

1954

# Hollis E. Walker v. Levi G. Peterson : Brief of Appellant

Utah Supreme Court

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Walter G. Mann; Attorney for Defendant and Appellant;

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Case No. 8213

Case No. 8213

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# In The Supreme Court of the State of Utah

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HOLLIS E. WALKER,

Plaintiff and Respondent

VS.

LEVI G. PETERSEN,

Defendant and Appellant

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## APPELLANT'S BRIEF

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Walter G. Mann

Attorney for Defendant  
and Appellant

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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HOLLIS E. WALKER

Plaintiff and Respondent

vs.

LEVI G. PETERSEN,

Defendant and Appellant

Case  
No.  
8213

---

APPELLANT'S BRIEF

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STATEMENT OF FACTS

This case does not involve a lot of money but the principle involved is great and for the reason that the court, in making its decision said (R. 130) :

“Gentlemen, this court is committed to the doctrine in these kind of cases, on through highways, the proximate cause must rest solely on him who makes the left turn. Until the Appellate Court overturns that doctrine, that will remain the rule in this District.”

He again repeated himself on this doctrine in (R. 131 line 20) :

“So, while I find both parties guilty of negligence—and I repeat that until such time as I am instructed

otherwise by an Appellate Tribunal—the findings and conclusion must be as indicated by the language cited by counsel, used by Mr. Justice Wolfe, that he who makes the left turn on these through highways must take the responsibility irregardless of speed, or any other circumstances.”

This theory of the Court, as set out above, unbeknown to counsel, was in the mind of the tryer of the facts at the beginning of the trial. It mattered not what cases might be cited in support of counsel's contentions in behalf of his client; it mattered not how careless the opposing party might be; what laws he might break or with how much speed the opposing party might drive upon a through highway, if my client turned to the left and an accident resulted, my client is guilty of negligence which, in the opinion of the court, is the sole proximate cause of the accident. The other party might be guilty of negligence but under no circumstances can it be a proximate cause. This theory, according to the Court will remain the doctrine of this District unless the Appellate Court of the State of Utah in a decision appealed from Box Elder County, where the Honorable Judge Lewis Jones was presiding, should advise him otherwise.

Consequently I say in all sincerity, and I firmly believe that the statements made by the Court (R. 130-131):

“This court is committed to the doctrine in these kind of cases, on through highways, the proximate cause must rest solely on him who makes the left turn - - - That he who makes the left turn on these through highways must take the responsibility irregardless of speed or any other circumstance, - - - ”

is not the law and never has been and that such a doctrine would, in fact, encourage dangerous driving for it offers a

premium to any person who might be traveling a through highway, if he utterly disregards the rights of any person who might wish to cross the same, by giving him immunity from all his wrongs, regardless of what they are, if an accident takes place. Consequently this appeal must follow.

This is an intersection collision. Plaintiff was traveling south on Highway 30S approaching Bear River City, Utah. The defendant had been traveling North on said highway but stopped his car East of the hard-surface thereof on said highway and some 20 or 30 feet South from the intersection in question for the purpose of talking business with another party. The other party had been driving a truck but upon receiving a signal from the defendant, he stopped his truck on the East side of the highway after he had passed the intersection in question and at a point off the hard-surface and about 100 feet North from the intersection. Both the defendant and the trucker got out of their cars and met together in the intersection, East of the hard-surfaced portion, and talked over their business. When the conversation ended, the defendant went South to his parked car and the trucker went North to his parked truck and both started their motors, preparatory to driving off. The trucker commenced to go back on the hard-surface of the highway, slowly, as he proceeded in a northerly direction and the defendant commenced to make a left turn at the intersection from the point where he was stopped on the East side of the highway, so as to go to his home which is located about a block West from that intersection.

Highway 30S is an arterial highway which passes through Main Street, Bear River City, Utah, where the defendant lives. At the intersection in question, both the Main Highway and the intersecting street are 99 feet wide. The intersecting street is gravel while the arterial highway



is hard-surfaced for 22 feet in the center. North of the intersection and on the West side of the arterial highway at a point approximately 375 feet to the North of the intersection is a State Road sign fixing the speed at 40 miles per hour, as you proceed South from that point. North of that sign the posted speed is 60 miles per hour in the daytime. Two blocks North of the intersection in question, is a sign reading "Entering Bear River City." The day was clear and the highway dry and the accident happened at approximately 11:45 A. M. The plaintiff testified (R. 57 and 58) that when he reached the 40 mile zone, he was doing 60 miles an hour and the Court (R. 131 line 12) found:

"In accordance with their testimony I expressly find that the plaintiff's car was going over 60 miles an hour as it came up to that 40 mile zone and it was going 5 miles or more in excess of 40 miles an hour as it approached the intersection."

The plaintiff claimed that he was going 45 miles an hour, just prior to the accident, but admitted that he had never looked at his speedometer (R. 72 line 30). The plaintiff's wife also testified that just before the collision they were doing 40 to 45 miles an hour, but she admits that she did not look at the speedometer (R. 75). They both testify that they did not see the Petersen car turn West across their lane until they were 100 feet away from him (R. 58 line 8) (R. 68 line 20) (R. 74 line 26). It so happened that another vehicle was traveling back of the Walker car. The party driving it being a Mr. Madsen, and even though he was back and further down the highway to the North, he testified (R. 84 line 20) that he saw both the truck that was parked and the defendant's car that was parked, start to move from their positions on the East side of the highway at about the same time. One appeared to be going to back



upon the highway and going North which was the truck, and the other car appearing to make what he thought was a U turn, though farther down the street he saw the defendant's car turn from its parked position and start west (R. 84) across the intersection, even though plaintiff did not see him at all until he started across the center line. (R. 58)

A Highway Patrol Officer testified (R. 97) where the point of the accident happened, being on the West side of the hard-surface of the road halfway through the intersection. That from that point the officer went northerly along the road and found skid marks on the cement from the Cadillac car, belonging to the plaintiff, for a distance of 148 feet. He also testified (R. 98) beginning with line 24, that from the point of impact, the Walker car continued for a distance of 42 feet. Also, that the defendant's car which was a Mercury sedan, was knocked back Southeast across the highway from the point of impact, heading the car again in a Southeast direction, being just opposite from where it was heading, a distance of 72 feet. Or, in other words, the plaintiff's car had skid marks of 148 feet prior to the point of impact and if we deduct the 148 feet from the 375 feet to the reduce speed sign, we would have 227 feet that the Cadillac car traveled before the brakes took hold from the 40 miles an hour sign and at said sign the Court found he was going in excess of 60 miles per hour which would be just 2½ seconds travel time at 60 miles an hour.

Now, this question comes up. Would the speed of the Cadillac car in 2½ seconds time when it was traveling in excess of 60 miles on hour, drop down without its brakes being applied, over two or three miles an hour? The truck driver, Brook Shuman, watched the plaintiff's car come down the highway (R. 108) when he started to drive his car North from its parked position, and we must remember that

plaintiff's witness Madsen said they both (defendant and Shuman) started to drive off at the same time, that the plaintiff's car was at least one block North of where the truck was. That he noticed this car coming because there was a reduce speed sign there and officers had been watching people rather close in that zone. That he heard the brakes go on when the plaintiff's car was just a little in front of his truck. Again at (R. 110) this same Mr. Shuman testified that he did not see the plaintiff slacken his speed at all prior to the screeching of the brakes; that he was in his line of vision all the time and that in his opinion he was going sixty miles an hour at the time he applied his brakes. On the other hand Mr. Petersen testified (R. 118) and (R. 119) that he was well out into the intersection when the plaintiff's car reached the 40 mile zone. He also testified (R. 122) that he started to drive his car away at the same time the truck started to move off. He said he was parked between 20 or 30 feet from the intersection on the East side of the hard-surfaced portion (R. 124). He testified on cross examination (R. 125) that he checked the road behind him before he started to drive off. That he gave an arm signal and light signal and that the plaintiff was then halfway between the 40 mile zone sign and the cross road further to the North. Counsel for plaintiff cross examined for this and received the following answer:

"No, I didn't tell you that, I told you he was half of the 40 miles where the 40 mile zone starts. He was in the half of that other block where that street comes down.

Q. Then you are trying to tell me he was still in the 60 mile zone?

A. Yes.

Q. So he was still in the 60 mile zone when you pulled off on to the highway?

A. That's right.

If this estimate were correct then the plaintiff was between 550 and 600 feet away when the defendant started to drive across the street.

Petersen admitted that he did not continue to watch the Walker car all the time, after he had determined that it was safe to cross and after he had started in a westerly direction, he did not look again to the North until the plaintiff honked his horn (R. 127) and that he was across the center line heading West when he heard the horn honked. That he estimated his own speed between 5 and 6 miles an hour (R. 129).

After both parties rested, the Court announced his doctrine that the proximate cause must rest solely on him who makes the left turn irregardless of speed or any other circumstance, but found plaintiff guilty of negligence.

#### STATEMENT OF POINTS

POINT 1. That the Court erred in failing to find the plaintiff guilty of contributory negligence, after he found the plaintiff guilty of negligence.

POINT 2. That the Court erred after finding that the plaintiff was driving too fast for existing conditions and was driving in excess of the posted speed upon said highway and that said excessive speed was negligence in not also finding that said negligence was a proximate cause of said accident.

POINT 3. That the Court erred in failing to find that the plaintiff failed to keep a proper lookout and that the duty to keep a proper lookout applies as well to the favored driver on an arterial highway as to a dis-favored driver on an intersecting street and neither can excuse his own failure to observe because the other driver failed in his duty.

POINT 4. That the Court erred in failing to find that even though a driver making a left turn must yield the right of way to cars which are close enough to constitute an immediate hazard, that said rule requires the exercise of some judgment and that there is still a duty on the part of the driver traveling the arterial highway to remain reasonably alert to the possibility of the dis-favored driver starting across the intersection in the belief that he can cross in safety, and that his failure to remain alert and observe in time to avoid an accident can contribute to and be a proximate cause of an accident.

POINT 5. That the Court erred in failing to find that all rights of way are relative and the duty to avoid accidents or collisions at street intersections rests upon both drivers.

### ARGUMENT

Inasmuch as all of the above points are closely related and can be discussed together, the argument hereafter will be addressed collectively to all of them.

Now first I wish to cite some of the sections of our Utah Code.

**Utah Code Annotated 1953 41-6-46. Speed regulations—Maximum speeds—School buses and school buildings—Intersections—Powers of Governor—**(a) No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care.

(b) Where no special hazard exists the following speeds shall be lawful but any speed in excess of said limits shall be prima facie evidence that the speed is not reasonable or prudent and that it is unlawful:

(1) Twenty miles per hour.

Upon meeting or overtaking any school bus which has stopped on the highway for the purpose of receiving or discharging any school children, provided, such school bus bears upon the front and rear thereof a plainly visible sign containing the words school bus in letters not less than 4 inches in height which can be removed or covered when the vehicle is not in use as a school bus.

When passing a school building or the grounds thereof during school recess or while children are going to or leaving school during opening or closing hours; provided, that local authorities may require a complete stop before passing a school building or grounds at any of said periods.

(2) Twenty-five miles per hour in any business or residential district.

(3) Sixty miles per hour in other locations during the daytime.

(4) Fifty miles per hour in such other locations during the night-time. Daytime means from half hour before sunrise to half hour after sunset. Night-time means at any other hour.

(c) The driver of every vehicle shall, consistent with the requirements of subdivision (a) of this section, drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding road, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(d) Provided, that the governor by proclamation, in time of war, or national emergency, may upon recommendation of the federal authorities, change the speed on the highways of the state, to conform to such recommendations.

**Utah Code Annotated 1953 41-6-73 Vehicle turning left at intersection.**—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 approach-



ing the intersection from said opposite direction shall yield the right-of-way to the vehicle making the left turn.

Utah Code Annotated 1953 41-6-144. Brakes—Equipment required—Performance standard—Condition—  
(a) the following brake equipment is required.

(1) Every motor vehicle, other than a motorcycle or motor-driven cycle when operated upon a highway shall be equipped with brakes adequate to control the movement of and to stop and hold such vehicle, including two separate means of applying the brakes, each of which means shall be effective to apply the brakes to at least two wheels. If these two separate means of applying the brakes are connected in any way, they shall be so constructed that failure of any one part of the operating mechanism shall not leave the motor vehicle without brakes on at least two wheels.

(b) Every motor vehicle or combination of motor drawn vehicles shall be capable at all times, and under all conditions of loading, of being stopped on a dry, smooth, level road free from loose material, upon application of the service (foot) brake, within the distance specified below, or shall be capable of being decelerated at a sustained rate corresponding to these distances:

	Feet to stop from 20 miles Per hour	Decelerated In Feet per Second Per Second
Vehicles or combinations of vehicles having brakes on all wheels.	30	14
Vehicles or combinations of vehicles not having brakes on all wheels.	40	10.7

Now, can't we say this: If the plaintiff were going 45 miles per hour and saw the defendant at a distance that has to be 250 feet or more (he left tire marks for 148 feet plus time element to react at his speed per hour) and if his brakes met the requirements of Section 41-6-144 he could have stopped in sufficient time to avoid the accident? If he did not stop then he was traveling faster than that speed or he was negligent in not having his car equipped with brakes that could stop him in the distance required by the

statutes. Also, under the speed section 41-6-46, he must have his car under control; drive no faster than is reasonable; reduce his speed when approaching an intersection and be alert and attentive. If he drives in a forty mile zone and into an intersection at such a speed that he leaves brake marks for a distance of 148 feet prior to the collision, and 42 feet thereafter and knocks a Mercury automobile 72 feet in the opposite direction, can we say that he satisfied the requirements of our statutes or must we conclude that his action, or lack of action was a proximate cause of the collision.

Again the section on the rights of making a left turn at an intersection does not define what distances amount to "or so close thereto as to constitute an immediate hazard," and each case has to be determined individually. Consequently the cases, a number of which are listed hereafter, hold that the rights and duties of each are relative and neither has an absolute right of way over the other when two vehicles are approaching each other and one intends to make a left turn and as a matter of law neither can disregard the other. So now to the cases.

**Cases:** Plaintiff seems to lean quite heavily on the Cederloff vs Whited 169 P. 2d 777. This case is not in point for the following reasons: Plaintiff brought the action to recover damages for injuries which she sustained in an automobile collision between her car which was driven by her son and a car driven by the defendant. The jury returned a verdict of no cause of action and Plaintiff appealed and reversed. Plaintiff's car was being driven in a northerly direction on State Street on the east side of the street in the traffic lane nearest the center. At the same time the defendant was driving his car in a southerly direction. When



these cars were in the middle of the block the defendant turned his car to the left into the course traveled by the plaintiff's car and the two cars collided. The point of impact was a few feet east of the center line of the street. The point of impact indicated that the front part of defendant's car was all that got beyond the center line of the street. The testimony shows that plaintiff's car was traveling 25 to 30 miles an hour prior to the accident with lighted head lights which complied with legal requirements. The evidence also showed that the defendant put his arm out of the window and signaled a left turn and that when he did so he had slowed his car down to five miles an hour at the time of the collision, but that he did not see plaintiff's car at all before the collision. The plaintiff contended that as a matter of law, defendant's negligence was the sole proximate cause of the collision and the resulting damage. The court in making its determination, cited Sections 57-7-133 Utah Code Annotated 1943 which is the same as our Section 41-6-69 and it is not an intersection case. The court went on to show that under the circumstances in that particular case, the driver of plaintiff's car would either believe that the defendant's car was slowing down waiting for plaintiff to pass, or that the turning was made at such a point where it would be physically impossible to avoid the collision. The court found that the sole proximate cause, on the facts therein stated, was the left turn made by defendant, but it was not an intersection left turn. One of the later cases shows the difference.

We have another case involving a turn in the center of a block which is Hart vs. Kerr, cited as 175 P.2d 475. This was an accident that took place in Ogden. The plaintiff was traveling north on the east side of Washington Blvd. in Ogden, Utah. When he reached a point near the corner of

17th Street, he was forced by repair work upon the highway to turn to his left and upon the east lane of the west side of Washington, in order to continue on north, had that been his intention. At the same time the defendant was driving south on Washington Blvd. on the west side thereof, leaving room for north bound traffic to pass the obstruction. However at that point, the plaintiff, instead of continuing north, made a left turn for the purpose of parking on the west side of Washington Blvd. and the defendant's automobile crashed into his side as he made the left turn. The record showed the defendant was traveling 35 to 50 miles an hour and the court held as a matter of law, that he was guilty of negligence. The lower court also held that the plaintiff violated the requirements of Section 57-7-133 Utah code annotated 1943 which are turns from a direct course on a highway and that he was guilty of negligence and denied the plaintiff relief upon his complaint as well as the defendant on his counter claim. From this the plaintiff appealed and the only thing before the Supreme Court was whether or not the plaintiff was negligent when he made a left turn. They held that he was when he failed to yield right of way.

So, in substance, this case is one where the defendant was speeding and the plaintiff was making a left turn and neither recovered.

Another Utah case that has been cited is Hickok vs. Skinner 190 P.2d 514. This covered an accident that happened at the intersection of 21st South Street and West Temple Street. 21st South Street is an arterial highway running east and west with stop signs placed so as to stop traffic coming from the north and south. The plaintiff was traveling north on West Temple and his testimony is

that he came to a stop at the stop sign, he waited for some traffic coming from the west and then looked east and saw an automobile more than a half a block away, between 400 and 500 feet east of the intersection. He also claims that there was some traffic coming from the north that required his attention because a driver might make a left hand turn, so plaintiff started up and figured that he had plenty of time to cross the intersection. He never again looked to the east and his car was struck by the defendant's automobile. On the other hand the defendant's speed, according to what the defendant told the investigating officer, was 45 miles per hour and the posted speed limit for the street was 35 miles per hour. There were no skid marks before the impact. The trial court held the plaintiff guilty of contributory negligence. The defendant no doubt admitted his own negligence and relied on contributory negligence. There was a City ordinance similar to the State statute which required the driver who had stopped at the stop sign to yield the right of way to other vehicles which have entered the intersection or which were approaching so closely on said highway as to constitute an immediate hazard, but said driver having so yielded may proceed and the driver's of all other vehicles approaching the intersection on said through highway shall yield right of way to the vehicle so proceeding into or across the through highway. The court, in analyzing the case held that when the defendant was 400 to 500 feet back from the intersection that he was not so close thereto as to constitute an immediate hazard, but that the court held that plaintiff had to be more observant and he could not look only the once and fail to ever look again and that as a consequence, he was guilty of contributory negligence. There was a strong descenting opinion, by Judge Wolfe.

Another interesting case is Conklin vs. Walsh 193 P. 2d 437 and in the syllabus they laid down this:

“The duty to keep a proper lookout applies as well to the favored driver on arterial highway as to disfavored driver on intersecting street, and neither can excuse his own failure to observe because the other driver failed in his duty.”

Which to me is the crux that we have before the court in this case.

In the above case the suit was first tried in the City Court of Salt Lake City, where judgment was rendered in favor of the respondents and against the appellants. It was then appealed to the District Court and tried before a jury. When both sides had rested the court directed a verdict in favor of the plaintiff Clifford E. Conklin and against the defendant. In so directing the verdict the court concluded that both drivers were guilty of negligence, but that Mrs. Conklin was not an agent or servant of her husband the plaintiff, and therefor her negligence was not imputable to him. The two principal questions raised on the appeal are:

(1) Did the Trial Court err in finding that the defendant Robert A. Walsh was negligent as a matter of law.

(2) Did the Trial Court err in finding that Mrs. Conklin was not the agent or servant of her husband in the operation of his automobile.

The facts were that the accident happened on South Temple Street where it is intersected by 0 Street from the north and by 10th East Street from the south. South Temple Street is the arterial highway and is 60 feet wide and 0 Street is 30 feet wide. Mrs. Conklin, driving her husband's car and taking their daughter to a neighborhood child's dancing lesson, drove the car out of 0 Street and south to South Temple. She stopped before entering the

intersection, claimed she looked both ways and then proceeded to cross the intersection looking straight ahead without again looking to the left and the right. Walsh was driving east along South Temple at a speed variously estimated at 30 to 45 miles per hour. He claims he saw Mrs. Conklin drive up towards the intersection and then look in the opposite direction to see what was coming and when he looked back she was right in front of him. He turned his vehicle to the right but the accident happened.

The court made some observations about the truck driver who was traveling up the arterial street and said on page 439:

“By his own admission the truck driver traveled at least one quarter of a block without making any further observation of a car which, at the time he first saw it, was much nearer the intersection than was his. He asserts his attention was focused on traffic that might be coming from the south. If, as he claims, he was unable to get a clear view to the south on 10th East Street, there was nothing to prevent him from reducing the speed of his truck so as to permit a reasonable opportunity to observe the approaching cars from other directions. In this case we have the driver of a truck traveling between 30 and 45 miles per hour who knows a car is approaching from his left, keeping his eye on what he claims to be a blind corner on his right, and ignoring the approach of the vehicle from his left. Because of the assumption that as to the later car he has the right of way. Under the facts of this case, either the defendants were or were not, as a matter of law, guilty of negligence which proximately contributed to the accident|”

Again on the right hand column, of page 439, speaking of the relative responsibility of both people on the highway, the court said:

“The defendant truck driver was not justified in thus ignoring the movement of plaintiff's automobile. The



duty to keep a proper lookout applies as well to the favored as to the disfavored driver. Neither driver can excuse his own failure to observe because the other driver failed in his duty. Neither driver is at any time to be excused for want of vigilance or failure to see what is plain to be seen. Drivers are permitted to cross over arterial highways after having stopped. True, they must yield the right of way to cars which are close enough to constitute an immediate hazard. This rule, however, required the exercise of some judgment. There is still a duty on the part of the driver traveling the arterial highway to remain reasonably alert to the possibility of the disfavored driver starting across the intersection in the belief that he can cross in safety. The duty of keeping a proper lookout attends all those operating motor vehicles and other rules of the road do not relieve any driver of the necessity of complying with this requirement."

Again on page 440 the court said:

"The driver having failed to see plaintiff's automobile until too late to avoid the collision, we see no escape from the conclusion that he did not keep a proper lookout and was guilty of negligence in that omission. The trial court so held."

The court went on to hold that there is no family purpose doctrine in the use of an automobile in the State of Utah. This being the husband's car, the negligence of the wife was not imputable to the husband and consequently the judgment of the lower court in favor of the plaintiff was affirmed and the man on the arterial highway, who failed to keep a proper lookout, even though he was a favored driver, was held to have driven negligently and that his negligence was a proximate cause of the injury.

Another interesting case was *Hardman vs. Thurman et al* 239 P. 2d 215. This was an action by Ruth Bunker Hardman, an administratrix of her husband's estate against Thurman and Wood, doing business as Dickey Wood Pro-

duce Company. This was an intersection case and took place about 9:30 P. M. on October 29, 1949, at the corner of 21st South and State Street in Salt Lake City. It appears that south of 21st South Street there are six lanes of traffic and north of 21st South Street there are four. At the time of the accident, Mrs. Hardiman was driving in a southerly direction on State Street and intended to turn east on 21st South Street. Her husband was riding in the front seat with her, holding their small child. She was driving in the lane next to the center lane. It appears that she stopped at 21st South Street momentarily to permit north bound traffic to proceed through the intersection. On the opposite side an oil tanker was proceeding north in the first lane east of the center lane and it had stopped at the south line of the intersection and signaled for a left turn to go west. There was a second car in the lane east of the oil tanker which was proceeding north but it stopped so that Mrs. Hardman could turn left and Mrs. Hardman observed no car in the third lane to the east, but as her car reached a point where it would be crossing the third traffic lane to the east if said lane had extended out in the intersection, the trailer truck operated by the defendants in the third driving lane came through the intersection and struck the Hardman car sideways and knocked it across to the north curb. Mr. Hardman received injuries from which he died the following day. There were some tire marks of the truck trailer which showed the distance the wheels, or some of them skidded when the brakes were applied. The speed of the truck was estimated at various speeds from 20 to 42 miles per hour. The speed on State Street at 21st South was 40 miles per hour and 35 miles per hour north of that intersection. A physicist who was called to testify as an expert on the basis of the skid marks and the weight of the



trailer estimated the speed at 42 miles per hour. The driver testified that he was only driving 20 miles per hour. The defendant sought reversal on the following grounds:

(1) That the court erred in denying defendant's motion for a directed verdict, since there is no evidence in the record to support a finding of negligence upon the part of the driver of defendant's trailer truck and that the evidence requires the finding that the driver of decedent's car was negligent.

(2) That incompetent evidence was admitted.

(3) That the court erred in refusing to give certain instructions requested by defendant.

The first ground is the one that, for the purpose of this case, we would be interested in. The court said on the left hand column, page 217:

"The assignments directed at the lack of evidence of negligence upon the part of the driver of defendant's truck is overruled. The testimony of such driver was itself such as to warrant the finding that he was driving negligently in the following particulars: (1) There was some evidence in the record from which the jury could conclude that from the driver's elevated position in the cab of the truck he would be able to see the Hardman car as it proceeded to make a turn on Twenty-First South Street. He admitted that he did not see it until after he got into the intersection. If he did not see the Hardman car, he was negligent by reason of being inattentive, and in proceeding into the intersection without ascertaining whether it was safe for him to proceed. (2) In traveling at an excessive rate of speed under the circumstances into the intersection. The evidence adduced relative to the speed of the truck, plus the fact that there was a car stopped to his left although the green light was showing southward, would indicate that it was not safe to proceed through the intersection. The fact that he was unable to bring his truck to a stop within 30 feet after the application of the brakes, as required by Sec. 57-7-205 (b,c) would warrant a conclusion that he was traveling at a greater

speed than 20 miles per hour. As evidenced by the length of the tire marks, 126 feet, less the length of the trailer-truck, 51 feet, the truck moved forward about 75 feet from the point where the truck finally stopped. From the point where the brakes were applied to the point of impact, the truck moved about 30 feet, and from the point of impact the Hardman car was pushed sideways a little over 45 feet. (3) In failing to yield the right of way to a vehicle in the intersection in the act of turning in accordance with Sec. 57-7-137, U.C.A. 1943, which section we will have occasion to refer to in connection with the defendants' argument relative to negligence on the part of the driver of the Hardman car."

The court then went on to distinguish that case from the Cederloff vs. Whited, Supra and French vs. Utah Oil Refining Company, Supra. The interesting thing about this case is however, that the court points out that the defendant, because of his position on the road, could have seen and thereby had to be alert. That if he did not see what was plainly before him, then he was inattentive, which is negligence. That he was traveling at an excessive rate of speed and a speed in excess of Sec. 57-7-205, which is similar with slight changes made that require faster stopping at the present time to our Section 41-6-144 in the 1953 code.

Another Utah case is French vs. Utah Oil Refining Company 216 P. 2d 1002. In that action plaintiff was driving an automobile north on Second West Street in Salt Lake City, which is an arterial highway. The defendant was driving south along the same street. North of 4th South on Second West Street there is a four lane highway and south of 4th South there is a two lane highway. As plaintiff approached the intersection of 4th South and Second West he intended to turn west or make a left turn. The green light was shining and he therefore proceeded into the intersection and as he crossed its south border, he noticed

some traffic coming from the opposite direction. One being the defendant's vehicle in the west lane. It appears that he first saw the truck 100 to 120 feet north of the intersection, the exact distance could not be determined, but did not see it again until it was about six feet from the point of impact. It appears as he turned left and reached the west limit of the intersection, the truck came through and struck him on the right side. The truck stopped almost at the point of impact, but the force of the collision turned and pushed plaintiff's car about four feet. Plaintiff estimated his speed at about 8 miles per hour and the speed of the truck about 20 to 25 miles an hour. The court said that while it was doubtful that plaintiff established any negligence on the part of the defendant's driver, they weren't going into that question because the court held the plaintiff guilty of contributory negligence. The Section involved was Sec. 57-7-137, similar to our Sec. 41-6-73. The court went on, on page 1003 and said:

"Accordingly excessive speed of the truck or inaccurate estimation by the plaintiff of its rate of movement forward is not involved."

There being no speed problem involved, the court went on in its deliberations to show that if they took the speed of both vehicles that the impact was bound to occur at the point where it did. Consequently it was not safe for the plaintiff to conclude that he could turn and that as a consequence the truck was so close that it could say as a matter of law, it constituted a hazard. Counsel for defendant claims that this case is not in point with the case that we have before the court for the reason that speed in our case is a vital factor. The ability of the plaintiff to stop his car, is a vital factor when he exceeds the speed limit. His

ability to always have his car under control is a vital factor when he exceeds the speed limit. His ability to actually see what is before him is also reduced when speed is involved.

Another Utah case is Yeates vs. Budge 252 P. 2d 220. This is a case that was appealed from the First District. It appears that there were two actions that were combined. One Yeates vs. Budge and one Budge vs. Yeates, growing out of an automobile accident that took place at the point of the "Y" just south of Logan. The accident occurred September 11, 1951, at the junction on this "Y". Mrs. Yeates had left Logan and was proceeding south on the outside west lane, intending to take the highway to Nibley. She gave an arm signal and moved into the inside lane, next to the double center line. Her speed was 25 miles per hour. Budge was traveling northeast on U. S. Highway 91 approaching the junction. It appears that Mrs. Yeates saw the other car and knew that the other car intended to go into Logan, but that without signaling she applied her brakes and turned her car to the left across the path of the Budge vehicle, not knowing whether she could safely proceed or not. A collision took place when the front end of her automobile was over the center line and her car was practically stopped. Budge testified that he was doing approximately 35 miles per hour. He had seen the Yeates vehicle from about 500 feet up the road, but there was an ambulance that was coming and he decreased his speed further. He had no idea that Mrs. Yeates intended to go to Nibley until the two vehicles were about 25 to 30 feet apart, and she abruptly turned across his path without signaling beforehand her intention to do so. That he applied his brakes and turned to the right, but struck the right front end of her car. It appeared from the measurement of skid marks, after subtracting the length of the automobiles

that the cars were about 40 feet apart when the brakes on both cars were applied. The court said on page 223, left column:

“While the evidence was all to the effect that Budge’s speed was below the posted speed limit, the court could have reasonably found that it was too fast for existing conditions. However, in view of the fact that Mrs. Yeates admittedly did not signal her intention to turn on the Highway 101, that there was testimony and physical evidence that Mrs. Yeates made her turn when Budge was only 40 feet away, it was not unreasonable to conclude that Budge’s negligence was not a proximate cause of the ensuing accident (in order to stop in 40 feet a vehicle could only be traveling about 20 miles an hour according to figures published by the Utah Highway Patrol) the front wheels of the Yeates car were only 9 feet over the center lines when the collision occurred, indicating that Budge was very close when she turned to cross his path. Thus the lower court could have concluded that had Budge been driving at a proper speed in view of existing conditions, he would have nevertheless been helpless to stop short of colliding with the Yeates vehicle. It is no answer to say that Budge could have avoided the accident by turning to the left and pass to the rear or the west of the Yeates vehicle, since to have done so would have placed Budge on the wrong side of the four lane highway at a curve. We cannot say the lower court was compelled to find him negligent in not doing so, even though there was testimony that the west side of the highway at that point was free from traffic.”

Consequently in this case we have no speed violation involved. The turning was so close that regardless of speed a person could not have avoided the accident; no signal was given and consequently the decision was affirmed.

Another interesting case was Whisler vs. Weiss cited as 174 P. 2d 766; this was before the Supreme Court of the State of Washington, November 21st, 1946. This was a very lengthy and involved case. One party, Whisler, was driving south on a through street. Weiss was going west



to a stop sign. There was a blind side. Weiss moved out and saw the car of Whisler 150 to 200 feet down the Street and tried to drive across, but the accident took place. The lower court tried the case without a jury and found defendant entitled to recover, on a cross complaint, and denied the plaintiff any right of recovery. There was a motion for vacating judgment and a new trial. The court then vacated and held both parties guilty of negligence and then the appeal was the result, and the appeal was sustained. The court said on page 774, right hand column:

“(3.4) It is true Mrs. Whisler was on the arterial, and we think, under the evidence, it can be said that her car and the Weiss car were simultaneously approaching a point in the intersection. However, we have often stated, that all rights of way are relative, and the duty to avoid accidents or collisions at street intersections rests upon both drivers. While it is true that the primary duty of avoiding accidents rests upon the driver to the left, the favored driver, whether he be such by reason of being on an arterial highway or on the right, cannot proceed to cross an intersection regardless of what conditions may confront him relative to traffic approaching from the opposite direction.

(5) It should also be kept in mind that there is a blinker light over the center of this intersection, which is a warning to drivers on this arterial, as well as to drivers on the stop street, to drive cautiously.

In the instant case, the trial court was justified in assuming that Mrs. Whisler had she been using reasonable care to watch out for traffic as she approached this intersection, could and should have seen the Weiss car when she was at least 150 feet from the intersection. Had she been exercising such care, she could and should have seen the Weiss car move out into the intersection, apparently with the intention of crossing ahead of her. However, she testified she saw no car in the intersection as she approached it, and did not see the Weiss car until she was near the middle of the intersection, when she first saw it coming directly toward her on the left and about 15 feet away. Mrs. Whisler's sister did not see the Weiss car at all.”

## CONCLUSION

In conclusion I call the Court's attention to the physical facts which are not disputed. Plaintiff left tire marks for 148 feet to point of collision and 42 feet thereafter. He smashed into defendant's big Mercury Sedan with such force to turn it around in the opposite direction and throw it back up the road 72 feet. Could this have possibly taken place unless plaintiff was traveling at least 60 miles an hour when his brakes were applied? If he was going that fast, he was then in a 40 mile zone.

Also, the defendant must drive from a position on the east side of the highway and at a point 20 to 30 feet south of it in a northwest direction and he does it 5 to 6 miles per hour. He is in a position on the highway where he can be seen by plaintiff all of the distance yet plaintiff says he does not see him until he starts west into his lane in the intersection. Where, in the name of heaven was the plaintiff looking? He was required by statute to be alert; to reduce his speed at intersections; to see what's plainly before him; to drive at a speed so his car is always under control; so that his car can stop if needs be and avoid a collision. Did he do any of this? No. So the Court said he was guilty of negligence, but the Court also said because the defendant turned left the full responsibility is on him and plaintiff is forgiven. I do not believe this is the law. I think such a principle is dangerous and would just add to the conflict and woes of all users of the highway. This defendant respectfully requests this Court to reverse the decision of the lower court and hold plaintiff guilty of contributory negligence.

Respectfully submitted  
Walter G. Mann  
Attorney for defendant