

1952

# John B. Yeates v. Archie L. Budge : Brief of Respondent

Utah Supreme Court

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7851

7852

Cases No's. 7851-7852

**IN THE SUPREME COURT**  
**of the**  
**STATE OF UTAH**

**JOHN B. YEATES,**  
*Plaintiff and Appellant,*

— vs. —

**ARCHIE L. BUDGE,**  
*Defendant and Respondent.*

**and**  
**ARCHIE L. BUDGE,**  
*Plaintiff and Respondent,*

— vs. —

**MRS. JOHN B. YEATES,**  
*Defendant and Appellant.*

**FILED**

JUL 25 1952

Clerk, Supreme Court, Utah

**RESPONDENT'S BRIEF**

**RICH & STRONG and**  
**DALE T. BROWNING,**  
*Attorneys for Respondent*

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Appeals No's.  
7851-7852

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RESPONDENT'S BRIEF

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STATEMENT OF FACTS

These appeals involve merely a factual question. We, therefore, deem it advisable to make our own Statement of Facts.

The original typewritten transcript of the proceedings prepared by the reporter is filed as a part of the record in Case No. 7482 in the lower court. A typewritten

copy of the reporter's transcript of the proceedings was filed in Case No. 7475 in the lower court. Both transcripts are a part of the record on appeal. The proceedings are, of course, identical in each case because the two cases were consolidated for trial. However, the official paging appearing at the bottom of the transcript varies in the two transcripts because of difference in the number of pages in the pleadings in the two cases. The reporter's page numbering of both transcripts appears in the upper right hand corner of each transcript and this paging is identical in both cases. We will, therefore, follow the practice of appellants' counsel and in all references to testimony in our brief the same is to the page numbering of the reporter appearing in the upper right hand corner of each transcript.

The actions in connection with which these appeals have been taken arose out of an automobile accident that occurred on September 11, 1951, (R. 3), at approximately 6:00 P.M., (R. 4), just south of the Logan City Limits. Counsel for the appellant throughout his brief refers to Utah Highway No. 1 which runs from the Idaho line south through Logan and thence south to Wellsville through the State of Utah. This highway, except to counsel, is commonly known and also formally designated by appropriate markers as U. S. Highway 91 and is the main highway proceeding north and south through the State of Utah, (R. 6, 94). According to Section 36-6-12 Utah Code Annotated, Utah State Highway No. 101 runs from Logan southerly via Hyrum to Wellsville. U. S. Highway 91 proceeds in a general northerly and southerly direc-

tion through Logan, Utah, and just south of the City Limits of Logan said U. S. Highway 91 curves to the west. At this point said Utah State Highway No. 101 proceeds in a southeasterly direction from said U. S. Highway 91. The junction of said Utah State Highway with said U. S. Highway 91 forms an almost perfect "Y". North of the said junction said U. S. Highway 91 is a 4 lane paved road. As said U. S. Highway 91 curves to the west south of said junction it narrows to a 2 lane paved road. Utah State Highway No. 101 is merely a 2 lane paved road. There is a stop sign on the east side of said Utah State Highway 101 at its junction with said U. S. Highway 91 requiring traffic on said State Highway No. 101 to stop prior to entering said U. S. Highway 91. The physical facts and the manner in which said highways come together were all indicated on a blackboard drawing made by State Highway Patrolman Roland Reese which drawing has been copied by the reporter and reproduced at R. 117. While there is no designation on the map to indicate directions, the top of the map indicates south and the bottom of the map indicates north, (R. 4). The speed limit along U. S. Highway 91 at the scene of the accident is 35 miles per hour and was so posted at the time of the accident, (R. 33).

The accident occurred on a clear day, (R. 10), with no obstruction to vision, (R. 11).

Mrs. John B. Yeates was driving a 1946 Ford vehicle which was owned by her husband, (R. 4, 19), and was proceeding south from Logan en route to Hyrum, Utah, (R. 8). Archie L. Budge was driving his 1948 Nash auto-

mobile, (R. 70), in a northerly direction along U. S. Highway 91, (R. 9, 63). The 2 cars were thus approaching the "Y" from opposite directions.

Mrs. Yeates testified that as she approached the "Y" she was traveling at a speed of approximately 25 miles per hour, (R. 7, 8, 9), and that Budge was traveling at a medium rate of speed, neither fast nor slow, (R. 14). When she was up by the bridge some distance north of the "Y" she was traveling in the far west lane for southbound traffic on said U. S. Highway 91. At that time she signaled with her hand to change lanes and proceeded into the inside lane for southbound traffic next to the center line so that she could make a left turn at the junction onto the Nibley-Hyrum road, (R. 16). She testified that when she first observed the Budge car it was coming north on its own side of the road, (R. 16), and was then about a length or a length and a half of the court room from her, (R. 9); that there were no obstructions to her vision, (R. 11). Point A was designated on the blackboard map, (R. 117), as the point where U. S. Highway 91 and Utah State Highway 101 come together. According to Mrs. Yeates when she was about 100 or more feet north of Point A, Budge was just about at Point A, (R. 57-58).

Mrs. Yeates testified that she had driven over the road a number of times, (R. 15), and knew it was a dangerous intersection, (R. 19); that she knew there was a stop sign requiring traffic as it came north along the Nibley road to stop, (R. 15). She testified that she knew that the Budge car was going to continue north into Lo-

gan as there was no other way for it to go, (R. 21, 24, 25).

“Q. (By Mr. Strong) Mrs. Yeates, when you first saw the Budge vehicle there was no doubt in your mind as to the course it was going to take and that it was coming straight into Logan, was there?

A. Well, I guess that’s right. (R. 24)

Q. You knew that was the only road it could take?

A. Surely.

Q. And you knew what road it was going to take when you first saw it?

A. Yes. (R. 25)”

When she was about the length of the court room away from the Budge vehicle she applied her brakes, (R. 19), because she didn’t know whether she could proceed safely in front of it. At this time she had not yet crossed over the center line of the highway, (R. 16, 20).

“Q. So that when you were about the length of this room away you applied your brakes?

A. Yes, sir. (R. 20).

\* \* \* \*

Q. At that time you didn’t know whether you could safely proceed across in front of this Budge car?

A. That’s right. (R. 20).

\* \* \* \*

Q. But while they were applied (meaning the brakes) you turned across the double center line into the lane for northbound traffic?

A. Yes. (R. 21).

\* \* \* \*

Q. Well, that's what you did though, isn't it? You did turn over the double center line into the lanes of northbound traffic with your brakes on?

A. But that put me in my own lane.

Q. Put you over the double center line, didn't it?

A. Yes, and on my own road going to Nibley. (R. 22)."

She admitted that she had not signaled her intention of turning from Highway 91 onto the Nibley-Hyrum road, (R. 16, 17, 95).

She testified that the front end of her car practically back to the windshield was over the center line of the highway at the time of the impact, (R. 18, 19). She admitted that there was no other traffic in front of her on her side of the road in the immediate vicinity of the accident, (R. 21).

She testified that the right front of her car and the left front of the Budge vehicle collided, (R. 23); that at the time of the impact she was practically stopped, although her car could have been somewhat in motion, (R. 23).

Mrs. Yeates testified that she expected Budge to pass to the rear or west of her car, (R. 27), notwithstanding the fact that the front end of her car at that time was over the center line of the highway and the rear of her car was at least partially in the inside lane of south bound

traffic on Highway 91, (R. 28). She further admitted that she turned the steering wheel of her car to the left before the impact, (R. 30-31).

Archie L. Budge testified that when he passed the 35 mile speed limit sign about a block southwest of the "Y," he reduced his speed to 35 miles per hour and slowed down to about 30 miles per hour as he approached the "Y," (R. 53); that he first observed the Yeates vehicle when it was about 500 feet away, (R. 75); that it was traveling in the lane next to the center line, (R. 46-47), with no other vehicles at that time on the road between the two cars; that he continued ahead because there was no indication that the Yeates car was going to cross into his lane of traffic, (R. 47); that when the two vehicles were about 25-30 feet apart Mrs. Yeates started to turn abruptly into his lane of traffic and without signalling her intention so to do, (R. 48, 65); that he applied his brakes and turned to the right, (R. 65); that he didn't have time to turn to the left or rear of the Yeates car and that this in any event would have placed him on the wrong side of the road, (R. 48). According to Budge Mrs. Yeates was traveling about 25-30 miles per hour and he thought she picked up speed as she turned in front of him, (R. 66). Following the accident, Mrs. Yeates said: "I just don't know what happened," (R. 67).

There were four passengers in the Budge vehicle, all of whom testified at the trial. Ivan Peterson, one of the passengers, stated that Budge slowed down as he approached the intersection and was not traveling over 30 miles per hour at the "Y," (R. 82); that he observed

the Yeates car traveling down the highway on its own side of the road until it got within 25-30 feet of them when it made a quick left turn, (R. 83); that Budge turned to the right and applied his brakes, (R. 83); that Mrs. Yeates gave no signal, (R. 83); that there was no danger or warning until Mrs. Yeates made the abrupt left turn, (R. 84); that in his opinion Mrs. Yeates was traveling at a speed of about 30 miles per hour as she made the turn, (R. 84).

William Royce King, another passenger in the Budge vehicle, testified that they were not going fast and were traveling under 30 miles per hour as they approached the "Y," (R. 88); that Mrs. Yeates was traveling in the lane immediately to the right of the center line but made an abrupt left turn just a split second in front of the Budge car, (R. 89), when the Budge vehicle was about 30-40 feet away, (R. 92); that the accident occurred about 3 or 4 feet east of the center of the highway, (R. 91); that until Mrs. Yeates made her abrupt left turn he thought she was going to continue on Highway 91, (R. 93).

William B. Smith, another passenger in the Budge vehicle, stated that as the Budge car entered the intersection it was traveling at a speed of about 20-25 miles per hour, (R. 103); that when the Yeates car got within 20-30 feet of them Mrs. Yeates without signaling (R. 106), whipped sharply in front of them like she was going to make a U turn and at a speed of 20-25 miles per hour, (R. 102).

Leatham MacNiel, another passenger in the Budge

vehicle, testified that they were traveling at a moderate rate of speed, (R. 108); that when he first observed the Yeates car it was in the inside lane coming straight down the road but that when it got within 25-30 feet of them it made a quick left turn in front of them, (R. 108); that Mr. Budge then turned to the right, (R. 108).

Paul W. Hurd was driving a northbound vehicle on Highway 91 and had been traveling ahead of the Budge vehicle. He observed the Yeates car coming south on Highway 91 at a speed of about 35 miles per hour. He looked back over his shoulder and observed the Yeates car about at the time of the impact with the car about one-half a car length across the center of the highway, (R. 96). He testified that he had been traveling at a speed of 27-28 miles per hour and that Budge had not been gaining on him, (R. 97).

Roland Reese, the State Highway Patrolman who investigated the accident, (R. 32), testified that when he arrived on the scene the Yeates car was headed almost due east, (R. 42), with its front wheels 21 feet west of the east edge of the paved road and its rear wheels 26 feet east of the west edge of the paved road, (R. 37, Ex. 1); that the oiled portion of U. S. Highway 91 at this point was 60 feet in width, (R. 38); that he observed 37 feet of brake marks from the Yeates car, (R. 35); that these brake marks at their north end started about on the line separating the two lanes for southbound traffic, (R. 38, 40, 41). Patrolman Reese also testified that the Budge vehicle laid down 41 feet of brake marks, (R. 34), and traveled 13 feet after the impact, (R. 34, 35). Patrolman

Reese testified that he drew a map showing the physical facts as he found them on the scene right after the accident and before either car had been moved, (R. 39). This map was received in evidence as defendant's Exhibit No. 1. He testified that the diagram, Exhibit 1, had been drawn by him to show the situation on the highway as he found it immediately following the accident and that the diagram clearly showed the cars and the marks as good as an amateur could make it, (R. 39). He testified that from his observation the front wheels of the Yeates car at the time of the accident were about 9 feet over the double center line, (R. 42).

With reference to the skid marks testified to by the patrolman, Mr. Budge stated that his marks were not skid marks but merely tire marks, (R. 78). He also testified that the length of his car was 18-20 feet, (R. 97); that he was present when the officer measured the skid marks and that they included the total length without any allowance for the wheel base and that the length of his car would, therefore, have to be subtracted, (R. 98). Mr. MacNiel testified that the measurements of brake marks from both cars were made from the point of impact on the front of each car and therefore the marks included the front wheels; that the length of car, therefore, would have to be subtracted to determine the actual braking distance; and that by doing so these marks would indicate that the two vehicles were about 40 feet apart when the brakes on both were first applied, (R. 112, 113).

Archie L. Budge sued Mrs. John B. Yeates for per-

sonal injuries and for damages to his vehicle, (Budge, R. 1), and Mrs. Yeates counterclaimed in this action for alleged personal injuries (Budge, R. 2). John B. Yeates as owner of the vehicle operated by his wife filed a separate suit against Archie L. Budge to recover damages to his automobile (Yeates, R. 1). Both cases were consolidated for trial and tried before the Judge without a jury, the Judge in both cases, therefore, acting as trier of the facts.

The court found that Mrs. Yeates was negligent in turning left across the center of the highway into the path of the Budge car when it was so close as to constitute a hazard and without keeping a proper lookout, and that this negligence was the sole proximate cause of the accident, (R. 6-7 Yeates case) (R. 5 Budge case). Mrs. Yeates counterclaim was dismissed, (R. 59) (Budge R. 7). A judgment of no cause of action was rendered in the Yeates case against Budge (Yeates R. 9), and a judgment in favor of Budge was entered in his case against Yeates, (Budge R. 7). The only question involved in these appeals is whether there was sufficient evidence to sustain the court in its finding that Mrs. Yeates' negligence was the sole proximate cause of the accident.

## POINT

THE EVIDENCE IN THE CASES SUPPORTS THE FINDINGS AND JUDGMENTS OF THE TRIAL COURT.

## ARGUMENT

There is no dispute that this accident occurred at an

intersection. Counsel for the appellants, however, takes the position that Mrs. Yeates was not making a left turn at the intersection. He bases this on the claim that Mrs. Yeates was allegedly on Highway 101 as well as U. S. Highway 91 before reaching the junction after leaving Logan and that she continued on that highway and by reason of this she was not turning left but in fact continuing straight ahead. As a matter of fact, the Hyrum-Nibley Road does not commence and is not even designated except at the point of its junction with U. S. Highway 91 and south thereof. In any event, an examination of the reproduction of the patrolman's map (R. 117) shows that Mrs. Yeates would have to turn left to reach the Hyrum-Nibley Road. Mrs. Yeates herself testified that she did turn left and that the front end of her car back to the windshield was across the double center line of Highway 91 at the time of the accident. In response to a direct question asked her by the court she admitted that she actually turned the steering wheel of her car to the left. Under such circumstances it is difficult to understand how counsel could decide that Mrs. Yeates was not making a left turn.

Section 57-7-78 (ii), Utah Code Annotated 1943, defines an intersection as follows:

“Intersection.” The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles, or the area within which vehicles traveling upon

different highways joining at any other angle come in conflict."

Section 57-7-137, Utah Code Annotated 1943, controls the rights of motorists turning at an intersection and provides as follows:

"The driver of a vehicle within an intersection *intending to turn to the left* shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver, having so yielded and having given a signal when and as required by this act, may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicle making the left turn."

We believe that these sections of the Utah statute are controlling and decisive of the facts and issues in the case. Under them there can be no question that Mrs. Yeates was in fact making a left turn.

In these cases the court was sitting as trier of the facts. It weighed all of the evidence before it and concluded that the negligence of Mrs. Yeates in making a left turn in front of the Budge vehicle when it was so close as to constitute a hazard was the sole proximate cause of the accident. The decision of the trial court must be upheld if there is any evidence to support it. We believe that the evidence in this case not only supports the court's decision, but under the testimony no other reasonable decision was possible.

There was evidence from which the court could have found that Mrs. Yeates while traveling at a speed of 20-30 miles an hour south along U. S. Highway 91 made an abrupt left turn without signal or warning across the double center line at a time when the Budge vehicle was within 25 or 30 feet of her; that at the time of the impact the front end of the Yeates car back to the windshield was over the double center line; that the right front of the Yeates vehicle and the left front of the Budge vehicle collided.

The undisputed evidence in the case was that the speed limit on U. S. Highway 91 at the scene of the accident was 35 miles per hour. No one testified that Budge was traveling in excess of that speed. Even Mrs. Yeates described his speed as moderate. Under such circumstances it is difficult to support the court's finding that Budge was traveling at an excessive rate of speed, but nonetheless, under the facts above mentioned, Budge's speed could not be a proximate contributing cause to the accident. Mrs. Yeates admittedly gave no warning signal of any type for her left turn and until her vehicle crossed over the double center line there was nothing to indicate to the defendant that she was going to turn left onto the Hyrum-Nibley Road. Since she was then within 25-30 feet of the Budge vehicle and since the court could have found that both vehicles at that time were traveling at a speed of 20-30 miles per hour, an accident was inevitable regardless of the speed at which Budge was traveling. In fact, Mrs. Yeates felt at the time she turned left there was going to be an accident (R. 34), and she was

still on her side of the road, but notwithstanding her feeling, continued across the double center line into the path of the oncoming Budge car.

Whether Budge's speed was excessive under the circumstances, and if so, whether it was a proximate cause of the accident was a question of fact to be decided by the court sitting as trier of the facts. See 5 Am. Jur. P. 882, Sec. 689, where it is said:

“\* \* \* It is generally for the jury to decide whether the speed of the vehicle proximately contributed to the accident, and whether such speed was excessive, considering in connection therewith the hazards of the surrounding circumstances.”

See also to the same effect 10 Blashfield Cyclopedia of Automobile Law and Practice, Part 1, P. 662 Sec. 6607, where it is said:

“Speed in excess of that permitted by statute, ordinance, or other traffic regulation may constitute negligence per se; *nevertheless there is still a jury question as to whether or not such violation was the proximate cause of the injury or damage complained of.*”

See also 4 Blashfield Cyclopedia of Automobile Law and Practice, Part 2, P. 111, Sec. 2611, which reads as follows:

“It is usually a question for the jury whether an excessive rate of speed is a contributing cause of an accident, so it has been held a question for

the jury whether the violation of an ordinance limiting the speed of vehicles in crossing a main thoroughfare was the proximate cause of a collision of plaintiff's automobile with a telephone pole."

See *Frakes vs. Travelers Mutual Casualty Co.* (Kansas), 84 Pac. (2d) 871. In that case the defendant argued, as appellant's counsel does here, that since the jury found the plaintiff was guilty of traveling at a speed in excess of that provided by statute, that as a matter of law the plaintiff was not entitled to recover. The court held that this did not follow because it was still for the jury to determine whether the speed was a proximate contributing cause of the accident. The jury did not so find and the appellate court upheld its decision.

See also *Bennis vs. Young* (Calif.), 20 Pac. (2d) 111, wherein there was evidence that both cars involved in the accident were exceeding the speed limit, but the jury found that the defendant's negligence was the proximate cause of the accident, and the appellate court sustained the verdict.

See also to the same effect *Larsen vs. Webb* (Miss.), 58 S.W. (2d) 967, holding that negligence of a plaintiff in exceeding a statutory speed limit would not defeat his recovery unless such negligence was a proximate contributing cause to the accident.

The Utah Supreme Court in the case of *Martin vs. Stevens*, decided May 1, 1952, and reported at 243 Pac. (2d) 747, has held that even though there was evidence of negligence on the part of plaintiff, that it was none-

theless for the jury under all of the evidence to determine whether that negligence was a proximate cause of the accident or whether the defendant's negligence was the proximate cause of the accident. In the case at bar the court was sitting as trier of the facts and found that the negligence of Mrs. Yeates was the proximate cause of the accident. The court as trier of the facts was, therefore, doing what the Utah Supreme Court in the *Martin vs. Stevens* case held was its proper function under disputed issues of negligence and contributory negligence.

Counsel for appellants in his brief argues that Budge should have passed to the rear or left of the Yeates vehicle and that he was negligent in not so doing. He relies on Section 57-7-130 (b), Utah Code Annotated 1943, which, among other things provides:

*"Whenever practicable a left turn shall be made in that portion of the intersection to the left of the center of intersection."*

We refer the court to the reporter's copy of the patrolman's diagram found at R. 142 for the purpose of determining whether counsel's contention in this regard is sound. Car No. 2 as indicated on the diagram shows the position of the Yeates vehicle across the double center lines. However, as testified to by Mrs. Yeates, only the front portion of the car back to the windshield was over the double center lines. The diagram conclusively shows that it would not have been practicable or safe for Budge to have passed to the left or the rear of the Yeates

vehicle. This would have placed him entirely on the wrong side of the road and into the lanes for southbound traffic. He turned right when Mrs. Yeates made her abrupt left turn across the center line when he was only 25-30 feet away and we submit that this was the only safe thing for him to do. In fact, according to Budge and all of the passengers in his vehicle there was no time to turn left in view of the suddenness with which Mrs. Yeates turned in front of them.

Counsel for appellant in his brief refers to the brake marks from each of the vehicles as testified to by Patrolman Reese and argues that according to the brake marks the two vehicles were 78 feet apart since there were 37 feet of brake marks from the Yeates car before the impact and 41 feet of brake marks from the Budge car. However, it is undisputed by other testimony that the patrolman measured to the front wheels of each vehicle at the point of impact and that accordingly in order to determine the actual braking distance of each car the length of each vehicle would have to be subtracted. Budge testified that his vehicle was about 18-20 feet in length and the length of the Yeates car would, of course, be about the same. Subtracting the lengths of the two vehicles from their respective brake marks, this would indicate that the two vehicles were actually 38-42 feet apart when the brakes on each were first applied. There was evidence that the two vehicles at that time were traveling at a speed of 20-30 miles per hour. The patrolman's drawing of Mrs. Yeates brake marks, (Exhibit 1), indicates that the Yeates vehicle proceeded at

about a 45 degree angle from a point near the outside lane across the center line. It can thus readily be seen that Mrs. Yeates did turn abruptly in front of the Budge car and when it was too close for Budge to avoid an accident. Her negligence under such circumstances was the proximate cause of the entire accident.

Mrs. Yeates knew the course that the Budge vehicle was going to take because it was the only road which it could take. Notwithstanding this, she turned directly into the course that she knew the Budge vehicle would take. She created the hazard by turning into the path of the Budge vehicle and without giving any proper signal of her intention of so doing. She appreciated the danger while she was still on her own side of the road because when she first applied the brakes her vehicle was on its side of the road and near the line dividing the two lanes for southbound traffic. She felt then that an accident was going to occur and yet continued turning directly into the path of the oncoming car. She could have avoided the accident by continuing on her own side of the road to the left of the center line because, as she admitted, there were no other southbound vehicles in the immediate vicinity and nothing to have prevented her from so doing. The diagram prepared by Patrolman Reese at the time of the original investigation immediately following the accident indicates that the Yeates vehicle made a sharp turn and from the outside lane and at almost a 45 degree angle directly into the path of the Budge car, (Exhibit 1).

We believe that the reasoning of this court in the

cases of *Cederlof vs. Whited*, 169 Pac. (2d) 777, *French vs. Utah Oil Refining Co.*, 216 Pac. (2d) 1002, and *Hardman vs. Thurman*, 239 Pac. (2d) 215, is a complete answer to the position taken by the appellants in these cases.

While the *Cederlof* case did not occur at an intersection, the question there was whether the defendant's negligence in making the left turn was the sole proximate cause of the accident or whether there was evidence from which the jury might find that the plaintiff was guilty of contributory negligence in causing the accident. The court in that case points out that the jury could have found that the defendant made the turn very slowly in accordance with his testimony, or could have found that he did not slow down but turned suddenly into the plaintiff's lane of traffic. This is exactly the situation in our case. Mrs. Yeates testified that she made the turn very slowly, but in such event Budge would have been justified in assuming that since her brakes were applied she had seen his approach and was going to allow his car to pass before proceeding across his lane. If, on the other hand, the court believed the other testimony that Mrs. Yeates did not slow down, then, as indicated by this court in the *Cederlof* case, the result would still have been the same and the negligence of Mrs. Yeates would still be the sole proximate cause of the accident. In both the *Cederlof* case and the *French* case the court indicated that after all the one making the left turn has control of the situation. He knows when he is going to turn, but the opposing driver must discover it and even where the approaching driver is coming too rapidly, the left turn

drivers must take that into consideration. In the cases at bar Mrs. Yeates knew the course that the Budge vehicle was going to take, but Budge could not, of course, know which road she was going to take. She did not signal and gave him no warning of her turn until it was too late for him to avoid the accident. Furthermore, she knew the speed at which the Budge vehicle was being operated and had appreciated the danger by applying her brakes while still on her side of the road, but then she turned directly across the center line into the path of the Budge car when she could have avoided the accident in its entirety by remaining on her own side of the road.

The *Hardman vs. Thurman* case merely held that the questions of negligence and contributory negligence in a left turn case were questions of fact for the jury. In the cases at bar the court was sitting as trier of the facts. The case is, therefore, stronger than either the *Cederlof* case or the *French* case and comes directly within the rule announced in the *Hardman vs. Thurman* case. The court sitting as trier of the facts resolved the issues in the favor of Budge and we submit under the evidence there was ample to support the court in so finding.

## CONCLUSION

It is, therefore, respectfully submitted that the judgment of the lower court in both cases should be affirmed.

Respectfully submitted,

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