

1958

# Samuel R. Thurman v. Eldon Edward Partridge : Brief of Respondent

Utah Supreme Court

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Rich & Strong; Lawrence L. Summerhays; Attorneys for Respondent;

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# IN THE SUPREME COURT

OF THE

STATE OF UTAH

FILED

MAY - 9 1958

SAMUEL R. THURMAN,  
*Plaintiff and Appellant.*

Clerk, Supreme Court, Utah

vs

Case No. 8807

ELDON EDWARD PARTRIDGE,  
*Defendant and Respondent.*

## BRIEF OF RESPONDENT

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# IN THE SUPREME COURT

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## STATE OF UTAH

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*Plaintiff and Appellant.*

VS

ELDON EDWARD PARTRIDGE,  
*Defendant and Respondent.*

Case No. 8807

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### BRIEF OF RESPONDENT

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### STATEMENT OF FACTS

Action by the plaintiff against the defendant to recover damages to his automobile arising out of an accident which occurred at about 11:20 A. M. on the 18th of February, 1956, at the intersection of Cleveland Avenue and Major Street in Salt Lake City, Utah. Defendant filed a counterclaim for damage to his vehicle. From a judgment by Third District Judge, Joseph G. Jeppson, holding both parties guilty of negligence which contributed to the accident, the plaintiff has appealed.

The evidence will show that Major Street and Cleveland Avenue are both narrow streets, with Cleveland Avenue running east and west and Major Street north and south. Both streets are of blacktop construction with Cleveland Avenue being approximately 21 feet wide and Major Street approximately 35 feet, (R. 38). On the southeast corner of the intersection from the east edge of the blacktop on Major Street to the sidewalk on the east side of Major Street it is approximately 10-12 feet including a small strip of grass, (R. 39). The sidewalk is about 2-2-1/2 feet in width, (R. 33). There is a home on the southeast corner of the intersection which stands within 18 inches to 2 feet of the sidewalk on Major Street, (R. 34, 58 A), and within 2-3 feet of the sidewalk on Cleveland Avenue, (R. 43). A solid row of trees extends south from the southeast corner on the east side of Major Street, (R. 32), being about 1 foot west of the sidewalk, (R. 33), and there are about 3-4 trees extending east from the southeast corner on Cleveland Avenue, (R. 32). The trees and the home substantially obstructed the vision for north and westbound traffic approaching the intersection, (R. 34, 35, 50). Defendant testified that the house and trees obstructed vision until a car approached a point where it almost entered the intersection, (R. 50). The Court found as a fact that vision was obstructed by the house and trees on the southeast corner of the intersection, (R. 69).

It had been snowing most of the morning but it was not snowing at the time of the accident. The snow was approximately 6 inches deep on the ground and on the two streets.

The plaintiff was driving in a northerly direction on Major Street and the defendant in a westerly direction on Cleveland Avenue. At the Cleveland Avenue entrance to the intersection there was placed "Yield Right of Way" signs. The signs were approximately 24 inches along the top and each side and 12 inches across the bottom, (R. 42).

Plaintiff testified that he approached the intersection at a speed of 20-25 miles per hour, (R. 25), and that when he was at a point about 20-30 feet from the intersection, (R. 25), he saw the defendant approaching from the east. At that time plaintiff said defendant's vehicle was 50 feet east of the intersection and was approaching the intersection at a speed of 15 miles per hour and that it appeared to be slowing, (R. 26, 29). Plaintiff estimated defendant's speed at impact at 10 miles per hour, (R. 29). Plaintiff did not notice defendant's vehicle again until plaintiff was almost through the intersection and just before the impact, (R. 38).

Defendant, on the other hand, testified that he was at the east sidewalk line or 6-8 feet east of it traveling 10 miles per hour, (R. 49), when he first observed the plaintiff's car which was then 30 to 35 feet south of the south sidewalk line of the intersection, (R. 51), and that plaintiff's vehicle was traveling 25 miles per hour and

did not slow at any time, (R. 53, 59). Defendant had looked to the south before arriving at the intersection but stated he did not see plaintiff's vehicle, (R. 56). He looked north and then again south at which time he saw plaintiff's vehicle, (R. 56). He applied his brakes and attempted to turn to the right to avoid the accident but was unable to stop or turn much, (R. 49).

The left front of the defendant's vehicle struck the right center portion of plaintiff's vehicle, (R. 53), at a point just east of the center line of Major Street and when the front of plaintiff's vehicle was at about the north line of the intersection, (R. 54). Defendant had approached the intersection from a point about 100-150 feet back of the intersection at a speed of about 15 miles per hour, (R. 46, 47, 59), and was slowing as he approached.

## STATEMENT OF POINTS

### POINT I.

THE COURT DID NOT ERR IN FINDING CONTRIBUTORY NEGLIGENCE UPON THE PART OF THE PLAINTIFF.

### POINT II.

THE FINDINGS OF THE TRIAL COURT WITH RESPECT TO THE NEGLIGENCE OF THE PLAINTIFF ARE SUPPORTED BY THE EVIDENCE.



## POINT III.

THERE WAS NO IRREGULARITY IN THE PROCEEDINGS OF THE COURT AND NO ABUSE OF DISCRETION BY THE COURT.

## POINT IV.

DEFENDANT WAS ENTITLED UNDER THE FACTS TO THE RIGHT OF WAY AT THE INTERSECTION UNDER THE STATE STATUTE PERTAINING TO RIGHT OF WAY GOVERNING OPEN INTERSECTIONS BECAUSE THE PLACEMENT OF THE YIELD RIGHT OF WAY SIGN AT THE INTERSECTION ENTRANCE FROM CLEVELAND AVENUE WAS INVALID AND INEFFECTIVE.

“A” THE CITY ORDINANCE AUTHORIZING PLACEMENT OF STOP SIGNS WAS INVALID BECAUSE IT ESTABLISHED A RULE OF EVIDENCE.

“B” THE YIELD RIGHT OF WAY SIGN WAS NOT PLACED OR USED IN ACCORDANCE WITH THE STATE STATUTE AND AS PRESCRIBED BY THE SIGN MANUAL OF THE STATE ROAD COMMISSION.

"C" THE YIELD RIGHT OF WAY SIGN DID NOT CONFORM TO THE SPECIFICATIONS OF THE SIGN MANUAL PERTAINING TO YIELD RIGHT OF WAY SIGNS.

### ARGUMENT

POINTS I AND II. THE COURT DID NOT ERR IN FINDING CONTRIBUTORY NEGLIGENCE UPON THE PART OF THE PLAINTIFF AND THE FINDINGS OF THE TRIAL COURT WITH RESPECT TO NEGLIGENCE OF PLAINTIFF ARE SUPPORTED BY THE EVIDENCE.

Plaintiff's own evidence is that he approached the intersection at a speed of 20-25 miles per hour. He did not at any time reduce his speed although the evidence is clear that visibility is very limited and restricted for the driver of west and northbound vehicles approaching the intersection. The vision was obstructed by a home constructed on the southeast corner within 18 inches to 2 feet of the sidewalk on Major Street and 2-3 feet of the sidewalk on Cleveland Avenue. The west side of the home was not over 12-14 feet from the blacktop edge of the street, or about 4-5 feet from the shoulder of the road, and had a solid line of trees to the west of it which also obstructed vision. The conditions on the north side of the home were somewhat similar. The street was covered with snow and it was slippery. With the limited visibility and the slippery condition of the road plaintiff could not have brought his vehicle to a stop at a point from the

20-30 feet south of the intersection where he states he first saw defendant's vehicle, or could have seen defendant's vehicle before colliding with other vehicles entering the intersection. Utah's basic speed law, Section 41-6-46 (1), Utah Code Annotated 1953, provides that 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. . . . Subsection 3 provides: "The driver of every vehicle shall consistent with the requirements of Subdivision (1) of this section drive at an appropriately reduced speed when approaching and crossing an intersection . . . and when special hazards exist with respect to . . . other traffic or by reason of weather or highway conditions." On a dry highway at 25 miles per hour it would take plaintiff approximately 61 feet to stop after discovering danger. However, on snow it would take him much further before he could bring his vehicle to a halt. Considering his speed, the limited visibility at the intersection and the slippery highway, the court might very easily and properly conclude that plaintiff was driving too fast for existing conditions in view of all the existing hazards.

Section 41-6-72. 10 (c) Utah Code Annotated 1953 as amended provides as follows:

"When a Yield Right-of-Way sign is erected, the driver of a vehicle approaching said sign shall slow to a reasonable speed for existing conditions of traffic and visibility, yielding right-of-way to all vehicles and pedestrians on the intersecting street which are so close as to constitute an immediate hazard."

The statute does not require vehicles to come to a stop at the Yield Right-of-Way sign in all instances but to slow and yield the right of way to all vehicles on the intersecting street which are so close as to constitute an immediate hazard. It, therefore, requires the exercise of judgment upon the party approaching the sign to determine whether the vehicle approaching on the intersecting street constitutes an immediate hazard. If the approaching car is an immediate hazard, the right of way must be yielded to it and the non-favored driver must, if necessary, come to a stop. However, if the non-favored driver fails to see the other car approaching the intersection or does not consider him an immediate hazard, he will not stop at the Yield Right-of-Way sign and there is, therefore, a duty upon the part of the favored driver to exercise more caution in approaching such an intersection than if he were approaching one guarded by a stop sign.

Each driver approaching such an intersection has a relative duty to approach with caution in view of all the circumstances and each one has a right to rely upon the fact that the other driver is required to act in a reasonable prudent manner under all the conditions existing at the time.

Plaintiff testified that when he was 20-30 feet away from the intersection he was going 20-25 miles per hour and that defendant was at that time at a point 50 feet east of the intersection and going 10-15 miles per hour. Defendant's testimony substantiates the speed of the respective vehicles. Plaintiff was, therefore, going about twice as fast as the defendant. Plaintiff's statement of defendant's position at the time he saw him is obviously

erroneous. The defendant's testimony with respect to the position of the two vehicles is apparently the more accurate. If plaintiff had been traveling at a slower speed which the existing conditions required, each driver would have had more time and a better opportunity to observe the approach of the other and avoid the accident.

The evidence clearly supports the court's finding that the plaintiff was guilty of contributory negligence.

It cannot be said under the circumstances that the plaintiff was free from negligence as a matter of law and the finding of the trial court in this instance is binding upon the appellate court.

Knowing that the intersection had a blind corner on it, he should have approached the intersection at a much slower speed so that he could control his vehicle under the existing circumstances in the event traffic approached from the east.

"A motorist approaching an intersection whose view is obstructed should have his car under such control without regard to the question of statutory priority of right of way, and hence statutes or ordinances providing for or designating through ways or streets do not ordinarily modify requirements regarding speed in approaching obstructed intersections." 2 Blashfield 372, Sec. 1041.

POINT III. THERE WAS NO IRREGULARITY IN THE PROCEEDINGS OF THE COURT AND NO ABUSE OF DISCRETION BY THE COURT.

Plaintiff's counsel has filed a Statement of Trial Judge which he claims supports his contention that there

was irregularity in the proceedings in that the trial judge viewed the premises without the counsel being present and also an abuse of discretion for the same reason.

The record fails to support plaintiff's contention. At the commencement of the trial while plaintiff's counsel was making his opening statement he stated that the accident occurred at the intersection of Cleveland Avenue and Major Street. The trial judge at that time stated that he knew the corner. Other statements made by the court which are not part of the record were that he had traveled that intersection many times; that he used to travel it on his way to work and was quite familiar with it.

On the morning of the argument, the court stated that he had driven by the intersection again on his way to court that morning and again noted the intersection. The record does not show nor did the court state that his decision was based upon or influenced by his observations made on the morning of the argument.

"In a case tried before the trial judge without a jury, where the judge acts as a trier of facts, according to the weight of authority he may, in his discretion, view the premises in dispute or where material facts occurred, even in the absence of any statutory authorization." Section 1128, 53 Am. Jur. 784.

On the morning set for the argument of the case plaintiff's counsel had a trial scheduled in the City Court of Salt Lake City, although he did not mention it to the trial judge the day before. He was, however, going to have his associate counsel try the City Court case but when he was unable to secure his services for the City

Court trial, he made the appearance himself and sought to have the District Court Judge postpone the argument on the morning set for the argument and objected to the District Court proceeding with the argument of the case. At that time the court stated that he was ready to decide the case whether plaintiff was ready to argue his case or not. He did not state what his decision was or would be and counsel for defendant understood the court to mean that the appointed time was set and had arrived and the court was ready to decide the case whether or not counsel was ready to argue. In fact, the court stated that counsel had no right to assume that he could leave the case in the District Court and enter trial in another court until the case was completed in the District Court.

We cannot see that the record or the facts sustain plaintiff's contention of irregularity or abuse of discretion upon the part of the court. The record clearly sustains the court's finding of negligence upon the part of the plaintiff.

POINT IV. DEFENDANT WAS ENTITLED, UNDER THE FACTS, TO THE RIGHT OF WAY AT THE INTERSECTION UNDER THE STATE STATUTE PERTAINING TO RIGHT OF WAY GOVERNING OPEN INTERSECTIONS BECAUSE THE PLACEMENT OF THE YIELD RIGHT-OF-WAY SIGN AT THE INTERSECTION ENTRANCE FROM CLEVELAND AVENUE WAS INVALID AND INEFFECTIVE.

**"A" THE CITY ORDINANCE AUTHORIZING PLACEMENT OF THE YIELD RIGHT OF WAY SIGNS IS INVALID BECAUSE IT ESTABLISHES A RULE OF EVIDENCE.**

Utah's State Statute authorizing Yield Right-of-Way signs was enacted during the Legislative Session of 1955 and provides as follows:

**"41-6-72. 10. Yield right-of-way signs.—**

(a) The state road commission, with reference to state highways, and local authorities, with reference to highways under their jurisdiction, may at certain intersections, where safety and efficiency require the normal right-of-way rule to be modified in favor of one of the highways, erect and maintain a yield right-of-way sign at such intersections on the minor approaches.

(b) The Yield Right-of-Way sign shall conform to the specifications outlined in the sign manual of the state road commission.

(c) When a Yield Right-of-Way sign is erected, the driver of a vehicle approaching said sign shall slow to a reasonable speed for existing conditions of traffic and visibility, yielding right-of-way to all vehicles and pedestrians on the intersecting street which are so close as to constitute an immediate hazard.

(d) If a motorist approaches an intersection and finds a car has been stopped at Yield Right-of-Way sign on an intersecting approach and has been waiting to enter and then starts to enter, the oncoming motorist shall yield the right-of-way to



him in the same manner as if he had been waiting at a stop sign.”

The ordinance passed by the City Commission under the authority granted in the State Statute is as follows:

“Sec. 207. Yield right-of-way signs. The City Traffic Engineer shall erect and maintain a ‘Yield Right-of-Way’ sign at all intersections where directed by the Board of City Commissioners and when said sign is erected the driver of the vehicle approaching a ‘Yield Right-of-Way’ sign shall slow to a reasonable speed for existing conditions of traffic and visibility, yielding right-of-way to all vehicles and pedestrians on the intersecting street which are so close as to constitute an immediate hazard.

(1) The driver of any vehicle proceeding past a ‘Yield Right-of-way’ sign facing his vehicle and who interferes with or collides with the movement of any vehicle proceeding on the intersecting street *shall be deemed prima facie in violation of the section.*

(2) If a motorist approaches an intersection and finds a car has been stopped at a ‘Yield’ sign on an intersecting approach and has been waiting to enter and then starts to enter, the oncoming motorist shall yield the right-of-way to him in the same manner as if he had been waiting at a ‘Stop’ sign.

(3) A person violating this section shall be guilty of a misdemeanor.” (Italics ours)

It is to be noted that sub-paragraph 1 of said ordinance establishes a rule of evidence in connection with

the driver proceeding past a yield right-of-way sign facing his vehicle and who collides with a vehicle proceeding on the intersecting street.

In the case of *Nasfell vs. Ogden City* (122 Ut. 344), 249 Pac. (2d), 507, our Supreme Court had before it an Ogden City Ordinance which read as follows:

"The presence of a vehicle in or upon any public street or highway in Ogden City stopped, standing or parking in violation of any ordinance of Ogden City, shall be prima facie evidence that the person in whose name such vehicle is registered as owner, committed or authorized the commission of such violation."

Our Supreme Court held that the ordinance was invalid and we quote from the decision as follows:

"Under the decisions of this court Ogden has no express or implied power to pass the ordinance in question. Cities in Utah derive their powers through express legislative grant, and we look to our own authority in testing Ogden's powers to pass the ordinance. Counsel for Ogden cites but one Utah case, which we do not believe controlling here, and looks for support of his position to sister states where fountains of power radically may differ from our own. Repeatedly we have denied to cities implied powers which had far greater proximity of purpose in implementing express powers given, than the implied power claimed here bears to the generic power granted by the legislature.

Ogden assumes that because cities have been the power to regulate streets and the parking of vehicles for a fee, together with general power to enforce such powers, they necessarily have the implied power to pass an ordinance establishing a rule of evidence binding on the courts. Such assumption does not stand the test of logic, nor is it sustained by this court. Power to pass an ordinance establishing a rule of evidence binding on the courts is not granted to cities in express words, nor can it be fairly implied from, nor is it incident to, the powers expressly given. Neither is it essential to the accomplishment of the objects and purposes of the powers granted.

We are committed to the principle that cities have none of the elements of sovereignty, that "any fair, reasonable substantial doubt concerning the existence of the power is resolved by the courts against the corporation (city) and the power denied." . . . "and that grants of power to cities are strictly construed to the exclusion of implied powers not reasonably necessary in carrying out the purposes of the express powers granted."

It is therefore counsel's contention that the decision in this case is controlling and that the Salt Lake City ordinance is invalid.

"B" and "C." THE YIELD RIGHT-OF-WAY SIGN WAS NOT PLACED OR USED IN ACCORDANCE WITH THE STATE STATUTE AND AS PRESCRIBED BY THE SIGN MANUAL OF THE STATE ROAD COMMISSION; and THE YIELD

## RIGHT-OF-WAY SIGN DID NOT CONFORM TO THE SPE- CIFICATIONS OF THE SIGN MANUAL PERTAINING TO YIELD RIGHT-OF-WAY SIGNS.

In authorizing the use of Yield Right-of-Way signs the Legislature provided in paragraph (b) of said statute that the Yield Right-of-Way sign shall conform to the specifications outlined in the Sign Manual of the State Road Commission. The State Road Commission has enacted the following specification in connection with Yield Right-of-Way signs:

### “YIELD RIGHT-OF-WAY” SIGN

The Yield Right-of-Way sign shall be an equilateral triangle with one point downward, having a yellow reflectorized background with black lettering. Its sides shall be a minimum of 30 inches in length. It shall be erected in the same manner as the Stop sign.

Placement shall be authorized by the Traffic Engineer only.

## WARRANTS FOR YIELD RIGHT-OF-WAY SIGNS

At no place should Yield Right-of-Way signs be used unless (a) there is relatively light traffic entering the heavier traveled road from the intersecting road; (b) or where the crossing or merging traffic streams at an intersection are about equal in volume with frequent intervals in each that permit safe crossing and merging movements of

vehicles; (c) *and where there is good visibility in both or all directions*; (d) and unless it is clearly shown that traffic will be effectively controlled through the use of the Yield Right-of-Way signs. Whenever there is any doubt as to the effectiveness of its use, install Stop signs or other controls instead.” (Italics ours)

The yield right-of-way sign at Cleveland Avenue according to the testimony was not in the shape of a triangle, nor was it 30 inches by 30 inches by 30 inches. The testimony was that the sign was in the shape shown in Exhibit I and the dimensions were approximately 24 by 24 by 24 by 12 inches. It did not, therefore, even substantially comply with the specification pertaining to size and shape.

Counsel directs the Court’s attention to the second paragraph of said Specifications, which provides that Yield Right-of-Way signs should not be used unless there is good visibility in both or all directions. The evidence introduced in this case clearly showed that the southeast corner of the intersection had very poor visibility in that both the home and the trees on said corner constituted a block to visibility. Plaintiff and defendant both testified of this fact, and the court made a specific finding that visibility was obstructed at the intersection.

In order to be a valid ordinance, the city had first to enact an ordinance complying with authority granted by State Statute and then to set up its signs in conformance with the State Manual and Specifications established by the State Road Commission. Section 41-6-22, U.C.A. 1953, provides as follows:

"41-6-22. Placing and maintenance upon local highways by local authorities.—Local authorities, in their respective jurisdictions, shall place and maintain such traffic-control devices upon highways under their jurisdiction as they may deem necessary to indicate and to carry out the provisions of this act or local traffic ordinances or to regulate, warn or guide traffic. *All such traffic-control devices hereafter erected shall conform to and be maintained in conformance with the state manual and specifications.*" (Italics ours)

The court's attention is also directed to Section 41-6-16, which provides:

"The provisions of this act shall be applicable and uniform throughout this state and in all political subdivisions and municipalities therein and no local authority shall enact or enforce any rule or regulation in conflict with the provisions of this act unless expressly authorized herein. Local authorities may, however, adopt regulations consistent with this act, and additional traffic regulations which are not in conflict therewith."

The city failed to enact a valid ordinance, the specifications with respect to the size and shape of the signs were not followed and the signs were not placed in conformance with the State Manual. They, therefore, have no legal significance.

While counsel was unable to find any cases pertaining to yield right-of-way signs, we feel that the following cases pertaining to stop signs and ordinances are in point and are governing as to the ordinance and yield right-of-way signs in question.

In the case of *Bartlett vs. McDonald* (Ohio, Mar. 26, 1937), 17 N.E. (2d) 284, the city of Youngstown, Ohio, enacted an ordinance establishing one of two intersecting streets as a main thoroughfare, but failed to erect stop signs at the intersection as required by the state statute authorizing the local authorities to enact ordinances establishing main thoroughfares. An accident ensued and one of the two drivers involved in the accident filed suit against the other. The party driving on the street declared by the ordinance to be a main thoroughfare claimed the right-of-way by reason of the ordinance, whereas, *the other party claimed the right-of-way by virtue of the state statute.* The court held the ordinance invalid for the reason that the stop signs had not been erected, and the plaintiff, who under the ordinance was the unfavored driver, was allowed to recover.

In the case of *Daniels, et al. vs. Ramirez, et al.*, (1947 Texas), 209 S. W. (2d) 972, a collision occurred at an intersection between a school bus in which the deceased, Ramirez, was a passenger and a Chevrolet sedan owned by Daniels. The jury found both defendants, to-wit: the driver of the school bus and the driver of the Chevrolet sedan guilty of negligence. The bus driver was found negligent for his failure to stop at a stop sign facing the bus. The other driver claimed he was on a through highway and it was therefore not required that he stop, and that the bus driver should have stopped. The court held that inasmuch as the stop sign was erected without authority and maintained without it, it could impose no duty upon the bus driver, and therefore under the record of the case, the stop sign was no protection for Daniels, the driver on the through highway.

In the case of *Albrecht Grocery Company vs. Overfield*, (Ohio 1929), 168 N. E. 386, the police department placed stop signs at an intersection but the City of Akron, Ohio, failed to pass the ordinance authorizing the placement of the stop sign. A collision occurred between a vehicle driven in a northerly direction on West Cedar Street and one being driven in an easterly direction on Bishop Street. Stop signs were placed on Bishop Street where it entered West Cedar Street, requiring drivers on Bishop Street to stop for traffic proceeding along West Cedar Street. The Albrecht Grocery Company truck being driven on Bishop Street failed to stop at the stop sign placed on Bishop Street and the other party secured a judgment in the trial court against the driver proceeding through the stop sign. On appeal the appellate court stated as follows:

“The Council of the City of Akron not having passed the ordinance so authorized to be passed, it is quite immaterial whether the police department erected the signs claimed by the plaintiff in error to have been erected, or whether these signs were erected near or far from said intersections. Signs so erected do not have any legal effect whatever and no one is required to pay any attention to them.”

In the case of *Popp vs. Barger*, 264 Ill. App. 484, (1932), plaintiff brought action against defendant to recover for damages when a collision occurred on account of defendant's failure to stop at a stop sign guarding the intersection where the accident occurred on that portion of the highway traveled by the defendant. The court held that the failure of the Department of Public Works



and Buildings to place a stop sign at the entrance to the state highway did not relieve the plaintiff from stopping; it was his statutory duty. The same statute gives the defendant the right of way and did not require him to stop before entering the intersection. The court said:

"It is unfortunate that the Department of Public Works and Buildings failed to place stop signs on 25th Street, on which street the plaintiff was traveling. It wasn't defendant's fault that they failed to place said signs. The plaintiff saw the defendant coming 75 feet away, but thought he would stop for the stop signs. Defendant traveling on the through highway had the right of way, even though the stop signs faced him."

In *LeGere vs. Bunicky*, N.H. (1943), 35 Atl. (2) 508, the action involved a collision in an intersection of cars proceeding at right angles to each other. Plaintiffs were passengers in the defendant's car. Defendant drove through a stop sign while proceeding in a northerly direction on Pearl Street and was struck by an East bound car on Myrtle Street. The defendant requested that the jury be instructed that the stop sign was not legally established and that the law of the road relative to intersecting ways be charged.

The requests which were not given, raised the issue of whether the stop sign was legally placed, and if so, the effect of such signs. The court said of course if the sign was not placed in accordance with statutory authority directly or under an ordinance, then it was a mere circumstance of the accident, entitled to such consideration as a warning and a suggestion for caution in operating

a motor vehicle as a reasonable driver under the circumstances would give it but without legal requirement beyond its bearing as a detail of a situation upon due care of a driver passing northerly through Pearl Street and approaching Myrtle Street.

See also *Hoover vs. Blackmore* (Ohio), 87 N.E. (2), 477.

It is obvious from the decisions rendered in these cases that the Yield Right-of-Way Sign involved in the case before the court had no legal significance and that, at most, it could be considered as just one other factor involved in the accident along with all the others in considering the duties of the respective parties. In other words, the intersection would be considered as an open intersection, and under the circumstances the negligence of the plaintiff in failing to yield the right of way to the defendant would bar the plaintiff from recovery in this case, as said negligence was a proximate cause of the accident.

## CONCLUSION

The evidence clearly supports the court's finding of contributory negligence upon the part of the plaintiff. No abuse of discretion or irregularity in proceedings was committed by the court.

The ordinance enacted by the City of Salt Lake was invalid because it established a rule of evidence. The Yield Right-of-Way sign placed under the ordinance did not meet the specifications of the State Mutual with

respect to size and shape and furthermore was placed at an intersection where visibility was not good contrary to the directive in the State Manual, and it was, therefore, ineffective and its placement invalid. The State Statute pertaining to right of way at open intersections governed the rights of the parties and defendant had the right of way. Plaintiff's failure to yield the right of way to the defendant constituted negligence.

The judgment should be affirmed.

Respectfully submitted,  
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