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Negligence - Dangerous Premises - Licensee and Invitee Distinguished

R. O.

In jurisdictions other than Louisiana, courts have reached the same conclusion with reference to statutory change from hanging to either electrocution[26] or lethal gas.[27]

In the *Pierre* case[28] and the subsequent case of *State v. Burks*[29] the judge sentenced the defendant to death by hanging and the trial court amended the sentence to make it comply with the provisions of Act 14 of 1940. In *Henry v. Reid*[30] the sentence was to die "in the manner provided by law" so that the executive head of the government could order the execution according to the statute then in force. This form of the sentence was also held valid in a later case.[31]

We come to the conclusion that the method of carrying out the death penalty is as unessential an element as are the time and the place, and that it may be changed by the legislature even after the accused has been found guilty or has been sentenced, and its change at such a time does not deprive the defendant of any of his substantial rights. Actually it works to his advantage because thus the state is free to adopt the most modern and humane method of inflicting capital punishment.

A. C.

NEGLIGENCE — DANGEROUS PREMISES — LICENSEE AND INVITEE DISTINGUISHED—Plaintiff, a sixteen year old boy, entered the shop office of defendant railroad company in search of the superintendent. His purpose was to solicit defendant's advertising for a local newspaper. While waiting outside the shop, he was injured when one of several metal car wheels, which were negligently stacked, fell upon him. *Held,* plaintiff was an invitee and as such was owed the duty of reasonable care with respect to the condition of the premises. The court, having found that the plaintiff was entitled to protection against negligence, allowed recovery under

26. Woo Dak San v. State, 36 N.M. 53, 7 P. (2d) 940 (1931); Shipp v. State, 130 Tenn. 491, 127 S.W. 317 (1914).

27. Hernandez v. State, 43 Ariz. 424, 32 P. (2d) 18 (1934); Shaugnessy v. State, 43 Ariz. 445, 32 P.(2d) 337 (1937); State v.Brown, 342 Mo. 53, 112 S.W. (2d) 568 (1938).

28. 200 La. 808, 9 So. (2d) 42 (1942), commented on in (1943) 5 LOUISIANA LAW REVIEW 259.

29. 202 La. 167, 11 So. (2d) 518 (1942), commented on in (1943) 5 LOUISIANA LAW REVIEW 578.

30. 201 La. 857, 10 So.(2d) 681 (1942), commented on in (1943) 5 LOUISIANA LAW REVIEW 578.

31. Iles v. Flournoy, 202 La. 29, 11 So.(2d) 16 (1942).

the doctrine of res ipsa loquitur.[1] *Mercer v. Tremont & Gulf Railway Company,* 19 So. (2d) 270 (La. App. 1944).

It is generally held that one whose status is that of a licensee accepts the premises as he finds them and must be alert for his own safety. The only duty owed a licensee is that of warning him of dangerous conditions which are known to the occupier and which the licensee could not be expected to discover for himself.[2] On the other hand, the business guest, or invitee, as he is sometimes called, is entitled to assume that preparations for his safety have been made, and he is owed the duty of reasonable care with respect to the condition of the premises.[3] The distinction between these two classes of persons has been recognized on several occasions in Louisiana.[4]

There is considerable difference of opinion as to the basis of distinction between a licensee and invitee.[5] It is generally held that a business guest or invitee is one who comes upon the premises for a purpose in which both he and the occupier have some sort of business interest.[6] If this mutual interest exists, it is not important whether the business guest came at the suggestion or request of the defendant or entered upon his own initiative.[7] In the latter instance it is commonly said that the existence of the "invitation" is implied.[8] Conversely, if a person is upon the

1. Pizzitola v. Letellier Transfer Co., 167 So. 158 (La. App. 1936); Rome v. London and Lancashire Indemnity Co. of America, 169 So. 132 (La. App. 1936); Jones v. Shell Petroleum Corp., 185 La. 1067, 171 So. 447 (1936); Loprestie v. Roy Motors, Inc., 191 La. 239, 185 So. 11 (1938).

2. Restatement of the Law of Torts, §§ 340-343; Myers v. Gulf Public Service Corp., 15 La. App. 589, 132 So. 416 (1931).

3. Baucum v. Pine Woods Lumber Co., 130 La. 39, 57 So. 577 (1912).

4. Mills v. Heidingsfield, 192 So. 786 (La. App. 1939).

5. The Restatement of the Law of Torts, §§ 330-332 bases the difference on "business interest." Prosser, Business Visitors and Invitees (1942) 20 Can. Bar Rev. 357, 393: "When premises are thrown open to the public, the occupier assumes responsibility for their safe condition toward any member of the public who may enter for the purpose for which they are open, regardless of whether he brings with him the hope of profit or 'benefit.'

"When premises are not open to the public, the individual may still be entitled to protection if he enters under circumstances which give him reasonable assurance that care has been taken to make the place safe for his reception. Visits for the performance of contracts, and for other economic advantage to the occupier, usually are made upon such implied assurance.

"When premises are not open to the public, the individual is not entitled to protection where he does not enter under circumstances giving him reasonable assurance that the place has been made safe for him; and this is true whether or not he confers benefit upon the occupier."

6. Ibid.

7. Mills v. Heidingsfield, 192 So. 786 (La. App. 1939).

8. To come under an implied invitation, a visitor must come for a purpose connected with the business in which the occupant is engaged, or which he permits to be carried on, and there must be some mutuality of interest. Plaintiff who went to the railroad station to mail a letter was held to be invitee. Bell v. Houston and S. R. Co., 132 La. 88, 60 So. 1029 (1913).

premises of another for his own personal purposes, he is a licensee even though an express invitation may have been extended him by the defendant.[9] However, in border situations the existence of an invitation to enter business premises tends to indicate that the occupier considered the purpose of the visit as being in the interest of his business, while the absence of an invitation is persuasive of the fact that the plaintiff was a licensee.[10]

Cases in which the plaintiff enters the defendant's premises as a salesman or solicitor with only the hope of arousing the latter's interest in a business transaction have given the courts considerable trouble.[11] There is a tendency to regard such a person as an invitee only when the prospective business would be clearly advantageous to the occupier, as where the existence of previous dealings between them indicates a likelihood of interest by the defendant. Where, under these circumstances, the entry is onto non-business premises, the courts are generally reluctant to regard the plaintiff's purpose as one in which the occupier would have a business interest. Thus, where a prospective tenant was injured while on residential property which he had entered for the purpose of determining whether or not the premises may be available for his tenancy at a future date, the court refused recovery on the ground that the plaintiff's status was that of licensee.[12] In the principal case, although the premises were not generally open to the public, it is to be expected that the defendant should anticipate the presence not only of workmen but likewise of those having general business to transact with the railroad. Furthermore, newspaper advertising by railroads is a current practice, and it may be safely assumed that these companies consider it to be profitable. The decision is in line with the modern tendency to enlarge the group of persons classified as business guests. Narrow distinctions depending on the purpose of entry by the plaintiff are not only productive of confusion and uncertainty, but likewise encourage falsification of testimony.

The court, having held that the plaintiff was entitled to the exercise of reasonable care, properly applied the doctrine of res ipsa loquitur. This doctrine has frequently been employed in

9. Vargas v. Blue Seal Bottling Works, Ltd., 126 So. 707 (La. App. 1930).
10. Myers v. Gulf Public Service Corp., 15 La. App. 589, 132 So. 416 (1931).
11. Southwest Cotton Co. v. Pope, 25 Ariz. 364, 218 Pac. 152 (1923); Hartman v. Miller, 17 A.(2d) 652 (Pa. Super. 1941).
12. Mills v. Heidingsfield, 192 So. 786 (La. App. 1939).

Louisiana in the case of falling objects.[13] Its use, however, would clearly not be available if the plaintiff were a trespasser or a licensee.[14]

R. O.

13. In reference to falling objects, see Malone, Res Ipsa Loquitur and Proof by Inference—A Discussion of the Louisiana Cases (1941) 4 LOUISIANA LAW REVIEW 386; Lonatro v. Palace Theatre Co., 5 La. App. 386 (1926); Ramon v. Feitel House Wrecking Co., 17 La. App. 193, 134 So. 426 (1931); Pizzitola v. Letellier Transfer Co., Inc., 167 So. 158 (La. App. 1936).

14. Boyett v. Chicago R. I. and P. R. R., 123 La. 579, 49 So. 200 (1909).