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Automobiles -- Turning and Stopping -- Signals by Driver

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Automobiles—Turning and Stopping—Signals by Driver

A truck, operated by defendant company, and a motorcycle, driven by plaintiff's intestate, were proceeding in the same direction on a city street, the motorcycle following the truck. The truck driver, without looking in his rear view mirror, made a hand signal for a left turn which it appears was not continued for the last fifty feet traveled; and then "angled" left toward the driveway entrance to defendant's plant. The motorcycle struck the left side of the truck near the front when the truck was several feet from the entrance to the driveway, causing the death of the motorcycle driver. Motion to nonsuit plaintiff denied. Verdict for plaintiff. *Held,* in *Ervin v. Cannon Mills,*[1] trial court's ruling affirmed.

This decision focuses attention on the issues inherent in motor vehicle accidents growing out of turning and stopping without adequate signal. The ordinary situation is one in which the vehicle turning or stopping is hit from the rear by the vehicle immediately following. N. C. GEN STAT. §20-154 states the important rules for signals upon stopping or turning.[2] The driver following has the advantage of the rule that its violation is negligence per se.[3] Therefore a showing of violation of the statute coupled with proof of causal connection between the violation and the injury establishes actionable negligence.[4] Hence if it is admitted that defendant violated the statute—which led to the accident—his chances of winning depend on a showing of contributory negligence.

On the other hand, the person who is charged with negligent stopping or turning has the benefit of N. C. GEN. STAT. §20-152, which

[1] 233 N. C. 415 (1951).

[2] "(a) The driver of any vehicle upon a highway before starting, stopping or turning from a direct line shall first see that such movement can be made in safety, and whenever the operation of any other vehicle may be affected by such movement, shall give a signal as required in this section, plainly visible to the driver of such other vehicle, of the intention to make such a movement.

"(b) The signal herein required shall be given by means of the hand and arm in the manner specified, or by any mechanical or electrical signal device approved by the department, except that when a vehicle is so constructed or loaded as to prevent the hand and arm signal from being visible, both to the front and rear, the signal shall be given by a device of a type which has been approved by the department.

"Whenever the signal is given the driver shall indicate his intention to start, stop or turn by extending the hand and arm from and beyond the left side of the vehicle as hereinafter set forth.

"All signals to be given from left side of vehicle during last fifty feet traveled." N. C. GEN. STAT. §20-154 (1949 Supp.).

For the rules on the technique of making a turn, see N. C. GEN. STAT. §20-153 (1943).

[3] Grimm v. Watson, 233 N. C. 65 (1950); Conley v. Pearce Young-Angel Co., 224 N. C. 211, 29 S.E. 2d 740 (1944); Holland v. Strader, 216 N. C. 436, 5 S. E. 2d 311 (1939).

[4] Tarrant v. Pepsi-Cola Bottling Co., 221 N. C. 390, 20 S. E. 2d 365 (1942); Grimm v. Watson, 233 N. C. 65 (1950).

declares that "(a) The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent with regard to the safety of others and due regard to the speed of such vehicles and the traffic upon and the condition of the highway. . . ."[5] Its violation also constitutes negligence per se.[6] The turning driver may also rely on the statutory duty of a passer to sound his horn,[7] if not within a business or residential district, the breach of which is "negligence."[8]

Although N. C. GEN STAT. §20-154 is stated in terms of an absolute twofold duty (1) to turn only after driver has first seen that the movement can be made in safety, (2) to give the proper signal whenever the operation of any other vehicle may be affected by such movement; yet it has been construed to require only the exercise of reasonable care to see if movement can be safely made, and to require the giving of a signal only when "surrounding circumstances afford him reasonable grounds for apprehending that his turn . . . might affect the operation of another vehicle."[9] Hence the law does not require a driver to signal every time he turns, nor does it demand infallibility of his judgment of the proper occasion to signal. The most extreme application of this view is in *Stovall v. Ragland.*[10] There plaintiff turned left from the highway into his private driveway[11] without giving a signal of any description and collided with defendant who was apparently in the act of passing him. Plaintiff was held to have satisfied the statutory duty by his act of looking in his rear view mirror. Accordingly the court held that the trial judge erred in calling plaintiff's conduct negligent as a matter of law on a motion to nonsuit him. The result of this decision and the interpretation of the statute may be to deprive the statute of much of its precautionary value. As a practical matter the effort required to give a signal in every case as an alternative to current dependence on the driver's "reasonable" decision in each case as to when one is necessary,

[5] Subsection (b) of this statute states: "The driver of any motor truck, when traveling upon a highway outside of a business or residence district, shall not follow another motor truck within three hundred feet, but this shall not be construed to prevent one motor truck from overtaking and passing another." N. C. GEN. STAT. §20-152 (1949 Supp.).

[6] Murray v. A. C. L. R. R., 218 N. C. 392, 11 S. E. 2d 326 (1940).

[7] N. C. GEN. STAT. §20-149 (1943), relied on in *Stovall* v. *Ragland,* 211 N. C. 536, 190 S. E. 899 (1937); held inapplicable in the *Ervin* v. *Cannon Mills* case because in business district.

[8] Stovall v. Ragland, 211 N. C. 536, 190 S. E. 899 (1937).

[9] Cooley v. Baker, 231 N. C. 533, 536, 58 S. E. 2d 115, 117, (1950).

[10] 211 N. C. 536, 190 S. E. 2d 899 (1937). "The plaintiff having looked in both directions and having observed no automobile or other vehicle approaching from either direction, was under no obligation, by virtue of the statute, to give any signal of his purpose to turn to the left and enter the driveway of his home." (p. 539)

[11] It would seem that greater precaution should be exercised by the driver turning into a private driveway than at an intersection where turning is more to be expected.

is slight compared to the number of accidents it would prevent. Some decisions of the North Carolina court, however, indicate that this statutory duty may not be so flexible as it might seem.[12] It has been said that "He [the driver] is held to the duty of seeing what he ought to have seen."[13]

The principal case *(Ervin v. Cannon Mills)* in which the driver following was suing the driver turning, seems to impose a more stringent duty on the turning driver than *Stovall v. Ragland,*[14] in which the driver turning was suing the driver following. In the *Ervin* case a signal was admittedly given, although the court was somewhat doubtful whether it complied with the 50 feet requirement of N. C. GEN. STAT. §20-154, and the court emphasized that in addition the turning driver had not ascertained whether the turn could be made in safety by looking in his rear view mirror. But even assuming proper giving of a signal the court declares that compliance with the minimum requirements of the statute is not necessarily an exercise of the ordinary care of the reasonable prudent man under the circumstances—which is the ultimate criterion. In the *Stovall* decision the court seemed eager to hold that the turning driver's conduct could be found to have complied with the statute without making any inquiry into a more extensive duty. However, since the court did not hold the turning driver free of negligence as a matter of law, there is no conflict in the cases. The court seems to feel that such a flexible formula is a necessary concomitant to variable facts.

The application of these rules to an accident caused by the sudden stopping of a preceding vehicle which is hit in the rear by the vehicle following raises similar principles.[15] The mere stopping on a highway without a signal is not negligence. Even though a stop signal is not given, the jury may still be allowed to decide whether the conduct was negligent.[16] *Holland v. Strader*[17] presented the familiar autumn scene of a long string of closely following automobiles proceeding to a football game at Chapel Hill, intermittently slowing and increasing speed. The defendant was forced to stop because of the stopping of the automobiles ahead of him, and he did so suddenly and without a signal. On this showing, plaintiff, who smashed into the rear of defendant's car, was allowed to go to the jury.

The usual view of the North Carolina court is that the jury should decide these uncertain questions of negligence and contributory negli-

[12] *E. g.*, emphasis in *Ervin* decision on compliance *plus.*
[13] Wall v. Bain, 222 N. C. 375, 379, 23 S. E. 2d 330, 333 (1942).
[14] 211 N. C. 536, 190 S. E. 899 (1937).
[15] Conley v. Pearce Young-Angel Co., 224 N. C. 211, 29 S. E. 2d 740 (1944).
[16] See cases cited note 18 *infra.*
[17] 216 N. C. 436, 5 S. E. 2d 311 (1939).

gence regardless of which driver, following or preceding, is the plaintiff. Thus a finding of no original negligence of defendent or of contributory negligence as a matter of law in these turning or stopping accidents is ordinarily not proper.[18]

A limited number of decisions, however, have granted nonsuit[19] or sustained a demurrer in cases involving both turning[20] and stopping.[21] In all of these the ruling was in favor of the turning or stopping driver. In reaching such a decision, reliance is placed upon one or more of three factors.

(1) The following driver was guilty of conduct which was a breach of some of the duties imposed upon him; viz. in following too closely, failing to sound horn before passing, exceeding proper speed.[22]

(2) The turning or stopping driver may assume that the following driver will obey these traffic rules and will exercise due care for the safety of others.[23] This right is qualified,[24] however, and the court has stated that a driver may so rely only when he himself is free of negligence.

(3) The court may invoke the "outrunning the headlights" doc-

[18] Turning: Grimm v. Watson, 233 N. C. 65 (1950); Levy v. Carolina Aluminum Co., 232 N. C. 158, 59 S. E. 2d 632 (1950); Beaman v. Duncan, 228 N. C. 600, 46 S. E. 2d 707 (1948); Tarrant v. Pepsi-Cola Bottling Co., 221 N. C. 390, 20 S. E. 2d 565 (1942) (bicycle treated for these purposes as vehicle; here bicycle was turning); Mason v. Johnston, 215 N. C. 95, 1 S. E. 2d 379 (1939) (court said in passing that nonsuit properly refused); Stovall v. Ragland, 211 N. C. 536, 190 S. E. 899 (1937); Morris v. Seashore Transportation Co., 208 N. C. 807, 182 S. E. 487 (1935).

Stopping: Banks v. Shepard, 230 N. C. 86, 52 S. E. 2d 215 (1949); Barlow v. City Bus Lines, 229 N. C. 382, 49 S. E. 2d 793 (1948); Conley v. Pearce Young-Angel Co., 224 N. C. 211, 29 S. E. 2d 740 (1944); Bechtler v. Bracken, 218 N. C. 515, 11 S. E. 2d 721 (1940) (new trial given plaintiff against whom verdict rendered); Holland v. Strader, 216 N. C. 436, 5 S. E. 2d 311 (1939); Smith v. Carolina Coach Co., 214 N. C. 314, 199 S. E. 90 (1938).

[19] The usual rules as to granting of nonsuit on ground of contributory negligence are: (1) nonsuit will not be sustained or directed unless the evidence is so clear that no other conclusion seems permissible; (2) the evidence is taken in the light most favorable to plaintiff and he is entitled to every reasonable inference to be drawn therefrom; accordingly only that part of defendant's evidence which is favorable to plaintiff will be considered. Atkins v. White Transportation Co., 224 N. C. 688, 32 S. E. 2d 209 (1944), and cases cited there. But see possible modification of rule (2) in the majority opinion and concurring opinion of Stacy, C. J., in this case (evidence considered to explain and make clear plaintiff's evidence, to make manifest natural or physical circumstances which may bar recovery. Pp. 692-3). The three-member dissent takes issue with the majority on the evidence to be considered.

[20] Moore v. Boone, 231 N. C. 494, 57 S. E. 2d 783 (1950) (nonsuit); Austin v. Overton, 222 N. C. 89, 21 S. E. 2d 887 (1942) (nonsuit); Cooley v. Baker, 231 N. C. 533, 58 S. E. 2d 115 (1950) (demurrer to complaint sustained; accident between meeting cars).

[21] Fawley v. Bobo, 231 N. C. 203, 56 S. E. 2d 419 (1949); Warner v. Lazarus, 229 N. C. 27, 47 S. E. 2d 496 (1948); Atkins v. White Transportation Co., 224 N. C. 688, 32 S. E. 2d 209 (1944).

[22] Moore v. Boone, 231 N. C. 494, 57 S. E. 2d 783 (1950).

[23] Cooley v. Baker, 231 N. C. 533, 58 S. E. 2d 115 (1950).

[24] See Sebastian v. Horton Motor Lines, 213 N. C. 770 (1938).

trine—which raises a duty to drive at a speed at which the driver can stop within the range of his headlights, the violation of which is negligence as a matter of law.[25] This rule has been applied by a line of North Carolina cases to support the nonsuiting of a plaintiff who hits the rear of a vehicle parked on the highway.[26] An inquiry whether it should also be applied to moving vehicles which suddenly stop or turn without warning is somewhat academic in the face of statements by the court that this line of cases is also controlling as to stopping[27] and turning.[28] The doctrine has undergone a turbulent history,[29] and its present status is made somewhat doubtful by the most recent decision[30] which sent a similar hitting-the-rear-of-a-parked-vehicle situation to the jury.

The court has also emphasized that in order to establish contributory negligence (here as a matter of law) it is not necessary to show that the plaintiff's negligence was the sole and proximate or "real and efficient" cause, but merely that there was negligence of plaintiff which concurred with that of defendant to contribute to the injury.[31] This is to be contrasted with the rule that in order to insulate negligence of a defendant, the negligence of the other tortfeasor must be the motivating or principal negligence which proximately causes the accident and hence overshadows the defendant's negligence.[32] Therefore a showing of negligence of less serious nature is adequate to support a nonsuit predicated on contributory negligence.

The cases discussed thus far have involved collision of vehicles proceeding in the same direction but these principles are likewise applicable to the turning by one vehicle across the path of another vehicle approaching from the opposite direction.[33]

In several cases the sudden turn is made to avoid some obstruction

[25] Note, 27 N. C. L. REV. 153 (1948).

[26] *E.g.*, Marshall v. Southern Ry., 233 N. C. 38 (1951); Cox v. Lee, 230 N. C. 155, 52 S. E. 2d 355 (1949); Tyson v. Ford, 228 N. C. 778, 47 S. E. 2d 251 (1948); Beck v. Hooks, 218 N. C. 105 S. E. 2d 608 (1940); Weston v. Southern Ry., 194 N. C. 210, 139 S. E. 237 (1927).

[27] Fawley v. Bobo, 231 N. C. 203, 56 S. E. 2d 419 (1949); Atkins v. White Transportation Co., 224 N. C. 688, 32 S. E. 2d 209 (1944).

[28] Moore v. Boone, 231 N. C. 494, 57 S. E. 2d 783 (1950); Austin v. Overton, 222 N. C. 89, 21 S. E. 2d 887 (1942) (plaintiff and defendant disagree whether driver stopped or turned).

[29] A line of cases contra to those cited in note 28 *supra* has developed. *E.g.*, Thomas v. Thurston Motor Lines, 230 N. C. 122, 52 S. E. 2d 377 (1949); Cummins v. Southern Fruit Co., 225 N. C. 625, 36 S. E. 2d 11 (1945); Leonard v. Tatum Transfer Co., 218 N. C. 667, 12 S. E. 2d 729 (1940).

[30] Chaffin v. Brame, 233 N. C. 377 (1951).

[31] Austin v. Overton, 222 N. C. 89, 21 S. E. 2d 887 (1942).

[32] Beaman v. Duncan, 228 N. C. 600, 46 S. E. 2d 707 (1948); Powers v. Sternberg & Co., 213 N. C. 41, 195 S. E. 88 (1938).

[33] Cooley v. Baker, 231 N. C. 533, 58 S. E. 2d 115 (1950), Butner v. Spease, 217 N. C. 82, 6 S. E. 2d 808 (1940);

in the road ahead.[34] These were cases in which the court refused to rule against the party turning, as a matter of law.[35] The court, then, may take notice that an emergency was created[36] and hence hold the driver only to the standard of care commensurate with the emergency circumstances.[37] Indeed one faced with the choice between instantly turning or striking the object ahead should perhaps not be charged with the ordinary presence of mind requiring the giving of a signal. However, it has been declared that the principle is not available to one who by his own negligence has brought about or contributed to the emergency.[38]

Just as the court favors submitting issues of negligence of defendant to the jury, it may also be held error to fail to submit the issue of contributory negligence of plaintiff to the jury.[39]

Even though a plaintiff who turns without a signal is shown to be guilty of contributory negligence yet he may win on an issue of last clear chance.[40]

To what extent are modern mechanical and electrical devices on the rear and front of vehicles, indicating turning and stopping, a compliance with the driver's duty? N. C. GEN. STAT. §20-154 authorizes not only a hand signal but also signal by mechanical or electrical devices "approved by the department" (of Motor Vehicles).

Administratively, the practice of the Department of Motor Vehicles is to approve in blanket form certain devices which have been tested by the department according to the candle power and size of the light, frequency of flashing, etc. It is the opinion of the Department of Motor Vehicles and the Department of Justice that an operator of any automobile equipped with one of the approved types of devices in good working order may use it in lieu of the hand signal—at least in regard to turning. Some doubt has been expressed as to the adequacy of the rear brake light as a substitute for a hand stop signal since (1) the light flashes when the brakes are applied which may mean mere slowing rather than stopping and (2) there is no intermittent flashing and hence it is less noticeable than a turn indicator.

[34] Tarrant v. Pepsi-Cola Bottling Co., 221 N. C. 390, 20 S. E. 2d 565 (1942) (opening door of car at side of road); Morris v. Seashore Transportation Co., 208 N. C. 807, 182 S. E. 487 (1935) (chicken); Austin v. Overton, 222 N. C. 89, 21 S. E. 2d 887 (1942) (turning driver claims drunk man in the road).

[35] *But cf.* Holland v. Strader, 216 N. C. 436, 5 S. E. 2d 311 (1939) (stopping caused by stopping ahead in football traffic).

[36] Tarrant v. Pepsi Cola Co., 221 N. C. 390, 20 S. E. 2d 565 (1942).

[37] Sparks v. Willis, 228 N. C. 25, 28, 44 S. E. 2d 343, 344 (1947).

[38] Hoke v. Atlantic Greyhound Corp., 227 N. C. 412, 42 S. E. 2d 593 (1947).

[39] Mason v. Johnston, 215 N. C. 95, 1 S. E. 2d 379 (1939).

[40] Morris v. Seashore Transportation Co., 208 N. C. 807, 182 S. E. 487 (1935). *But cf.* Van Dyke v. Atlantic Greyhound Corp., 218 N. C. 283, 10 S. E. 2d 727 (1940).

Although there has been no square holding that these devices are adequate compliance with the driver's statutory duty, yet decisions have given cognizance to their ability to warn the driver following and put him on notice.[41] Hence even though no hand signal is given, it is clear that the flashing of a directional turn signal on the rear and front of the vehicle, or the flashing of a red light on the rear when the brakes are applied, are circumstances which will be considered. In a recent case[42] in which the operator of a stopping bus relied on the rear brake lights, the court held that a mere showing that the inspector for the Utilities Commission had approved the bus and that the bus had the lighting equipment prescribed by the Commission was not sufficient evidence of compliance with the above statute.

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Conflict of Laws—Enforcement of Foreign Alimony Decrees

A recent North Carolina case[1] is typical of the cases which pose the problems inherent in the methods of enforcing foreign alimony decrees. Plaintiff wife brought action to establish and enforce a Florida decree directing payment of $100 monthly alimony. The trial court entered judgment for plaintiff for past due and unpaid installments accrued, decreed the adoption of the Florida judgment, and thereupon entered an order directing payment of future installments as they become due. *Held:* plaintiff was not entitled to a judgment ordering payment of future installments, but only to a money judgment for past due and unpaid installments due her under the decree, "which judgment" the court added "is enforceable by execution and not by contempt proceedings."[2]

The courts are generally in agreement that a foreign alimony decree is not enforceable in so far as it relates to future installments.[3] And as

[41] Levy v. Carolina Aluminum Co., 232 N. C. 158, 59 S. E. 2d 632 (1950) (turning signal); Moore v. Boone, 231 N. C. 494, 57 S. E. 2d 783 (1950) (turning signal); Barlow v. City Bus Lines, 229 N. C. 382, 49 S. E. 2d 793 (1949) (brake lights); Warner v. Lazarus, 229 N. C. 27, 47 S. E. 496 (1948) (brake lights; court even raised question of how many feet brake lights were on before collision); Smith v. Carolina Coach Co., 214 N. C. 314, 199 S. E. 90 (1938) (brake lights; court let jury decide whether adequate compliance with statute; the then statute apparently did not contain a provision for electrical signal). But see Grimm v. Watson, 233 N. C. 65 (1950), where facts indicated electrical turn signal given, but no mention made of it in court's opinion.

[42] Banks v. Shepard, 230 N. C. 86, 52 S. E. 2d 215 (1949).

[1] Willard v. Rodman, 233 N. C. 198, 63 S. E. 2d 106 (1951).

[2] *Id.* at p. 202.

[3] The Full Faith and Credit Clause does not obligate the courts of one state to enforce an alimony decree rendered in another state with regard to future payments, particularly when such future installments are subject to modification by