

Highways: Contributory Negligence of Motorcyclist Attempting to Pass Automobile Making Left Turn

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Repository Citation

Al Watson, *Highways: Contributory Negligence of Motorcyclist Attempting to Pass Automobile Making Left Turn*, 12 Marq. L. Rev. 169 (1928).

Available at: <http://scholarship.law.marquette.edu/mulr/vol12/iss2/11>

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been actually served, if only during a single day, this humane purpose becomes impossible or extremely difficult. The prisoner is then branded as a felon and a gaolbird. It is therefore reasonable to say, as a number of inferior federal courts have already said, that such probation machinery ceases to operate when the prisoner begins to serve his sentence, since it then loses its efficiency.

Second. As a law stood before the enactment of the Probation Act, a prisoner serving his time could be released on parole or by executive pardon. There is no reason to assume that Congress wished to create a third method of relief, particularly since the Probation Act, in such a situation, would practically repeal the more stringent parole act. On the contrary, Congress could hardly have wished to throw upon an already overworked judiciary the gigantic task of examining probation petitions on behalf of every federal prisoner behind the bars.

DANIEL J. MCKENNA

Highways: Contributory Negligence of Motorcyclist Attempting to Pass Automobile Making Left Turn.

The case of *Kerlinske v. Etzel*,¹ recently decided in the Wisconsin Supreme Court, declares that the decision in the case of *Suren v. Zuege*,² is good law and that it will not be overruled. In the latest case the plaintiff, a motorcycle officer, was following the defendant, who was driving a Ford coupe. The defendant was going up a hill in low gear, on a concrete road, called Highway 60. As the defendant neared the crest of the hill she looked back to see if anyone was approaching and seeing no one, made a left turn into a drive-way, leading to her brother's farm. As the defendant was making the left turn, a traffic officer attempted to pass the defendant's car, causing a collision, resulting in the injury of the plaintiff, for which this action was commenced. The defendant had not signified her intention to make a left turn and the traffic officer had not given a signal that he intended to pass the defendant's vehicle. The trial judge awarded damages to the plaintiff. On appeal the primary question seemed to be whether the plaintiff was guilty of contributory negligence? To which the court said, "To be sure, there is no statutory law³ requiring one driving a motor vehicle on the highway to give warning of an intention to pass another vehicle. Neither is there any law requiring the driver of the vehicle ahead to give warning of an intention to turn to the left." The statute above mentioned by the court is substantially this:

¹ *Kerlinske v. Etzel*, — Wis. —; 215 N.W. 591, Oct. 11, 1927.

² *Suren v. Zuege*, 186 Wis. 264; 201 N.W. 722, Mar. 10, 1925.

³ Section 85.01 sub. (2) Statutes of 1925.

"Every such operator or driver on overtaking any vehicle or draft animal on any highway shall pass on the left side thereof, and the operator or driver overtaken shall with all convenient speed upon signal or notice that passage is required, drive to the right of the center of the traveled part of the highway so as to allow a free passage on the left, and if necessary on account of road conditions shall stop long enough to allow the other to pass."

'That every driver on overtaking any vehicle shall pass on the left side thereof, and the driver overtaken shall with as much speed as possible, upon the signal of the oncoming driver, drive to the right of the center of the road so as to allow a free passage on the left, and if necessary, because of the condition of the road, stop long enough for the other party to pass.' This statute says nothing about signals when passing or turning left on the highway.

The court goes on the theory that the driver behind can see what is ahead of him and knows that unless he gives a signal of his intention to pass that the party ahead has a right to turn to the left. The court also says that a traffic officer⁴ should know the rules of the road and that he knows that if he gives warning of his intention to pass the machine ahead that the driver is required by law to give him half of the road. They base their decision on the case of *Suren v. Zuege*, which holds that, 'A police officer driving a motorcycle at a speed of forty to fifty miles an hour in pursuit of a fleeing automobile, without signaling his approach and intention to pass a vehicle ahead, is guilty as a matter of law, of contributory negligence, precluding a recovery for injuries sustained in a collision with such vehicle as it turned to the left.'

In regard to overruling the above case, the court has this to say; "To announce a rule in this case different from that in the *Suren* Case would make our law a mere matter of speculation on the part of trial judges. Innumerable cases would arise where the trial judge would be at a loss to know whether the situation was covered by the *Suren* Case or by this one. It is quite plain that these two cases should be in harmony."

AL WATSON '28

Negligence: Landlord May Not Create Trap on Premises and Induce Tenant to Use It to His Injury: Limits of Simple Tool Doctrine.

That the owner may not make a trap or snare on his premises, and so induce his tenant to use it as to cause him injury, appears to be well established in the recent case of *Woodruff v. Ellenbecker*.¹

This case is an action for injuries received by the plaintiff by reason of the cover of a box, used for the deposit of rubbish, falling upon said plaintiff and injuring her seriously. The said box was about two and one-half feet high and was set against a shed in the rear of a cottage on the defendant's premises.

The plaintiff was the defendant's tenant and the box was necessarily used for the deposit of rubbish. On top of the box was a cover with hinges, and this cover when opened would rest against the side of the shed and when closed, pitched downward.

The plaintiff, prior to her injury, had occupied the premises of the

⁴ Section 85.16 sub (3) Statutes of 1925.

"Police officers shall be exempt from the speed limitations and other regulations of highway traffic while actually in pursuit of a criminal or attempting to apprehend a person who is violating any other provision of this chapter; . . .

¹ 215 N.W. 816 Wis. Decided Nov. 8, 1927.