1964

Phillip Roy Smith v. Ignacio Theodore Gallegos et al : Brief of Appellants

Utah Supreme Court

Hanson & Garrett; Attorneys for Defendants and Appellants;
Hanson & Baldwin; Attorneys for Defendants and Respondents;

IN THE SUPREME COURT
of the
STATE OF UTAH

PHILLIP ROY SMITH, an infant, by Andrew J. Smith, his Guardian Ad Litem,

Plaintiff,

vs.

IGNACIO THEODORE GALLEGOS and WASATCH CONSTRUCTION COMPANY,

Defendants, Third Party Plaintiffs and Appellants,

WILLIAM JEWEL JONES and MILWHITE MUD SALES COMPANY, a corporation,

Defendants, Third Party Defendants and Respondents.

Case No. 10226

APPELLANTS' BRIEF

Appeal from the Third District Court for Salt Lake County Honorable Ray Van Cott, Jr., Judge

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CASES CITED

STATUTES

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STATEMENT OF THE KIND OF CASE

This action arose out of an accident involving two truck-trailer units which occurred at the intersection of 3500 South Street and Redwood Road in Salt Lake City, Utah.

DISPOSITION IN LOWER COURT

A brief history of this law suit will be helpful.

One Phillip Roy Smith, a passenger in one of the units involved in the accident, commenced the action

for personal injuries. Named as defendants in the law suit were William Jewel Jones, the owner and operator of the unit in which Smith was a passenger; Wasatch Construction Company, owner of the other unit involved in the accident; and Ignacio Theodore Gallegos, the employee of Wasatch Construction Company who was driving the unit. Later Smith amended his Complaint joining Milwhite Mud Sales as a defendant. This defendant had an agreement with William Jewel Jones, the truck owner and operator, concerning the carriage of freight which was on the unit at the time of the accident. Agency was claimed by plaintiff Smith. Each of the defendants was alleged to have negligently or willfully caused Smith's injuries.

Each defendant appeared and answered. Defendants Gallegos and Wasatch Construction Company (appellants herein) cross-claimed against Jones and Milwhite Mud Sales alleging negligence causing damage to the unit and personal injuries to Gallegos.

Defendant William Jewel Jones cross-claimed against Gallegos and Wasatch Construction Company for personal injuries and property damage.

Before the case reached trial, the claim of plaintiff Smith was settled. Defendants William Jewel Jones, Wasatch Construction Company, Theodore Gallegos, and Milwhite Mud Sales each contributed to the settlement. This left remaining the cross-claims of defendants Theodore Gallegos and Wasatch Construction Company against Jones and his cross-claim against them. The issues between these parties were tried to a jury. A verdict in favor of Jones resulted.

RELIEF SOUGHT ON APPEAL

Appellants Theodore Gallegos and Wasatch Construction Company seek judgment in their favor as a matter of law on the cross-claim of William Jewel Jones or, that failing, a new trial.

STATEMENT OF FACTS

At the outset, appellants refer the Court to Exhibit 9, a diagram of the roadway and intersection of 3500 South and Redwood Road in Salt Lake City, Utah. For convenience, this Exhibit has been reproduced in this Brief. The accident in question happened on September 7, 1961 between 8:00 and 8:30 P.M. (R. 291). It was dark, the road was dry, the weather was clear, and visibility good (R. 318). The unit operated by Theodore Gallegos was northbound on Redwood Road. The unit owned and operated by William Jewel Jones was southbound on Redwood Road, turning left intending to proceed east on 3500 South.

At the time of this accident, Redwood Road north of 3500 South consisted of four lanes for moving traffic plus a left-turn lane (Exhibit 9). South of 3500 South at the entrance to the intersection, Redwood Road between curb lines is approximately 60 feet in width. It is sufficiently wide to permit the movement of four cars abreast. At the point marked "stop line" on Exhibit 9, the roadway from the dotted line which delineates the curb line (R. 250) to the center line of the roadway is a distance of 30 feet (Exhibit 9 is scaled 1 inch equals 1 foot). Following the curb line back south on the intersection, we note that the northbound lane tapers some-

what and the width of the lane at the edge of Exhibit 9 is approximately 17-1/2 feet. The tapering of the roadway can also be seen visually by reference to Exhibit 13 which is an aerial photograph of the intersection. Exhibit 13 accurately depicts the roadway at the time of the accident with the exception of the moving objects shown thereon and there has been added markings describing the left-turn lane (R. 273 and 274).

Deputy Sheriff Darrell Brady testified as the first witness. He arrived at the scene of the accident about 8:30 P.M. and there conducted an investigation. He found the point of impact between the two units to be about 28 feet 6 inches of the survey monument in the center of the intersection (R. 219). This point was also tied to a water meter cover and a light pole. These marks together with the positions of the units after the impact are shown on Ex. 9.

He did not testify as to the statements made by the driver, Theodore Gallegos, but he did testify as to statements made by William Jewel Jones. We quote from the Record at Page 261:

> "Q. Now will you tell the Court what Mr. Jones told you about what happened in the accident?
>
> "A. I believe he told me that he had just come through the intersection of — now he wasn't familiar with it but I believe he was referring to 2100 South on Redwood Road which at that time still had a semaphore regulating traffic for left turn and through traffic for all directions. And that while he was at the

intersection of 35th and Redwood Road when the light turned green he thought it was a left turn light for him to go ahead."

The Deputy Sheriff also obtained a signed statement from Mr. Jones which was later introduced into evidence as Ex. 23. This statement reads as follows:

"I, William J. Jones was driving my truck south on Redwood Road when I stopped at 33rd South and waited for the light to turn green in the center lane for a left turn and when the light turned green in the center lane for left turns when the two cars that were in front of me turned left, I turned left also as all of the lights were still red except the center ones and all of the cars meeting me were still stopped when this gravel truck came out around them on the extreme outside lane at a very high rate of speed and hit my truck in the right-hand side near the door and Phillip Smith who was riding with me was thrown out that side when the door was thrown open and that's just about all that happened.

William J. Jones
P. O. Box 1169
Moab, Utah"

Contrary to Mr. Jones' belief as to the existence of a signal light controlling left-turning vehicles, the officer testified that at the time of the collision the intersection was controlled only by a single semaphore which alternately exhibited green, yellow and red signals on each of its four sides. There was no separate signal controlling left turns (R. 279).

Additionally the officer testified that the point of impact on the Jones unit was the right front fender and

door (R. 271), and on the left front corner of the Wasatch Construction Company unit (R. 281).

Both drivers testified as to the happening of the accident.

Mr. Gallegos testified that he lived in Kearns, Utah and was employed by Wasatch Construction Company. On the evening in question he was hauling dirt from 6000 South and 4000 West in Salt Lake County to the Rose Park area in the northwest section of the city (R. 304). His shift on this day was from 5:00 P.M. to 2:00 A.M. in the morning. He had made one complete trip prior to the accident (R. 305). Mr. Gallegos entered Redwood Road at 5400 South and proceeded at a speed of 30 to 40 m.p.h. north on Redwood Road to the intersection where the accident happened (R. 306). (The posted speed limit south of the intersection is 40 m.p.h. (R. 204).) As he proceeded north on Redwood Road, he was following a Pontiac automobile. As that automobile approached the intersection, it pulled close to the center line to make a left turn. He testified that there were no other vehicles ahead of the Pontiac as they approached the intersection (R. 306). The semaphore was red against him as he approached the intersection, but it changed to green when his unit was 200 to 250 feet south of the intersection. At a distance of approximately 150 feet from the intersection, Mr. Gallegos first observed the unit of Mr. Jones. At that time it was moving slowly into the left-turn lane to turn left (R. 307-308). As the Jones unit turned left across the path of the Gallegos unit, Mr. Gallegos stepped on his brakes, turned

to the right, and sounded the horn, but there was not sufficient time or distance to avoid the resulting collision (R. 308).

Mr. William Jones, driver of the other unit, testified that he was a resident of Moab, Utah. He had delivered a load of furniture to Sunset, Utah from southern Utah the day before the accident and on the day of the accident had picked up a 25-ton load of bentonite or drilling mud. He was southbound on Redwood Road and as he approached the intersection of 3500 South, he pulled over into the left-turn lane and commenced signaling with the mechanical signal light on the truck. There was no traffic in the left-turn lane ahead of him (R. 335). He testified that as he approached the intersection, the traffic light was red against him. He said that there was other traffic in the area and that there were cars northbound on Redwood Road that were stopped.

He then testified that when the light changed to green, the vehicle across from him in the northbound lane started to turn left, everything looked clear for him, so he started to make his left-hand turn. He then glanced back in his rear-view mirror to check his trailer to make sure it was clearing the island in the center of the road and at that time he was pretty well into his left turn. When he looked back to the south, he then first observed the lights of the unit operated by Mr. Gallegos. He only had time to hit his brakes and turn the steering wheel when the collision occurred (R. 337). At the time of the accident, he had attained a speed of between 5 and 10 m.p.h. (R. 338). The other unit was very close to his unit

when he first observed it and not over 30 feet away (R. 342).

Several independent witnesses testified. Mr. Gene Matthews was stopped on the west side of 3500 South in response to a red light. There was one vehicle ahead of him. The driver of this vehicle appeared to be intending to turn right to go south on Redwood Road. Mr. Matthews observed the Jones unit in the left-turn lane either stopped or proceeding very slowly into a left turn (R. 290). He observed the unit driven by Gallegos just before the accident. He estimated the speed at approximately 25 to 30 m.p.h. and observed this unit turn to the right just before the impact (R. 292-293).

Marcus Richardson testified that his car was stopped on the east side of 3500 South headed west. There were no cars ahead of him (R. 317). As he approached the intersection, the light turned yellow and he stopped at the pedestrian lane in response to the red light (R. 318). He observed the Jones unit in the southbound left-turn lane stopped. He could not tell whether the left-turn signals were operating (R. 318). He heard an air horn and his attention was directed to the south at which time he observed the Gallegos unit approximately 175 to 200 feet south of the intersection. At this time, he observed four northbound vehicles parked along the line next to the center waiting for a left turn (R. 322). He observed the Gallegos unit pass these vehicles to the right and estimated the speed of the truck at that time at 40 to 45 m.p.h. When he looked back, the Jones unit was into its left turn (R. 323). The accident happened immediately thereafter.

The argument following will be directed to the proposition that the Court committed reversible error in failing to direct a verdict in their favor as to the negligence of William Jewel Jones.

ARGUMENT

POINT I.

THE LOWER COURT COMMITTED REVERSIBLE ERROR IN FAILING TO DIRECT A VERDICT AGAINST WILLIAM JEWEL JONES.

At the conclusion of all the evidence, appellants moved the Court to direct a verdict against William Jewel Jones and submit to the jury only the question of appellants' negligence. The motion was denied (R. 364). The Court should have directed a verdict in accordance with the motion and its failure so to do was reversible error.

Specifically Respondent was guilty of negligence as a matter of law in two respects, namely: Failure to yield the right of way and improper lookout. Appellants will discuss these two items separately.

A. Failure to Yield Right of Way

We look first to the statute of this state governing left-turning vehicles. The statute is 41-6-73 UCA 1953 and reads:

> "The driver of a vehicle within an intersection intending to turn left shall yield the right of way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, during the time when such driver is moving within the intersection.

The above section of the Code was enacted by the

legislature and was the law of this state in 1961, prior to the accident in question. The enactment of the above section was a substantial and material change from the prior statute regulating left-turning vehicles. The former 41-6-73 UCA 1953 read as follows:

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

The change in statute has broadened the responsibility of the left-turning driver and has placed upon him the duty to yield the right of way to any approaching vehicle that would constitute a hazard at any time the left-turning vehicle is in the intersection. The prior law provided only that the left-turning vehicle must yield to any vehicle that was an immeditae hazard at the time the left-turning vehicle commenced his turn.

The factual inquiry that now must be made in a case of this kind is whether the approaching vehicle was a hazard during any part of the period of time that the left-turning vehicle would have been within the intersection. The evidence in this case will conclusively show that the Wasatch Construction unit was a hazard to the Jones unit while it was moving in the intersection.

The Court is referred to Exhibit 9. This map de-

lineates the intersection of 3500 South and Redwood Road in Salt Lake County and is drawn to scale. Depicted on the Exhibit are the curb lines or lateral boundry lines of the roadway and these are marked by a curved dotted line. As defined by statute, an intersection is:

> "The area embraced within the prolongation or connection of the lateral curb lines or, if none, then the lateral boundry lines of the roadways of the two highways which join one another at, or approximately at, right angles, or the area within which vehicles travelling upon different highways join at any other angle, come in conflict." 41-6-8 UCA 1953

Drawing an imaginary line representing the prolongation of the roadways at the intersection and scaling the distance, we note that a left-turn vehicle must traverse a curve in excess of 60 feet in length in order to clear the intersection. To this distance must be added the length of the vehicle. This is most important in this case because Mr. Jones was operating a heavily loaded truck-trailer unit. These vehicles as is commonly known vary from 35 to 55 feet in length. To clear this particular intersection then, the Jones unit would necessarily have to travel a curve of a minimum distance of 95 feet in order to clear the intersection. This minimum figure is arrived at by adding the minimum length of the unit to the minimum distance on the ground. In other words, from the moment the front of the unit enters the intersection till the end of the trailer leaves it, a minimum distance of 95 feet is involved.

Coupled with the distances involved is the time

that it takes for a vehicle to travel this distance and this factor is dependent upon its speed. In this case Mr. Jones testified as to the speed of his vehicle:

> "Q. Will you tell us what your speed was as you proceeded in your turn and at the time of the accident?
>
> A. Somewheres between 5 and 10 miles an hour." (R. 338)

At 5 miles per hour a vehicle will travel 7.3 feet per second and at 10 miles per hour a vehicle will travel 14.66 feet per second. It will be noted that it would take approximately 6.4 seconds for the Jones unit to clear the intersection at 10 miles per hour and 12.9 seconds at 5 miles per hour. It may be reasoned that by his own estimate of speed as being "somewheres between 5 and 10 miles an hour" it would have taken him approximately 9 seconds to clear the intersection. This time is something he should have anticipated when he commenced his left turn. The posted speed limit at this intersection is 40 m.p.h. (R. 204). A vehicle approaching the intersection at that speed would be travelling approximately 58 feet per second. During the approximate nine-second interval required by the Jones unit to clear the intersection, an approaching vehicle travelling 40 miles an hour would cover approximately 500 feet. It may, therefore, be concluded that at the time the Jones unit started its turn any approaching vehicle within 500 feet of the intersection would constitute a potential hazard.

Now let us look at the event of this accident with particular regard to the time, speed and distances involved.

Again we refer to Exhibit 9 and scale off the distance between the entrance to the intersection and the actual point on the roadway where the two trucks collided. We find this to be approximately 45 feet on a straight line. In this case nothing would be added to this distance for the length of the vehicle because the point of impact on the Jones unit was the right front (Ex. 11 —photograph). Considering the speed of the Jones unit at between 5 and 10 miles per hour, it would have taken that unit between three and a half to 7 seconds to travel the distance from the entrance to the intersection to the point of impact 50 feet away. Assuming that the Jones unit was traveling 10 miles per hour, any approaching vehicle traveling 40 m.p.h. would have collided with the Jones unit if the approaching vehicle were within approximately 400 feet of the point of impact travelling at a speed of 40 m.p.h.

These figures furthermore did not show the mere possibility of a collision as the Jones unit was almost clear of the intersection. These figures show a collision occurring at almost the first possible moment that such collision could occur. That is, at the moment the front of the Jones vehicle had only just entered the lane of traffic occupied by the Wasatch Construction unit.

We now refer to the testimony of Mr. Marcus F. Richardson. He was stopped waiting for a red light on the east side of 3500 South facing west. He could observe both the Jones unit commencing its left turn and the approaching Wasatch Construction Company unit. Called as a witness by Mr. Jones he testified that he

observed the Wasatch Construction unit approximately 175 to 200 feet south of the intersection (R. 318) and that he estimated the speed of the vehicle at that time at 40 to 45 m.p.h. At that moment the Jones unit had commenced its left turn. Mr. Richardson knew there was going to be an accident and testified, "I told my wife there was going to be an accident . . ." (R. 319). This witness shows that at the time the Jones vehicle commenced its left turn, the Wasatch Construction unit was only 175 to 200 feet from the intersection travelling at a rate of 40 to 45 m.p.h. The mathematics applicable to the testimony of this witness shows that the Wasatch Construction unit would enter the intersection within 3½ seconds. It is abundantly clear that this unit was an immediate hazard to Respondent Jones requiring him to yield the right of way. It is also apparent that it is not conceivable that reasonable minds could disagree. The lower court, therefore, should have directed a verdict against Mr. Jones on this point alone.

We turn now to the law. As noted above, the legislature has made a significant change in the statute governing left turns. The legislature has "tightened up" the law in this regard and placed a greater duty on the left-turning motorist. That motorist is now and was at the time of this accident required to yield the right of way to any vehicle approaching from the opposite direction which is so close as to constitute an immediate hazard during any time that the left-turning driver is moving within the intersection. To the best knowledge of appellants this statute has not been before this Court

for judicial interpretation. However, it is apparent from reading the statute that the change is of such magnitude to make the cases interpreting the earlier statute no longer sufficient authority. The law must be restated in terms of the new statute. Appellants contend that a statement from WALKER VS. PETERSON, 3 Utah 2d 354, 278 P. 2d 291 is pertinent in this regard. This Court said:

> "The driver going straight through the intersection does have the right of way. This means that where the circumstances are such that if the two continued their course, there would be danger of collision, the left turner must give way."

The statute means that if in any accident involving a left turner it can reasonably be said that the approaching vehicle would be a danger if the two vehicles continued on their course, then the left turning driver is guilty of failing to yield the right of way barring his recovery as a matter of law. For cases concerning the early statute, see CEDERLOF VS. WHITED, 110 Utah 45, 169 P. 2d 777; FRENCH VS. UTAH OIL REFINING COMPANY, 117 Utah 406, 216 P. 2d 1002; YEATES VS. BUDGE, 122 Utah 517, 252 P. 2d 220.

B. FAILURE TO MAINTAIN A PROPER LOOKOUT.

Closely coupled with respondent's failure to yield the right of way is his failure to maintain a proper lookout. His testimony in this regard is most illuminating. He gives his version of the events immediately before the accident in the following manner:

"A. Well, when the light changed to green the

> car that was sitting at an angle started to make a turn to the west, this was the left hand turn for it and I checked and everything was clear as far as I could see. I started my left hand turn and I glanced back in my mirror, my rear view mirror on the left to check my trailer to see if it was clearing the island in the center and at that time I was pretty well in my turn. I was pretty well across Redwood Road into the other road going east, that would be 3500. And when I looked back why those lights to the extreme east of the road, to my south, was bearing down on me." (R. 336-337)

Respondent by this testimony admits that his attention was directed to the mirror on his left to determine whether or not his trailer was clearing the island in the center of the road. His duty was to maintain a continuing lookout for vehicles approaching.

Respondent even gives us the reason for his failure to maintain a lookout. At the time he stopped in response to the red semaphore, he was under the impression that this intersection had a green light for left-turning traffic and that when the green light was on for left-turning traffic, red lights controlled through traffic so as to permit the left turn. In this regard, we refer to the statement he gave the officer which is quoted above (Ex. 23).

Again, it was the duty of respondent to maintain a continuing lookout. WEENIG BROS. VS. MANNING, 1 Utah 2d 101, 262 P. 2d 491. Had the attention of Respondent been directed ahead for approaching traffic rather than to the left-side rear-view mirror where it was

directed, he would have been apprised of the approaching vehicle of appellant and had sufficient and ample time to have avoided the accident.

We first call the attention of the Court to the fact that these were two truck-trailer units. The cab of each is considerably higher than an ordinary passenger car and affords the driver a much better view of his surroundings and moving traffic. Also to be noted is the fact that respondent's vehicle was occupying a position on the roadway that it had a legal right to occupy. Reference is made to respondent's Ex. 13 which is an aerial photograph of the intersection in question. There have been no changes made to the roadway in question as to dimension, but there has been added since the time of the accident a lane marked "left only." It is quite apparent by reference to this photograph that there is sufficient roadway for two lanes of moving traffic going north. This is also apparent by reference to the map (Ex. 9). All witnesses also testify to the fact that the vehicles next to the center lane going north were waiting or making left turns. Title 41-6-56 UCA 1953 permits passage on the right under these circumstances. We also mention that the roadway north of this intersection is marked for four moving lanes of traffic and a vehicle in the position of respondent's vehicle is almost directly in line with the outside of the two north-bound lanes (Ex. 9 and 13).

We note from further reference to Ex. 9 that the point of collision was approximately 28 feet 6 inches east of the center of the intersection. We also know that

the vehicle of respondent started from a stopped position and had attained a speed of 5 to 10 m.p.h. when the accident occurred. According to Mr. Jones' testimony a vehicle such as his when the brakes are fully applied will either stop or the wheels lock and skid (R. 330). He had time to apply his brakes before the impact (R. 337), and stopped his vehicle before the impact occurred (R. 346). His truck did not leave skid marks in the process of stopping. (R. 339).

These facts and testimony serve to point out that respondent could have stopped his vehicle without skidding at any point in the intersection from the moment he commenced his left-hand turn and particularly during the last 28 feet that he was crossing opposing lanes of traffic.

Mr. Jones testified that appellants' vehicle was only 30 feet from his vehicle when he first observed it (R 343-346). He had not seen nor was he aware of appellants' vehicle until the two vehicles were that close together. There is no evidence in the record that his view to the south was in any manner obstructed. He gives no reason for failing to see the approaching vehicle of appellant. Respondent's own witness, Marcus Richardson, heard the air horn of appellants' vehicle, looked in that direction and saw the vehicle, and at the same moment knew and realized that the left-turning vehicle of respondent was on a collision course. There is no evidence or testimony in this record to show why respondent was not also aware of these facts and circumstances. It is, however, apparent from the record that the reason why respondent did not become aware of these facts is that he thought

he had a left-turn signal and for that reason was not maintaining a lookout for approaching vehicles, but rather was looking in his left-side view mirror to keep track of his trailer. This excuse is not sufficient. His duty under settled law was to maintain a continuing lookout for approaching vehicles.

If respondent had maintained a proper lookout, he could have stopped his vehicle in time to have avoided the accident. This is clear from his testimony regarding the fact that he fully stopped his vehicle without skidding when appellants' vehicle was only 30 feet from his truck. At his speed of from 5 to 10 m.p.h., it is quite obvious that he could have avoided the accident almost at any time before the accident actually happened.

The case of JOHNSON VS. SYME, 6 Utah 2d 319, 313 P. 2d 468 is applicable to the facts of this case.

The accident in this case occurred at night on a four-lane highway divided by a 35 foot island bordered by open farm land. The accident occurred on U.S. 91 at its intersection with the Draper road. The facts indicated that the defendant drove into the highway without stopping for a stop sign. Plaintiff admitted that she saw nothing until defendant's car was directly in front of her at a distance of 20 to 30 feet. Plaintiff's own witnesses who were travelling behind her vehicle testified that they observed the whole occurrence including the defendant's vehicle approaching the highway.

The Court held:

> "Under such circumstances we cannot but conclude that plaintiff either looked and failed

to see the obvious, or failed to look at all, and as a matter of law negligently contributed to her own injuries and the death of another motorist. In other instances of negligent failure to look or to see that which is there to be seen, when the facts were no stronger than those herein, we have concluded, as we do here, that there was contributory negligence as a matter of law which precluded recovery."

The Court above cites and refers to the following Utah cases wherein the failure to maintain a proper lookout was deemed to be negligence as a matter of law: SANT VS. MILLER, 115 Utah 559, 206 P. 2d 719; CEDERLOF VS. WHITED, 110 Utah 45, 169 P. 2d 777; MINGUS VS. OLSSON, 114 Utah 505, 201 P. 2d 495; COX VS. THOMPSON, 123 Utah 81, 254 P. 2d 1047; WILKINSON V. OREGON SHORT L. R. COMPANY, 35 Utah 110, 99 P. 406; COVINGTON V. CARPENTER, 4 Utah 2d 378, 294 P.2d 788.

Where, as in this case, a driver has obviously failed to maintain a lookout for approaching traffic, this Court has not hesitated to rule that such motorist is guilty of negligence as a matter of law barring recovery.

CONCLUSION

The evidence in this case points unerringly and as a matter of law to the conclusion that respondent, William Jewel Jones, failed to yield the right of way to the approaching vehicle of appellant and that he failed as a matter of law to maintain a proper lookout.

The facts in the case without dispute show that re-

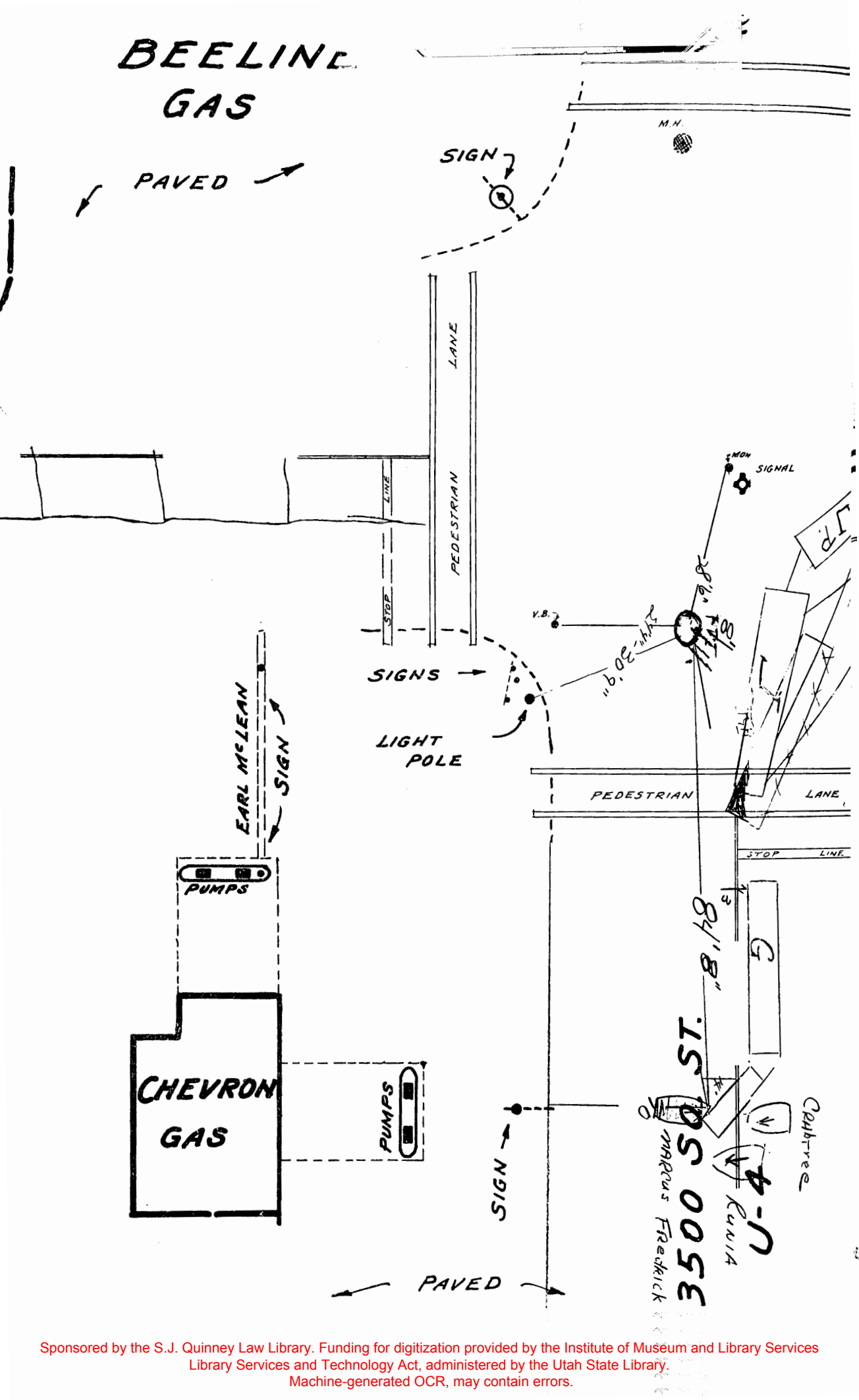
spondent, William Jewel Jones, commenced a left turn at a time when the vehicle of appellant was an immediate hazard. He failed to yield the right of way as commanded by the statute and this failure as a matter of law caused the accident.

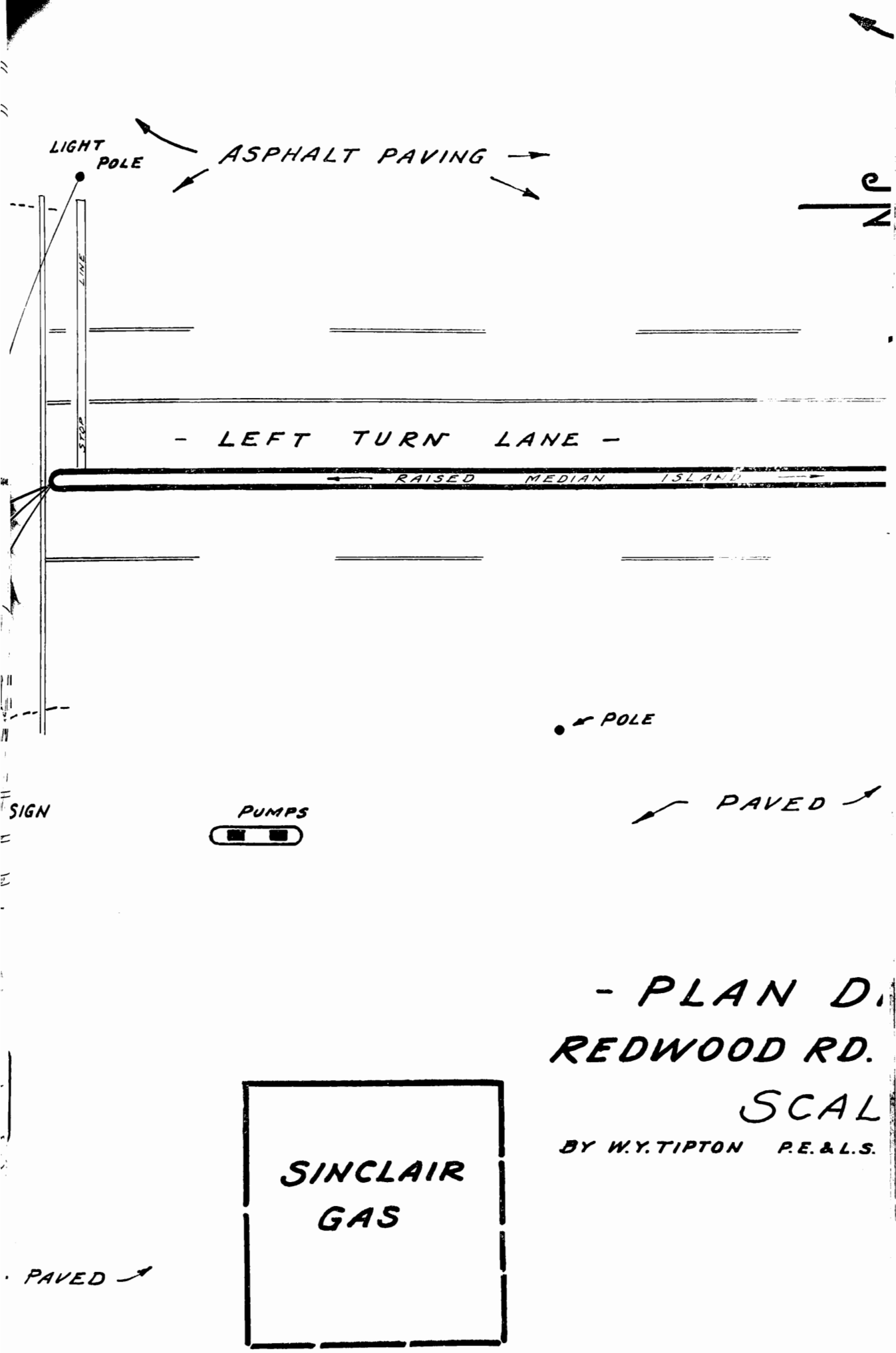
Additionally, the evidence is without dispute that he did not see the vehicle of appellant until that vehicle was 30 feet from his vehicle. His own witness testified that he heard the air horn of appellants' vehicle, saw the same when it was 175 feet to 200 feet away, observed the left-turning vehicle of respondent, and knew there would be a collision. Respondent offered no evidence at all as to why he failed to see and hear the same things and to take heed. He testified that he did not see the vehicle of appellant until it was 30 feet away. This clearly as a matter of law convicts him of a failure to maintain a proper lookout.

The verdict below must be reversed.

Respectfully submitted,

HANSON & GARRETT
Attorneys for Defendants, Third Party Plaintiffs and Appellants





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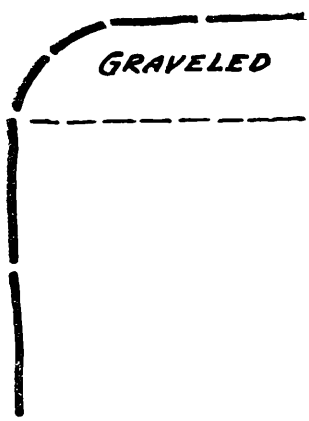

AGRAM -

& 3500 SO. ST.

E 1" = 10'

319 OCT. 12, 1962