have time to protest after the danger became apparent was not contributorily negligent. A guest who was not familiar with the road and who had remonstrated about his host’s fast driving was not negligent when the driver went across a T intersection and down an embankment. Also a guest is not negligent in failing to protest against driving on a road full of ruts; and he need not keep a lookout for unusual or unexpected dangers. The guest who shouted a warning the moment he saw an unlighted truck parked on the side of the highway when 30-35 feet away was keeping a proper lookout. The danger was of an unusual nature and wholly unexpected. Where the host suddenly speeded up and the danger arose before the guest had a chance to protest, the court held that the guest was not guilty of contributory negligence. But, “where the road becomes dangerous, or the speed of the machine in which one is riding as a passenger or guest is unlawful, or the driver is otherwise careless or reckless in his conduct, and this is known to the passenger it is his duty, in the exercise of ordinary care, to protect himself from injury, to caution the driver of the danger, protest against it, and, unless delivered from it, to quit the car if that may be done with safety, or, to direct that the vehicle be stopped, and when stopped get out of the car.” The circumstances must be such as to convince an ordinarily careful and prudent person that the danger was so imminent as to justify getting out of the car. A guest while on a brightly lighted street of ample width need not observe and call the attention of the driver to plainly

233. 2 Blashfield, Cyclopedia of Automobile Law (1935) 1098.
apparent cars parked along the way. The guest who did so would be more of a nuisance than a protection and would not soon again be invited to ride. 235 A plaintiff who was riding on the back seat of a car owned and driven by his superintendent in the course of the employment was held entitled to recover of the driver even though he failed to protest, stating that it would have been presumptuous for him to have protested. 236 Likewise, a fourteen year old boy was not expected to protest against the negligent driving of his employer, 237 and a negro chauffeur who had protested about his employer's fast driving by stating that it was "pretty fast for a new car" was not contributorily negligent. 238 Boy scouts were held not negligent in failing to protest to their scout master's fast driving, because of his position as scout master. 239 It has also been held that there is no duty on the guest to protest and demand that the car be brought to a complete stop instead of a virtual stop before entering the intersection. Interference of a guest with the driving, except in some sudden emergency or unusual situation where the driver is not aware of the danger, is likely to cause more accidents than it prevents. 240

"If it is actionable negligence to rent or loan an automobile to one who is manifestly intoxicated . . . then it is certainly negligence, which will prevent recovery, to ride with a driver obviously under the influence of liquor." 241 Thus where plaintiff and defendant went on a drinking party in defendant's car, and after attending several saloons defendant ran into a parked car, the court declared: "Their continued drinking was of sufficient importance to cause an apprehension of danger and an anticipation and realization of the peril in which he was voluntarily entering. One cannot close his eyes to obvious danger or entrust his safety absolutely to the driver of an automobile when the same knowledge of obvious or threatened danger is possessed by both. Experiencing the exhilaration and sensations incident to the swirl and dash of a mixture of intoxicating liquor and rapid transit, plaintiff assumed the risks of danger attendant thereto." 242 The fact that plaintiff was one of two guests on the front seat is of no importance in the absence of evidence to show the driver was

hampered in his operation of the car.\textsuperscript{243} Compare, however, the court's statement that "the crowding of four persons into a coupé built for two interfered with the driver's safe operation of the car, impeded the manipulation of the hand and foot devices, and obscured the driver's clear vision of vehicles approaching from the right. It is patent that plaintiff's daughter helped to create this condition and was rightfully charged with contributory negligence."\textsuperscript{244} 

The driver owes his guest the general duty to have his machine under control at all times; but there is no set rule on what constitutes "control," which must be determined from the circumstances of each case.\textsuperscript{245} Where defendant lost control of her car when frightened by a motorcycle sounding its horn as a warning of an intent to pass, the court held that defendant knew vehicles would be passing from her rear and owed her guest the duty of keeping her car under control.\textsuperscript{246} A public carrier owes a guest a high degree of care and the doctrine of res ipsa loquitur applies when a guest is injured.\textsuperscript{247} A guest who saw loose gravel was not contributorily negligent in failing to protest when the proximate cause was lack of proper care by the host after he lost control.\textsuperscript{248} 

It has been generally stated that a guest who goes to sleep puts himself out of a position to be able to protest and he has not the right to rely exclusively on the one operating the car.\textsuperscript{249} In a recent case involving a guest who was asleep at the time of the accident the court declared that the test was whether an ordinarily prudent person would have gone to sleep under the circumstances of the particular case. Knowledge of a guest that the driver is sleepy and tired or drunk may be a circumstance which would make it negligent for him to go to sleep. In that instance the plaintiff was not held negligent in view of the facts that defendant had the reputation of being a careful driver and plaintiff had often ridden with him, he was a matured man, was driving carefully prior to and at the time plaintiff fell asleep, traveling on a paved highway, and there were no outward appearances of danger.\textsuperscript{250} It has been held that the rider in a rumble

\textsuperscript{243} Provosty v. Christy, 152 So. 784 (La. App. 1934).
\textsuperscript{244} Herr v. Thames, 165 So. 530, 532 (La. App. 1936).
\textsuperscript{245} Monkhouse v. Johns, 142 So. 347 (La. App. 1932).
\textsuperscript{246} Reil v. McNaspy, 177 So. 393 (La. App. 1937).
\textsuperscript{247} Thibodeaux v. Star Checker Cab Co., 143 So. 101 (La. App. 1932).
\textsuperscript{248} Galbraith v. Dreyfus, 162 So. 246 (La. App. 1935).
\textsuperscript{249} Brown v. Dalton, 143 So. 672 (La. App. 1932).
\textsuperscript{250} Weddle v. Phelan, 177 So. 407 (La. App. 1937).
seat, on a running board, on a soap box in the rear of an open car without doors, or on the cab of a truck, assumes the risks incident to the ordinary operation of the vehicle, but not those occasioned by another's negligence. "The gratuitous driver, not being an insurer of the safety of his guest, is not liable for accident resulting from latent defects on the roadway." The host is not liable to a guest in failing to discover a latent defect in the road.

XIV. Doctrine of Last Clear Chance

In 1842 the celebrated English case of Davies v. Mann announced an exception to the rule that contributory negligence on the part of a plaintiff bars a recovery for damage resulting from the accident. This exception is known as the "Doctrine of Last Clear Chance"; and its basis, as clearly suggested by its title, is that during the course of events leading up to the accident one of the negligent parties had an opportunity to avoid the accident at a time when the other party had no such opportunity. Our Louisiana courts have said that they will apply the doctrine, but much confusion has followed concerning just when it is to be applied. The leading case of Rottman v. Beverly involved an accident occurring after defendant had discovered the plaintiff's peril in time to have avoided injuring her, and was a true "last clear chance" situation. The court declared: "It is frequently stated by courts that there can be no recovery in negligence cases where it appears that the negligence of the plaintiff continued until the moment of the accident, but that is not a correct statement of the rule. Thus broadly stated, it is misleading for it is not true in a strict legal sense that a plaintiff is barred from recovery under any and all circumstances merely because he was guilty of negligence which continued down to the moment of the accident which caused his injury and this court has never so held;" and further stated that in those cases which applied the "broadly stated rule" the fault of each party had operated directly to cause the injury. "The defendants had no better 'last
chance' to avert the accident than did the pedestrians, and inasmuch as the pedestrians could have avoided the injuries by taking proper precautions, and failed to do so, and as their negligence continued down to the accident, they were in no position to invoke in their behalf the doctrine of last clear chance.\(^{260}\)

The last clear chance doctrine is inapplicable when the negligence of the injured person continued up to the moment of the accident so as to have been a contemporaneous contributing cause.\(^{261}\) Where plaintiff pedestrian knew that defendant's truck was approaching him, but continued looking down relying on the assumption that defendant would drive around him, the court concluded that concurrent negligence on the part of plaintiff had contributed to the injury at the very time of the accident, and thus the rule of last clear chance was inapplicable.\(^{262}\) The doctrine was also held inapplicable when plaintiff stepped into an intersection without looking and was hit by a truck whose driver was not keeping a lookout. In that case there was equal opportunity of discovering the danger had either been keeping a lookout.\(^{263}\)

The court of appeals for the first circuit held in *Rottman v. Beverly* that the negligence of plaintiff continued to the moment of the accident and further held that this served to prevent application of the doctrine of last clear chance.\(^{264}\) When the case went to the supreme court the "doctrine of discovered peril" was held applicable.\(^{265}\) Confusion then arose in the same court of appeals, as is shown in a subsequent case where it was held that the doctrine of "last clear chance" was limited in Louisiana to cases in which the perilous situation of the plaintiff was actually discovered.\(^{266}\) This case also went to the supreme court which reversed the decision and held that the peril of the plaintiff need not have been actually discovered, but that if it could have been realized by the motorist had he been keeping a proper lookout, the doctrine applies.\(^{267}\) The rule as announced by the supreme court had been earlier stated by the court of appeal for the second circuit: "It is an inexorable rule of law that the operator of an automobile is held to see that which he should have seen and which, of course, may be seen and observed by human eyesight;

\(^{264}\) 162 So. 73 (La. App. 1935).
\(^{266}\) *Jackson v. Cook*, 176 So. 622 (La. App. 1937).
\(^{267}\) *Jackson v. Cook*, 189 La. 860, 181 So. 195 (1938) (a leading case).
and this being true, we can see no sound reason for holding that the operator must actually see the injured person in time to avoid colliding with him in order that the doctrine of the last clear chance may be correctly applied. This doctrine should not be called the doctrine of "discovered peril" because, as the supreme court has held, an actual "discovery" of the plaintiff's peril is not essential. It should more properly be called the doctrine of "apparent peril" since its result is to hold the motorist liable because he has failed to avoid striking a plaintiff whose peril he should have seen and appreciated if he had looked. The driver is held to see that which he could have seen, and he must keep a lookout ahead to discover those who might be in peril. The last clear chance doctrine was applied where an intoxicated person staggering on a highway at night was struck by defendant. The court held that defendant was under a duty to have discovered his peril, which he could have done. A motorist who saw a pedestrian crossing the street 150 feet ahead of him was under the duty to bring his car under such control as to avoid injuring him. The doctrine was applicable upon a showing that defendant could have prevented the accident by veering to the left or stopping his car or reducing his speed. A motorist discovering a pedestrian in his path has the duty of making his presence known and to do nothing which might suddenly alarm him. In one case deceased dashed out into the street to retrieve a rolling object at a time when defendant's truck was three hundred feet away and approaching at fifteen miles an hour. The court held that defendant had the last clear chance—he either saw defendant in his path and realized his danger at a time when he had an opportunity to avoid the accident, or he should have seen him. A motorist must have his car under such control as to be able to take advantage of a last clear chance if offered to him. If it is found that the doctrine is applicable the primary negligence of the plaintiff becomes unimportant.

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274. Loewenberg v. Fidelity Union Casualty Co., 147 So. 31 (La. App. 1933).  
Where the pedestrian in the street looked up, saw defendant, and stopped, defendant was justified in believing that the pedestrian intended to remain stationary.\textsuperscript{279} It has been held that the driver has no reason to suppose that a pedestrian would leave the sidewalk and enter the street in the path of an automobile going twenty miles an hour when only twenty feet away;\textsuperscript{280} and that he had a right to assume that deceased would continue walking in a safe position, since he was walking in a normal manner and there were no unusual actions on his part to indicate his intoxicated condition.\textsuperscript{281} Also, where plaintiff was standing just over the center line in defendant’s lane of traffic flagging him to stop, defendant driver had the right to assume that he would get out of the way.\textsuperscript{282} The doctrine is inapplicable when the evidence does not justify a holding that even the most alert driver could have avoided the accident.\textsuperscript{283}

XV. MISCELLANEOUS

The “Highway Regulatory Act” provides that an automobile shall be equipped with brakes adequate to control the movement of and to stop and to hold such vehicle, upon a reasonably clean, dry, level surface within a distance of forty-five feet from the spot where such brakes are first applied.\textsuperscript{284} When no attempt was made to use brakes until it was too late to stop regardless of the kind of brakes, the fact that they were defective had nothing to do with the accident.\textsuperscript{285} A driver with defective brakes is held to a greater degree of care in driving, especially over an intersection.\textsuperscript{286} In a case where defendant’s truck ran into plaintiff’s parked car, a defense based on latent defects in the brakes was rejected because defendant did not attempt to prove the nature of the defect or that if it existed it could not have been discovered and remedied by proper inspection.\textsuperscript{287}

\begin{itemize}
  \item \textsuperscript{279} Baptiste v. Mateu, 147 So. 731 (La. App. 1933); Johnson v. Zeringue, 151 So. 105 (La. App. 1933).
  \item \textsuperscript{280} Ford v. Bonnette, 156 So. 821 (La. App. 1934).
  \item \textsuperscript{281} Coleman v. Terrebonne Ice Co., Inc., 8 So.(2d) 313 (La. App. 1942).
  \item \textsuperscript{282} Dean v. Allied Underwriters, 11 So.(2d) 93 (La. App. 1942).
  \item \textsuperscript{283} Thompson v. Dyer, 1 So.(2d) 433 (La. App. 1941); Stansbury v. Drillon, 2 So.(2d) 662 (La. App. 1941); Gauthier v. Foote, 12 So.(2d) 9 (La. App. 1943).
  \item \textsuperscript{284} La. Act 286 of 1938, § 9(a)(1) [Dart’s Stats. (1939) § 5233].
  \item \textsuperscript{285} Brooks v. Norris, 153 So. 574 (La. App. 1934).
  \item \textsuperscript{286} Swaggerty v. Lillie, 156 So. 782 (La. App. 1934).
  \item \textsuperscript{287} Hassell v. Colletti, 12 So.(2d) 31, 32 (La. App. 1943). "While the doctrine of latent defects in automobiles has been recognized as a valid defense by the courts in actions of this kind, it is manifest that the proof submitted by the alleged tort-feasor must be of a most convincing nature. In fact, we
The rule of law which relieves a person of liability for the result of an inevitable accident requires the one seeking to avail himself of its protection to show that he himself was in no way to blame for the happening. Thus where defendant had a puncture while in the act of passing plaintiff, resulting in side-swiping defendant, the court held there was no liability unless it be shown that there was carelessness in the matter of inspection of tires or equipment, or that there was negligence in the operation of the car. When defendant, traveling on a gravel road at 35-40 miles an hour, lost control when a tire went flat and collided with the plaintiff two hundred feet away, his failure to apply brakes and attempt to bring the car under control was adjudged to be negligence.

Other miscellaneous decisions illustrate a number of novel, but somewhat infrequent problems. In a case where two drivers traveling in opposite directions approached a portion of the highway that was submerged under water, it was held that the usual rules relating to the pre-emption of an intersection were applicable. While, as a general rule the presence of a train across a highway is adequate notice and warning to motorists that the road is blocked, atmospheric conditions impairing visibility may call for special warning. It is almost impossible to estimate the speed of a car coming toward you; but when it goes by sideways, though the estimate cannot be exact, the speed may be approximately estimated. "To now drive an automobile on a much-traveled street of a city at a speed not greater than 23 miles per hour, instead of being an aid to the safety of traffic, more nearly amounts to interference therewith." A person who parks his car against a curb and later finds it blocked by another may gently push that other car a foot or so, to permit his own

think that the evidence should be such as to exclude any other reasonable hypothesis in respect to the cause of the accident except that it resulted solely from the alleged defect.

291. Solomon v. Davis Bus Line, Inc., 1 So.(2d) 816 (La. App. 1941). The court remarked that it was unable to find any other cases in point.
car to be extricated. The car's owner may expect it to be moved to accommodate other motorists, but need not anticipate that the engine will be started. The "family purpose" doctrine does not apply in Louisiana. A parent is not liable for the negligent acts of a third party in driving a car owned or entrusted to a minor son where the minor son permits a third party to operate the car and where the minor himself is not guilty of any negligence; and a husband is not liable for the negligence of his wife in the operation of a car when she is not acting as his agent or for the purpose of the community. The mere fact that an automobile is five years old is not sufficient to justify the conclusion that it is unsafe and unmanageable. Entering a street from a blind alley calls for all the care, caution and prudence a person can exercise.

The measure of damages has been litigated in a number of cases. In one plaintiff had sold the car damaged by defendant's negligence, instead of having it repaired; and the court held that he could recover no more than the difference between the value of the car before the accident, and the amount that he received for it afterwards. It has been held, on numerous occasions, that when one's automobile has been damaged in a collision caused by the negligence of another he has a right to have every injured part restored to its former condition, even though the cost of replacing the parts may be out of proportion to the estimated value of the machine before the injury. But the measure of damages cannot exceed the value of the car before the accident. The law of comparative negligence does not apply in Louisiana.

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