Masthead Logo

DePaul Law Review

Volume 1
Issue 2 *Spring-Summer 1952*

Article 18

Instructions to Jury - Reversible Error When Given Only in Words of Statute

DePaul College of Law

INSTRUCTIONS TO JURY–REVERSIBLE ERROR WHEN GIVEN ONLY IN WORDS OF STATUTE

Plaintiff recovered for personal injuries received as a result of a collision at an intersection between an automobile, in which he was a guest, and defendant's truck. The jury was instructed in the words of the right-of-way statute of the Motor Vehicles Act.[1] As there was sharp conflict in the evidence, defendant excepted to the instruction on the grounds that the statute failed to tell the jury that they must also consider the speed and relative positions of the vehicles to the point of collision. The Appellate Court of Illinois agreed with the defendant and held the instruction to be prejudicially erroneous. *Walker v. Shea-Matson Trucking Co.*, 344 Ill. App. 466, 101 N.E. 2d 449 (1951).

The *Walker* case represents the exception to the general rule governing instructions in the language of the statute, as stated in *Deming v. City of Chicago:*[2] "Where an instruction is given in the language of a statute which is pertinent to the issues it must be regarded as sufficient. Laying down the law in the words of the law itself ought not to be pronounced error."[3] However, the giving of such instructions without making them applicable to the facts before the jury has been criticized and condemned.[4] It is the duty of the court to give to the jury rules of law which are applicable to the evidence in the case and to make the application so that the jury may understand the relation of the rules to the evidence.[5] An instruction in the words of the right-of-way statute is especially misleading when not qualified by other instructions. Illinois courts of review have repeatedly held that the right-of-way at intersections is not an absolute right, but is subject to, and affected by the relative distances of the vehicles from the point of intersection and the speed at which the vehicles are traveling.[6]

[1] Ill. Rev. Stat. (1943) c. 95½, § 165: "Vehicles approaching or entering intersection: Except as hereinafter provided motor vehicles traveling upon public highways shall give the right-of-way to vehicles approaching along intersecting highways from the right and shall have the right-of-way over those approaching from the left."

[2] 321 Ill. 341, 345, 151 N.E. 886, 887 (1926).

[3] Greene v. Fish Furniture Co., 272 Ill. 148, 111 N.E. 725 (1916); Mertens v. Southern Coal Co., 235 Ill. 540, 85 N.E. 743 (1908); Mt. Olive Coal Co. v. Rademacher, 190 Ill. 538, 60 N.E. 888 (1901). For other cases consult 15 A.L.R. 1491 (1921).

[4] Mayer v. Springer, 192 Ill. 270, 61 N.E. 348 (1901).

[5] People v. Isbell, 363 Ill. 264, 2 N.E. 2d 84 (1936); Burke v. Zwick, 299 Ill. App. 558, 20 N.E. 2d 912 (1939); Watson v. Kammeier, 203 Ill. App. 31 (1916).

[6] Wilson v. Hobrock, 344 Ill. App. 147, 100 N.E. 2d 412 (1951); Leech v. Newell, 323 Ill. App. 510, 56 N.E. 2d 138 (1944); Krawitz v. Levinstein, 320 Ill. App. 618, 52 N.E. 2d 60 (1943); Partridge v. Enterprise Transfer Co., 307 Ill. App. 386, 30 N.E. 2d 947 (1940); Riddle v. Mansager, 254 Ill. App. 68 (1929); Heidler Co. v. Wilson and Bennett Co., 243 Ill. App. 89 (1926); Salmon v. Wilson, 227 Ill. App. 286 (1923).

In *Salmon v. Wilson*,[7] it was held that while the statute gives the right-of-way to vehicles approaching along intersecting highways from the right over those approaching from the left, it does not intend to confer that right regardless of the distance the approaching cars may be from the point of intersection. An instruction given in the words of the right-of-way statute, in *Krawitz v. Levinstein*,[8] was held erroneous for the same reason as in the instant case. Again, in *Riddle v. Mansager*,[9] the court stated, ". . . the statute does not authorize such assertion of the right-of-way regardless of circumstances, distance or speed."[10]

Other jurisdictions having similar statutes have interpreted the statute in the same way.[11] The Maryland Court, in *Wlodkowski v. Yerkaitis*,[12] after discussing the rule in respect to distance and speed of vehicles approaching an intersection, continued:

> Inasmuch as a vehicle approaching from the right does not have an absolute right of way in every instance, regardless of its distance from the intersection when the other vehicle enters from the left, the statutory right-of-way rule is regarded as a cautionary guide, rather than a peremptory command . . . various other circumstances might materially affect the issue as to whether an asserted right-of-way should be recognized.

Several jurisdictions have construed such statutes to mean that although a vehicle may be approaching from the right, the vehicle on the left will have the right-of-way if it reaches the point of intersection first.[13] The majority of jurisdictions take the view that it is not a question of which vehicle entered the intersection first, but whether both vehicles were approaching at approximately the same time, and whether under the circumstances it would raise a question in the mind of a reasonably prudent person whether he had time to cross in the face of a vehicle approaching from his right.[14] The vehicle having the subordinate right must not take chances,

[7] 227 Ill. App. 286 (1923).

[8] 320 Ill. App. 618, 52 N.E. 2d 60 (1943).

[9] 254 Ill. App. 68 (1929).

[10] 254 Ill. App. 68, 72 (1929). Accord: Munns v. Chicago City R. Co., 235 Ill. App. 160 (1924).

[11] Wlodkowski v. Yerkaitis, 190 Md. 128, 57 A. 2d 792 (1948); Lee v. City Brewing Corp., 279 N.Y. 380, 18 N.E. 2d 628 (1939); Gendron v. Glidden, 84 N.H. 162, 148 Atl. 461 (1929); Paulsen v. Klinge, 92 N.J.L. 99, 104 Atl. 95 (S. Ct., 1918).

[12] 190 Md. 128, 132, 57 A. 2d 792, 794 (1948).

[13] Tate v. Shaver, 287 Ky. 29, 152 S.W. 2d 259 (1941); Schneider v. Rolf, 211 Ky. 669, 278 S.W. 100 (1925); Fall City Ice and Beverage Co. v. Scanlan Coal Co., 208 Ky. 820, 271 S.W. 1097 (1925); Conner v. Dale, 63 Cal. App. 338, 218 Pac. 462 (1923); Whitworth v. Jones, 58 Cal. App. 492, 209 Pac. 60 (1922).

[14] Thomasson v. Burlington Transp. Co., 128 F. 2d 355 (C.A. 10th, 1942); Gregware v. Poliquin, 135 Me. 139, 190 Atl. 811 (1937); Salm v. Bleau, 240 N.Y. 614, 148 N.E. 728 (1925); Goden Eagle Dry Goods Co. v. Mockbee, 68 Colo. 312, 189 Pac. 850 (1920).

make close calculations, or try to slip by on chance; it must give way to the vehicle on the right when it is anywhere near the crossing.[15]

Relying upon *Moran v. Gatz*,[16] *Burns v. Jackson*,[17] and *Waterbury v. Chicago, M. and St. P. Ry. Co.*,[18] the court held that where a modified construction has been placed upon the statute by courts of review, the instruction should be framed according to that construction and the jury properly instructed as to its legal effect. In *Burns v. Jackson*,[19] the court, citing the *Waterbury* case, held:

> While numerous authorities uphold the practice of giving instructions containing the very language of the statute, yet we think that where a modified construction has already been placed thereon by our Supreme Court, ... the instruction should be framed accordingly, otherwise it would be apt to mislead the jury.

However, the Supreme Court of Illinois has never granted certiorari to review the decisions of the appellate courts where it was held reversible error to charge the jury in the words of the right-of-way statute without qualification. Nevertheless, decisions of the appellate courts should come within the rule set out in the *Waterbury* case, and modifying constructions having been placed upon statutes by appellate courts, the lower courts should frame their instructions accordingly.

All of the cases which apply this rule seem to involve some section of the Motor Vehicle Act. In analyzing these statutes, particularly the right-of-way statute, the legislature seems to have indicated an intention merely to set up a guide rather than a hard and fast rule, leaving it to the courts to properly qualify the statute in any instruction to the jury.

This principle that an instruction to the jury given in the words of the statute is reversible error unless qualified does not seem to have any application to other types of statutes than those already discussed.

PROCEDURE–IMPOSITION OF FEDERAL PRACTICE ON STATE COURTS

Petitioner, employee of defendant railroad, was seriously injured when an engine in which he was riding jumped the track. He claimed his injuries were due to the defendant's negligence and brought an action in an Ohio court under the Federal Employers' Liability Act.[1] Defendant claimed that petitioner had signed a release; petitioner alleged that the release was obtained by fraud.

[15] Shuman v. Hall, 246 N.Y. 51, 158 N.E. 16 (1927).
[16] 327 Ill. App. 480, 64 N.E. 2d 564 (1946).
[17] 224 Ill. App. 519 (1922).
[18] 207 Ill. App. 375 (1917).
[19] 224 Ill. App. 519, 528 (1922).
[1] 35 Stat. 65 (1908), 45 U.S.C.A. § 51 (1951).