

1956

Gerald Jensen v. Frank F. Mower : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Louis E. Midgley; Attorney for Defendant and Appellant;

Recommended Citation

Brief of Appellant, *Jensen v. Mower*, No. 8369 (Utah Supreme Court, 1956).
https://digitalcommons.law.byu.edu/uofu_sc1/2378

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

RECEIVED
FEB 21 1956

LAW LIBRARY
U. of U.

RECEIVED

FEB 21 1956

LAW LIBRARY
U. of U.

IN THE SUPREME COURT
of the
STATE OF UTAH

GERALD JENSEN,
Plaintiff and Respondent,

vs.

FRANK F. MOWER,
Defendant and Appellant.

Case No.
8369

APPELLANT'S BRIEF

LOUIS E. MIDGLEY,
*Attorney for Defendant
and Appellant.*

INDEX

	Page
STATEMENT OF FACTS	1
Facts with relation to plaintiff's status as a Guest.....	17
STATEMENT OF POINTS	6
ARGUMENT	7
Point One. The plaintiff is presumed by law to be a guest and not a passenger for hire, and plaintiff failed to sustain the burden of proof necessary to overcome that presumption	7
Point Two. Assuming the jury was justified in find- ing the defendant negligent, the plaintiff, on those same findings was contributorily negligent as a matter of law, and the jury's verdict to the contrary was against the clear weight of the evidence.....	37
Point Three. The court's instruction Number 12 in- vaded the province of the jury, and was reversible error	51
Point Four. The instructions were prejudicially er- roneous in that they were contradictory and con- fusing and incorrectly stated the law.....	56

APPENDIXES

Appendix A.....	Photograph of Blackboard.....
Appendix B.....	Copy of Road Map.....

CASES

	Page
Albrecht v. Safewaf Stores (Ore.) 80 P. 2d 62.....	30
Burns v. Storchak, 331 Ill. 273, 69 NE 2d 878.....	16
Caperon v. Tuttle (Utah) 116 P. 2d 402.....	47
Cowan v. Salt Lake & O. R. Co. 56 Utah 94, 189 P. 599.....	47
Derrick v. Salt Lake & O. Ry. Co. (Utah) 168 Pac. 335.....	27
Esernia v. Overland Moving Co., 115 Ut. 519, 206 P. 621.....	50
Garrow v. Seattle Taxicab Co., 135 Wash. 630, 238 P. 623.....	46
Gibbs v. Blue Cab Co., Inc. (Utah) 249 P 2d 213.....	37
Gilman v. Olson, 125 Ore. 1, 265 P. 439.....	47
Hasbrook v. Wingate (Ohio) 10 ALR 2d 1342.....	15
Hillyard v. Utah By-Products Co., (Utah) 263 Pac. 2d 289.....	50
Jenkins v. National Paint & Varnish Co., 7 Cal. App. 2d 161, 61 Pac. 2d 780.....	16
Maybee v. Maybee, 79 Utah 585, 11 P 2d 973.....	51
McCann v. Hoffman (Cal.) 70 Pac. 2d 909.....	28
McDermott v. McKeown Transp. Co., 263 Ill. App. 325.....	50
Miller v. Miller, 395 Ill. 273, 69 NE 2d 878.....	16
Moss v. Christensen-Gardner, Inc. (Utah) 98 Pac. 2d 367....	61
Olefsky v. Ludwig (N.Y.) 273 NYS. 158.....	29
Pilcher v. Erny, 155 Kan. 257, 124 Pac. 2d 461.....	16
Riggs v. Roberts (Idaho) 264 Pac. 2d 698.....	15
Voelkel v. Latin (Ohio) 16 NE 2 519.....	29
Weenig Bros. v. Manning (Utah) 262 P 2d 492.....	37

OTHER AUTHORITIES

	Page
5 Am. Juris., Automobiles (Pocket Parts) Sec. 239.....	29
20 Am. Juris., Evidence, Sec. 226.....	17
53 Am. Juris., Trial, Sec. 557.....	60
9C Blashfield, Cycl. Auto Law & Practice, sec. 6115.....	15
4 Blashfield, Cycl. Auto Law & Practice, sec. 2292.....	29
sec. 2217.....	46
sec. 2414.....	49
1 Blashfield, Cycl. Auto Law & Practice, sec. 751.....	63
sec. 749.....	65

STATUTES CITED

41-9- 1, U.C.A. 1953.....	22
41-9- 2, U.C.A. 1953.....	7
54-6- 1, U.C.A. 1953.....	7
54-6- 3, U.C.A. 1953.....	8
54-6-12, U.C.A. 1953.....	8
54-6-12, U.C.A. 1953, (Pocket Parts).....	34
54-6-18, U.C.A. 1953.....	8
76-5-25, U.C.A. 1943.....	9
Laws of Utah, 1953.....	34
Laws of Utah, 1948.....	9
H. B. No. 1 (Special Session, 1948).....	9
S. B. No. 4 (Special Session, 1948).....	10
House of Representatives Journal, 1948 Special Session.....	9
Senate Journal, 1948 Special Session.....	10

CONSTITUTION OF UTAH

Article VI, sec. 23.....	12
--------------------------	----

IN THE SUPREME COURT
of the
STATE OF UTAH

GERALD JENSEN,

Plaintiff and Respondent,

— vs. —

FRANK F. MOWER,

Defendant and Appellant.

Case No. 8369

APPELLANT'S BRIEF

STATEMENT OF FACTS

This action was brought by the plaintiff, who was injured on February 2, 1954, at approximately 6:30 A.M. (Tr. 14), during total darkness (Tr. 45), while riding in defendant's automobile. Plaintiff and defendant were fellow employees of the Hill Air Force Base and were en route from their homes in Salt Lake City to their employment at the time of the accident.

We respectfully refer the Court to the photograph

of the blackboard (Appendix 1), which photograph was taken immediately following the trial, for clarification of the following:

The accident occurred in open country, two miles North of the Farmington Underpass on U.S. #91 (Tr. 7), and 4/10th of a mile North of Shepard's Lane, Davis County, Utah (Tr. 9). The scene is a one way (Tr. 9; 14) two-lane highway, black top (Tr. 8; 9) running Northerly from the Underpass (Tr. 9). The entire width of the highway is 38 feet and has no shoulders (Tr. 10; 13). The right or East lane is 22 feet wide (Tr. 11; 13) and the West or left lane is 12 feet wide (Tr. 12; 13). Four feet inside or East of the West edge of the road are painted two lines, indicating no crossing over, due to a "barrow pit" which separates the North traffic lanes from the South traffic lanes (Tr. 9; 10; 13). This "barrow pit" or gulley is 3 to 4 feet deep (Tr. 10; 14) and varies in width between the two highways from 10 to 25 feet (Tr. 9; 10; 14). At the point of impact, the "barrow pit" was about 15 feet wide (Tr. 9; 14). The two lanes for North-bound traffic was separated by a painted line (Tr. 10). East of the highway it also drops off into a "barrow pit" (Tr. 13; 35).

The morning of the accident was cold (Tr. 22) and foggy (Tr. 16), but the highway was clear of snow (Tr. 43; 44). It had not snowed in the area for 7 to 10 days (Tr. 156). The defendant's testimony was that the appearance of the highway was misleading, as it appeared

to be dry, and two other drivers of Northbound vehicles, involved in accidents at the scene immediately following the accident to the defendant's vehicle, also so testified. However, the evidence was conflicting on the appearance of the highway, other witnesses testifying that the highway appeared icy.

The surface of the road was, in fact, covered with a sheet of ice at the scene of the accident (Tr. 41), and the testimony was in dispute as to how far South of the scene of the accident the icy condition of the road extended (Tr. 32). The thin layer of ice was apparently deposited by the fog, coupled with the cold night (Tr. 15; 43).

Prior to the accident, David E. Kenley, also an employee of Hill Air Force Base, was driving his black or blue 1942 Buick automobile in a Northerly direction in the outside lane of this one-way highway (Tr. 131; 132). He testified that at the Underpass fog had started to cloud up his windshield (Tr. 132) to the extent that he could not see. The evidence was clear that Mr. Kenley stopped his car squarely in the center of the East or right lane of travel (Tr. 26; 29) for the purpose of scraping the fog off his windshield (Tr. 33). After stopping, he had alighted from his car and had scraped his windshield. When he stopped, he noticed that his car skidded on the ice (Tr. 134). He intended to scrape the ice off and get back in his car before another car came along (Tr. 133; 134).

The defendant was proceeding Northerly in the East or right lane of travel, in the fog and darkness, at a speed testified by him at 30-35 MPH (Tr. 158), and variously estimated by his passengers at 30-40 MPH (Tr. 117; 123). After passing under the Farmington Underpass and proceeding Northerly to a position approaching the scene of the accident, he observed tail lights of a vehicle ahead (Tr. 158). He at first thought that the vehicle ahead was moving North. Mr. Gull, one of the passengers riding in the front seat, also saw the tail lights and had the same impression (Tr. 102; 104). When the defendant's car reached a distance of approximately 75 to 100 feet (Tr. 158) he realized that the car ahead was stopped. The defendant, not being aware of the reason for the car being stopped, in his testimony stated "I wanted to slow up and see what was ahead" (Tr. 167; 173). The defendant turned his car to the left and applied his brakes to slow down but not to stop (Tr. 159; 173), when the defendant's car immediately skidded on the icy highway, with the result that the rear end skidded to the North or to the car's right. The right rear of the defendant's vehicle struck the left rear of the stopped Kenley vehicle (Tr. 25). The point of impact was 10 feet East of the broken white line separating the lanes (Tr. 25). The impact caused the defendant to fall out of the left door of his vehicle (Tr. 23; 167) onto the highway, after which the driverless car traveled through the "barrow pit" on its power, and across the South traffic lanes and into a fence adjacent to a railroad right-of-way.

David E. Kenley testified that the impact did not shove his car at all (Tr. 135), but that after the accident Mr. Kenley drove his car to the East edge of the road (Tr. 135).

To recite what then followed, as well as a brief review of the foregoing, we quote the testimony of Officer Grant (Tr. 29), whose resume of the entire accident was as follows:

“The 1942 Buick (Kenley) had stopped in the middle of the roadway. The 1947 Nash (Defendant) came driving along behind him, touched his brakes, his car went into a skid sideways and hit the rear end of the 1942 Buick and careened off on the roadway to the left. The 1942 Buick went off the roadway towards the East a little ways. While that action was taking place there was another car that came along.”

“This car applied his brakes and Mr. Reynolds, who was following this unknown car, applied his brakes when he saw the tail lights of one of the cars in front of him and he skidded sideways, hit the car ‘X’ as we shall say. Mr. Owens, following Mr. Reynolds, also applied his brakes, skidded, and hit into the rear of Mr. Reynold’s car.”
(Words in parentheses added.)

The facts with relation to the status of the plaintiff in defendant’s automobile, whether a guest or a passenger for hire, is recited fully at Page 17, Point One of this Brief.

The driver of the 1942 Buick, Mr. Kenley, was not a party defendant to plaintiff's cause of action.

STATEMENT OF POINTS

The Appellant respectfully submits four points:

POINT ONE

THE PLAINTIFF IS PRESUMED BY LAW TO BE A GUEST AND NOT A PASSENGER FOR HIRE, AND PLAINTIFF FAILED TO SUSTAIN THE BURDEN OF PROOF NECESSARY TO OVERCOME THAT PRESUMPTION.

POINT TWO

ASSUMING THE JURY WAS JUSTIFIED IN FINDING THE DEFENDANT NEGLIGENT, THE PLAINTIFF, ON THOSE SAME FINDINGS WAS CONTRIBUTORILY NEGLIGENT AS A MATTER OF LAW, AND THE JURY'S VERDICT TO THE CONTRARY WAS AGAINST THE CLEAR WEIGHT OF THE EVIDENCE.

POINT THREE

THE COURT'S INSTRUCTION NUMBER 12 INVADED THE PROVINCE OF THE JURY, AND WAS REVERSIBLE ERROR.

POINT FOUR

THE INSTRUCTIONS WERE PREJUDICIALLY ERRONEOUS IN THAT THEY WERE CONTRADICTORY AND CONFUSING AND INCORRECTLY STATED THE LAW.

ARGUMENT

POINT ONE

THE PLAINTIFF IS PRESUMED BY LAW TO BE A GUEST AND NOT A PASSENGER FOR HIRE, AND PLAINTIFF FAILED TO SUSTAIN THE BURDEN OF PROOF NECESSARY TO OVERCOME THAT PRESUMPTION.

Before reviewing the facts with relation to plaintiff's status as a guest or passenger for hire, we respectfully refer the Court to the following Statutes:

"41-9-2, UCA 1953 . . . 'Guest' defined. — For the purpose of this section the term 'guest' is hereby defined as being a person who accepts a ride in any vehicle without giving *compensation* therefor."

Title 54, Chapter 6, UCA 1953, regulates the carrying of passengers for *compensation* on the highways of this State.

"54-6-1, UCA 1953 . . . Words and phrases defined. — 'Motor vehicle' means *any automobile* . . . used upon any public highway of this state for the purpose of transporting persons . . .".

"'Common motor carrier of passengers' means any person who holds himself out to the public as willing to undertake for hire to transport by motor vehicle from place to place, persons who may choose to employ him."

"'Contract motor carrier of passengers' means any person engaged in the transportation

by motor vehicle of persons for hire, and not included in the term common motor carrier of passengers as hereinabove defined."

"54-6-3, UCA 1953 . . . 'transporting *for compensation* on public highways.'

"No common or contract motor carrier shall operate any motor vehicle for the transportation of either persons or property *for compensation* on any public highway in this state, except in accordance with the provisions of this act."

"54-6-12, UCA 1953 . . . 'Exceptions from provisions of act.' No portion of this act shall apply:

"(h) To a group of employees riding together in the automobile of a fellow employee to and from their employment *and sharing the actual expenses of the transportation*; provided that said group of employees shall not exceed 5 persons, in addition to the driver of the vehicle . . . and provided further that this subsection shall not apply to any individual so operating in excess of one motor vehicle."

It shall be unlawful for any vehicle which is operated under any of said exempt classes to be operated for any uses or purposes not falling within said exempt classes, except in accordance with the provisions of this act.

"54-6-18, UCA 1953 . . . violating provisions of act a misdemeanor."

It will be noted, upon analyzing the above statutes, that the Legislature uses the terms, "for hire" and "for compensation" interchangeably. For example, in the definitions of Common motor carrier of passengers, and Contract motor carrier of passengers, the Legislature has used the phrase "for hire", while in 54-6-3 (*supra*) the Legislature, specifically referring to "common or contract motor carriers", uses the term "for compensation".

However, before proceeding further with the analysis of the above statutory provisions in relation to the facts of the case at bar, we feel it necessary to point out to the Court a very obvious error, caused by oversight, which occurred during the passage of subsection (h) 54-6-12, U.C.A. 1953 (then 76-5-25, U.C.A. 1943 as Amended by Section 4 of Chapter 105, Laws of Utah, 1945).

The error has to do with the Title to the above Amendment as it now appears in Laws of Utah, 1948.

The House of Representatives Journal, 1948 Special Session reveals that the above proposed Amendment was introduced as H.B. No. 1, and the Title to the proposed Amendment, as well as the proposed text were as follows:

"An act Amending (the above statute) By Adding Thereto A Provision Permitting Casual or Occasional Transportation of Persons For Compensation By A Fellow Employee.

(No portion of this Act shall apply:)

- (h) To the casual or occasional transportation of persons for compensation by any person not regularly engaged in transportation by motor vehicle as his or its principal occupation or business, nor to the transportation of not in excess of 5 persons in addition to the driver of the vehicle to and from their daily places of employment by a fellow employee not regularly engaged in transportation by motor vehicle as his principal occupation or business." (Original of H.B. No. 1 now in Secretary of State's office.)

Concurrently with the action of the House in considering the above bill, the Senate introduced an identical bill, (S.B. No. 4, at page 9, Senate Journal, 1948) except that the Title differed as follows:

"An Act Amending Section 76-5-26 (etc.) Relating To The Transportation of Persons And Property By Motor Vehicle."

The House, after adopting some amendments to the above text, which are not material here, passed the bill and forwarded it to the Senate.

The Senate referred the bill to its Judiciary Committee, and at page 43, Senate Journal, 1948, that Committee reported:

"We, your Committee on Judiciary beg leave

to report that we have considered H.B. No. 1, by Mrs. Jack, and in connection therewith we have also considered S.B. No. 4, by Senators Selvin, Midgley, Farr, Elggren and Knight; that the said House and Senate Bills are identical; and that after careful consideration of H.B. No. 1, we recommend that the said bill be amended *by striking all of Section "h" of the bill representing on page 2, lines 19 to 25 inclusive.* In place thereof we recommend the following language, to wit:

(h) To a group of employees riding together in the automobile of a fellow employee to and from their employment and sharing the actual expenses of the transportation; provided that said group of employees shall not exceed 5 persons, in addition to the driver of the vehicle, and in no event to exceed 3 persons in any one seat, and provided further that this subsection shall not apply to any individual so operating in excess of one motor vehicle."

On March 8, 1948 the Senate passed the bill containing the above complete revision of the bill and returned it to the House, who on the same day accepted the revision and passed the bill. During this fast action the above mistake we refer to occurred. No one apparently thought to also strike the language from the Title which the Legislature had found objectionable, that is "casual or occasional transportation for compensation."

It is clear, however, that for some very clear and definite reason, the Legislature substituted the phrase "sharing the actual expenses of the transportation" for

the word "compensation."

It seems almost superfluous to state that the Legislature having found the language in the text objectionable, and having stricken it from the text, most certainly intended also to strike it from the Title. Their failure to so do can only be explained as an inadvertent oversight.

To now maintain that the Title, as it now appears in Laws of Utah, 1948, despite the above mistake, clearly expresses the subject of the bill, would not only be erroneous, but would leave the Act open to valid attack as unconstitutional, in violation of Article VI, Sec. 23, Constitution of Utah. If, in fact, this Court cannot by Judicial Interpretation, overlook and "strike" the words in the Title, which the Legislature did in the text, and thereby ignore the words "casual", "occasional", and "for compensation", then we in fact contend that, in that event, the Act as it now appears in Laws of Utah, 1948, is unconstitutional. This for the reason that the Act says nothing about casual or occasional transportation, and as we submit hereafter, it clearly infers from its text, that the sharing of the actual expenses by the fellow employees shall *not* be deemed "compensation." The Title, as it now appears, therefore, without the judicial interpretation which we have submitted, is in violation of the Constitution, Article VI, Section 23.

The Title, however, can be amended to comply with

the intent of the Legislature, by simply striking the words found offensive by the Legislature in the text, but which they failed to also strike from the Title, in which event the Title would read:

**“An Act Amending (the statute) By Adding
Thereto A Provision Permitting The Transporta-
tion of Persons By A Fellow Employee.”**

As thus amended, in compliance with the intent of the Legislature, the Title clearly expresses the subject of the Act, and there could be no valid attack on constitutional grounds.

For the above reasons, we continue our analysis of the statutes quoted at page 7 of this brief, in light with the facts in the case at bar, and disregard the Title to the Act.

The Legislature clearly decided in adopting the exception to the Motor Vehicle Transportation Act, 54-6-12 (h) (supra) page 8, in effect that as long as the fellow-employees were sharing the actual expenses of the transportation, the driver-employee was not receiving “compensation” for the transportation; he was not operating a vehicle “for hire”, and the driver-employee therefore did not have to comply with the provisions of the act.

And conversely, if the driver-employee charged his

fellow-employee riders *more* than their share of the actual expenses of the transportation, then the driver-employee would be operating a vehicle “for hire” or “for compensation”, in which event he would be guilty of a Misdemeanor, unless he fully complied with the other provisions of the Motor Vehicle Transportation Act.

That interpretation is obvious, and not subject to valid question, as the Legislature, following the list of exceptions, stated, *supra*, page :

“It shall *be unlawful* for any vehicle which is operated under any of said exempt classes to be operated for any uses (sharing the actual expenses) or purposes (riding to and from employment) not falling within said exempt classes, *except in accordance with the provisions of this act.*” (parentheses and emphasis added)

Certainly it could not be suggested that the Legislature intended to limit the defendant here from bargaining for the best price possible as a fare to be charged his fellow-employee riders; limit him strictly to accepting from each employee-rider his pro rata share of the actual expenses of operating the defendant’s own automobile; expect the defendant to also pay his own share of the expenses, inasmuch as the statutory phrase is “*sharing the actual expenses*”; and at the same time *increase the liability* of the defendant to that of a person who operates a vehicle for hire.

The question, then, simply resolves itself into whether the defendant charged the plaintiff *more* than the plaintiff's share of the actual expenses (in which case the plaintiff would be deemed a passenger for hire), or whether the defendant charged the plaintiff his share of the actual expenses (in which event the plaintiff would not be deemed a passenger for hire, but a mere guest, and not entitled to recover from the defendant.)

The burden of proof, without question, was upon the plaintiff to overcome the legal presumptions in favor of the defendant, that the plaintiff was a guest, under the statutes quoted above.

RIGGS VS. ROBERTS, (Idaho) 264 Pac. 2nd 698,
at page 703:

“Appellant did not sustain the burden of proof resting on him to establish that such consideration passed to Respondent for transporting Appellant on this trip as to make him a passenger, not a guest.”

HASBROOK VS. WINGATE, (Ohio) 10 ALR2 1342
at page 1346:

“Since the liability of the motorist host to a person riding with him depends on the status of the latter, he, the latter, has the burden to establish such relationship . . .”

Vol. 9C, Blashfield, Cycl. of Auto. Law and Practice,
Sec. 6115, page 88:

“Normally, when the vehicle is a private automobile, not usually occupied as a common carrier, it is assumed that the occupants are guests, and it is incumbent upon the occupant to prove that he is a passenger for hire.”

And again at Sec. 6146, page 165:

“Automobile guest statutes, widely prevalent at the present time, preclude an injured guest from recovering against the host for ordinary negligence and for this or other reasons, the occupant of a motor vehicle involved in an accident may seek to prove that he was not a guest, but on the contrary had some status other than that *contemplated by statutes*, and in this situation the burden of proof is upon the plaintiff.” (emphasis added)

In accord, see

JENKINS vs. NATIONAL PAINT & VARNISH CO., 7 Cal. App. 2nd 161, 61 Pac. 2nd 780;

PILCHER vs. ERNY, 155 Kan. 257, 124 Pac. 2nd 461;

MILLER vs. MILLER, 395 Ill. 273, 69 NE 2nd 878;

BURNS vs. STORCHAK, 331 Ill. App. 347, 73 NE 2nd 168.

The burden upon the plaintiff is even more apparent when, as in the case at bar, the defendant is presumed by

law to be acting legally within the provisions of the statutes heretofore cited, and the law will not presume that the defendant's act in accepting money from the plaintiff for his transportation, is a violation of the statute.

20 Am. Juris., Evidence, Sec. 226, at page 221, states :

“The law presumes, in the absence of proof to the contrary, that everyone obeys the law and discharges the duties imposed by law upon him, *especially when a violation constitutes a criminal offense*. It is presumed that the conduct of men is lawful . . . and that they do not intend to violate the law. Noncompliance with, or nonobservance of, the statutory law . . . will not be presumed.”

A review of the testimony and evidence produced by the plaintiff at the trial of this action, fell far short of the evidence that would be necessary to sustain the burden of proof requisite to even make the question one of fact for the jury, let alone a ruling as a matter of law in his favor. To sustain this proposition, we review in detail, the entire testimony bearing on the status of the plaintiff as a passenger for hire, or a guest.

(Tr. 2-5) The plaintiff first called the defendant, Frank F. Mower, as an adverse witness under Rule 43, URCP, and he testified that he lived at 1068 East 17th South, Salt Lake City, Utah, and had worked at the Hill Air Force Base since June of 1953. He had driven his car to work five days a week since working there. He first became acquainted with the plaintiff, Mr. Jensen, on

Tuesday of the week prior to the accident and had, prior to that time, carried fellow employees back and forth with him to Hill Field from Salt Lake City. Just before he met plaintiff he had vacancies in his car for passengers.

(Tr. 3)

“Q. And in line with that, did you advertise for passengers?

A. Well, they have a bulletin board there that is used especially for that. That is a regular thing and if a person has vacancies why they post a bulletin on this bulletin board and people that want a ride can get in contact with them.”

The defendant testified the notice said something to the effect, “Riders from Salt Lake wanted,” with his name on it.

The day following the posting of the notice, Mr. Jensen, the plaintiff, came to the defendant and asked the defendant if he had room for the plaintiff to ride and the defendant replied “yes”.

(Tr. 4)

“Q. And what was said about the cost of the transportation?

- A. There was nothing said about it. *That was more or less a standard thing.* That was the bus fare rate.
- Q. That was *understood* that he should pay you for it?
- A. Yes. *They all pay.*
- Q. And did he pay you at all for any of his transportation?
- A. No. I don't remember him ever paying anything. He sent his boy down after you sent me a letter to appear in Court to try to pay me but I didn't accept it.
- Q. But there were some arrangements made, I take it, to pay you?
- A. Well, *it was a standing idea* that people who ride are *supposed* to stand *part of the expense.*"

The defendant testified that the plaintiff, during his first ride with defendant, agreed to pay \$3.50 per week, and the payments would be made on pay day.

(Tr. 5)

- "Q. And was he to pay you that amount whether he rode or not?
- A. Well, that was the standard bus arrangement.

Q. Well, I take it he was supposed to pay you whether he rode or not.

A. Well, he didn't pay me because he only rode three days.

Q. But he agreed to pay you whether he rode or not?

A. Yes.

Q. In other words, if he missed a day he was to pay you?

A. That would be the general idea."

The plaintiff testified his address was 466 East 13th South, Salt Lake City (Tr. 69), and that (Tr. 70-72) he was employed at Hill Air Force Base. On Tuesday or Wednesday before the accident he went to the bulletin board and observed the card with Mr. Mower's name on it and contacted Mr. Mower.

(Tr. 71)

"I asked him if he still had room and he said 'yes' and he asked me where I lived and I told him and he says that was good because that would be on his route, he wouldn't have to go out of the way to pick me up.

Q. And was anything said that time about whether you were to pay him or not?

A. No. I went back to work but when I asked

him the first day I rode with him, which was Thursday, I asked him then how much and . . . he said 70c a ride and you pay whether you go or not, as long as the car goes, and I told him, 'okeh'."

On cross-examination (Tr. 94-96) the plaintiff further testified that he took another employee, Mr. Williams, to the defendant, inasmuch as Mr. Williams was also seeking a ride. The bus fare from Salt Lake to Hill Field and return was 70c per round trip, and that was the amount he agreed to pay Mr. Mower, or 35c each way. He had previously ridden with someone else who had charged 90c for the same distance, and he did not know what Mr. Mower was going to charge until he talked to him. The plaintiff had previously driven his own vehicle while his wife was also working at the Hill Air Force Base, but discontinued driving because his wife was laid off, his car needed overhauling, and further *that it was too expensive to drive his own car alone to and from Hill Field*. He had ridden with Mr. Mower, the defendant, three days before the day of the accident.

The defendant carried three fellow-employees in his automobile; namely, Mr. Jensen, Mr. Gull and Mr. Williams.

The above is a complete resume of the entire testimony of the plaintiff's case with relation to his status as an alleged passenger for hire.

At the close of the plaintiff's case, the defendant moved for a dismissal of the action on the ground that the plaintiff had not produced evidence which would relieve the plaintiff from the provisions of Section 41-9-1, Utah Code Annotated 1953, commonly called "The Guest Statute," and the motion, with no argument permitted, was taken under advisement and later, of course, denied.

During the defendant's case, in chief, the defendant again testified (Tr. 153-154). His testimony, however, added nothing to what had previously been testified.

It will be noted that nowhere in plaintiff's evidence did he deem it necessary to even advise the Court of the distance travelled by the plaintiff in defendant's car each day, this fact being material for the obvious reason that for example, 70c for a trip of 100 miles would bear a different analysis than a trip of 10 miles.

Nowhere did plaintiff deem it necessary to inquire into the actual cost of the transportation, although this information could have been readily available before trial through the discovery procedures provided in the Utah Rules of Civil Procedure; and at the trial, could have been determined by the simple expediency of asking the defendant while he was on the stand.

The plaintiff's case, boiled down to its basic elements, simply is this: that the plaintiff paid to defendant, his

fellow-employee, 70c per day for a round trip transportation to and from employment, an undisclosed distance, the rides to be five times a week, but the expenses of operating the car are not disclosed; that the above evidence sustains the burden of proof showing that the defendant was committing a Misdemeanor, in violation of 54-6-12 (h), supra, page 8.

We feel certain, quite to the contrary, that the plaintiff wholly failed to sustain the burden of proof, and that the Honorable Court below erred in denying plaintiff's motion for a dismissal of the action.

In the event that plaintiff feels, however, that natural inferences can be drawn in light with the plaintiff's testimony and evidence, coupled with facts based on common knowledge, we, too, gladly arrive at those inferences and conclusions.

This distance from Salt Lake City to Hill Air Force Base near Ogden, Utah, is definite and not subject to dispute. The State of Utah Road Commission publication, Appendix B, shows it to be 25.3 miles (by adding the distances noted on the map), the measurement from Salt Lake City starting at the Brigham Young Monument at South Temple Street and Main Street. The plaintiff resided at 456 East 13th South Street (Tr. 69), or 13 blocks south and $4\frac{1}{2}$ blocks east of the Monument, total blocks, $17\frac{1}{2}$. It is common knowledge that there are eight Salt Lake City blocks to the mile.

By simple arithmetic, therefore, an accurate computation of the distance traveled from the plaintiff's home to work and return can be determined as follows :

Official miles to Hill Field—25.3

Round trip50.6 Mi.

Additional distance, plaintiff's home to

Monument, round trip—35 blocks,

divided by 8 (blocks to mile)..... 4.4 Mi.

Total miles per day.....55 Mi.

It can, therefore, be properly inferred from the above that the plaintiff was paying 70c per day for at least 55 miles transportation in defendant's automobile, or *1.3c per mile*. If we assume that each occupant in the defendant's car contributed the same amount, the total contribution would be equal to 5.2c per mile, and the defendant *would be contributing one-fourth of that sum towards the expense of operating his own vehicle*.

Or, if we give the plaintiff more than a benefit of the doubt, and assume that the entire distance, from his home to Hill Field was only 25 miles, or 50 miles round trip, the 70c per day contribution by him amounted to *1.4c per mile*. On this again, if all the occupants contributed the same amount, *a total of 5.6c per mile* would be contributed, *one-fourth of which the defendant would be paying*. And if the expenses of the transportation actually exceeded that amount, the defendant, of course,

would have to pay all the additional expense, as well as the one-fourth mentioned.

The plaintiff contends, and the Honorable District Court has agreed as a matter of law, that the plaintiff, under the above facts, gave "compensation" to the defendant for his rides, within the meaning of the Guest and Motor Vehicle Transportation Acts (*supra*, page 7), and that the plaintiff sustained the burden of proof to show that the arrangement between the parties was not merely a convenient method for sharing the actual expenses.

It is so well known that the Court can take judicial notice of the fact that a modern automobile cannot possibly be operated as economically as 5c per mile—not in these times of 30c gasoline, 45c oil, \$1.50 lubrication, \$20.00 to \$30.00 tires, coupled with the increased cost of repairs, insurance, and rapid depreciation of originally high priced automobiles. But in order to believe that the defendant, under this arrangement, was receiving "compensation" it would have to be ruled, as a matter of law, that the defendant's vehicle could be operated at a substantially lower amount than 5c per mile, in which event the defendant was charging the plaintiff and his two other fellow-employees more than their share of the actual expenses. Such a contention would, in our opinion, be ridiculous.

Again we state, that to agree with the contention of

the plaintiff, and the rulings of the Court below, would be to agree that the Legislature intended to *restrict and prohibit* the employee-driver from bargaining with fellow-employee riders for a profit, ("compensation"); *limit him* to accepting from each employee-rider his pro-rata share of the actual expenses of the transportation; *insist that the driver also pay* his share of the expenses of his own vehicle; but at the same time *impose upon the employee-driver the increased liability of a person actually operating a vehicle for hire.*

There is, of course, a vast maze of opinions from other jurisdictions, interpreting the local Guest Statutes in light with the innumerable fact situations which have been presented.

An attempt here to reconcile the apparent conflict in the decisions, in our opinion, would be both futile and unnecessary. In our search of the precedents, we have found no case from any jurisdiction wherein a statute, even similar to our 54-6-12 (h) UCA, 1953, has even been mentioned.

Furthermore, the cases involving fellow-employees, sharing expenses for the transportation to and from work, are surprisingly few in comparison. But even these cases could not possibly be controlling or of interest to this Court, unless, in those cases, the Court was also interpreting a similar statute.

But despite the conflicting decisions, the Courts are quite uniform in their holdings concerning the general principles of law which govern, the conflict being in the interpretation of those principles in light with the facts of each case. These general principles can be classified as follows:

1. THE MERE SHARING OF EXPENSES ALONE IS NOT ENOUGH, OF ITSELF, TO ESTABLISH THE RIDER AS A PASSENGER FOR HIRE, RATHER THAN A GUEST.

The Utah Supreme Court, in *DERRICK vs. SALT LAKE AND O. RY. CO.*, 168 Pac. 335, while not interpreting the Guest Statute, which of course was not then enacted, has recognized the above principle. In that case, Merritt, the driver, accompanied by two other salesmen, plaintiff and one Leggett, were en route from Salt Lake City to Ogden, Utah. The three men had previously agreed to each pay his share of the actual expenses of the trip, and during the trip, the car was struck by a train, and the plaintiff was injured. Plaintiff brought suit against the defendant railroad. The three salesmen represented different companies, and the lower court held that the relationship of carrier and passenger existed between the driver and his passengers.

On these almost identical facts to the case at bar, the Utah Supreme Court states, at page 337:

“The (lower) Court . . . charged (the jury) on

the theory that the relation of carrier and passenger existed between Merritt (driver) and the plaintiff. *This was error.*"

The Supreme Court then held that the parties were joint adventurers and the balance of the decision is inapplicable to the case at bar, as there was no issue in the pleadings, or at the trial on this theory.

The above ruling of this Court has never been overruled.

The following citations are also in accord:

RIGGS vs. ROBERTS, (Idaho) supra, page 15.

"The Courts have quite uniformly held that merely paying for gas and oil is not of itself and alone sufficient to establish passenger status." (Cases cited at 264 Pac. 2nd 700)

In McCANN vs. HOFFMAN, 70 Pac. 2d 909, at Page 912, the Court states:

"The great weight of authority is to the effect that the sharing of the cost of gasoline and oil consumed on a trip, when that trip is taken for pleasure or social purposes, is nothing more than the exchange of social amenities and does not transform into a passenger one who without such exchange would be a guest, and consequently is not payment for the transportation or compensa-

tion within the meaning of the Statute. It is obvious that if a different result obtained under any construction of the Statute, its purposes would be defeated and its effect annulled. The relationships which will give rise to the status of a passenger must *confer a benefit of a tangible nature* and are limited."

In *OLEFSKY vs. LUDWIG*, (NY) 272 NYS 158 in construing the Connecticut Statute, held that as a matter of law contribution to the expenses of gasoline, oil, and garage does not constitute payment within the meaning of that Statute.

In *VOELKEL vs. LATIN* (Ohio) 16 NE 2 519:

"The guest statute should not be rendered practically void by holding that a contribution to common expenses of friendly parties made those so contributing exempt from its effect."

In *Blashfield Cyclopedia of Automobile Law and Practice*, Vol. 4, Part 1, Sec. 2292 at Page 318:

"The mere sharing of expenses has been held not to constitute the giving of compensation within the meaning of the Statute, and the fact that the rider pays part of the expenses of the trip does not necessarily prevent him from being regarded as a guest."

In 5 *Amer. Juris.—Automobiles* (Pocket Parts) Sec. 239 at Page 99:

"The mere fact that the owner or operator

of the car receives money as a result of carrying the plaintiff does not necessarily entitle the plaintiff to the status of a passenger for hire, *if the money is not received as compensation* for the transportation, and the transportation was not induced by the expectation of such cash payment."

Therefore, if in the case at bar, the defendant sought only to secure from the plaintiff for the transportation, the plaintiff's share of the actual expenses, which the law presumes to be the case, and which the facts and the inferences drawn therefrom clearly indicate, then the money was not received *as compensation* and the transportation was not "induced by the expectation of such."

2. TO CONSTITUTE "COMPENSATION" THE CONTRIBUTION FROM THE RIDER TO THE DRIVER MUST BE SUBSTANTIAL IN NATURE.

"The authorities are likewise quite uniform to the effect that to constitute one a passenger, not a guest . . . there must be contributed by the passenger to the driver of the car something substantial and of worth to the driver, i.e., commercial, not mere courtesy . . . In other words, the driver must be actuated by a benefit of substantial value . . . to make the rider a passenger." Riggs vs. Roberts (Supra, page 15).

In ALBRECHT vs. SAFEWAY STORES (Ore.) 80 Pac. 2nd 62, the Court states that the test is "whether some substantial benefit has been conferred upon the owner or operator of the motor vehicle *as compensation*

for the transportation. If there was, the person being transported is not a guest."

HASBROOK vs. WINGATE, (Ohio) *supra*, page 15.

"The general rule is that if the transportation of a rider confers a benefit only on the person to whom the ride is given and no benefits other than such as are incidental to hospitality, good will, or the like on the person furnishing the transportation, the rider is a guest. . . ."

Apparently plaintiff contends that his arrangement with the defendant was a cold business proposition, and not in the nature of friendship or courtesy. It is true that the parties did not know each other before they arranged for the plaintiff to ride. But isn't it just as logical to also assume that there is a fraternity of fellowship among fellow workers who have common problems of employment, transportation, and the like. Isn't it true that this is brought out by the very fact that at the first meeting of these parties, not one word was spoken about the cost to plaintiff of the transportation; that the defendant in fact accepted *20c less per day* from the plaintiff than plaintiff had paid previously. That certainly would tend to indicate that the defendant was not attempting to get "all that the traffic would bear" from his riders. Further, the fact that the Legislature has placed its stamp of approval on the arrangement clearly indicates that Public Policy, in this State, where there are several Defense Establishments, as well as huge copper, steel and

mining corporations, is in favor of assisting the employees in economically and conveniently getting to and from their employment.

3. THE RIDER IS DEEMED A GUEST UNLESS THERE WAS A CONTRACT BETWEEN THE PARTIES CLEARLY INDICATING TO THE PARTIES THAT THE RIDER WAS A PASSENGER, AND THAT THE DRIVER KNEW, OR SHOULD HAVE KNOWN, THAT HIS LIABILITY TO THE RIDER ENTAILS THAT OWING TO A PASSENGER FOR HIRE.

HASBROOK vs. WINGATE (Ohio) 10 ALR 2 1342
at Page 1345:

“The Ohio Guest Act and similar acts in other states were undoubtedly enacted to carry out a policy of social equity to the effect that the owner or operator of an automobile should not be made liable to a guest riding therein to whom the owner or operator is doing a favor or is extending a courtesy, except for wilful or wanton misconduct on his part, and that a guest should assume the risk of ordinary negligence or acts which are less culpable than wilful or wanton misconduct. *That being the spirit of the enactment, the motorist should be accorded the status which incurs the lesser liability unless his status is clearly and definitely changed by express consent or by facts constituting acquiescence on his part to a status which entails the greater liability.*”

RIGGS vs. ROBERTS, (Idaho) supra, page 15:

“The authorities indicate there must be a mu-

tual understanding reasonably clear to both the rider and the driver before the trip is undertaken, that the rider's relationship to the driver is that of a passenger and not a mere guest."

Again, in the case at bar, can it be said that the defendant, in compliance with the statute that permits the carrying of fellow-employees to and from work, would be deemed, as a matter of law, to understand that in so complying, he was placing himself in a position of practically insuring the safety of his riders, the same as if he flaunted the law, and charged each rider \$5.00 per day, carried 10 passengers and operated two or more automobiles in violation of the Statute? The answer, of course, is obvious. Quite the contrary, he would certainly assume, and be correct, that as long as he drove his car within the intent and meaning of the statutory exception, his liability to the occupants would not be increased over his liability to any other guest.

The above three general principles of law, therefore, read in light with the statutes of this state heretofore cited and discussed, strongly and definitely are in accord with the defendant's contention here, that the plaintiff was a guest occupant in the defendant's automobile at the time of the accident, and that the plaintiff failed to establish at the trial that he was a passenger for hire.

Another clear indication of the intent of the Legislature is found in The Pocket Supplement Volume 6,

U.C.A., 1953, following 54-6-12 (h), which contains a new provision requiring those vehicles in the "exempt classes" *which are operated for hire* to carry liability insurance on the *vehicle for hire*. A reading of the Title to this Act, Laws of Utah, 1953 at page 242, as well as the text, definitely shows that the employee-drivers, under subsection (h) are not required to carry this insurance, as the legislature did not classify them as operating a vehicle for hire.

"An Act Amending Sections 54-6-12 and 54-6-17, Utah Code Annotated 1953, Regarding Safety And Inspection of Motor Vehicles, Reporting of Accidents, Providing For Public Liability And Property Damage Insurance, And Elimination of Cargo Insurance For Contract Motor Carriers For Hire."

It shall be unlawful for any vehicle which is operated under any of said exempt classes to be operated upon the public highways of this state, *for hire*; without a public liability policy (in certain amounts) for liability arising out of the operation of *said vehicle for hire*; . . . *or*, to be operated for any uses or purposes not falling within said exempt classes, except in accordance with the provisions of this act."

Now, certainly it cannot be contended that the Legislature having specifically restricted the employee-driver from charging his riders a fare, at the same time meant to designate his vehicle a "vehicle for hire." The Legislature could not have intended such a contradictory thing.

They most certainly would have left the words "for compensation" in the original H.B. No. 1 and not specifically stricken those words for the present phrase, "sharing the actual expenses of the transportation."

The new insurance requirement applies only to those classes in the "exempt classes" which are in fact "vehicles for hire," such as class (g) which includes taxis, ambulances, etc. It does not and could not apply with relation to those classes which were not deemed to constitute "vehicles for hire," such as class (d), vehicles of an Agricultural Cooperative Association, being used in its non profit activities; or class (e), vehicles owned and operated by the United States, or the State of Utah.

The insurance requirement could not possibly, therefore apply to class (h) as the very wording of that subsection prohibits the employee-driver from charging more than the occupant's actual share of the cost.

We have discussed the insurance requirement for a reason other than to point out the above intent of the Legislature. The other reason is to call the Court's attention to a very definite "trap" into which the thousands of employee-drivers in this state have fallen, should the Court reject the defendant's contention here.

It is common knowledge that the standard liability policy issued by all companies on private passenger vehicles carries the exclusion declaring the policy void if the vehicle is used as a "public or livery conveyance."

If, then, the employee-driver has fully complied with the provisions of 54-6-12 (h); has secured the standard liability insurance policy; has not paid the greatly increased premium necessary for a vehicle for hire (there being no legal requirement that he do so); and should the Court now hold that he has, under the intent and meaning of the above statute, in fact been operating a vehicle for hire, the employee-driver is without insurance protection completely. And this, even though he has scrupulously complied with every portion of the law.

If the Legislature meant such an interpretation, they would most certainly have permitted the employees in class (h) to carry passengers for compensation, and would not have stricken "compensation" from the Act.

It is therefore clear and without doubt, that the plaintiff wholly failed to sustain the burden of proof necessary to relieve himself of the provisions of the Guest Statute, and that the Honorable District Court erred in denying defendant's Motion for dismissal of the action at the close of plaintiff's case, and in further refusing to direct a verdict in favor of defendant at the close of all the evidence.

It is respectfully submitted, therefore, that defendant is entitled, in justice, to a reversal of the judgment, and an entry of judgment in his favor, No cause of Action.

POINT II

ASSUMING THE JURY WAS JUSTIFIED IN FINDING THE DEFENDANT NEGLIGENT, THE PLAINTIFF, ON THOSE SAME FINDINGS WAS CONTRIBUTORILY NEGLIGENT AS A MATTER OF LAW, AND THE JURY'S VERDICT TO THE CONTRARY WAS AGAINST THE CLEAR WEIGHT OF THE EVIDENCE.

The plaintiff having prevailed at the trial, we must, of course, consider the evidence with relation to the question of defendant's negligence in the light most favorable to the plaintiff.

WEENIG BROS. v. MANNING (Utah) 262 P. 2d at 492;

GIBBS v. BLUE CAB, INC. (Utah) 249 P. 2d 213.

With that test in mind, we summarize the favorable evidence to plaintiff.

The fog was very thick, and the accident occurred in total darkness. On this the evidence was clear, the only variance in the testimony being as to the distance the defendant could see ahead.

The plaintiff testified (Tr. 72) that when he entered the car it was foggy, and this was confirmed by the testimony of the other witnesses. Officer Grant (Tr. 16) — "It was a very heavy fog that morning."; Officer Evans (Tr. 44) — ". . . it was very, very thick that morning.

I have seen it a little thicker, but not many times.”; Witness Gull (Tr. 102) — “The visibility was very bad”; Witness Everley (Tr. 109) — “It was thick. You didn’t even know you were by Slim Olsen’s until you got underneath the lights. . . . It was a dense fog”; Witness Williams (Tr. 120) — “It was very foggy. I think it was extremely foggy”; Witness Reynolds (Tr. 149) — “It was very dense”; Witness Owens (Tr. 138) — “It was very foggy.”

As to visibility through the fog, the testimony varied as follows:

Officer Grant (Tr. 16) — “approximately one hundred feet”; Officer Evans (Tr. 40) — “Somewhere in the neighborhood of 100 feet; maybe slightly less, maybe a little more in places.”; Witness Gull (Tr. 102) — “I could see a short distance ahead and down along the side of the road.”; Witness Williams (Tr. 120) — “on the highway, I think we could see 40 to 50 feet”; Witness Everley (Tr. 109) — “I would say 50 to 75 feet”; Defendant Mower (Tr. 156) — “I would estimate 75 to 100 feet. . . .”; Witness Reynolds (Tr. 147) — “I would say 50 feet”; Witness Owens (Tr. 139) — “75 to 100 feet”.

The speed of defendant’s car was indicated as follows:

The plaintiff testified (Tr. 75) — “Well, I couldn’t see the speedometer, but I assume we was going close,

right around 40 miles per hour. . . . I just had that opinion"; Witness Gull (Tr. 117) — "The way I had it in mind was somewhere around 40 miles an hour; that is between 35 and 40"; Witness Williams (Tr. 123) — "I looked at the speedometer. I was frankly nervous, and it showed 39 miles an hour."

The appearance of the roadway, whether it appeared icy or dry, was at issue. The testimony was very contradictory, but the following witnesses testified that the road appeared icy:

Officer Grant (Tr. 15) in answer to the question, "and how could you tell" (the road was icy), answered "By looking at the roadway. There was a glare on the roadway that was normally absent on a dry road"; Officer Evans (Tr. 43) — "I knew the road was slick because when I came onto the highway it appeared to be slick"; Witness Williams (Tr. 122) — "Well, it was a wet fog and did look slippery".

Despite the fact that witnesses Gull (Tr. 104); Everley (who said the road appeared wet) (Tr. 110 and 112); Witness Owens (Tr. 139-140); Witness Reynolds (Tr. 146-147), as well as the defendant, all testified the roadway appeared dry, we will assume for the purpose of this argument only that the above testimony apparently would be sufficient for the jury to find that the appearance was that of an icy roadway.

As to the windows of the car, and particularly with relation to the accumulation of fog on the windshield, the testimony, favorable to the plaintiff and adverse to the defendant, was as follows:

Witness Williams (Tr. 120) — “the windshield was fogged up”; (Tr. 121) — “up towards the Farmington Underpass it (right windshield) was quite foggy. . . . There was very little heat and just a small opening (in the left windshield) about one foot in diameter . . . kind of an oval opening”; (Tr. 127)

Q. “The right side was worse than the left?” A. “Yes. I don’t think it (the defroster) was working, because the other side was completely fogged up. A lot of (the fog) was on the inside and some of it on the outside. . . . There was frozen fog on the outside.” (Tr. 129) “Through the small opening (in the left windshield) it was clear.”

The plaintiff confirmed the above condition of the windshield, and testified the other windows were completely fogged up. (Tr. 74) — “They were getting pretty well fogged up by that time (When the car reached Mr. Williams’ house). The (windshield) was getting dim where it was hard to see through the windshield. As we continued to go north, the windows frosted up more.”

(Tr. 75) Q. “And could you see out of the windshield in front of Mr. Gull?” A. “No, I was pretty well blocked

from any side." Q. "could you see over to the left of the windshield by Mr. Mower?" A. "Very little. . . . You can't fix to judge the speed if you can't see out."

On cross-examination (Tr. 86) plaintiff testified, "Wouldn't anybody have a fear in their heart if they couldn't see out and going, riding in the car?" Q. "And the windows were so fogged you couldn't see out?" A. "Yes."

(Tr. 89) Q. "Well, then will you please tell us, Mr. Jensen, why you were uneasy in the car?" A. "Well, I just think it was on account of me being in the dark and going. I think anyone would be."

Q. "You mean in the back seat, where you couldn't see?" A. "Yes." (Tr. 90) Q. "And you couldn't even see a thing through the right half of the windshield?" A. "No."

Q. "Now isn't it true that the left half of the windshield was clear?" A. "Not very much of it . . . there was fog on the left hand side, but it wasn't all fogged up." (Tr. 93) ". . . It was just like going somewhere in the dark."

On the question of defendant's negligence, therefore, the jury must have found that the defendant was driving in a heavy, thick fog in the nighttime (of which plaintiff, of course, was well aware); that defendant's speed was

40 MPH (the opinion of the plaintiff at the time); that the visibility through the fog was not over 50 to 100 feet (which the plaintiff also knew); that the roadway appeared icy (the plaintiff at least having knowledge of this possibility as he testified (at Tr. 85) that he felt the car skid in front of Mr. William's home); that the right windshield was completely fogged up, and that there was only a small opening in the left windshield, through which the plaintiff, and therefore the defendant, could see "Very little."

Under these conditions plaintiff made no protest whatsoever, nor did he request the defendant, at any time, to slow down, stop and clear his windows, or, in fact, make any indication to the defendant that he, the plaintiff, was in any way worried by the manner of the defendant's driving, or the lack of visibility from inside the car.

The plaintiff testified (Tr. 91):

"Q. Now as you reached the Farmington Underpass and when the passengers were alleged to have made these statements, did you say anything to him?

A. No.

Q. Did you at the time feel that it was getting dangerous?

A. Well, I did, but I put my trust in him and I

don't think it's right for all drivers to advise the driver.

Q. If you felt that you might get injured, don't you feel that you would be justified in asking Mr. Mower if he wouldn't mind slowing down or cleaning his windshield, or something?

A. Yes.

Q. But you don't like to be a back seat driver?

A. That's right.

Q. So that you decided that you would just take the gamble and hope that you made it?

A. That's right."

The remarks made to the defendant by the other drivers could have hardly been sufficient to replace plaintiff's own objection to the very dangerous situation which the jury apparently decided prevailed. Those remarks were made by Mr. Gull, riding in the front seat, and Mr. Williams, in the rear seat, the testimony of these witnesses being:

Mr. Gull: (Tr. 101)

"Well, all I can recollect of that is I told Frank, I said, 'My side is getting fogged up. Can you see out of yours?' I remember Frank saying, 'Yes, I can see out of mine.'"

Mr. Williams: (Tr. 123)

“I remarked, and I hated to, I don’t like to be a back seat driver. I remarked something like, ‘Aren’t we going a little fast?’

Q. And what did Mr. Mower say, if anything?”

A. I don’t recall. I don’t believe he answered unless he just said, ‘Yeah,’ or something like that.

Q. And did he make any change in the speed of the car?

A. He may have dropped down some.”

At Tr. 125, the witness testified:

“He dropped it (his speed) a little . . . I would say 2 or 3 miles per hour and then I think he went back up from there.”

The above conversations took place at the Farmington Underpass, or about two miles from the scene of the accident.

Certainly the remarks made by the other riders did not have a noticeable and immediate effect upon the manner in which the defendant was driving, and the condition of the fogged windshields and the side windows was certainly not improved. Yet despite the lack of any immediate response from the defendant to the remarks made, the plaintiff made no statement whatsoever, but in-

stead, as he admitted on the stand, he decided to take the gamble and hope that he made it.

The plaintiff admitted that he had a "fear in his heart"; that he was "intense"; that he felt that the situation was dangerous.

Under those conditions the normal, prudent rider, in order to protect himself from the danger which was so apparent most certainly would and should have protested, or at least strongly requested the driver to slow up, or to stop and clear his windshield.

The half-hearted remarks made by the other riders, with no immediate result upon the defendant, cannot substitute for a more vigorous protest from the plaintiff, which, in all probability, would have had the desired response from the driver. But without some effort on the plaintiff's part to lessen the dangerous situation, he cannot now be heard to complain that the gamble which he took, a calculated risk, failed.

Furthermore, there was ample testimony that moisture inside the vehicle collected upon the windshield and the other windows during this cold, freezing morning. The plaintiff was so concerned with his own comfort that he did not roll the window down to air out the interior, and free the inside of the glass of "fog", because (Tr. 86) "it was too cold."

The plaintiff contended that he was a paying passenger in defendant's automobile. The authorities are clear that even if he were, he is under a duty to use reasonable precautions for his own safety.

4 BLASHFIELD, CYC. OF AUTO. LAW AND PRACTICE, SEC. 2217, at Page 2217, in discussing passengers in taxicabs, stated:

“While the primary duty to care for the safety of passengers rests upon the driver of a taxicab, a passenger being under no duty, except in exceptional cases, to be on the lookout for possible dangers, yet circumstances may arise which are such as to impose such a duty on the passenger in order for his conduct to conform to that of a reasonably prudent person. While the mere speed at which a taxicab is driven is ordinarily not a matter with which a passenger may need concern himself, yet, if it is driven at a speed dangerous under all the circumstances or dangerous under the particular circumstances, and the passenger has an opportunity to protect against the speed, his failure to do so may prevent his recovery for an injury resulting from the excessive speed, if an ordinarily prudent person, under the circumstances, would have cautioned the driver.”

In GARROW v. SEATTLE TAXICAB CO. - 135 WASH. 630, 238 P. 623, the Court states:

“ . . . if the automobile be driven at a speed dangerous under all the circumstances, or dangerous under the particular circumstances, and the

passenger had an opportunity to warn or protect against the speed and failed so to do, clearly he could not recover against the owner for an injury resulting from the excessive speed . . . *it is not reasonable prudence for one to remain passive while another negligently subjects him to an unnecessary danger, when an opportunity to act is present.*"

In *CAPERON v. TUTTLE* (UTAH) 116 P2d 402, the facts were that plaintiff, a guest in defendant's car, was riding in the rear seat when he saw sheep on the road ahead and cried out a warning about the same time that defendant applied his brakes. This Court stated at Page 405:

"As we have heretofore stated, any negligence of the driver was not imputable to his guest. Nevertheless, if the jury found that the driver was negligent, it could . . . have considered whether or not (plaintiff) was, or should have been, aware of such negligence and was, therefore, under a duty to warn said driver of the danger involved and endeavor to influence him to exercise greater caution, and further, whether or not anything that plaintiff might have done would have influenced the driver to greater care and thus have avoided the accident."

GILMAN v. OLSON, 125 OR. 1, 265 P439; *COWAN v. SALT LAKE & O. R. CO.* 56 UTAH 94, 189 P. 599.

In the case at Bar, and again referring to the remarks made by witnesses Gull and Williams, the plain-

tiff (at Tr. 75) testified:

“We went under the Underpass there by Lagoon. I can remember of going under the Underpass. But before we went under the Underpass I heard Mr. Williams ask him if he wasn’t going too fast and he said no. And I seen him go under the Underpass and then Mr. Gull said, after the Underpass, that he couldn’t see out of his side of the windshield . . . and Mr. Mower said that he could and kept a going. So I was just intense.”

The Court: “So you were what?”

A. “Intense.”

In answer to the question of Mr. Williams, “Aren’t we going a little fast?”, Mr. Mower either made no reply, or he said “yeah” or “No”. The witnesses’ recollections were not in accord.

But regardless of his reply, there was no noticeable reaction from the driver, unless he dropped his speed 2 to 3 miles per hour, and then picked the speed back up again, which Mr. Williams testified he “may” have done.

In any event, the plaintiff himself believing the situation dangerous some two miles from the point of the accident; knowing the atmospheric conditions; completely unable to see out of the car windows, except “very little” throughout the left front windshield glass; himself of

the opinion that the car was going 40 miles per hour; and knowing from past experience that the roadway was amply wide enough to stop the car against the east edge so that the windshields could be cleared, cannot, as a reasonable and prudent person passively sit by and gamble with his own safety.

Again in Blashfield, Vol. 4, Sec. 2414 at pages 563,-
564.

“It is a general rule, however, that the guest will be considered to acquiesce in any course of driving persisted in sufficiently long to give him an opportunity to protest and thereby indicate his dissent or disapproval of the manner of driving. A passenger, even one who is a gratuitous guest, in an automobile cannot sit idly by observe clear violations of the law or a steady course of negligent conduct, in such ways, for example, as by the operation of the vehicle at an excessive speed or the like, and acquiesce therein and then be permitted to hold the operator or third persons liable for the damage resulting from such violation of legal duty. As said by the Supreme Court of Louisiana . . . the theory underlying this rule is that of assent to and acquiescence in the driver’s negligence.”

There is then cited by the text at note 59, page 570;

“. . . a finding of the jury that plaintiff was not negligent is against the manifest weight of the evidence, where the collision occurred on a dark, foggy and misty night, where the driver of the car in which the plaintiff was riding testi-

fied that he was driving between 18 and 20 miles an hour, although he could not see more than 8 to 10 feet ahead, and where plaintiff who was sitting beside the driver made no remonstrance or objection of any kind as to the speed at which the automobile was being driven. *McDermott v. McKeown Transp. Co.*, 263 Ill. App. 325."

The Utah Supreme Court, in *Hillyard vs. Utah By-Products Co.*, 263 Pac. 2nd at page 289 has stated the rule in this respect as follows:

"Ordinarily (the guest) has the right to place some reliance upon prudence, care and skillfulness of the driver. It is only when the guest knows, or in the exercise of ordinary care should know that the driver lacked such qualities, **or is being careless** that it becomes the guest's duty to consider doing something about the operation of the car. In the *Esernia* case cited by defendant, where such duty was recognized, the passengers were fully aware of the sleepy condition of the driver; he had already run off the road once and had stated that he was so sleepy that he didn't know whether he could keep awake, after which there had been ample opportunity to leave the truck. Likewise in the case of *Maybee v. Maybee*,³ the plaintiff, whose mother was the driver, knew of her mother's nearsightedness and that she was driving without glasses; so she was fully aware of the serious defect in her mother's ability to drive safely, yet she acquiesced in the situation and abandoned the care of the car to her mother to such an extent that she was content to read a book during the drive."

2. *Esernia v. Overland Moving Co.*, 115 Utah

519, 206 P. 2nd 621.

3. 79 Utah 585, 11 P 2nd 973.

See also Cowan v. Salt Lake & U. Ry. Co. (Utah) 189 Pac. 605.

It is therefore submitted ,that the plaintiff was contributorily negligent as a matter of law; he acquiesced in the manner in which the defendant was driving under the very dangerous conditions which the jury found existed; he made no protest or suggestion to the defendant whatsoever, although he had ample opportunity to do so inasmuch as the dangerous circumstances existed miles before the accident occurred.

The jury's finding that plaintiff was free of negligence was clearly against the manifest weight of the evidence.

POINT THREE

THE COURT'S INSTRUCTION NUMBER 12 INVADED THE PROVINCE OF THE JURY, AND WAS REVERSIBLE ERROR.

Instruction No. 12 was as follows:

“You are instructed that if you believe from a preponderance of the evidence that defendant, Frank Mower, knew or should have known that he was traveling on icy roads, then if you further

find that a person under the circumstances of this case would not, as a reasonable and prudent man, have applied his brakes, then you shall find that in so doing he was negligent."

The Court, by this instruction, assumed the following facts, which were at issue :

1. That the defendant applied his brakes before the car started skidding.
2. That the application of the brakes was negligently done, whether touched lightly to slow the speed of the car, or jammed vigorously to stop.
3. That the application of the brakes, regardless of how applied, was a proximate cause of the accident.

It was a jury question as to whether the defendant actually applied his brakes; and if applied, whether they were applied before or after the car started skidding. It was a jury question as to whether the defendant *negligently* applied his brakes, it being the testimony of the defendant that, if he applied his brakes at all, he merely "touched" his brakes, which we submit would not be negligence in any event; and it was a jury question as to whether the application of the brakes was a proximate cause of the accident, it being the contention of the defendant that the car skidded on the solid ice surface primarily from the attempt to turn from one lane to the other to avoid the stopped car ahead.

At Tr. 159 the defendant testified:

“Well, I naturally wondered what was in front of me. I turned to the left and I guess I touched my brakes and my right end just came on around and cut the front end.”

Again, on Cross Examination at Page 164:

“Well, as I discovered these tail lights were stopped I naturally turned to the left and I imagine I hit my brakes. I don’t even remember that I hit my brakes but my right end came around.”

At Page 168:

“Well, I imagine I was going about the same speed as I was when I touched my brakes because it didn’t seem to slow up. The rear end just whipped right around.”

On Re-Direct, at Page 173:

“Why I turned to the left to turn around him and I naturally wanted to see what was in front of him. I wanted to slow down and see if there was something in front of him. . . . I had no idea there was going to be an accident at that time. . . . I just merely intended to turn around him and slow down in case there was something in front of him. . . .”

The Court’s instruction, therefore, completely disregarded defendant’s testimony. The jury had a right to believe the defendant and to believe that the application

of the brakes was either made after the car started skidding; that the defendant, even if he knew that the highway was icy, was not negligent in lightly "touching" the brake pedal; and that the application of the brakes, in any event, was not a proximate cause of the accident.

The highway patrol officer who testified at Tr. 29, while reviewing his findings at the scene, based on his observation and inquiry of the drivers involved, stated:

"The 1947 Nash came along . . . touched his brakes, his car went into a skid, etc."

It is common knowledge that brakes on vehicles must be used, even if the roadway is solid ice. The careful driver applies his brakes under these circumstances by a light application "touching" and in a pumping action. It is, of course, careless to "jam" the brakes. But, whether the defendant carefully "touched" his brakes or "jammed" them in an effort to stop, was a vital question for the jury.

The Court's instruction clearly stating that if the jury should find that the defendant should have known that the road was icy and applied his brakes, no matter how he applies them, and regardless of whether he applied them before or after the car started skidding, the defendant would then be negligent, was clearly error prejudicial to the defendant.

It is also common knowledge that the mere turning of the front wheels on solid ice can and very frequently does cause a car to skid, with no application of the brakes. Plaintiff's own witness, Everley, testified (at Tr. 110) that while he was following the gradual curve under the Underpass at Farmington, he felt his car skid, but he was able to right it and proceed. Until that time he thought the road was wet but not slippery (Tr. 112). At any rate, he certainly was not applying his brakes at the time his car started skidding.

The defendant testified, as indicated above, that he turned and then may have touched his brakes, but in any event, the car started skidding immediately. The order of his actions, however, was first, to turn to his left to change lanes, and second, to touch his brakes to slow down (if in fact he applied his brakes at all). The instruction completely took these factors from the jury, by assuming that the negligent application of the brakes caused the car to skid.

We, therefore, submit that the jury could have hardly thought other than this:

The issue for the jury's determination was whether the defendant knew or should have known that the road was icy at the scene of the accident. If the jury found in the affirmative, then the defendant was negligent, inasmuch as he applied his brakes negligently, which caused the car to skid and collide with the stopped vehicle.

We further submit that even assuming that the defendant knew that the road was icy, the jury had a right to find that the defendant's action in attempting to change lanes, and lightly touching his brakes, for the purpose of slowing the speed of his car until he could determine what was ahead of the stopped car, was not negligence, and that the defendant acted in those respects in accordance with the actions of the reasonable and prudent motorist under the circumstances.

We believe the instruction was further erroneous in that it did not state the alternative to the proposition stated, and therefore over-accentuated the plaintiff's theory of the case.

For the above reasons, it is respectfully submitted that the defendant is entitled to a reversal of the judgment, and a new trial.

POINT FOUR

THE INSTRUCTIONS WERE PREJUDICIALLY ERRONEOUS IN THAT THEY WERE CONTRADICTORY AND CONFUSING AND INCORRECTLY STATED THE LAW.

The instructions to which we refer as contradictory and confusing, and which incorrectly state the law applicable to the facts of the case at bar, are herewith quoted:

Instruction No. 8.

You are instructed that it is negligent as a matter of law for a person to drive an automobile upon a traveled public highway used by vehicles at such a rate of speed *that said automobile cannot be stopped within the distance at which the operator of the automobile is able to see objects upon the highway in front of him.*

Instruction No. 10.

... In every event the speed shall be so controlled as may be necessary to avoid colliding with any person, vehicle or other conveyance on the highway and the duty of all persons to use due care.

Instruction No. 11.

It is the duty of the driver of a motor vehicle to be diligent at all times, keeping a reasonable lookout for possible danger to himself or others, and to keep the motor vehicle he is driving under such control that *to avoid a collision he can stop as quickly as might be required of him by eventualities* that would be anticipated by an ordinary, prudent person in like position.

Instruction No. 12.

You are instructed that if you believe from a preponderance of the evidence that defendant, Frank Mower, knew or should have known that he was traveling on icy roads, and if you further find that a person under the circumstances of this case would not as a reasonable and prudent man have *applied his brakes, then you shall find that in so doing he was negligent.*

Instruction No. 13.

You are instructed that if you believe from a pre-

ponderance of the evidence that the defendant, Frank Mower, *could* have passed to the left of the automobile parked on the highway and he *should have* done so in the exercise of due care of a reasonably prudent man then you will find that he was negligent in failing to do so.

In effect, therefore, the jury was instructed in Numbers 8 and 11 that the defendant was under a duty to *stop* (with no mention made of “avoid”) upon seeing a vehicle ahead in his headlights, yet in Number 12 the jury was instructed that if the defendant knew the road was icy and attempted to stop by applying his brakes *to stop*, he was negligent, if the reasonable prudent man would not have applied his brakes, even in the slightest degree. The jury, under those instructions, could well assume that the law requires a motorist, travelling on icy roads, to travel at such a speed that he can stop *without* the application of brakes at all, or that if he does apply brakes, he does so at his own risk, inasmuch as he will be deemed negligent if an accident occurs, regardless of the circumstances.

Instruction No. 10 goes further by saying that “*in every event*” the speed must be controlled so as to avoid an accident, even, we presume, if it be conceded that the car with which the accident occurs is stopped blocking traffic in violation of the law, or the other motorist is operating his vehicle in a highly reckless manner. This instruction, clearly stating that there are no exceptions to the rule of law stated, is clearly contrary to the law as stated by this Court, as indicated *infra* page

It is further confusing, and must have been so to the jury, to be instructed, in Number 13, in effect that even though the law requires the defendant to stop, if the defendant, as a reasonable man, *could* have or *should* have passed on the left of the stopped vehicle, and he failed to do so, (which was obvious because of the fact that the accident happened) then the defendant was negligent.

Instruction No. 13 was very prejudicial. It permitted the jury to determine by hindsight what was admitted by the evidence, that there was sufficient room on the left of the stopped car for the defendant's vehicle to pass. If all that the jury had to determine was whether the defendant "could" have passed, there would have been no need for a law suit. Of course he "could" have passed, in the sense that it was not an impossibility to do so. The instruction then, in effect, asks the jury whether the defendant "should" have passed the car. Again, using hindsight, there is no question that he "should" have done so, if for no other reason than it would have been highly

more desirable for everyone concerned that he do so. Can any one say that he should have collided with the car? There has never yet been an automobile accident which should have happened, and we feel certain no jury has ever yet so found.

The plaintiff will undoubtedly contend that the Court's Instruction Number 17 (which was requested by defendant) clarifies any confusion which might have been

present in the minds of the jury. We believe Number 17 to correctly state the law, but the jury, after being instructed in Numbers 8, 10, 11, 12 and 13, could not help but be further confused by Instruction Number 17. In other words after having been told that, in effect, the defendant is under the duty to stop, or that if there were room enough to pass the stopped vehicle on its left and he failed to do so he is negligent, with no exception, and that "in any event" he must avoid an accident, then the jury could not help but be confused by then being instructed, as in Number 17, that there are exceptions after all.

In 53 Am. Juris. Trial, Sec. 557, page 442:

"Instructions as a whole must be consistent and harmonious, not conflicting and contradictory. This is true although one of the instructions correctly states the law as applicable to the facts of the case, since the correct instruction cannot cure the error in the contradictory, erroneous instruction. Inconsistent instructions are calculated to mislead and confuse the jury, since the jury are thereby left in doubt and without any certain guide as to the law arising upon the evidence."

We submit that the Court's instructions were not tailored to the fact situations present in this case. The Court's instruction on the duty of a motorist to drive at such a speed that he can stop within the distance of his headlights would be entirely correct, if the accident had occurred on the normal two lane highway, one lane

for each direction. A motorist on such a highway, of course, must anticipate that he may encounter an object ahead at the same time that an opposite bound car is approaching, which may require a complete stop in order to avoid a collision with the object ahead, as well as to avoid a head-on collision with the opposite bound car. But that situation was not present in the case at bar.

Here the defendant was proceeding north on a *two lane, one way highway*, with no possibility at all of an opposite bound car preventing the defendant from passing any object in the lane ahead.

It is common knowledge that a motorist can, with little or no effort, move his vehicle from one lane to another and pass an obstacle blocking the one lane, whereas it might, under the circumstances, be impossible and unnecessary to completely stop behind that object.

To hold, however, even under these facts, that the defendant nevertheless, is still under the duty to drive at such a speed that he can completely stop behind a vehicle which he suddenly observes illegally stopped in the one lane ahead, would require a complete disregard of the practical factors of driving at night.

In MOSS vs. CHRISTENSEN - GARDNER, INC. (Utah) 98 Pac. 2nd at 367, Justice Wolfe, in his concurring opinion, states:

“The instant decision commendably departs from the severe logic of the Dalley case (Dalley v. Midwestern Dairy Products Co., 80 Utah 331, 15 P. 2d 309) in order to make the law comport not with logic but with realities—a very welcome symptom. The logic of the Dalley case would require that a driver blinded by lights stop until the blindness disappears. There is in logic no more reason why a man should proceed when unable to see objects because of being blinded by the lights of some other car than when unable to see them by the lights of his own car. But as stated in my dissenting opinion in Farrell v. Cameron, 94 P.2d 1068, some concession must be made to actualities. In that case, the implication was that a man on his own side of the road blinded by oncoming lights was under a duty to discover an oncoming person on the wrong side of the road. Of course, such law would make driving at night on much used arterials practically an impossibility.”

We submit that the same reasoning applies to the case at bar. A motorist, even in fog, is entitled to proceed in his lawful use of the highway. That motorist, with the knowledge that he is using a wide, two lane, *one way* thoroughfare, with no possibility of opposite bound cars, is not negligent if he drives at a speed which would permit him to *avoid*, by passing, an object stopped in the lane ahead; and this, even though he were unable to actually stop within the same distance which permitted a safe passing.

For example, Blashfield Cycl. of Auto. Law and

Practice, Vol. 1, Part 2, Page 695, Sec. 751, it is stated:

“Suppose a motorist is traveling at the rate of 40 miles an hour. At that speed, allowing for for the three-fourths of a second that is required for the average driver to react to a warning, an automobile with brakes in excellent condition can be stopped in 115 feet. If the headlights reveal an object just 115 feet ahead, then the motorist is traveling within the radius of his lights, and is able to avoid a collision, *provided* that when the object is first discerned the surrounding circumstances suggest danger, and the need for an emergency stop. If a second passes before the motorist perceives indications of danger, and a “stop” signal flashes to his brain, the automobile during that second has travelled 59 feet. The object is then only 56 feet away, and it is too late to stop, and may be too late even to swerve so as to avoid a collision, since the actual stopping distance at 40 miles per hour is 71 feet.”

The defendant in the case at bar testified that when he realized that the car ahead was stopped, it was 75 to 100 feet distant. The three-fourths second lapse before defendant could react would result in the car travelling 44.25 feet. The defendant, therefore, had 30.75 to 55.75 feet to stop *or turn and pass* the vehicle ahead. Quite obviously, the defendant could not possibly have stopped, and indeed there was no need for him to do so, as there was a lane of travel wide open on his left. It is submitted that in that distance, under conditions which prevailed, the jury could properly have determined that the defendant was not negligent merely because of the fact that

his automobile skidded. (Vol. 1 Blashfield, Cyc. Auto. Law & Practice, page 680, sec. 749); nor that he was driving too fast under the conditions; nor that he was keeping an improper lookout.

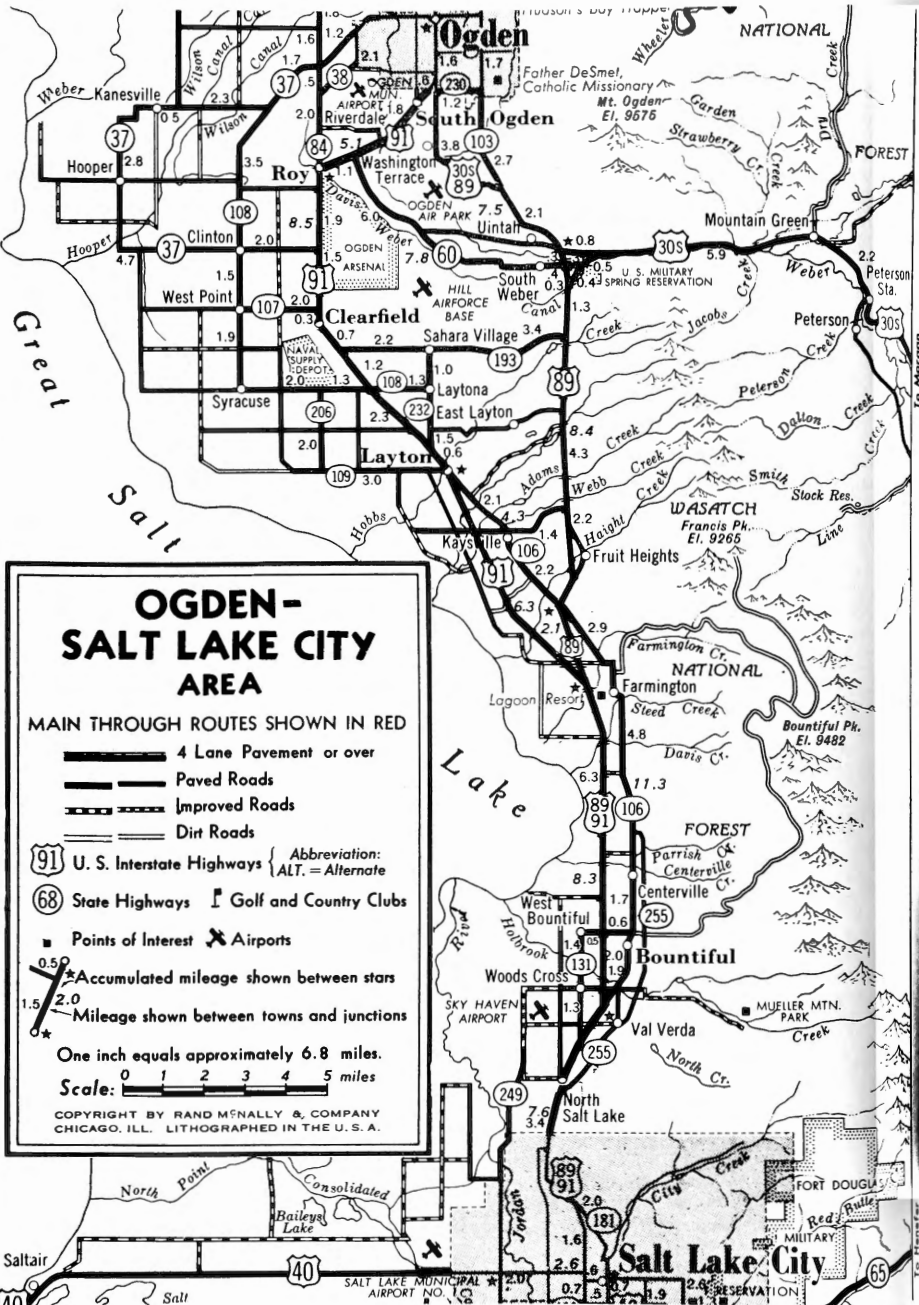
But the jury having been instructed, in Instructions No. 8 and 11, that the law requires that the motorist be able to stop within the distance objects ahead can be seen, with no mention in those same instructions concerning the motorist's ability to avoid the said object, was certainly misleading and did not properly state the law applicable to this case, and made it incumbent on the jury to find the defendant negligent.

For the above reasons, the instructions were prejudicially erroneous.

Respectfully submitted,

LOUIS E. MIDGLEY,
*Attorney for Defendant
and Appellant.*

APPENDIX "B"



OFFICIAL ROAD MAP - UTAH STATE ROAD COMMISSION

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
 Library Services and Technology Act, administered by the Utah State Library.
 Machine-generated OCR, may contain errors.

APPENDIX "A"

