Volume 51
Issue 4 *Dickinson Law Review - Volume 51, 1946-1947*

6-1-1947

Look and Continue to Look

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Dickinson Law Review

Published October, January, March and June by Dickinson Law Students

Vol. LI JUNE, 1947 NUMBER 4

Subscription Price $2.00 Per Annum 75 Cents Per Number

NOTES

LOOK AND CONTINUE TO LOOK

Two recent opinions, handed down by our Supreme Court on the same day, involved the question as to whether the failure to continue to look for approaching vehicles is contributory negligence as a matter of law or a question of fact for the jury.

In *Halkias v. Lakjer,* 355 Pa. 422 (1947), 50 A. 2d 286, the lower court was reversed for entering judgment for defendant notwithstanding a jury's verdict for the plaintiff, while in *Rucheski v. Wisswesser,* 355 Pa. 400 (1947), 50 A. 2d 291, the action of the court below in directing a verdict for defendant was affirmed. In both cases the lower courts had held the plaintiffs guilty of contributory negligence as a matter of law.

In the former case the plaintiff looked in all directions before starting to cross the street, Spruce Street in Philadelphia, and no traffic was in sight on this street. He was at the corner of 59th Street and he saw three cars approaching him on this street. Before these cars had passed through the intersection plaintiff started across Spruce Street. After advancing only seven or eight feet from the curb, plaintiff was struck by defendant's car travelling on Spruce Street from behind the traffic on 59th Street.

The Supreme Court held that the striking of the plaintiff was not so immediate upon his entering the crossing as to furnish a "legally conclusive inference" that, before he stepped down from the curb, he should have seen the car which struck him. The defendant's car was hidden from plaintiff's view by the line of cars on 59th Street. It was accordingly held that the question of plaintiff's contributory negligence was "clearly for the jury," both in attempting to cross Spruce Street at all under such circumstances and as to the care exercised while crossing.

Conceding that a pedestrian must continue to look out for his own safety as he proceeds across a street, it was held that "once properly committed to the crossing, the care which the plaintiff thereafter exercised in proceeding under necessarily varying conditions, was essentially a question of fact for a jury to determine," citing the following cases: *Atkinson v. Coskey,* 354 Pa. 297, 307, 47 A. 2d 156; *Pensak v. Peerless Oil Co.,* 311 Pa. 207, 209, 166 A. 792; *Rosenthal v. Phila. Phonograph Co.,* 274 Pa. 236, 117 A. 790; *Jacobson v Palma,* 115 Pa. Super, 401, 404, 175 A. 731.

In the second of the cases decided the same day the plaintiff looked for traffic on Ridge Avenue, saw none "although he looked in both directions and twice to the north," the direction from which defendant's car came. Because plaintiff testified he "never saw the car" that hit him, though he had advanced exactly the same number of steps from the curb that the plaintiff had advanced in the *Halkias* case before being struck, a directed verdict for defendant was held proper.

In the first of these cases plaintiff was attempting to cross a street at an intersection. In the second one, plaintiff attempted to cross a street sixty-two feet from an intersection. This latter fact was held to require the exercise of a higher degree of care than that which the law requires when one crosses at an interesection.

In the second case the plaintiff was a "paralytic since birth, walked with a slight limp and used a cane to assist him." In the first case the plaintiff had no such handicap but judgment was directed to be entered on the jury's verdict in his favor.

In the first case plaintiff started to cross Spruce Street when he saw a line of cars approaching on 59th Street, any one of which might have turned into Spruce Street and, as it turned out, plaintiff's view of traffic on Spruce Street was interrupted while these cars were passing him on 59th Street. Whether starting to cross under these conditions was negligence was held to be a question for the jury.

In the second case the plaintiff started to cross Ridge Avenue at a point sixty-two feet south of the nearest intersection at a time when the traffic light was red as to traffic on Ridge Avenue. However, he "saw no vehicles on Ridge Avenue although he looked in both directions." He could see one hundred and seventy-five feet beyond the red light, at which point Ridge Avenue turned, so as to conceal any cars approaching beyond the turn. Plaintiff's admission that he never saw the car that struck him convicted him of a failure to continue to look and "he will not be heard to say that he looked without seeing what was approaching and plainly visible." *Guy v. Lane,* 345 Pa. 40, 43, 26 A 2d 327, 328. This rule was held to justify the directed verdict for defendant.

In the second case the Court cites *Morris v. Harmony Transportation Co.,* 348 Pa. 117, 34 A. 2d 534, with approval and this case follows *Hamilton v. Moore,* 335 P. 433, 6 A. 2d 787 in holding that "a pedestrian traversing a highway not at an intersection or regular crossing is not negligent as a matter of law." One has a right to cross a street at whatever point he may desire but he must have regard for traffic *"before he starts to cross."* This the plaintiff concededly did. The factual difference between the two cases appears to be that in the one case plaintiff explained why he had not seen the car that hit him, while in the other he failed to do so.

To show that the first case was one "clearly for the jury" the court cites *Rosenthal v. Phila. Phonograph Co.,* 274 Pa. 236, 239, 117 A. 790 and *Jacobson v. Palma,* 115 Pa. Super. 401, 404, 175 A. 731. In the first of these cases the plaintiff "looked on all sides and saw no car approaching." He was struck at a crossing when he had advanced only three steps. It was held that "plaintiff had committed himself to the crossing, and had the right to believe passing vehicles would have due regard for the safety of those moving forward," and that therefore the question of contributory negligence was for the jury, conceding that, had plaintiff stepped "directly in front of a moving vehicle," a directed verdict would have been proper. This case followed *Anderson v. Wood,* 264 Pa. 98, where, as in the *Rucheski* case, plaintiff attempted to cross between intersections, but it did not appear whether he looked to the right or left after he started to cross the street.

Justice Jones, who wrote the opinion in the *Halkias* case, refers also to an earlier opinion of his in *Atkinson v. Coskey,* supra, in which he had said:

> "Once thus committed to the crossing, the care he thereafter exercised in proceeding involved a question of fact which was for the jury to determine even if Atkinson was traversing the street at a point other than a regular crossing: Cf. *Anderson v. Wood,* supra. This is not a case of a pedestrian being struck upon stepping down from the curb."

In the *Pensak* case, supra, plaintiff himself testified that he was not aware of the truck until it was upon him but since he had proceeded some ten or twelve

feet before he was struck, the rule was applied that when one has properly committed himself to a crossing the question of his contributory negligence thereafter is one for the jury.

Guy v. Lane, supra, the case held to rule the *Rucheski,* case, was a four to three decision and contains a strong dissenting opinion by Justice Stern, in which Justices Maxey and Patterson concurred. Though plaintiff admitted he did not see the car "at all until I was struck," Justice Stern points out that this could be accounted for if the accident happened in either of two ways in which it may have happened and that "at least the question was for the jury," citing *Harrington v. Pugarelli,* 344 Pa. 204, 25 A. 2d 149. This case held that when a pedestrian is invited to cross a street, at a regular intersection, by a favorable traffic signal and is struck by an automobile *after he is fully committed to the crossing, the question whether the pedestrian should have looked again* or was warranted in assuming that he could cross in safety depends upon shifting conditions, and *presents a question of fact rather than of law,* on the issue of contributory negligence.

The recent opinions by Justice Jones would seem to add him to the group which opposes the entry of directed verdicts or judgments n.o.v. wherever the evidence indicated a failure to "continue to look." However, only a very bold man would predict what will be done in each case as it comes before the Court.

In *Cunningham v. Spangler,* 123 Pa. Super. 151, 186 A. 175, it is said:

> "The rule that plaintiff must 'look and continue to look' does not require something humanly impossible; nor is it a rule requiring observance with universal uniformity or with mathematical precision."

The Superior Court has repeatedly quoted this statement with approval. That the rule should not be applied, if there was something which distracted plaintiff's attention and this explains why he did not see the car of defendant until hit, is indicated in *Ross v. Pittsburgh Motor Coach Co.,* 156 Pa. Super. 45, 39 A. 2d 148, 150.

One is certainly negligent if he fails to look where he is going. A lame man, such as the plaintiff in the *Rucheski* case, must give some attention to where he sets his feet, if he is to avoid falling. Holes in the street may demand his attention and he may readily be struck by a rapidly approaching car while looking downward.

Hoffman v. George, 155 Pa. Super. 501, 38 A. 2d 504, quotes *Cunningham v. Spangler* with approval and notes that the rule is not to be invoked unless it is clear that the plaintiff's failure to see defendant's car was a contributing cause of the accident.

It is submitted that the power to direct verdicts in this type of cases should be sparingly exercised.

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