

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Thing v. Southern Pac. Co.

31 F.2d 36 (9th Cir. 1929) · Decided March 4, 1929

SUMMARY

The Ninth Circuit affirmed a directed verdict for a railroad in a wrongful-death action arising from a collision between an automobile and a railroad motorcar at a highway crossing. The court held that, even assuming the crossing was negligently maintained, its condition did not contribute to the accident, and that the evidence did not support liability under the last-clear-chance doctrine.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Dietrich; Bean; Rudkin
JURISDICTION	Federal
DECIDED	March 4, 1929
DISPOSITION	affirmed
PROCEDURAL POSTURE	After the plaintiff presented her evidence in a wrongful-death action, the trial court granted the defendant's motion for a directed verdict and entered a judgment of dismissal. The administratrix appealed.
STANDARD OF REVIEW	The court reviewed whether the evidence could reasonably support a finding for the plaintiff and whether the directed verdict was proper.
PRECEDENTIAL VALUE	Published federal appellate opinion
PARTIES	Thing, as administratrix v. Southern Pacific Co.

TOPICS

- negligence
- wrongful death
- contributory negligence
- appellate procedure
- standard of care

PRACTICE AREAS

- torts
- wrongful death
- railroad crossing liability
- appellate procedure

QUESTIONS PRESENTED

1. Whether the allegedly unsafe condition of the railroad crossing contributed to the collision.

2. Whether the railroad failed to exercise reasonable care under the last-clear-chance doctrine after the decedent's peril became apparent.
3. Whether the trial court properly directed a verdict for the railroad at the close of the plaintiff's evidence.

HOLDINGS

1. The evidence did not support a finding that the condition of the crossing contributed in any way to the accident.
2. The evidence could not reasonably support a finding that the railroad failed to exercise its obligation under the last-clear-chance doctrine.
3. A directed verdict for the railroad was proper because, on the evidence presented, reasonable jurors could not find that the railroad's conduct caused the accident or violated the last-clear-chance obligation.

KEY QUOTATIONS

"In no possible view of the evidence can it be said that the condition at the crossing contributed to the accident." (38)

"Nor could intelligent men reasonably find that in any respect the defendant failed in its obligation under the doctrine of the last clear chance." (38)

FACTUAL BACKGROUND

Frank L. Thing was killed when the automobile he was driving collided with a railroad motorcar at a public crossing in Maricopa County, Arizona. The crossing had uneven gravel and rails that rose substantially above portions of the highway shoulders, but the court found no evidence that this condition caused or contributed to the collision. The railroad motorcar stopped and its foreman warned both drivers when the automobile approached at high speed; the evidence showed that the automobile braked, swerved, accelerated, and struck the motorcar.

PROCEDURAL HISTORY

The administratrix sued the railroad company for damages arising from Frank L. Thing's death in a collision between his automobile and the railroad's motorcar at a public crossing. The trial court directed a verdict for the railroad at the close of the plaintiff's evidence and entered judgment dismissing the action. The Ninth Circuit affirmed.

DISPOSITION

affirmed

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