SCHOOL OF LAW
CASE WESTERN RESERVE UNIVERSITY

Case Western Reserve Law Review

Volume 11 | Issue 2

1960

Negligence--Confusion at the Intersection

Charles J. Consiglio

That this decision is far-reaching cannot be doubted, for it may eventually effect every business which carries on some "activity" outside its domiciliary state. The staggering impact of the decision will be felt by small, as well as large, corporations, each facing the very real burden of multiple state taxation. It is interesting to note that the majority's opinion handled the problem of multiple taxation by saying that it cannot deal in abstractions and, therefore, since there was nothing to show that such taxation was present, it could not consider that issue. The minority, however, recognized the problem and its importance, Mr. Justice Frankfurter saying:

> . . . The cost of such a far-flung scheme for complying with the taxing requirements of the different states may well exceed the burden of the taxes themselves, especially in the case of small companies doing a small volume of business in several States. . . .[20]

This decision has opened up a new era, in which practically no obstacles remain to prevent a state from taxing interstate commerce. Its effect will surely be felt by all engaged in business.

BRUCE L. NEWMAN

NEGLIGENCE — CONFUSION AT THE INTERSECTION

Two automobiles approach an intersection at right angles. No traffic sign or signal faces either of them. *A*, the driver on the right, intends to turn to the right at the intersection. There is a squeal of brakes and crunch of metal as the cars carom off each other and come to rest. Who was to blame, and who will bear the cost of the damage? All things being equal, *A* was to blame for asserting the right of way over the driver on his left, according to the Franklin County Court of Appeals in its 1958 decision of *Michel v. Weber*.[1] Plaintiff, driver *A* in the situation described above, had lost below on a finding by the jury of contributory negligence,[2] and the court of appeals, in affirming, held that the trial court had dealt properly with this issue. However, as an alternate ground for the decision, the appellate court answered plaintiff's contention that he had had the right of way. The court held that plaintiff, having intended to turn to the right, lost his right of way, with the result that he should have yielded

States will soon have to pass upon a Florida Supreme Court decision requiring the Scripto corporation to collect a use tax on writing instruments sold to Florida consumers and delivered in interstate commerce. Scripto is a Georgia corporation not qualified to do intrastate business in Florida. It has no sales office, other place of business, nor stock of merchandise in Florida. All of its orders were solicited by independent advertising specialty brokers and were sent to Scripto in Atlanta, for acceptance. Scripto, Inc. v. Carson, 105 So. 2d 775 (1958) (appeal filed in the United States Supreme Court, May 27, 1959, Docket No. 80. Jurisdiction noted October 12, 1959).

20. 358 U.S. 450, 474 (1959) (dissent.)

to defendant, the driver on the left, and, thus plaintiff was *primarily* to blame, not merely a contributor. Plaintiff's contention was based upon the statutory rule that the right of way belongs to the driver on the right at intersections.[3] The court's answer was based upon the construction of Ohio's statutory definition of the term "right of way."

Most states include in their traffic codes a definition of "right of way" similar to that found in the Illinois code: "Right of way: The privilege of the immediate use of the roadway."[4] Ohio's code is somewhat unique, inasmuch as its definition states:

> "Right of Way" means the right of a vehicle, streetcar, trackless trolley, or pedestrian, to proceed uninterruptedly in a lawful manner in the direction in which it or he is moving in preference to another vehicle, streetcar, trackless trolley, or pedestrian approaching from a different direction into its or his path.[5]

This complex statement seems to be an attempt at writing positive law, rather than merely giving precise meaning to the statutes to which it applies, as do most definitions. As such, instead of being a clarifying mechanism, it poses a problem of construction, particularly when taken in conjunction with the intersection rule[6] which, in Ohio's code, is uncomplicated by reference to possible variations of the intersection situation.

Prominent among the cases which interpreted this definition, and relied upon by the court in the *Michel* case, is a 1948 decision, *Gratziano v. Grady*.[7] In that case, the Franklin County Court of Appeals held that a vehicle approaching an intersection from the right with the intention of making a *left* turn loses its preferential status over a vehicle approaching from the left. In construing the Ohio definition of "right of way," the court decided that the phrase "in the direction in which it or he is moving" could have no other object than to limit the right to that of proceeding in a straight line. In the context of the *Gratziano* case, that would be a straight line across the intersection. This interpretation, said the court, was necessary to avoid emasculating the wording of the definition.[8] The court in the *Michel* case followed the rule of the *Gratziano* case, and extended it to include intended turns to the *right,* as well as to the *left.*

---

1. 158 N.E.2d 401 (Ohio Ct. App. 1958).
2. Plaintiff testified that he had entered the intersection at a reduced speed. Defendant claimed that plaintiff had entered at an excessive speed. The trial judge submitted the case to the jury, with a charge on contributory negligence. The court of appeals held that this was the proper course for the trial court.
3. OHIO REV. CODE § 4511.41.
4. ILL. REV. STAT. *ch.* 95½, § 1-158 (1958).
5. OHIO REV. CODE § 4511.01(SS) (Supp. 1959).
6. OHIO REV. CODE § 4511.41.
7. 83 Ohio App. 265, 78 N.E.2d 767 (1948).
8. Gratziano v. Grady, 83 Ohio App. 265, 274, 78 N.E.2d 767, 771 (1948).

It must be conceded that the courts had little choice other than the rule announced. Therefore, the blame lies with the legislature for putting the traffic law in such an unclear condition. The exception to the right of way rule, if an exception was intended, belongs in the section of the code which declares the rule, not among the definitions in the introductory section of the statute.[9]

The rule enunciated by the court is bad, and is in need of revision for overriding practical considerations. This rule should be a means of facilitating traffic flow. It will not. Its effect is dependent upon the intent of driver *A*, and upon *B*'s knowledge of that intent. Directional signals are not, and never have been, an effective solution, principally because of the imperfect creatures who control them. If *A* intends to turn, but neglects to signal, the result would be that the drivers slow progressively to a standstill, and commence an enactment of "Alphonse and Gaston," because each is yielding to the other. If *B* has the mistaken impression that *A* is intending to turn, the result would be that both cars attempt to assert a right of way, and will probably collide. And what if *A* has not made up his mind, or changes it when he reaches the intersection? Are the rights and duties of the drivers to change in a split second? How much simpler to let *A* have the intersection to himself!

Ordinarily, because of the major rule, *B* immediately decelerates on first becoming aware of *A*'s presence. Then, because of the exception, he must ascertain *A*'s intentions and continue to slow down, or accelerate, according to his conclusion. Why interpose this contingency and uncertainty? Why not require *B* to follow his first reaction and yield in all cases? This is the rule that has been taught to drivers, and many of them will continue to believe it to be the law, despite the decisions, for the simple reason that most drivers receive little formal traffic education beyond their initial drivers' tests. An occasional chat with motorcycle patrolmen and bulletins posted by the Safety Council may impress upon the driver major points of technique and law, but how well can he be expected to know the fine points and exceptions? *Gratziano v. Grady* has been the law for some twelve years, but, as late as 1959, the information booklet is-

9. Because of this placement of the definition, the rule enunciated here is open to a glaring *reductio ad absurdum*. According to the introduction to the definition section, the definitions apply throughout the traffic rules chapter. The term "right of way" is used liberally with reference to private vehicles, pedestrians, funeral processions, and emergency vehicles, each time meaning the right to proceed in a straight line, which right is now lost when the vehicle intends to turn. An ambulance thus would be preferred only while going straight, and could not make a turn safely, despite the fact that all other drivers must pull over and stop until it passes. OHIO REV. CODE § 4511.45 (Supp. 1959). This patently frustrates the intent of the legislature to prefer emergency vehicles. If this were ever posed to a court, a simple answer would be "legislative oversight," or emphasis of the emergency aspect. Possibly the firmest ground would be an analysis of the tenor of § 4511.45, which imposes an express, affirmative duty upon other drivers to make way for emergency vehicles, whereas the language of the other sections is couched merely in terms of rights, with their correlative duties to be implied.