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Florida's Standing Train Doctrine: A Transition

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NOTES

FLORIDA'S STANDING TRAIN DOCTRINE: A TRANSITION

Mr. Justice Holmes once expressed the philosophy that when a standard of conduct is clearly needed "it should be laid down once for all by the Courts."[1] Under this philosophy courts established rigid rules of law defining certain standards of conduct for judicial application, and a subsequent plaintiff falling below the defined standard of conduct would be barred from recovery irrespective of the degree of his negligence or the extraordinary circumstances of his case. Such was the status of the doctrine applicable to standing train-motor vehicle accidents in Florida prior to 1951. Since that time this doctrine has undergone a transition. The purpose of this note is to trace that transition and to ascertain the current status of the law.

CHANGES IN STATUTORY INTERPRETATION

In 1877 the Florida Legislature attempted to alleviate the harshness of the rule of contributory negligence in accidents involving railroads by providing:[2]

> "A railroad company shall be liable for any damage done . . . by the running of the locomotives, or cars . . . unless the company shall make it appear that their agents have exercised all ordinary and reasonable care and diligence, the presumption in all cases being against the company."

This presumption arises by allegation and proof that the plaintiff was injured, that the injury was caused by the defendant railroad, and that as a result of the injury damages were sustained.[3] If, however, any material evidence is offered by the railroad tending to show reasonable care the presumption vanishes.[4] The latter interpretation

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

[2]FLA. STAT. §768.05 (1953).

[3]Atlantic C.L. R.R. v. Watkins, 97 Fla. 350, 121 So. 95 (1929); Seaboard A.L. Ry. v. Myrick, 91 Fla. 918, 109 So. 193 (1926).

[4]*E.g.*, Atlantic C.L. R.R. v. Price, 46 So.2d 481 (Fla. 1950); Powell v. American

of the statute is essential to prevent a violation of due process under the United States Constitution.[5] In fact, the Florida Supreme Court has held that after evidence of care is offered it is prejudicial error if the court makes any reference to the presumption in the charge to the jury.[6]

The word "running" has previously been interpreted to include only physical movement or action on the part of the locomotives or cars and not the general operation of the railroad;[7] therefore no presumption of negligence resulted from a collision involving a standing train.[8] This view appeared to be qualified when the Florida Court held in *Brown v. Loftin*[9] that whether moving or stationary "the train was being operated within the meaning of the statute." The facts, however, showed that the automobile collided with the seventeenth car of a moving freight train, which made dictum of the Court's statement concerning stationary trains; the presumption of negligence statute had always been applied to accidents involving moving trains.

The Florida Court has recently reconsidered the problem in *Horton v. Louisville and Nashville R.R.*,[10] in which the plaintiff's son drove underneath defendant's freight train while riding on a motor scooter late at night. At the time of the collision the train was stationary; but immediately thereafter the train began moving, dragging the plaintiff's son to his death. Without characterizing the train as moving or stationary at the time of the injury, the Court held that the presumption of negligence statute applied, stating that stopping, starting, running, and leaving the train standing on the grade crossing are acts of the railroad employees done in the "running or operation"

Sumatra Tob. Co., 154 Fla. 227, 17 So.2d 391 (1944); Roberts v. Powell, 137 Fla. 159, 187 So. 766 (1939); Atlantic C.L. R.R. v. Voss, 136 Fla. 32, 186 So. 199 (1939).

[5]Stringfellow v. Atlantic C.L. R.R., 290 U.S. 322 (1933), avoiding the rule of Western & A. Ry. v. Henderson, 279 U.S. 639 (1929); see Legis., 2 U. OF FLA. L. REV. 124, 126 (1949).

[6]Seaboard A.L. Ry. v. Bailey, 190 F.2d 812 (5th Cir. 1951); Powell v. American Sumatra Tob. Co., *supra* note 4; Atlantic C.L. R.R. v. Voss, *supra* note 4.

[7]*E.g.*, Tampa Elec. Co. v. Soule, 84 Fla. 557, 94 So. 692 (1922); Atlantic C.L. R.R. v. McCormick, 59 Fla. 121, 52 So. 712 (1910).

[8]Good v. Atlantic C.L. R.R., 142 F.2d 46 (5th Cir. 1944); Martin v. Kenan, 145 Fla. 488, 199 So. 919 (1941); Clark v. Atlantic C.L. R.R., 141 Fla. 155, 192 So. 621 (1939); Cline v. Powell, 141 Fla. 119, 192 So. 628 (1939); Rayam v. Atlantic C.L. R.R., 119 Fla. 386, 161 So. 415 (1935).

[9]154 Fla. 621, 18 So.2d 540 (1944).

[10]61 So.2d 406 (Fla. 1952).

of the train.[11] This decision has apparently extended the scope of the word "running" to include "operation of trains." Under this interpretation it is immaterial whether the train is moving or stationary at the time of the collision.

In addition to the presumption of negligence statute the Florida Legislature provided further:[12]

> "If the plaintiff and the agents of the [railroad] company are both at fault, the former may recover, but the amount of recovery shall be such a proportion of the entire damages sustained, as the defendant's negligence bears to the combined negligence of both the plaintiff and the defendant."

This statute permitting recovery by the negligent plaintiff has been construed as applicable only concurrently with the presumption of negligence statute.[13] Therefore, although the wording of the comparative negligence statute does not specifically limit recovery to accidents involving the "running" of the train, this result has been reached by the concurrent application of this statute with the presumption of negligence statute.[14] Thus the *Horton* case apparently extended both statutes to include all accidents involving the operation of trains, stationary or moving. This position is supported by the very recent decision of *Atlantic Coast Line R.R. v. Johnston*.[15]

Development of Standing Train Doctrine

Closely associated with, but distinguishable from, the two statutes is the standing train doctrine: In a collision with a standing train the mere presence of the train upon a crossing gives sufficient notice to make the plaintiff's act of running into the train the sole proximate

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[11] *Id.* at 411.

[12] Fla. Stat. §768.06 (1953).

[13] Atlantic C.L. R.R. v. Webb, 112 Fla. 449, 150 So. 741 (1933); see Legis., 2 U. of Fla. L. Rev. 124, 125 (1949). The acts were passed simultaneously and have always been considered as one act regulating a single restricted subject matter.

[14] Atlantic C.L. R.R. v. Webb, *supra* note 13; Florida E.C. Ry. v. Johnson, 70 Fla. 422, 70 So. 397 (1915); Seaboard A.L. Ry. v. Rentz, 60 Fla. 449, 54 So. 20 (1910); Atlantic C.L. R.R. v. McCormick, *supra* note 7.

[15] 74 So.2d 689 (Fla. 1954). Although the Court did not mention the application of the presumption of negligence statute, inspection of appellee's brief (pp. 6, 7) reveals that the statue did apply and that the question was argued as to whether the evidence presented by the railroad met the rebuttable presumption.

cause of the accident.[16] Under this doctrine the railroad has a right to assume that motorists will drive at such a rate of speed as will enable them to see the train in time to prevent a collision.[17] This reasoning evolved in *Stowers v. Atlantic Coast Line R.R.*[18] and subsequent Florida cases[19] as an analogy to *Key West Electric Co. v. Albury*.[20] In *Key West Electric* the defendant trolley company left several rails alongside the street at night, unguarded and without flares, over which the plaintiff tripped. The Florida Court held that through the exercise of ordinary care the existence of the rails would have been discovered and the accident would not have resulted; thus there was no causal connection between the defendant's negligence and the plaintiff's injury.

Most courts have qualified the doctrine to allow recovery if the company fails to take reasonable precautions when conditions at the crossing are usually hazardous.[21] In the past the Florida Court has extended the doctrine, denying recovery even when a dark and foggy atmosphere made visibility poor[22] or when the incline of the road prevented the car lights from revealing the train.[23] In these cases the Court reasoned that "the train remaining stationary on the crossing, ipso facto, could not be the proximate cause of the injury."[24] Also the doctrine has been held to include moving trains when the collision took place after the train had occupied the crossing for

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[16]*Eg.*, Good v. Atlantic C.L. R.R., *supra* note 8; Smith v. Brumley, 88 F.2d 803 (10th Cir. 1937); Clark v. Atlantic C.L. R.R., 141 Fla. 155, 192 So. 621 (1939); Kimball v. Atlantic C.L. R.R., 132 Fla. 235, 181 So. 533 (1939); Bowen v. Great N. R.R., 65 N.D. 384, 259 N.W. 99 (1935). *Contra:* Hendrickson v. Union Pac. R.R., 17 Wash.2d 548, 136 P.2d 438 (1943).

[17]Thompson v. Stevens, 106 F.2d 739 (8th Cir. 1939); Megan v. Stevens, 91 F.2d 419 (8th Cir. 1937); Pennsylvania R.R. v. Dillon, 31 Del. 247, 114 Atl. 62 (1921); Clark v. Atlantic C.L. R.R., *supra* note 16.

[18]106 Fla. 102, 142 So. 882 (1932).

[19]Clark v. Atlantic C.L. R.R., *supra* note 16; Kimball v. Atlantic C.L. R.R. *supra* note 16.

[20]91 Fla. 695, 109 So. 223 (1926).

[21]*E.g.*, Flagg v. Chicago, G.W. R.R., 143 F.2d 90 (8th Cir. 1944); Norfolk Sou. R.R. v. Swindell, 139 F.2d 71 (4th Cir. 1943); Holt v. Thompson, 115 F.2d 1013 (10th Cir. 1940); Crapse v. Southern Ry., 201 S.C. 176, 21 S.E.2d 737 (1942); see Note 161 A.L.R. 111 (1946).

[22]Cline v. Powell, 141 Fla. 119, 192 So. 628 (1939); Clark v. Atlantic C.L. R.R., *supra* note 16; Kimball v. Atlantic C.L. R.R., *infra* note 24.

[23]Bray v. Atlantic C.L. R.R., 153 Fla. 619, 15 So.2d 417 (1943); Kimball v. Atlantic C.L. R.R., *infra* note 24.

[24]Kimball v. Atlantic C.L. R.R., 132 Fla. 235, 181 So. 533 (1938).

a considerable time[25] but not to include a simultaneous approach when the train occupied the intersection only a few seconds before the accident.[26]

This established doctrine, together with the presumption of negligence statute, was re-examined in the *Horton* case. After holding that, moving or stationary, the "operation" of the train raised a presumption of negligence, the Court refused to hold as a matter of law that the sole proximate cause of the collision was the act of the plaintiff's son in running into the side of the train. Instead the Court stated that the standing train doctrine should not be indiscriminately applied in every collision involving standing trains. Indiscriminate application, it pointed out, impinges upon the provisions of the presumption of negligence and comparative negligence statutes.

The federal case of *Atlanta & St. Andrews Bay Ry. v. Church*[27] contains a recent construction of Florida's position. Testimony showed that[28]

> ". . . the road was not straight but curving, that there was a dip in the roadway, that the headlights did not light up the train until the car came out of the dip, and that [the] pavement and standing cars were black and unlighted."

The standing train doctrine was held not applicable under these conditions. The court stated that the special circumstances surrounding the accident and the stopping and standing of the train were sufficient grounds for the jury to find negligence, thus preventing a directed verdict under the orthodox doctrine. This view has been accepted by the Florida Court in its most recent interpretation of the Florida position.[29] This qualification of the doctrine is indicative of the present tendency to reject rigid rules of law in favor of concepts that enhance the plaintiff's opportunity to recover damages.[30]

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[25]Ouzts v. Powell, 125 F.2d 768 (5th Cir. 1942); Brown v. Loftin, 154 Fla. 621, 18 So.2d 540 (1944); Chassereau v. Powell, 116 Fla. 586, 156 So. 721 (1934).

[26]Goff v. Atlantic C.L. R.R., 53 So.2d 777 (Fla. 1951).

[27]212 F.2d 688 (5th Cir. 1954).

[28]*Id.* at 690.

[29]Atlantic C.L. R.R. v. Johnston, 74 So.2d 689 (Fla. 1954).

[30]See PROSSER, HANDBOOK OF THE LAW OF TORTS 284-287 (1941); James, *Accident Liability Reconsidered: The Impact of Liability Insurance,* 57 YALE L.J. 549 (1948); 2 U. OF FLA. L. REV. 443 (1949).

LAST CLEAR CHANCE DOCTRINE[31]

A concept that ordinarily favors the plaintiff is the last clear chance doctrine: "The party who last has a clear opportunity of avoiding an accident, notwithstanding the negligence of his opponent, is considered solely responsible for it."[32] This doctrine's rationale characterizes the defendant's intervening negligence as the sole proximate cause of the injury, relegating the plaintiff's antecedent negligence to a remote cause; thus the plaintiff's bar to recovery vanishes.[33]

The last clear chance doctrine was applied to a standing train accident in *Poindexter v. Seaboard Air Line Ry.*[34] The plaintiff motorist ran into defendant's standing train, which was parked upon a highway crossing. Eight lights were burning in the locomotive cab, and appropriate warning signs were visible along the highway approaching the crossing. The engineer continuously observed the plaintiff's car, traveling fifty to sixty miles an hour down a 1600-foot stretch of unobstructed highway. When the car came within 400 to 500 feet of the locomotive the engineer, according to his testimony, blew the train whistle. Other testimony, however, indicated that the whistle was blown only seconds before the collision. The trial court instructed the jury on the last clear chance doctrine. The jury returned a verdict for the plaintiff, but the court set it aside and granted a new trial. Upon appeal the Florida Supreme Court reversed the order for new trial, holding that the instruction as to the last clear chance doctrine was proper and that its application was a jury question.

The Court reasoned that the jury could find that the engineer should have realized the plaintiff's peril and blown the whistle in time to avoid the collision. This reasoning has been followed by other jurisdictions in similar factual situations.[35] Some courts, however, have refused to hold the railroad liable under the doctrine.[36]

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[31]For fundamentals of the doctrine see PROSSER, *op. cit. supra* note 30 at 408-416; Steinhardt and Simon, *Florida's Last Clear Chance Doctrine,* 7 MIAMI L.Q. 457 (1953); 1 U. OF FLA. L. REV. 300 (1948).

[32]Merchants Transp. Co. v. Daniel, 109 Fla. 496, 502, 149 So. 401, 403 (1933).

[33]Merchants Transp. Co. v. Daniel, 109 Fla. 496, 149 So. 401 (1933).

[34]56 So.2d 905 (Fla. 1951).

[35]*E.g.,* Underwood v. Illinois Cent. R.R., 205 F.2d 61 (5th Cir. 1953); Ziekefoose v. Thompson, 347 Mo. 579, 148 S.W.2d 784 (1941) (Missouri humanitarian doctrine).

[36]*E.g.,* Johnson v. Sacramento N. Ry., 54 Cal. App.2d 528, 129 P.2d 503 (1942) (train moving very slowly over highway crossing); Chesapeake & O. Ry. v. Switzer, 275 Ky. 834, 122 S.W.2d 967 (1938); *cf.* Sympson v. Southern Ry., 279 Ky. 619, 131 S.W.2d 481 (1939) (railway employees not at scene of accident); see Atlantic C.L.

In *Johnson v. Sacramento Northern Ry.*[37] the court held that there is no reason for an engineer to assume that the motorist in a rapidly approaching vehicle is inattentive or in peril until the motorist's car reaches a position where it cannot be stopped in time to avoid a collision. Thereafter, stated the court, the time remaining would be too short for the engineer to have a last clear chance. The doctrine "implies thought, appreciation, mental direction, and lapse of sufficient time to effectually act . . . ."[38]

The Court in the *Poindexter* case refused to apply the standing train doctrine.[39] Thus the entire loss from the accident shifted to the defendant by the application of the last clear chance doctrine, even though both parties contributed to the cause of the accident. Writers have pointed out that the only real explanation for this anomalous situation is the courts' dislike of the contributory negligence rule.[40]

One writer states that the last clear chance doctrine is a road leading to the apportionment of damages.[41] This might be true in the case of standing train-motor vehicle accidents in Florida. In the *Horton* case the Florida Court implied that the standing train in the *Poindexter* case – which was in the midst of switching operations at the time of the accident – came within the meaning of the word "running" in Florida's presumption of negligence statute. If the Court meant this, the comparative negligence statute should have been applied in the *Poindexter* case.[42]

This raises the question of whether the last clear chance doctrine should be applied in a situation covered by the comparative negligence statute. One court has indicated that the last clear chance doctrine is superseded by comparative negligence statutes when they are applicable.[43] The doctrine, however, can still apply under the com-

R.R. v. Dolan, 84 Ga. App. 734, 67 S.E.2d 243 (1951) (motorist held solely liable under Georgia comparative negligence statute).

[37]54 Cal. App.2d 528, 129 P.2d 503 (1942).

[38]Merchants Transp. Co. v. Daniel, 109 Fla. 496, 504, 149 So. 401, 404 (1933)

[39]The Court refused to apply Kimball v. Atlantic C.L. R.R., 132 Fla. 235, 181 So. 533 (1939), and similar cases because these cases completely ignored the last clear chance doctrine.

[40]PROSSER, *op. cit. supra* note 30, at 410; Steinhardt and Simon, *supra* note 31.

[41]James, *Last Clear Chance, A Transitional Doctrine*, 47 YALE L.J. 704 (1938).

[42]Since the train was motionless, plaintiff's lawyers probably thought that Florida's presumption of negligence and comparative negligence statutes were inapplicable. See discussion at p. 317 *supra*.

[43]Smith v. American Oil Co., 77 Ga. App. 463, 490, 49 S.E.2d 90, 107 (1948).

parative negligence statutes if the defendant's supervening negligence is characterized as the sole proximate cause of the accident.[44] Florida adheres to this view when the evidence so warrants.[45]

Even though the latter view is logical, there are considerations that make the rejection of the last clear chance doctrine desirable when the comparative negligence statute applies.[46] The apparent intent of the statute is to apportion damages between parties contributing to an accident rather than to place the entire loss on one person.[47] While the last clear chance doctrine evolved to relieve the same evil, its outdated rationale[48] produces a result contrary to the intent of the statute. One writer states the case succinctly:[49]

> ". . . the real objection to the last clear chance is that it seeks to alleviate the hardships of contributory negligence by shifting the entire loss due to the fault of both parties from the plaintiff to the defendant. It is still no more reasonable to charge the defendant with the plaintiff's share of the consequences of his fault than to charge the plaintiff with the defendant's; and it is no better policy to relieve the negligent plaintiff of all responsibility for his injury than it is to relieve the negligent defendant."

If the comparative negligence statute had been applied in the *Poindexter* case on the ground that the negligence of both parties was concurrent up to the time of the collision a more realistic and equitable result would have followed.[50]

In summarizing, although the standing train doctrine is still recognized, the Florida Court has taken the position that it should not be indiscriminately applied in every collision involving standing trains. Instead, when the testimony indicates special circumstances courts may allow the jury to determine the question of negligence. If both parties are found to be negligent the comparative negligence statute may logically apply, since the presumption of negligence statute

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[44]Chicago, R.I. & P. R.R. v. Adams, 187 Ark. 816, 62 S.W.2d 947 (1933).

[45]Seaboard A.L. Ry. v. Martin, 56 So.2d 509, 510 (Fla. 1952).

[46]GREGORY, LEGISLATIVE LOSS DISTRIBUTION IN NEGLIGENCE ACTIONS 126-134 (1936).

[47]See discussion in CHANGES IN STATUTORY INTERPRETATION *supra*.

[48]Hilkey, *The Last Clear Chance in Florida and Georgia, A Comparison*, 28 FLA. B.J. 24 (1954).

[49]PROSSER, SELECTED TOPICS ON THE LAW OF TORTS 14 (1953).

[50]See note 42 *supra*.