Louisiana Law Review

Volume 15 | Number 1
Survey of 1954 Louisiana Legislation
December 1954

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Repository Citation
J. Bennett Johnston Jr., *Railroad Crossing Accidents in Louisiana*, 15 La. L. Rev. (1954)
Available at: https://digitalcommons.law.lsu.edu/lalrev/vol15/iss1/25

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Railroad Crossing Accidents in Louisiana

Louisiana does not impose strict liability in any form upon railroads for damage arising from the collision of trains with other vehicles at railroad crossings.[1] In order to establish railroad liability for such damage, the victim of the accident must show that the railroad was guilty of negligent conduct and that this negligence was the proximate cause as well as the cause in fact of the collision.[2] The mere occurrence of the accident raises no presumption that the railroad was negligent.[3]

Negligence of the Railroad

Railroads are charged with maintaining every public crossing in a safe condition by keeping the view of the crossing free of obstruction, by erecting the familiar stop signs, and, under certain conditions, by providing special warning devices. Moreover, trains must be operated in accordance with certain speed requirements and the operators of trains must sound specified warning signals as the trains approach crossings. Recovery is usually predicated upon the railroad's violation of one of these duties.

Physical condition of the crossing. A railroad is required by statute to construct the crossing so "as not to hinder, impede, or obstruct its safe and convenient use."[4] In collision cases, this duty has played a prominent role only where the victim claimed that his view of the crossing was unduly obstructed. The railroad's obligation to keep the view at crossings unobstructed requires affirmative action whenever it is necessary to render the crossing safe for ordinary use by persons exercising reasonable care.[5] Apparently, however, the railroads have had little diffi-

1. Lewis v. Thompson, 47 F. Supp. 435 (W.D. La. 1942); McClain v. Missouri Pac. R.R., 200 So. 57 (La. App. 1941); Bloxom v. Texas & Pac. Ry., 15 La. App. 467, 131 So. 520 (1930); Washington v. Yazoo & M.V.R.R., 11 La. App. 635, 124 So. 631 (1929).

2. Smith v. Texas & Pac. Ry., 189 So. 316 (La. App. 1939); Slayter v. Texas & Pac. Ry., 182 So. 343 (La. App. 1938). *Cf.* Henderson v. Missouri Pac. R.R., 15 La. App. 196, 131 So. 586 (1930).

3. Henwood v. Wallace, 159 F.2d 263 (5th Cir. 1947), *cert. denied*, 331 U.S. 820 (1947); Williams v. Thompson, 48 F. Supp. 760 (W.D. La. 1943); Lewis v. Thompson, 47 F. Supp. 435 (W.D. La. 1942); McClain v. Missouri Pac. R.R., 200 So. 57 (La. App. 1941); Washington v. Yazoo & M.V.R.R., 11 La. App. 635, 124 So. 631 (1929).

4. LA. R.S. 45:324 (1950).

5. Bahry v. Illinois Cent. Ry., 13 So.2d 78 (La. App. 1943); Homeland Ins. Co. v. Thompson, 12 So.2d 62 (La. App. 1943).

culty discharging this duty,[6] and recoveries based on its violation have been infrequent.

No obstruction to view at a crossing will result in railroad liability if a driver operating a vehicle at a reasonable speed has space in which to stop after clearing the obstruction.[7] Even if obstructions to view make the crossing unsafe, the railroad may escape liability by showing that its trainmen exercised special care commensurate with the increased danger, as by reducing speed or giving added warnings.[8] Moreover, even if the trainmen have failed to exercise this additional care, the railroad might successfully contend that such increased danger requires a higher degree of care of those approaching the crossing.[9] By demanding this greater care of the public, the courts have gone to seemingly unwarranted lengths. However, when conditions at the crossing set a virtual "death trap" the courts tend to disregard plaintiff's failure to exercise this special care.[10]

Stop signs. Railroads are required by statute to erect the familiar "Louisiana Law Stop" signs at all public crossings.[11] Although failure to do so constitutes negligence,[12] one court has refused to find negligence where, because of the physical conditions at the crossing, literal compliance with the provisions regarding placement of signs was impracticable and the railroad had in good faith tried to comply with the act.[13]

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6. Stelly v. Texas & N.O.R.R., 49 So.2d 640 (La. App. 1950) (weeds not tall enough to be obstruction); Hutchinson v. Texas & N.O.R.R., 33 So.2d 139 (La. App. 1947) (view obscured by bushes and telephone poles up to 10 or 12 feet of the tracks); McClain v. Missouri Pac. R.R., 200 So. 57 (La. App. 1941) (maintenance of "passable" crossing not negligence); Banfield v. Louisiana Ry. & Nav. Co., 137 So. 571 (La. App. 1931) (at 25 feet from the crossing the driver could see 30 to 40 feet up the track; this was regarded as an "ample opportunity to see a train"); Young v. Louisiana Western R.R., 153 La. 129, 95 So. 511 (1923) (36 feet unobstructed view ample).

7. Perrin v. New Orleans Terminal Co., 140 La. 818, 74 So. 160 (1917).

8. Rachal v. Texas & Pac. Ry., 61 So.2d 525 (La. App. 1952); Smith v. Texas & Pac. Ry., 189 So. 316 (La. App. 1939), Wyatt v. Yazoo & M.V.R.R., 13 La. App. 632, 127 So. 479 (1930).

9. Calvert Fire Ins. Co. v. Texas & Pac. Ry., 55 So.2d 693 (La. App. 1951); Allen v. Texas & Pac. Ry., 96 F. Supp. 520 (W.D. La. 1951); Stelly v. Texas & N.O.R.R., 49 So.2d 640 (La. App. 1950); Teston v. Thompson, 77 F. Supp. 823 (W.D. La. 1948); Hutchinson v. Texas & N.O.R.R., 33 So.2d 139 (La. App. 1947); Lewis v. Thompson, 47 F. Supp. 435 (W.D. La. 1942); Perrin v. New Orleans Terminal Co., 140 La. 818, 74 So. 160 (1917).

10. Draiss v. Payne, 158 La. 652, 658, 104 So. 487, 489 (1925) ("a railroad company cannot be permitted to set a trap for the traveler"); *cf.* Williams v. Thompson, 48 F. Supp. 760, 764 (W.D. La. 1943) ("so-called 'death trap' doctrine").

11. LA. R.S. 45:562 (1950).

12. Grappe v. Texas & Pac. Ry., 16 La. App. 244, 133 So. 802 (1931).

13. Williams v. Thompson, 48 F. Supp. 760 (W.D. La. 1943).

Warning devices: The presence or absence of special warnings at the crossing, such as gates, flagmen, or automatic signals, has been an important factor in determining railroad liability in crossing accident cases. Proof of their presence and proper functioning lends weight to a defense of contributory negligence.[14] No case of recovery from a railroad was found where these warning devices were functioning properly. The railroads are required to furnish such warnings only where local ordinances so provide or where the location of the crossing and surrounding conditions present extraordinary dangers.[15] Thus, these warnings are not required at open country crossings in sparsely settled rural areas[16] or at crossings where heavy traffic or dense population presents no unusual dangers.[17] On the other hand, when heavily traveled crossings are especially hazardous, or when visibility is so poor as to conceal railroad signs, then the railroad's failure to provide flagmen or warning signals may constitute negligence.[18] Since faster highway travel and congested traffic conditions tend to increase the danger at grade crossings, it would seem that failure to provide warning devices at crossings will become a more frequent source of liability unless railroads take steps to meet the increased dangers.

Once gates or automatic signals have been provided at a crossing, failure to maintain them in proper working order is clearly negligence.[19] The public has learned to rely on these warning signals; consequently, the courts have dealt lightly with the defense of contributory negligence where plaintiff has been deceived by his reliance on a faulty signal.[20]

14. Teston v. Thompson, 77 F. Supp. 823 (W.D. La. 1948); Levy v. New Orleans & N.E.R.R., 20 So.2d 559 (La. App. 1945).

15. Eggleston v. La. & Ark. Ry., 192 So. 774 (La. App. 1939); Natal v. La. & Ark. Ry., 18 La. App. 50, 137 So. 600 (1931); Washington v. Yazoo & M.V.R.R., 11 La. App. 635, 124 So. 631 (1929); Smith v. La. & Ark. Ry., 10 La. App. 502, 120 So. 669 (1929). Although it is not a settled point of law, there is authority for the admissibility of the safety history (or evidence of dangerous nature) of a crossing in proving its dangerous condition and the railroad's knowledge thereof. Jones v. Texas & Pac. Ry., 154 So. 768 (La. App. 1934); *cf.* Rachal v. Texas & Pac. Ry., 61 So.2d 525 (La. App. 1952). See Lee, *Proof of Safety History in Railroad Crossing Accidents*, 28 TEXAS L. REV. 76-89 (1949). See also Morris, *Proof of Safety History in Negligence Cases*, 61 HARV. L. REV. 205 (1948).

16. Alanza v. Texas & Pac. Ry., 32 So.2d 341 (La. App. 1947); Williams v. Thompson, 48 F. Supp. 760 (W.D. La. 1943).

17. Eggleston v. La. & Ark. Ry., 192 So. 774 (La. App. 1939).

18. Martin v. Yazoo & M.R.R., 181 So. 571 (La. App. 1938).

19. McLellan v. New Orleans & N.E.R.R., 127 So. 648 (La. App. 1930) (gates broken); Dardenne v. Texas & Pac. Ry., 127 So. 458 (La. App. 1930) (wig-wag signal broken); Clements v. Texas & Pac. Ry., 148 La. 1050, 88 So. 394 (1921) (gates broken).

20. McLellan v. New Orleans & N.E.R.R., 127 So. 648 (La. App. 1930)

Speed of the train. The plaintiff in crossing accident cases frequently seeks to establish the negligence of the railroad by showing that the train was operated at an unreasonable speed at the time of the accident. An efficient transportation system demands swift rail travel; consequently, negligence is not inferred from the speed at which a train is operated in open country so long as the speed is consistent with the train's own safety.[21] Trainmen are therefore not required to reduce the speed of the train at rural crossings.[22] Moreover, although trainmen must take safety precautions commensurate with the dangerous character of each crossing,[23] they need not maintain a speed enabling them to stop within the range of their vision,[24] as drivers of automobiles are required to do. Thus, trains may be operated at normal speeds when visibility is poor, as, for instance, under rainy or foggy weather conditions.[25]

The peculiar facts of each case govern the determination of whether or not the speed at which a train was operated makes the railroad guilty of negligence. The violation of local speed ordinances clearly constitutes negligence,[26] as does the infraction of the railroad's own speed regulations when established in the interest of safety.[27]

In order to recover, plaintiff must show, not only that train-

(raising of gates considered "invitation to cross"); Clements v. Texas & Pac. Ry., 148 La. 1050, 88 So. 394 (1921). *But cf.* Dardenne v. Texas & Pac. Ry., 127 So. 458 (La. App. 1930). The provisions of LA. R.S. 45:563 (1950), requiring a driver to stop within 10 to 50 feet of a crossing, are not applicable where the crossing is provided with gates or flagmen. The *Dardenne* case held that wig-wag signals do not come within this exemption. In this case the driver was held contributorily negligent notwithstanding the broken signal. Under this decision the failure of the wig-wag to operate does not constitute an "invitation to proceed."

21. Guidry v. Texas & N.O.R.R., 56 So.2d 611 (La. App. 1952); Winfiele v. Texas & Pac. Ry., 150 So. 43 (La. App. 1933); Jeter v. Texas & Pac. Ry., 149 So. 144 (La. App. 1933); Franklin v. Louisiana & Ark. Ry., 10 La. App. 526, 120 So. 679 (1929); *accord*: Moody v. Texas & Pac. Ry., 37 So.2d 346 (La. App. 1948).

22. Guidry v. Texas & N.O.R.R., 20 So.2d 637 (La. App. 1945); Winfiele v. Texas & Pac. Ry., 150 So. 43 (La. App. 1933); Franklin v. Louisiana & Ark. Ry., 10 La. App. 526, 120 So. 679 (1929).

23. Rachal v. Texas & Pac. Ry., 61 So.2d 525 (La. App. 1952); Smith v. Texas & Pac. Ry., 189 So. 316 (La. App. 1939); Wyatt v. Yazoo & M.V.R.R., 13 La. App. 632, 127 So. 479 (1930).

24. Homeland Ins. Co. v. Thompson, 12 So.2d 62 (La. App. 1943); Jeter v. Texas & Pac. R.R., 149 So. 144 (La. App. 1933); *cf.* Cruse v. Thompson, 36 So.2d 735 (La. App. 1948).

25. Homeland Ins. Co. v. Thompson, 12 So.2d 62 (La. App. 1943); Jeter v. Texas & Pac. Ry., 149 So. 144 (La. App. 1933).

26. Illinois Cent. R.R. v. Aucoin, 195 F.2d 983 (5th Cir. 1952); Broussard v. Louisiana Western R.R., 140 La. 517, 73 So. 606 (1916).

27. Levy v. New Orleans & N.E.R.R., 20 So.2d 559 (La. App. 1945); Broussard v. Louisiana Western R.R., 140 La. 517, 73 So. 606 (1916).

men maintained excessive speeds, but also that the excessive speed was at least a contributing cause of the crossing accident.[28] The difficulty of finding this causal relationship was aptly expressed in *Levy v. New Orleans & Northeastern R.R.*[29]: "Had the speed of the train not exceeded the limit fixed by the rules, who can say that the accident might not have been averted?" Where the jury is employed, the question of cause is for them to determine.

The sounding of bells, whistles, and horns. Railroads are under a statutory duty to provide each locomotive with a bell and either a whistle or horn "which, under normal conditions, can be heard at a distance of three hundred yards. . . ."[30] Trainmen must ring the bell and sound the whistle or horn in a specified manner at a distance of three hundred yards from the crossing and continue the signals until the crossing is reached.[31] The courts have regarded the statutory distance as a minimum safety standard and have required that the signals be given within an effective distance in all cases, even if this distance exceeds the prescribed three hundred yards.[32] Although both signals need not be sounded together, one or the other must be sounded continuously.[33] Violation of this statutory duty has been called negligence *per se*[34] and gross negligence.[35]

The most difficult problem arising under this statute is one of proof. The victim and his witnesses almost invariably deny having heard the signal and the trainmen "swear to the statute." Moreover, persons living in the vicinity of railroad crossings are so accustomed to the sounds of train signals that they may fail to notice them. Their testimony is therefore regarded as having little value in establishing that a warning signal was not given[36]

28. Alanza v. Texas & Pac. Ry., 32 So.2d 341 (La. App. 1947).
29. 20 So.2d 559, 564 (La. App. 1945).
30. LA. R.S. 45:561 (1950), as amended by La. Acts 1954, No. 395. The amendment does not change the substance of the duty existing previously under La. Acts 1924, No. 12, § 1, p. 16.
31. LA. R.S. 45:561 (1950).
32. Smith v. Texas & Pac. Ry., 189 So. 316 (La. App. 1939).
33. Wright v. Texas & N.O.R.R., 19 So.2d 894 (La. App. 1944), *rehearing denied*, 20 So.2d 558 (La. App. 1945).
34. Smith v. Texas & Pac. Ry., 189 So. 316 (La. App. 1939); Henderson v. Missouri Pac. R.R., 15 La. App. 196, 131 So. 586 (1930).
35. Guidry v. Texas & N.O.R.R., 20 So.2d 637 (La. App. 1945).
36. Hutchinson v. Texas & N.O.R.R., 33 So.2d 139 (La. App. 1947); Handy v. New Orleans Public Service, 10 La. App. 72, 120 So. 271 (1929); Bihm v. New Orleans & Mexico R.R., 6 La. App. 655 (1927).

but is accorded greater weight when used to establish that the signal was given.[37]

Contributory Negligence

The degree of care which a driver of a vehicle must exercise when approaching a crossing is set forth in two statutes relating to the duty to "stop, look, and listen." Louisiana Revised Statutes 45:563, which re-enacts a 1924 statute,[38] provides that violation of the duty to stop, look, and listen at railroad crossings "shall not affect recovery for damages and the question of negligence or violation shall be left to the jury." The other statute, R.S. 32:243, requires the driver of an automobile at a crossing to stop "at such a place, in such manner and for a sufficient period of time to enable the driver . . . to observe the approach of trains . . . by looking . . . and by listening . . . before proceeding. . . ." It further provides that if drivers find compliance impossible, then they "shall proceed only with the greatest caution and *at their peril.*" (Italics supplied.) The latter provision strongly suggests a legislative purpose of relieving railroads of all liability in crossing collision cases. However, in *Robertson v. Missouri Pac. R.R.* (1936)[39] the court held that the 1932 act[40] from which this provision is derived was merely declarative of the law as it existed under the 1924 act. This decision has been consistently followed; yet there exists considerable support for the contrary view. In 1927, the Supreme Court of the United States, speaking through Mr. Justice Holmes, prescribed a standard of care requiring a driver to "get out of his vehicle" if it is otherwise impossible to ascertain the approach of a train.[41] Apparently in response to this famous decision, the Louisiana legislature enacted the statute of 1932 and adopted almost verbatim the standard announced by Mr. Justice Holmes—drivers who do not stop, proceed "at their peril." The refusal of the courts to give effect to the clear purpose of the statute would seem to indicate a desire on their part to protect the public from the hazards created by railway transportation. This refusal has left the standard of care required of drivers to be determined by the 1924 act, incorporated in R.S. 45:563.

37. Bloxom v. Texas & Pac. Ry., 15 La. App. 467, 131 So. 520 (1930); Handy v. New Orleans Public Service, 10 La. App. 72, 120 So. 271 (1929).

38. La. Acts 1924, No. 12, p. 16.

39. 165 So. 527, 530 (La. App. 1936); *accord*: Henwood v. Wallace, 159 F.2d 263 (5th Cir. 1947).

40. La. Acts 1932, No. 21, p. 162, substantially re-enacted by La. Acts 1938, No. 286, p. 708.

41. Baltimore & Ohio R.R. v. Goodman, 275 U.S. 66, 70 (1927).

Contributory negligence presents a particularly difficult question in crossing accident cases, because the reasonableness of plaintiff's conduct depends largely upon the conduct of the railroad's employees. For example, the care required of the driver of an automobile approaching a crossing varies with the presence or absence at the crossing of automatic signals, gates, or watchmen.[42] The driver's duty is also affected by his familiarity with the crossing and his knowledge of its dangers.[43] Similarly, the care required of the driver increases with the difficulty of seeing or hearing approaching trains.[44]

Usually, the momentum of a moving train is too great for it to stop in the few moments between the time at which a careful trainman could appreciate plaintiff's peril and the time of the train's arrival at the crossing.[45] For this reason, plaintiffs have had little success invoking the doctrine of last clear chance against a defense of contributory negligence in crossing collision cases.

J. Bennett Johnston, Jr.

Substantive Due Process of Law and Civil Liberties

In recent years, the Supreme Court of the United States has seemed increasingly willing to accord state legislation in the field of civil liberties the same presumption of validity enjoyed by state economic regulation.

Until the early 1930's, the Court frequently considered state legislation regulating business activity repugnant to the Due Process Clause of the Fourteenth Amendment. For instance, state regulation of prices charged by businesses not "affected with a public interest" was regarded as depriving persons engaged in such businesses of their property without due process of law.[1]

42. Levy v. New Orleans & N.E.R.R., 20 So.2d 559 (La. App. 1945).

43. Stelly v. Texas & N.O.R.R., 49 So.2d 640 (La. App. 1950); Butler v. Chicago, R.I. & P. Ry., 46 F. Supp. 905 (W.D. La. 1942), *aff'd*, 141 F.2d 492 (5th Cir. 1944); *accord*, O'Connor v. Chicago, R.I. & P. Ry., 40 So.2d 663 (La. App. 1949); Ashy v. Missouri Pac. R.R., 186 So. 395 (La. App. 1939).

44. See note 9 *supra*.

45. Matthews v. New Orleans Terminal Co., 45 So.2d 547 (La. App. 1950); Teston v. Thompson, 77 F. Supp. 823 (W.D. La. 1948); Levy v. New Orleans & N.E.R.R., 20 So.2d 559 (La. App. 1945); McClain v. Missouri Pac. R.R., 200 So. 57 (La. App. 1941); Washington v. Yazoo & M.V.R.R., 11 La. App. 635, 124 So. 631 (1929).

1. See, *e.g.*, Ribnik v. McBride, 277 U.S. 350 (1928); Tyson & Bros. v. Banton, 273 U.S. 418 (1927).