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**“BOULEVARD STOP” STREETS IN MARYLAND***Greenfeld v. Hook*<sup>1</sup>

Plaintiff sued defendant for injuries received as a result of an automobile collision. Defendant was travelling South on Eutaw Place, a designated boulevard, which had its respective lanes divided by a parkway, when he ran into plaintiff's car at the intersection of Eutaw Place and Lafayette Avenue. Plaintiff was travelling West on Lafayette Avenue; she had stopped and looked to her right both before crossing the North-bound lane and before entering the South-bound one of Eutaw Place. The general theory of plaintiff's case, and of the prayers granted at the trial on behalf of the plaintiff was that defendant's right of way was not absolute and that "persons when operating their vehicles upon through or boulevard streets [are duty bound] to keep the same under reasonable control and to have the speed of the automobile so reduced in approaching crossings as to have the same under reasonable control".<sup>2</sup>

A Maryland statute<sup>3</sup> provides for the establishment of through streets. By the terms of the statute, all vehicles entering highways designated by "stop" signs must stop and "yield the right of way to all vehicles approaching on such highway" unless traffic at the intersection is controlled by an officer or by a signal.

On appeal, after a verdict and judgment for plaintiff, the case was reversed and remanded for error in the instruction which was held contrary to the statutory design. The purpose of the statute was "to accelerate the flow of traffic over through highways by permitting travellers thereon to proceed within lawful speed limits without interruption." But the rights of the driver on the favored highway have been the subject of judicial controversy. Some cases have taken the view that such a driver must slow down at intersections. The opinion of the Court, which carefully reviews the law, characterized that view as frustrating the purpose of the statute. The intended benefit is uninterrupted travel. It would be contrary to this purpose to require the traveller to slow down at every intersection. On the contrary, the motorist on the favored

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<sup>1</sup> 8 A. (2d) 888 (Md. 1930).

<sup>2</sup> *Ibid.*, 890. Italics supplied.

<sup>3</sup> Md. Code Supp. (1935) Art. 56, Sec. 209.

highway should be entitled to expect those entering at intersections to stop and yield the right of way.

Cases involving the rights of way of motorists may be divided into five classes. The first two classes involve fixed wheel vehicles (streetcars and trains) and pedestrians; neither of these enter into the present discussion. The remaining three classes are defined in terms of the type of intersection involved; the first of these is the ordinary uncontrolled intersection; next is the stop and go signal corner; and the third is the boulevard stop or through street intersection.

The right of way at ordinary uncontrolled intersections is relative. In *Warner v. Markoe*,<sup>4</sup> the rule was thus summarized:

"It is a rule that applies only in appropriate circumstances, that is, when the two drivers come to the crossing in such proximity in point of time as to require accommodation of one to the other. \* \* \* Determination of the right of way, thus left to the drivers, in each instance, commonly involves the exercise of some judgment, the driver from the left being required to yield to avoid apparent chances of collision; and the fact should to some extent influence the driving of the car from the right. For one coming from the left may expect to have cars from the right approach under control in compliance with section 209 of article 56 of the Code, as amended, and taking care to avoid traffic from its own right as well as traffic from the left which might be ahead of it at the crossing; and the driving from the left is likely to be governed accordingly."

The law relating to intersections controlled by traffic lights (and other forms of signals) is sharply differentiated from the rule above expressed. At such intersections, the driver having the green light or "go" signal seems to have an absolute right of way and this without regard to his speed. In *Sun Cab v. Faulkner*,<sup>5</sup> the Court, speaking through Chief Judge Bond, said:

"The case is unlike those in which, there being no signals, by lights or by traffic officers, two drivers

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<sup>4</sup> 171 Md. 351, 357, 189 A. 260, 262 (1937).

<sup>5</sup> 163 Md. 477, 478-9, 163 A. 194 (1932).

approaching each other on intersecting streets have the burden of determining which has the right to cross unobstructed by the other. In those cases there is commonly a question of the exercise of due care on the part of one driver or the other in deciding to cross when he did, but in the present case no such question is present. . . .

If negligence is found in the rate of speed at which the Sun cab was being driven, that fact alone does not, of course, answer the question of liability. The negligence must have been the cause of the collision. . . . There would be no foundation in fact here for a holding that by driving at a reduced speed the Sun Company driver might have avoided the collision after the two cabs came within sight of each other. The contribution of the Sun cab to the accident appears to have been only that of being there at the moment, a circumstance which might have arisen with or without negligence in approaching the place. But taking it as proved that there was negligence in the rate of speed in this instance, that negligence, in the approach must be found to have been the cause of the collision, or there can be no legal responsibility for it on the Sun Company's part."

The law with respect to through streets has wavered between these two extremes. At first, the Court seemed inclined to treat intersections marked by boulevard stop signs in the same manner as intersections controlled by traffic signals.

In *Motor Tours v. Becker*,<sup>6</sup> plaintiff, a passenger of a bus, sued the bus company for injuries received when the bus collided with a taxi. The bus was proceeding east on Fayette Street, a designated boulevard, when the taxi emerged at Washington Street. The taxi's brakes failed to operate. Both drivers were evidently exceeding the speed limit. At the trial, plaintiff recovered, and on appeal the judgment was reversed on the ground that the evidence had not shown the bus's speed to be the proximate cause of the accident. The Court there said:

"While relying upon the protection which the traffic sign was intended to afford for his right of way, the bus driver had no reason to anticipate and guard

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<sup>6</sup> 165 Md. 32, 166 A. 434 (1933).

against such contingencies as those to which the accident in this case must be attributed, and to which the speed of the bus had no relation."<sup>7</sup>

In *Blinder v. Monaghan*,<sup>8</sup> plaintiff was occupant of a taxicab which entered Charles Street at 32nd Street, and there collided with a truck. Plaintiff sued the cab company to recover for the injuries received. The cab driver testified that his view of the truck had been obstructed by a United Railway Bus which had stopped to discharge passengers. Defendant further contended that the truck was proceeding at an excessive speed. The Court there held that, regardless of the truck's speed, the cab had no right to interfere with traffic on the boulevard. The statute expressly requires persons entering through streets to yield to traffic on such streets.

" . . . Where, as in this case, the operator of a vehicle enters such a highway in disregard of these explicit and mandatory rules, and collides with another vehicle approaching thereon, the collision can only be attributed to his negligence. . . ."<sup>9</sup>

The case of *Carlin v. Worthington*,<sup>10</sup> is very difficult to reconcile with the *Monaghan* case. The following language quoted from the *Worthington* case seems to incline towards the rule applicable to ordinary intersections; it seems to make the rights of the drivers relative:

"The rights, duties, and privileges of motorists on favored and unfavored highways is discussed at considerable length in the notes in 58 A. L. R. 1198, 81 A. L. R. 185, and 89 A. L. R. 838. Preferences in certain streets or highways must be created by statute or ordinance (cases cited), and in this state they are, by section 209, article 56 of the Code. The weight of authority seems to be that the right of a driver on a favored highway is not absolute, but is to be enjoyed with due regard to the circumstances then and there existing, particularly as to speed and distances of the respective cars from the intersection when in sight of each other. . . . A 'stop' sign means stop be-

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<sup>7</sup> 165 Md. 32, 36, 166 A. 434, 435 (1933).

<sup>8</sup> 171 Md. 77, 188 A. 31 (1936).

<sup>9</sup> 171 Md. 77, 84, 188 A. 31 (1936).

<sup>10</sup> 172 Md. 505, 192 A. 356 (1937).

fore entering a boulevard or favored highway (cases cited), and an unfavored driver must not enter against a favored driver arriving at the intersection at the same time. *When the unfavored driver has time, if the favored is so far from the intersection that he will not arrive there before the crossing is cleared by the other, if he is not speeding, it is not negligence of an unfavored driver to enter.*"<sup>11</sup>

In the case under discussion the Court finally decided that intersections at arterial highways are to be treated very nearly like intersections controlled by traffic signals. The opinion explained away the apparent inconsistency of the *Carlin* case on the ground that it related solely to the question of proximate cause and not to the relative rights at intersections:

" . . . In *Carlin v. Worthington* the Court was sustained in refusing a rule of the road prayer because it failed to require the jury to find that defendant's failure to stop before entering the boulevard was the proximate cause of the accident. Both [the *Carlin* case and the *Monoghan* case] agree upon the principle that a driver on an unfavored highway who enters a favored highway must be prepared to yield the right of way to a traveller on the favored highway, and must allow him to proceed, and applies to travellers in such a situation the severest rule known to the common law of America, the 'Stop, look and listen' rule applicable to railway crossings."<sup>12</sup>

Since the *Greenfeld* case, the court has reiterated its view in *Pegelow v. Johnson*.<sup>13</sup> There, one of the prayers granted for defendant was based on the theory that the favored driver must slow down at intersections. This case was reversed on appeal and *Greenfeld v. Hook*, and the matter therein quoted from the *Carlin* case were quoted at length as authority:

"It is not negligent for a driver on a primary or favored highway to assume that a driver on a secondary or unfavored highway, marked by a stop sign, will stop and allow him to proceed. (Cases cited).

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<sup>11</sup> 172 Md. 505, 508, 192 A. 356, 358 (1937).

<sup>12</sup> 8 A. (2d) 888, 894 (Md. 1939).

<sup>13</sup> Baltimore Daily Record, December 23, 1939 (Md. 1939).

"It is the application by statute of the old 'stop, look and listen' rule with respect to railways, which is, as stated in Philadelphia, W. & B. R. Co. vs. Hogeland, 66 Md. 149, 161, 7 A. 105, 107. 'It is negligence per se for any person to attempt to cross tracks of a railroad without first looking and listening for approaching trains; and, if the track in both directions is not fully in view in the immediate approach to the point of intersection of the roads, due care would require that the party wishing to cross the railroad track should stop, look and listen before attempting to cross'."<sup>14</sup>

But, the right of the favored traveller is not absolute. Blashfield under the caption "Care on Arterial Highways," says:<sup>15</sup>

"Motorist on arterial highway protected by stop sign must drive with reasonable care, as to traffic entering from side streets"

and cites as authority *Johnston v. Selfe*.<sup>16</sup> The cases cited by that author in his 1939 supplement indicate that this statement of the law is generally accepted. The motorist is not required to slow down, but at the same time, the law will not protect the favored driver who exercises his right recklessly. The unfavored driver does not unqualifiedly enter the boulevard at his peril.

Berry states the rule more precisely.<sup>17</sup> He says that the traveller on the favored street may assume that the traveller on the unfavored street will yield until, in the exercise of ordinary discretion he should discover that his assumption is erroneous.

The rules above expressed are followed with varying degrees of exactness in cases and articles. The Nebraska Law Bulletin<sup>18</sup> takes the view that the right conferred by statute is not absolute, but that the favored driver must slow down if necessary to avoid accident. In *Vance v. Poree*<sup>19</sup> it was held that the privilege is not an absolute one, "and it must be exercised with due regard to the right of other

<sup>14</sup> 8 A. (2d) 888, 894 (Md. 1939) quoting from *Carlin v. Worthington*, 172 Md. 505, 192 A. 356, 357 (1937).

<sup>15</sup> 2 BLASHFIELD, CYCLOPEDIA OF AUTOMOBILE LAW (1931) 188, Sec. 1024, n. 20.

<sup>16</sup> 190 Minn. 269, 251 N. W. 525.

<sup>17</sup> 3 BERRY, AUTOMOBILES (1935) 89, Sec. 3.29.

<sup>18</sup> *Right of Motorist on Arterial Highway*, (1930) 9 Nebr. L. Bull. 194.

<sup>19</sup> 5 La. App. 109 (1926).

vehicles to use the intersecting streets." Kentucky went perhaps a little too far in *Bradley v. Schmidt*<sup>20</sup> wherein it is held that the unfavored motorist need not yield "except when two vehicles arrive at intersection at same time," and this, even though the failure to yield might, to some degree, interfere with travel on the highway. The Boston University Law Review<sup>21</sup> in commenting on *Higgins v. Ledo*<sup>22</sup> says "a driver who has the right of way is not relieved of the duty of watching out actively for his own safety and the safety of others." The Uniform Act Regulating Traffic on Highways<sup>23</sup> is worded very nearly like the Maryland Statute. The cases under the act are in accord with the Maryland view.

The Maryland law, in its present state, imposes the following duties and liabilities on parties entering and travelling on "stop" streets: The party entering the street must stop<sup>24</sup> and yield to all traffic in the highway. He has the duty ". . . to exercise reasonable care and diligence to discover whether traffic thereon is approaching the intersection, and, having entered the intersection to yield the right of way to such traffic, by permitting it to proceed without interruption, and that duty persists throughout his passage across the favored way."<sup>25</sup> A failure to comply with this duty renders the driver liable for all damages proximately caused by his conduct.

The favored driver does not have an absolute right. He is entitled to assume that motorists on intersecting streets will stop and yield the right-of-way. Yet, he must exercise care commensurate with the circumstances; he should make reasonable allowance for curves, fog, and other contingencies. He is expected to obey the speed laws and he is of course subject to directions of traffic signals and traffic officers. He, too, is liable for the proximate consequences of his non-compliance.

These rights, duties and liabilities make reasonable allowance for the intended benefits of the statute and at the

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<sup>20</sup> 223 Ky. 784, 4 S. W. (2d) 703, 57 A. L. R. 1100 (1928).

<sup>21</sup> (1934) 14 Bost. U. L. Rev. 155.

<sup>22</sup> 66 F. (2d) 265 (1933).

<sup>23</sup> Sec. 48; 11 U. L. A. 46, 47.

<sup>24</sup> For a discussion of the technical question of where the unfavored driver must stop, see the report of the oral instruction of Frank, J., in the trial court case of *Webb v. Martin*, Baltimore Daily Record, February 5, 1938, to the effect that: ". . . the place to stop is not at the stop sign . . ., but just before entering the intersection, and that, of course, would be at or about the curb-line.

<sup>25</sup> 8 A. (2d) 888, 895 (Md. 1939).

same time they subject the parties to that degree of responsibility necessary for public safety. The result represents a balance between the conflicting public interests in speed and security.<sup>26</sup>

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<sup>26</sup> It is interesting to note in this connection the analogy drawn by the Court between this class of cases and that involving fixed-wheel vehicles. The severity of the burden placed on motorists crossing railroad or street-car tracks may be gathered from the following Maryland cases: *Baltimore Transit Co. v. Bramble*, 175 Md. 334, 2 A. (2d) 416 (1938); *Baltimore Transit Co. v. Lewis*, 174 Md. 618, 190 A. 879 (1938) and other cases cited in the last-named case.