

February 1930

## The Stop, Look and Listen Rule

Fletcher W. Mann

*West Virginia University College of Law*

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [Torts Commons](#), and the [Transportation Law Commons](#)

---

### Recommended Citation

Fletcher W. Mann, *The Stop, Look and Listen Rule*, 36 W. Va. L. Rev. (1930).

Available at: <https://researchrepository.wvu.edu/wvlr/vol36/iss2/11>

This Student Notes and Recent Cases is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact [ian.harmon@mail.wvu.edu](mailto:ian.harmon@mail.wvu.edu).

ing to the statute of wills which gives rise to a constructive trust resulting from the mere breach of promise.<sup>27</sup> Such would be a reasonable view to take and thereby renders the exception inoperative.

H. G. MUNTZING

---

**THE STOP, LOOK AND LISTEN RULE.**—Plaintiff's decedent was killed by one of defendant's passenger trains at a country road crossing. The train was backing to the crossing. Some of the gas lights in the two rear passenger coaches were lit, two red signal light markers on the rear of the train were burning and there was a lantern back a foot within the vestibule of the rear coach. Decedent was familiar with the crossing and his nineteen-year old daughter was driving. The night was dark and foggy. The view of the track was partly obstructed by buildings. The automobile did not stop at the crossing. Fifty feet from the track vision was uninterrupted for 999 feet, and twenty feet from the crossing vision was uninterrupted for 3200 feet. Held, one approaching a crossing is under no duty to look and listen for approaching trains, if to do so would avail him nothing as a warning, and as to whether it would have so availed him, is a question for the jury. *Morris' Administrator v. Baltimore and Ohio Railroad*, 148 S. E. 547 (W. Va., 1929.)

There are three generally recognized classes of decisions in regard to the duty of the motorist to stop, look and listen before crossing a railroad track. 29 WEST VIRGINIA LAW QUARTERLY 274.

The first is the so-called Pennsylvania Rule, by which one who fails to stop, look and listen before crossing a railroad track is guilty of contributory negligence as a matter of law. *Serfas v. Lehigh and New England Railroad*, 270 Pa. 306, 113 Atl. 370. *Benner v. Philadelphia and Reading Railway*, 262 Pa. 307, 105 Atl. 283. Under the second rule a failure to look and listen is negligence per se, but it is not absolutely necessary to stop. *Little Rock Railroad Company v. Blewitt*, 65 Ark. 235, 45 S. W. 548; *Castle v. Director General of Railroads*, 232 N. Y. 430, 134 N. E. 334.

The third rule requires only such care as is exercised by a person of ordinary prudence under the same or similar circumstances.

---

<sup>27</sup> *Hillyer v. Hynes*, 33 Cal. App. 506, 165 Pac. 718 (1917); *Brooks v. Gretz*, 313 Ill. 290, 145 N. E. 96 (1924); *Rudd v. Gates*, 191 Ky. 456, 230 S. E. 906 (1921). *Crinkley v. Rogers*, 100 Neb. 647, 160 N. W. 974 (1916).

Loughman v. Hines, 117 Wash. 166. *Murden v. Virginia Railway and Water Power Company*, 130 Va. 449, 107 S. E. 60, 1 A. L. R. 203 note; 41 A. L. R. 405 note. The West Virginia Supreme Court of Appeals has vacillated between these three positions. The first rule was favored in *Cline v. McAdoo*, 85 W. Va. 524, 102 S. E. 218, and *Gray v. Railway Company*, 99 W. Va. 575, 130 S. E. 139. The second rule has also been expressly favored. *Bonar v. Railway Company*, 99 W. Va. 462, 113 S. E. 766, *Kelly v. Railway Company*, 99 W. Va. 568, 130 S. E. 677; *Coleman v. Railway Company*, 100 W. Va. 679, 131 S. E. 563. The principal case, although it seems at first sight to follow the second rule, in effect, really follows the third. In the body of the opinion it is stated: "The duty of the decedent to look and listen depended on whether it would have availed him had he looked and listened. Whether the decedent would have comprehended the danger had he looked and listened was a jury question." While the first sentence of the quotation refers to a duty to look and listen, such duty is made expressly contingent on whether it would have availed him had he done so. When such a qualification is added the question is thrown to the jury—as the principal case states—to determine if decedent would have comprehended the situation had he looked and listened. Under this decision the court cannot say, as a matter of law, that a recovery by the decedent is barred because he failed to look and listen. It would seem that the net result of the principal case is to put the question of decedent's negligence to the jury in practically the same manner that the decisions embodying rule three, *supra*, would do. A previous West Virginia decision uses language which would seem to sustain this contention. *Bonar v. Railway Company*, *supra*. The result of the principal case, however, would seem to be the one best suited to modern conditions instead of to the era of the horse-drawn vehicle, when trains were the best and only means of rapid transit; and one that will give the most just results in actual practice. Certainly so in West Virginia where, at many of the crossings, especially on the numerous curves, a train could well arrive unknown to the driver between the time of getting out to look and getting back into the car to resume motion.

FLETCHER W. MANN.