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Torts -- Lookout -- Duty to Maintain at Green Light

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This is the attitude taken by the New Jersey court in the principal case. It is submitted that this should be the attitude taken by *any* court in reviewing the subject.

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Torts—Lookout—Duty to Maintain at Green Light

In the recent case of *Currin v. Williams*,[1] plaintiff entered the intersection with a green light in his favor but without maintaining a lookout for traffic approaching on the intersecting street. Defendant entered the intersection from plaintiff's left while the traffic control signal facing him was red. Though not conclusive, there was some evidence to support a conclusion that had plaintiff looked he would have been put on notice that defendant was not going to stop. *Held:* Plaintiff's failure to look to the right and the left when he entered the intersection on the green light was not contributory negligence as a matter of law, but the issue of contributory negligence was properly submitted to the jury.

Since, in accidents of this nature, failure to maintain a lookout is invariably alleged, it is essential that attorneys know (1) what is meant by *lookout*,[2] (2) what constitutes the motorist's duty to maintain a lookout, and (3) what effect automatic traffic signals have upon that duty.

In its inception, *lookout* was probably a nautical term designating that member of a ship's crew charged with the duty of keeping watch for danger.[3] Stated quite simply, the duty of a motorist to maintain a lookout is analogous to the duty of that crew member; the motorist must keep watch for possible danger.[4] Quite naturally, one indispen-

162, 260 P.2d 765 (1953). There the court says: "Ordinarily, when a court decides to modify or abandon a court made rule of long standing, it starts out by saying that 'the reason for the rule no longer exists.' In this case it is correct to say that the 'reason' originally given for the rule of immunity never did exist." *Id.* at 167, 260 P.2d at 768.

[1] 248 N.C. 32, 102 S.E.2d 455 (1958).

[2] One of a number of descriptive words usually accompanies the word lookout. See, *e.g.*, Wright v. Ponitz, 44 Cal. App. 2d 215, 112 P.2d 25 (1941) (*ordinary careful* lookout); Wilder v. Cadle, 227 Ky. 486, 13 S.W.2d 497 (1929) (*reasonable* lookout); Broussard v. Hotard, 4 So. 2d 563 (La. App. 1941) (*sharp* lookout); Wright v. Pegram, 244 N.C. 45, 92 S.E.2d 416 (1956) (*proper* lookout); Murray v. Atlantic Coast Line R.R., 218 N.C. 392, 11 S.E.2d 326 (1940) (*reasonably careful* lookout).

[3] See Devore v. Schaffer, 245 Iowa 1017, 65 N.W.2d 553 (1954).

[4] There are four classes of hazards which the motorist must guard against: (1) defects or hazards of the road surface, (2) objects or persons standing or moving in the path of the approaching vehicle, (3) objects or hazards which, without negligence, may enter or attempt to enter the path of the vehicle prior to, or at the time of, its passage, (4) objects or persons which negligently enter or attempt to enter the path of the vehicle prior to, or at the time of, its passage. Barrett, *Mechanics of Control and Lookout in Automobile Law*, 14 TUL. L. REV. 493, 507 (1940).

sable element in the maintenance of a lookout is the use of the eyes. To fulfill his obligation, the motorist must not limit the observation to his immediate front;[5] he must look to the sides—right and left—and to the rear as well.[6] Of course, the courts will take cognizance of the fact that he cannot simultaneously look in four different directions.[7] In many situations common sense will dictate in which direction a driver should look first;[8] however, there is no mathematical formula for determining when the obligation is fulfilled,[9] because looking is only a part of the duty. Not only must the driver look, but the purpose of looking must be accomplished;[10] and if there is evidence that he did not see what he ought to have seen, it is considered as evidence of failure to maintain a lookout.[11] Thus, stated broadly and generally, it appears that the duty to maintain a lookout requires that the driver have an awareness of those things surrounding him which are visible and which might have the effect of impeding the safe progress of his motor vehicle.

A question frequently raised is whether the same lookout is required in the face of an automatic traffic signal showing green as is required absent the automatic traffic signal. To arrive at a sensible answer to the question, it is necessary to know that automatic traffic signals are placed at intersections to render crossings less dangerous and to facilitate the flow of traffic.[12] Since traffic lawfully in the intersection when the light changes must be allowed to clear the inter-

[5] Mumford v. United States, 150 F. Supp. 63 (D. Md. 1957); Ehrhard v. Ruan Transp. Corp., 245 Iowa 193, 61 N.W.2d 696 (1953); Brooks v. State Farm Mut. Auto. Ins. Co., 91 So. 2d 403 (La. App. 1956); Evett v. Corbin, 305 S.W.2d 469 (Mo. 1957).

[6] Scott v. Marshall, 90 Ohio App. 347, 105 N.E.2d 281 (1951). See Kosbar v. Johnson, 185 Pa. Super. 510, 138 A.2d 872 (1958), where it was stated that one is not required to stop at every tree and clump of shrubs and look behind the leaves to see if an automobile lurks in ambush. Naturally the degree of care required in making observations to the rear is not as great as the degree of care required in making observations to the front. Dreher v. Divine, 192 N.C. 325, 135 S.E. 29 (1926).

[7] Gross v. Smith, 388 Pa. 92, 130 A.2d 90 (1957); Koehler v. Schwartz, 382 Pa. 352, 115 A.2d 155 (1955).

[8] For example, when a motorist is approaching an intersection, he should first look to his left, because he first enters the lane in which traffic on his left is moving. Grande v. Wooleyhan Transp. Co., 353 Pa. 535, 46 A.2d 241 (1946); Dandridge v. Exhibitors Serv. Co., 167 Pa. Super. 143, 74 A.2d 670 (1950).

[9] Bosell v. Rannestad, 226 Minn. 413, 33 N.W.2d 40 (1948). See also Davidson v. Vast, 233 Iowa 534, 10 N.W.2d 12 (1943); Morrisette v. A. G. Boone Co., 235 N.C. 162, 69 S.E.2d 239 (1952); Bullock v. Luke, 98 Utah 501, 98 P.2d 350 (1940).

[10] Donnelly v. Goforth, 284 S.W.2d 462 (Mo. 1955); Taylor v. Brake, 245 N.C. 553, 96 S.E.2d 686 (1957). See also Peckham v. Knofla, 130 Conn. 646, 36 A.2d 740 (1944); Blakeman v. Lofland, 173 Kan. 725, 252 P.2d 852 (1953); Marshburn v. Patterson, 241 N.C. 441, 85 S.E.2d 683 (1955); Shew v. Bailey, 37 Tenn. App. 40, 260 S.W.2d 362 (1951); Perry v. Thompson, 196 Va. 817, 86 S.E.2d 35 (1955).

[11] To look and fail to see what could have been seen by keeping a proper lookout is as negligent as not to have looked at all. Goodhue v. Ballard, 122 Conn. 542, 191 Atl. 101 (1937); Mitchell v. Terrell, 55 So. 2d 699 (La. App. 1951); Donnelly v. Goforth, *supra* note 10; Nehi Bottling Co. v. Lambert, 196 Va. 949, 86 S.E.2d 156 (1955).

[12] Gross v. Smith, 388 Pa. 92, 130 A.2d 90 (1957).

section before the motorist having the favorable signal proceeds,[13] the *go* signal does not literally mean that the motorist can go under any and all circumstances.[14] The signals are designed to prevent accidents and not to excuse them;[15] therefore, it would be absurd to assume that a green light gives the driver the privilege to wilfully or recklessly run down people or automobiles with impunity. Reasonable care must be exercised for the safety of others.[16] In approaching a blind unguarded intersection, a motorist, in the exercise of reasonable care, must slow down to a "snail's pace" and maneuver his automobile into a position where he can look to the right and left along the intersecting street and determine that the crossing can be made safely.[17] Is the same thing required when an automatic traffic signal is placed at the intersection?

Answering the question in the affirmative, a minority has held that the duty of a motorist to exercise care at an intersection is not relaxed by reason of the presence of a green traffic signal.[18] For purposes of simplicity, the holding of these courts will be referred to as Rule 1. On the other hand, a definite majority has answered the question in the negative, holding that a green traffic light lessens the degree of care required.[19] The holding of the latter courts will be referred to as Rule 2. In view of the fact that a motorist is not required to anticipate

[13] Freeman v. Churchill, 30 Cal. 2d 453, 183 P.2d 4 (1947); Davis v. Dondanville, 107 Ind. App. 665, 26 N.E.2d 568 (1940); Styskal v. Brickey, 158 Neb. 208, 62 N.W.2d 854 (1954); Indianapolis & Southeastern Trailways, Inc. v. Cincinnati Street Ry., 166 Ohio St. 310, 142 N.E.2d 515 (1957); Lanegan v. Crauford, 49 Wash. 2d 562, 304 P.2d 953 (1956).

[14] Scully v. Railway Express Agency, 137 F. Supp. 761 (E.D. Pa. 1956); Roland v. Murray, 239 S.W.2d 967 (Ky. 1951); Valench v. Belle Isle Cab Co., 196 Md. 118, 75 A.2d 97 (1950); Witt v. Peterson, 310 S.W.2d 857 (Mo. 1958); Fuss v. Williamson, 160 Neb. 141, 69 N.W.2d 539 (1955); Jordan v. Kennedy, 180 Pa. Super. 593, 119 A.2d 679 (1956); Arney v. Bogstad, 199 Va. 460, 100 S.E.2d 749 (1957).

[15] Adkins v. Smith, 98 S.E.2d 712 (W.Va. 1957).

[16] Cases cited note 14 *supra*.

[17] See Green v. Higbee, 176 Kan. 596, 272 P.2d 1084 (1954); Reaney v. Mabry, 97 So. 2d 841 (La. App. 1957); MacDonald v. Skornia, 322 Mich. 370, 34 N.W.2d 4 (1948); Papkin v. Helfand & Katz, 346 Pa. 485, 31 A.2d 112 (1943); Bailey v. Zwirowski, 268 Wis. 208, 67 N.W.2d 262 (1954). See also Annot., 59 A.L.R.2d 1202 (1958).

[18] Spence v. Waters, 39 Del. (9 W.W. Harr.) 582, 4 A.2d 142 (Super. Ct. 1938); Grimes v. Yellow Cab Co., 344 Pa. 298, 25 A.2d 294 (1942); Byrne v. O. G. Schultz, Inc., 306 Pa. 427, 160 Atl. 125 (1932); Vol Cannon v. Philadelphia Transp. Co., 148 Pa. Super. 330, 25 A.2d 584 (1942). "He must be vigilant, must exercise a *high* degree of care. . . . This duty has *not* been relaxed by the introduction of traffic officers and signals. . . . He is still bound to the *same* degree of care as *before* the introduction of these modern aids to travel." Byrne v. O. G. Schultz, Inc., *supra* at 433, 160 Atl. at 127. (Emphasis added.) It may be arguable that the court intended to require due care, but the language used certainly indicates that more than due care was required.

[19] Taylor v. Sims, 72 Cal. App. 2d 60, 164 P.2d 17 (1945); Sullivan v. Locke, 73 So. 2d 616 (La. App. 1954); Buehler v. Beadia, 343 Mich. 692, 73 N.W.2d 304 (1955); Hyder v. Asheville Storage Battery Co., 242 N.C. 553, 89 S.E.2d 124 (1955); Jordan v. Kennedy, 180 Pa. Super, 593, 119 A.2d 679 (1956); Wilson v. Koch, 241 Wis. 594, 6 N.W.2d 659 (1942).

negligence on the part of others,[20] Rule 2 seems eminently more sensible. Take, for example, the case of a motorist approaching an intersection which is surrounded by buildings that obstruct his view to the left and to the right. If this motorist has a green light when he approaches the intersection, what must he do? Not even Rule 1 would require him to stop his automobile, get out and peer around the obstruction to see if motorists approaching on the intersecting street are going to stop in obedience to the red traffic signal. But it seems that Rule 1 would require him to bring his vehicle virtually to a halt, inch forward into the intersection, and determine that vehicles approaching from his left and right are going to stop. Having made that determination, he could then proceed. Under Rule 2, the motorist having the green light could proceed uninterruptedly into the intersection and make his observation to the left and right while in progress.

Consider a second example. Six streets converge at one point. Each street carries six lanes of traffic. A reasonable and prudent motorist has a green light in his favor as he approaches that maze. What must he do? Must he stop in order that he may survey what is occurring in the other lanes of traffic? Allowing the motorist the benefit of Rule 2 enables him to continue his forward progress in reliance upon the favorable signal. Of course, as previously stated, he may not arbitrarily exercise his right.[21] He must still exercise a degree of care commensurate with the danger which continues to exist.[22] Even so, he is merrily on his way while the motorist operating under Rule 1 is still sitting at the intersection in a state of bewilderment.

Considering that traffic lights have two purposes, it seems that Rule 1 should be discarded. While it *may* have the effect of rendering crossings less dangerous,[23] it does not facilitate the flow of traffic. Having determined that the automatic traffic signal is green, the motorist must take the same precautions he would have to take at an unguarded blind intersection; therefore, under Rule 1, the green light is nothing more

[20] Messier v. Zanglis, 144 Conn. 449, 133 A.2d 619 (1957); Smith v. Sizemore, 300 S.W.2d 225 (Ky. 1957); Coyle v. Stopak, 165 Neb. 594, 86 N.W.2d 758 (1957); Morgan v. Saunders, 236 N.C. 162, 72 S.E.2d 411 (1952); Henke v. Peyerl, 89 N.W.2d 1 (N.D. 1958).

[21] Cases cited note 14 *supra*.

[22] Cappo v. Baker, 91 So. 2d 611 (La. App. 1957); Sullivan v. Locke, 73 So. 2d 616 (La. App. 1954); Stephens v. Koprowski, 295 Mich. 213, 294 N.W. 158 (1940); Witt v. Peterson, 310 S.W.2d 857 (Mo. 1958); Rynar v. Lincoln Transit Co., 129 N.J.L. 525, 30 A.2d 406 (Ct. Err. & App. 1943); Dembicer v. Pawtucket Cabinet & Builders Finish Co., 58 R.I. 451, 193 Atl. 622 (1937). See also Nelson v. Ziegler, 89 So. 2d 780 (Fla. 1956); Politte v. Miller, 301 S.W.2d 839 (Mo. App. 1957); Groome v. Davis, 215 N.C. 510, 2 S.E.2d 771 (1939); Reid v. Abbiati, 113 Vt. 233, 32 A.2d 133 (1943).

[23] *But see* Perpetua v. Philadelphia Transp. Co., 380 Pa. 561, 565, 112 A.2d 337, 339 (1955) (dissenting opinion), where it was said: "A hesitating, demurring and irresolute driver is by no means the safest of drivers. Vacillation can cause as much chaos as impetuosity."

than an additional factor to be noted. On the other hand, Rule 2, which allows the motorist to proceed uninterruptedly into the intersection and make his observation while in progress, operates effectively as to both purposes. Crossings are rendered less dangerous and the flow of traffic is facilitated.

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Workmen's Compensation—Analysis of "Jurisdictional Fact" Review by Superior Courts

The North Carolina Workmen's Compensation Act empowers the Industrial Commission to make findings of fact which are binding on the parties and on courts on appeal. Appeals from rulings of the Commission may be taken only "for errors of law, under the same terms and conditions as govern appeals in ordinary civil actions."[1]

Cases in North Carolina reveal two lines of authority concerning the extent to which findings by the Industrial Commission may be reviewed on appeal to the superior court. One group[2] of cases shows literal adherence to the language of the act in holding that the courts may review only questions of law. The other group[3] departs from the literal language of the act and asserts that the superior court judge may not only review questions of law, but that he may also make his own findings of "jurisdictional fact"[4] upon motion of the appellant.

[1] N.C. GEN. STAT. § 97-86 (1958) provides that the award of the Commission "shall be conclusive and binding as to *all questions of fact;* but either party to the dispute may . . . appeal from the decision of said Commission to the superior court . . . for errors of law, under the same terms and conditions as govern appeals in ordinary civil actions. . . ." (Emphasis added.)

[2] Hawes v. Mutual Benefit Health & Acc. Ass'n, 243 N.C. 62, 89 S.E.2d 739 (1955); Thomason v. Red Bird Cab Co., 235 N.C. 602, 70 S.E.2d 706 (1952); Smith v. Southern Waste Paper Co., 226 N.C. 47, 36 S.E.2d 730 (1946); Hayes v. Elon College, 224 N.C. 11, 29 S.E.2d 137 (1944); Bivens v. Teer, 220 N.C. 135, 16 S.E.2d 659 (1941); Beach v. McLean, 219 N.C. 521, 14 S.E.2d 515 (1941); Birchfield v. Department of Conservation and Development, 204 N.C. 217, 167 S.E. 855 (1933).

[3] Hart v. Thomasville Motors, Inc., 244 N.C. 84, 92 S.E.2d 673 (1956); Aylor v. Barnes, 242 N.C. 223, 87 S.E.2d 269 (1955); Francis v. Carolina Wood Turning Co., 204 N.C. 701, 169 S.E. 654 (1933); Aycock v. Cooper, 202 N.C. 500, 505, 163 S.E. 569, 571 (1932) (dictum).

[4] "[I]n every proceeding of a judicial nature, there are one or more facts which are strictly jurisdictional, the existence of which is necessary to the validity of the proceedings, and without which the act of the court is a mere nullity. . . ." Nobel v. Union River Logging R.R., 147 U.S. 165, 173 (1893).

Professor Larson has said that practically every fact decided in compensation cases has some bearing on the tribunal's jurisdiction and that reduced to the absurd, the rule could be used to render the tribunal powerless to decide any question with finality. 2 LARSON, WORKMEN'S COMPENSATION § 80.41 (1952).

The North Carolina Supreme Court, however, has termed only three issues questions of "jurisdictional fact": (1) Was the injured worker an employee? N.C. GEN. STAT. § 97-2(2) (1958); Francis v. Carolina Wood Turning Co., *supra* note 3; (2) Does the defendant regularly work five or more employees? N.C. GEN. STAT. § 97-13(b) (1958); Aycock v. Cooper, *supra* note 3; (3) If