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NOTES AND COMMENTS

Automobiles—Contributory Negligence—Outrunning Headlights

In Chaffin v. Brame,\(^1\) plaintiff's evidence tended to show that while traveling at night he was partially blinded by the lights of an approaching vehicle; that he reduced the speed of his automobile, and, upon passing the approaching vehicle, observed defendant's truck parked on the traveled portion of the highway; that plaintiff was unable to avoid striking the truck. Defendant's motion for nonsuit, on the ground that plaintiff's evidence showed contributory negligence as a matter of law, was denied and an issue of contributory negligence was submitted to the jury. The decision affirming the action of the superior court does much to clarify the North Carolina rule of "outrunning headlights," apparently the source of some confusion in recent years.\(^2\)

Chaffin v. Brame is the most recent of a number of cases that involve an after-dark collision of an automobile with a parked vehicle or some other stationary object.\(^3\) The rule of "outrunning headlights" appli-

\(^1\) 233 N. C. 377, 64 S. E. 2d 276 (1951).


All these cases involve collision with a stationary object. Collision with moving object is not within the scope of this note. There is, however, in some of the cases, a question of fact as to whether the vehicle was stopped or stopping.
cable to these cases is usually stated as follows:

"...[A person driving at night] must operate his motor vehicle in such manner and at such speed as will enable him to stop within the radius of his lights."\(^4\)

The application of this standard arises where defendant moves for a compulsory nonsuit predicated on the evidence showing contributory negligence as a matter of law.\(^5\) Perhaps the principal obstacle to a clear understanding of the rule is the terse statement generally accorded it. This has tended to make it appear rigid, but in view of recent decisions,\(^6\) this rigidity is only superficial.

Though several opinions are written in terms of each case being decided on its own facts,\(^7\) it is difficult to determine whether or not the standard employed since 1927 has consistently been a flexible one of due care. Careful study of the factual situation in each case seems to support a conclusion that, although the statement of the rule has been rigid, the rule as actually applied by the court has always been simply a standard of due care.\(^8\)

Whether this conclusion is accepted or not, there can be no doubt

\(^4\) Cox v. Lee, 230 N. C. 155, 158, 52 S. E. 2d 355, 356 (1949), and cases there cited.

\(^5\) For usual rules as to granting of nonsuit on grounds of contributory negligence, see Atkins v. White Transportation Co., 224 N. C. 688, 32 S. E. 2d 209 (1944), and cases cited there.

\(^6\) The question may also arise at the pleading stage, where a demurrer is filed on the ground that contributory negligence appears on the face of the complaint. Hollingsworth v. Grier, 231 N. C. 108, 55 S. E. 2d 806 (1950).

\(^7\) "The law simply decrees that a person operating a motor vehicle at night must so drive that he can stop his automobile or change its course in time to avoid collision with any obstacle or obstruction whose presence on the highway is reasonably perceivable to him or reasonably expectable by him. It certainly does not require him to see that which is invisible to a person exercising ordinary care." Chaffin v. Brame, 233 N. C. 377, 380, 64 S. E. 2d 276, 279 (1951). "...the bench and bar [have a tendency] to regard it [the rule] as a rule of thumb rather than as an effort to express in a convenient formula for ready application to a recurring factual situation, the basic principle that a person must exercise ordinary care to avoid injury when he undertakes to drive a motor vehicle upon a public highway at night." Thomas v. Thurston Motor Lines, 230 N. C. 122, 132, 52 S. E. 2d 377, 383 (1949).


\(^9\) The only case that put a seemingly rigid rule squarely before the court involved the following instruction, asked for by defendant and refused by the trial court: "If you find ... that the plaintiff ... could see only 10 or 15 feet in front of his machine and that a much greater distance than 15 feet would be required to stop his machine, then ... plaintiff would be guilty of negligence, and if you further find ... that such negligence was either the proximate cause or one of the proximate causes of plaintiff's injury, then ... plaintiff would be guilty of contributory negligence...." The court said the instruction or its substance, should have been given. Clarke v. Martin, 217 N. C. 440, 441, 8 S. E. 2d 230 (1940).

It is noteworthy that in spite of this seeming approval of a rigid charge, there yet remains elasticity in that portion of the charge dealing with proximate cause.
as to the present status of the rule. It is one of due care under the circumstances. The elements of "outrunning headlights," i.e., the speed of the vehicle as related to the range of the headlights and the effectiveness of the brake mechanism, are simply considered as relatively important factors in determining the presence or absence of contributory negligence as a matter of law. Since the bare fact of a collision would in most cases give rise to an inference that plaintiff was "outrunning his headlights," it seems that the only effective means of withstanding a demurrer or nonsuit is a careful marshalling of facts that tend to show extenuating circumstances in the particular case. Facts having a bearing of importance for this purpose have been indicated by a recent note. A comparison with the status of the rule, or its equivalent, in other jurisdictions indicates that the North Carolina Supreme Court has taken a sensible approach to a difficult problem which is of importance to many North Carolina motorists. In the light of recent decisions, the following statement seems to be indicative of the court's attitude toward "outrunning headlights":

One must operate a motor vehicle at night in a manner that will enable him to avoid striking objects that, by the exercise of reasonable care, he should perceive or anticipate as they come within the range of the headlights of his vehicle.

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Bailments—Validity of Contract Limiting Liability for Negligence

Automobile owner contracted with defendant parking lot operator for parking privileges, the parties agreeing orally that defendant would

The situation here is similar to the doctrine enunciated by the court that, the failure of a motorist to stop at a point where a clear view may be had of railroad tracks before crossing them is contributory negligence as a matter of law. Parker v. Atlantic Coast Line R. R., 232 N. C. 472, 61 S. E. 2d 370 (1950). It is interesting to note that this doctrine appeared in North Carolina in 1927, the same year as the rule of "outrunning headlights." Harrison v. North Carolina R. R., 194 N. C. 656, 140 S. E. 598 (1927). The rigid doctrine is generally considered to be the result of Baltimore & Ohio Ry. v. Goodman, 275 U. S. 66 (1927). But, by the recognition of "modifying factors," the North Carolina Court has, for most purposes, transformed the doctrine into a standard of reasonable care. See Note, 29 N. C. L. Rev. 301 (1951).