Popular Government

October-November 1950

December graduating class — Highway Patrol School

PUBLISHED BY THE INSTITUTE OF GOVERNMENT
UNIVERSITY OF NORTH CAROLINA
Chapel Hill

INSTITUTE OF GOVERNMENT

Institutes and Training Schools

January 3-4-5:
Sheriffs

January 10-11-12:
Clerks of Court

January 24-25-26:
Jailers

January:
Police Executives

Prosecuting Attorneys
Judges of Recorders' Courts

February:
Registers of Deeds

March:
Coroners

April:
County Accountants

Cover

The cover picture of this issue of POPULAR GOVERNMENT shows the thirty-four graduates of the Institute of Government's sixth postwar Traffic Law Enforcement School and the faculty of the school. The six-week training school was conducted by the Institute for the State Highway Patrol from October 30 through December 9 at the Institute's training barracks in Chapel Hill.

The strenuous training schedule kept the trainees busy sixteen hours a day, from calisthenics at 6:00 A.M. to lights out at 10:15 P.M. The daily program of instruction included nine hours of classroom lectures, or range and field work, plus compulsory study periods. The faculty of the school was selected from the officers of the State Highway Patrol and the staff of the Institute of Government and included a number of prominent judges, solicitors, and public officials.

The trainees taking the traffic law enforcement course were selected by open competitive mental, physical, and oral examinations after having passed a thorough character investigation. All thirty-four graduates were selected for appointment by Col. James R. Smith, Commanding Officer of the State Highway Patrol, and entered on duty as members of the Patrol on December 15, 1950.

October-November, 1950
Vol. 17 Nos. 2 and 3

POPULAR GOVERNMENT is published monthly except July and August by the Institute of Government, the University of North Carolina, Chapel Hill. Editor: Albert Coates. Assistant Editors: John Fries Blair, V. L. Bounds, J. Shepard Bryan, Jr., W. M. Cochrane, George Esser, Philip P. Green, Jr., Donald B. Hayman, Henry W. Lewis, Ernest W. Machen, Jr., J. A. McMahon, Basil Sherrill, William Poe. Editorial, business and advertising address: Box 990, Chapel Hill, N. C. Subscription: Per year, $2.00; single copy, 25 cents. Advertising rates furnished on request. Entered as second class matter at the Post Office in Chapel Hill, N. C.

TABLE OF CONTENTS

XIII. WINDING OR MOUNTAINOUS ROADS
- A. Duty to Decrease Speed
- B. Duty to Sound Horn
- C. Duty Not to Coast

XIV. STOPPING ON THE HIGHWAY
- A. Prohibited Parking
  1. Parking on pavement
  2. Parking on bridges
  3. Parking in front of private drives
  4. Parking in front of fire hydrants
  5. Parking near entrances to fire stations
  6. Parking near intersections
- B. Permitted Parking
  1. Parking at edge of highway when 15-foot lane is left open for traffic
  2. Parking in business and residential sections
  3. Disabled vehicles
  4. Temporary stopping
- C. Power of Local Authorities
- D. Duties of Officers

XV. BACKING

XVI. PEDESTRIANS
- A. Where on the Highways Pedestrians May Walk
  1. Walking on the left-hand side of the road
  2. Crossing when adjacent intersections are both marked by stop lights
  3. Hitchhiking
- B. Right of Way
  1. Right of way at intersections where traffic is being directed by an officer
  2. Right of way at intersections where there is a stop light
     a. Green light
     b. Yellow light
     c. Red light
  3. Right of way at intersections where there is no stop light and at marked crosswalks elsewhere
  4. Right of way where there is a pedestrian tunnel or overhead crossing
  5. Right of way elsewhere on the highway
- C. Sounding the Horn as a Notice to Pedestrians
- D. Other Provisions for the Protection of Pedestrians

XVII. FRIGHTENED ANIMALS
- A. Duty to Stop
- B. Duty to Turn Off Motor
- C. Duty to Render Assistance

XVIII. SCHOOL, CHURCH, AND SUNDAY SCHOOL BUSSES

XIX. RAILWAY, INTERURBAN, AND STREET CARS

XX. POLICE AND FIRE DEPARTMENT VEHICLES

XXI. VEHICLES WHICH MUST BE LABELED
- A. Vehicles Hauling Gasoline
- B. Vehicles Hauling Explosives
- C. Franchise Bus Carriers, Franchise Haulers, and Contract Haulers

XXII. DUTY TO STOP IN EVENT OF ACCIDENT
- A. To Whom Does the Statute Apply?
- B. Duties Imposed by the Statute
  1. The duty to stop
  2. The duty to identify yourself
  3. The duty to render assistance
  4. The duty to report the accident
     a. Reports by drivers
     b. Reports by occupants or other witnesses
     c. Reports by officers
     d. Inadmissibility of the reports
- C. Constitutionality of the Statute

XXIII. RECKLESS DRIVING
- A. The Definition
  1. The "wilful or wanton" offense
  2. The offense of endangering person or property
- B. The Relation between Reckless Driving and a Violation of the Motor Vehicle Law
  1. Reckless driving without violation
  2. Violation without reckless driving
  3. A series of violations
- C. The Relation between Reckless Driving and Actual Injury to Person or Property
  1. Reckless driving without injury
  2. Injury without reckless driving
- D. Illustrations of Criminal Negligence
  1. Driving very fast drunk and passing and repassing another car
  2. Repeatedly overtaking and passing other cars and cutting close in front
  3. Speeding on the left-hand side of the road
  4. Driving on the left-hand side of the road at night without lights
  5. Driving at night without lights
  6. Driving at excessive speed and ramming vehicle from behind
  7. Tremendous speed
  8. Allowing two people to have their hands on the wheel
  9. Zigzagging
  10. Hitting a pedestrian who is on the shoulder of the road
  11. Speeding with slick tires when it is raining
  12. Recklessness at intersections

XXIV. DRUNKEN DRIVING
- A. Where the Statute Applies
- B. Driving under the Influence of Narcotic Drugs
- C. What Is Drunken Driving?
- D. How May Drunkenness Be Proved?
  1. Traditional methods of proving drunkenness
     a. Access to liquor
     b. Appearance of defendant
     c. Demeanor of defendant
     d. Lack of muscular coordination
     e. Opinion evidence
     f. Admissions
     g. Testimony of doctors
  2. Scientific methods of proving drunkenness
- E. Criminal Liability for Violations of the Statute against Drunken Driving
  1. Murder
  2. Manslaughter
  3. Other crimes

XXV. PENALTIES
- A. Ordinary Violations
- B. Minor Violations
- C. Driving When an Habitual User of Narcotic Drugs; Driving While under the Influence of Intoxicating Liquor or Narcotic Drugs
- D. Failure to Dim Lights
- E. Failure to Stop in Event of Accident Involving Injury or Death to a Person

The Rules of the Road

By JOHN FRIES BLAIR

Assistant Director of the Institute of Government

An old fable tells of the centipede who, when asked which leg he used first, remained helpless in the ditch because he did not know. Something of the same experience may confront the motorist who, having driven for many years, is required to take a re-examination or to refresh his recollection of the automobile law. Nevertheless, analysis is frequently the precursor of improvement, and the temporary ataxia may precede the greater skill. The increase in the number of cars and drivers, the superannuation of many of our roads, and the mounting accident toll suggest that, for many, the greater skill is not only desirable, but imperative. And it is imperative, not only that we drive with knowledge and an approved technique, but that others do also, for, as Matthew Prior said in another sense, "Our term of life depends not on our deed."

The following outline of the Rules of the Road was prepared primarily for use in the Institute of Government's training schools for law enforcement officers, such as the one pictured, just before graduation, on the cover of this magazine. But it was prepared for the use of the public also, and the approach is not from the standpoint of the law enforcing officer but from that of the motorist behind the wheel. What he does is, at once, the cause of his and others' safety or peril and the basis of his liability, civil or criminal.

In connection with its research for the Governor's Advisory Committee on Highway Safety the Institute of Government received many hundreds of suggestions with respect to the automobile law. Some of these displayed misconceptions as to what the law is; others pointed out defects or pictured what the law ought to be. Because of widespread clamor for improvement it has been deemed not amiss to devote one entire issue of Popular Government to this simple exposition of the law, as it exists, with the dual hope that knowledge may bring about driver improvement, and analysis clear the path for needed reform.

Drivers whose last names begin with "U," "V," "W," "X," "Y," and "Z," and some others whose licenses are expiring, will be re-examined during 1951. To them, in particular, this issue is dedicated.

Introduction

"The preservation of human life is a sacred duty and obligation of the Legislative, the Judicial, and the Executive branches of the Government." This statement is taken from the Highway Safety Act of 1947. When most of the provisions of that act were repealed, this statement was retained, together with a declaration that every citizen of the State of North Carolina has a right to use its streets and highways, either as a motorist or as a pedestrian, without being exposed, unnecessarily, to injury or death because of the reckless or otherwise unlawful operation of vehicles by others.

If, however, every citizen, or, more strictly, every person, has a right to use the streets and highways, so does every other person also, with his sometimes conflicting desires, contrary intentions, and contrasting interests. Therefore, in the interest of speedy travel, in the interest of comfortable travel, and, above all, in the interest of safety, the legislature has adopted or formulated, and the courts have interpreted, a considerable body of rules for the governing of each user of the streets and highways in the interest of all. This chapter will attempt a brief statement and explanation of those rules, which are sometimes spoken of as "the rules of the road."

The rules of the road, as we now know them, were designed primarily to cover the actions of the motorist. The rider of a bicycle, however, is subject to the rules in so far as they are applicable (G.S. 20-38ff), and so is a person riding a horse or other animal or driving a vehicle which is being drawn by an animal (G.S. 20-171). Road machines actually engaged in work on the surface of the roads are exempt, but the provisions do apply to these machines when they are not so employed and to other vehicles owned or operated by the State or any of its subdivisions (G.S. 20-168). This is true even though it is not necessary to have a license in order to operate some of these machines. Special provisions apply to pedestrians. Their rights and duties will not be set out separately in this chapter but will be covered in the discussion of the duties of the motorist when he approaches them on the road.

The rules will be explained by imagining you in the driver's seat of an automobile proceeding down the highway, by setting forth a series of factual situations which are likely to confront you or any other person using the highways, and then by attempting to arrive at the principle or principles of law applicable to those factual situations. While the more important provisions of the statutes will be covered, the human experience of motorists is so varied that it will be impossible to anticipate more than a fraction of all the combinations of situations which may arise.

I.

WHAT IS DRIVING?

It may seem nonsensical to begin a chapter primarily about the operation of motor vehicles by a discussion of what driving is, since the answer to that question may seem obvious. The courts, nevertheless, have been concerned with and sometimes perplexed by it, so perhaps a brief discussion is appropriate. The question usually arises in cases which involve driving without a license or driving while under the influence of intoxicating liquor, but occasionally also in cases which involve driving without lights or other equipment.

A. Suppose the Vehicle Is Not in Motion

If the vehicle is not in motion and the person behind the wheel is drunk (we will not assume the reader to be there in this instance) may he be said to be guilty of operating the automobile while under the influence of intoxicating liquor?

In *State v. Hatcher*, 210 N.C. 55, 185 S.E. 435 (1936), a truck stalled on a hill, and the driver got out to work on the carburetor. The defendant, who was drunk, put his foot on the brake to keep the truck from rolling backwards and was arrested by the officers while in that position. The judge charged the jury that this was operation, but the Supreme Court reversed, saying, "All penal statutes must be construed in the light of the mischief against which they inveigh, and we apprehend that it was never the intention

of the Legislature to make it unlawful for a person to prevent an automobile from moving on the highway, although such person may be intoxicated at the time. The word 'operate,' when used in connection with an automobile, clearly imports motion—motion of the automobile. The holding of an automobile still on a hill placing one's foot on the brake while the driver worked on the carburetor cannot be construed as operating the automobile."

A similar result has been reached in the states of Iowa and Vermont, where it has been held that the driver of an automobile who has left it on the highway, whether properly parked or not, may not be convicted of *operating* it with improper lights. *Harland v. Kraschel*, 164 Iowa 667, 146 N.W. 403 (1914); *State v. Busby*, 91 Vt. 287, 100 Atl. 42 (1917).

What, then, is the duty of an officer who finds a lone motorist slumped behind the wheel, apparently drunk, and *not* operating an automobile which is properly parked on the shoulder of a highway? Is it legitimate to draw the inference that since the car is there he must have driven it there, and since he is drunk now he must have been drunk earlier and hence must have violated the statute against drunken driving? Probably not. The officer does not know how long he has been there nor what his condition was when he arrived and hence could probably not make out a case of drunken driving. In addition, the driving, if done at all, was not done in the officer's presence, so that he would not be justified in arresting without a warrant. He might conceivably arrest him for public drunkenness, or for some other crime if he commits it. Otherwise the most he can do, apparently, is to persuade him not to drive or to wait until he starts before making the arrest.

B. Suppose the Engine Is Running

If the engine of the car is running but the car itself is not in motion, may that be said to be operation? The Supreme Court of North Carolina does not seem to have passed on that specific point nor on the next two which we shall consider in this section, unless the expression of opinion quoted above may be taken as conclusive. The best we can do, therefore, is to consider the decisions of other states, remembering that they might or might not be followed by our court if the matter should be squarely presented here.

In *State v. Webb*, 202 Iowa 633, 210 N.W. 751 (1926), the defendant and three women drove into an alley in the City of Davenport about midnight and parked their car. They went to an apartment in the second story of an adjoining building where one Mills and his wife lived. While there they had sandwiches and beer, which they were told was home brew. At about two-thirty they returned, and the defendant seated himself in the driver's seat. As the women were "getting settled" in the back seat the defendant started the engine. Just as the back door was slammed and before the car was put in motion the officers appeared and arrested the defendant for operating the car while intoxicated. It was held that he was guilty, the court saying, "The defendant in the case at bar testified that he had started the engine and it was running. This is one of the necessary elements in the operation of a car. In other words, he could not have put his car in motion without having first started the engine, and the starting of the engine therefore is the first step in the operation of a car. We are disposed to hold . . . that the defendant was 'operating' his car, within the meaning of the statute." The same result was reached in New Jersey in the case of *State v. Ray*, 4 N.J. Misc. R. 493, 133 Atl. 486 (1926).

In *People v. Domagala*, 206 N. Y. Supp. 288 (1924), there may have been slight motion of the car, but the court does not place its decision on that narrow ground. The car was parked with the front wheels directly facing the curb. The defendant, being drunk, was attempting to move the car by starting it forwards instead of backwards. Six times he started the engine and six times it choked when the front wheels came into contact with the curb. The court held that this was operation, saying, after giving the definitions contained in the New York statute, "Under any of the above definitions, the respondent began to violate the law the instant he began to manipulate the machinery of the motor for the purpose of putting the automobile into motion. The fact that the motor was not powerful enough to force the automobile over the curb without stopping is no defense."

It seems, therefore, that an officer would be justified in making an arrest in such a case, and that there is a strong probability that the courts would convict.

C. Suppose the Car Rolls under Its Own Weight

If the car is in motion but the engine is not running a different situation is presented. This would be operation under the statement of the North Carolina rule quoted above. The question was not before the court in the Iowa case. In the case of *Commonwealth v. Clarke*, 245 Mass. 566, 150 N.E. 829 (1926), however, the court was confronted with just that situation. The defendant had parked his car about one o'clock in the afternoon. He came back about five-thirty, after having had several drinks. Deciding that he was not able to operate the car, he got in to lock the transmission. In order to do so he had to throw the gear-shift from reverse into neutral. As he did so the car moved forward about four feet, striking another car. It was held that he, also, was guilty of operating the car while intoxicated, the court pointing out that though the engine was not running the car was nevertheless under his control.

D. Suppose the Vehicle is Being Towed or Pushed

If the vehicle is being moved forward or backward, not by its own motor and not by its own weight, but by some other force, may that be said to be operation?

In *State v. Tracey*, 102 Vt. 439, 150 Atl. 68 (1930), the defendant was sitting at the wheel of a towed vehicle attempting to steer it, although he was drunk at the time. It was held that his actions did constitute "operation" within the terms of a statute making it unlawful to operate a motor vehicle under the influence of intoxicating liquor.

In the civil case of *Dewhirst v. Connecticut Co.*, 96 Conn. 289, 144 Atl. 100 (1921), on the other hand, the plaintiff's truck became disabled, and an unlicensed driver attempted to steer it while it was being pushed into a garage. The truck which was doing the pushing backed up to approach it at a slightly different angle, leaving a portion of the plaintiff's truck extending over the defendant's trolley tracks. The defendant's trolley, which was being operated in a negligent manner, hit the plaintiff's truck while it was in that position. The plaintiff brought a suit based on the negligent operation of the trolley. The defendant claimed the plaintiff could not recover because his truck was being operated by a driver who was unlicensed. The court, however, allowed recovery, saying that the driver's actions were not "operation" within the meaning of the statute.

Likewise in *Norcross v. B. L. Roberts Co.*, 239 Mass. 596, 132 N.E. 399 (1921), the plaintiff went to Oxford to get his motorcycle, intending to bring it back to Worcester to have it repaired. When he got to Oxford he found the engine frozen, so he began pushing it back to Worcester, a distance of five or six miles. Late in the afternoon, after he had turned

on his lights, a truck overtook him and ran into his motorcycle from the rear, injuring both him and the machine. The lights of the truck were not on. The plaintiff brought suit for his injuries, but the defendant claimed he could not recover because he had been operating his motorcycle without having had it registered and hence in violation of the law. The court held, however, that his acts did not constitute operation within the purpose of the statute, and allowed him to recover.

Probably the distinction between the cases in this section does not rest on whether they were criminal or civil, nor on whether the vehicle was being towed or pushed. It is possible that it rests on a difference in the definition of the term "operation" as used in the various statutes. More likely, however, it rests on the policy behind the different statutes, that policy being, in one case, to keep drunken drivers off the roads; in the other, to require motor vehicles and their drivers to be licensed, in so far as it is reasonable to require them to be so. In this connection, it is well to bear in mind the words of Mr. Justice Schenck in the North Carolina case quoted above, that "all penal statutes must be construed in the light of the mischief against which they inveigh."

II.

WHO IS DRIVING?

If the car is in motion under its own power, or if it is being "driven" in the sense that the term is used in any of the cases stated in the last section, may anyone other than the person behind the wheel be convicted of driving drunk, operating without lights, or whatever the charge may be?

We shall have occasion to consider later certain cases in which someone other than the person behind the wheel has been held guilty of second-degree murder, manslaughter, or some other felony growing out of an automobile accident. Since, however, murder and manslaughter were crimes long before the Motor Vehicle Act was passed, since the question of who was driving has really nothing to do with the definition of those crimes, and since the law has special doctrines with respect to principals and accessories in felonies, any discussion of those cases, except an incidental one, will be postponed.

Many of the sections of the Motor Vehicle Act, on the other hand, make *driving* in a certain way unlawful, or place certain responsibilities on the *driver*. In addition, most of the violations of the act are misdemeanors, and we are told that in misdemeanors all participants are principals. The present question is, therefore, if a section of the Motor Vehicle Act has been violated, may someone other than the person behind the wheel be indicted for the violation? The answer is yes, under certain circumstances. The cases which have reached appellate courts involve hit-and-run driving, reckless driving, drunken driving, and speeding, although there is no reason why the doctrine should not be applied to other violations.

A. Hit-and-Run Driving

Hit-and-run driving may be a felony or may be a misdemeanor in this State, depending on whether it is a person or property which is injured. In the event of an accident the statute places certain duties on the driver of any vehicle involved in the accident: to stop his vehicle at the scene of the accident, to give his name and address, to render assistance, to report the accident, etc. (These duties will be considered in detail in a later section.) A number of cases have reached the appellate courts in other jurisdictions in which there has been an attempt to hold the owner of the vehicle also, although he was not driving the vehicle at the time of the accident. No such case seems to have reached the Supreme Court of North Carolina. But see *State v. Newton and West*, 207 N.C. 323, 177 S.E. 184 (1934).

Perhaps the leading case is one from Virginia, *James v. Commonwealth*, 178 Va. 28, 16 S.E. (2d) 296 (1941). In that case the defendant, who lived in Danville, invited Bertha May Smith of that city to take a ride in his automobile. They drove to several places in Virginia and North Carolina, drinking wine and beer rather freely and rather frequently. At about eight o'clock that night the defendant permitted Bertha May Smith to drive while he sat at her right on the front seat and apparently went to sleep. He was awakened by a jar and by glass cutting him in the face. The young lady said, "I believe I killed a damn man back there." He saw the car strike another man but permitted Bertha May Smith to continue to drive until she reached her home, after which he took the wheel and drove the car to his own house.

Three separate indictments were brought against him for hit-and-run driving, it appearing that the car had at some time struck a third man also. He was convicted in all three cases. The Supreme Court of Virginia reversed on procedural grounds but was clearly of the opinion that a conviction would be proper in at least two of the cases, liability being predicated, not on the way the car was being driven, since he was asleep at the time of the first accident and did not know how it was being driven, but on the duties imposed on the driver by the statute, which he, as the person authorized to control the car, should have seen were performed, to do certain things *after* the accident. Only in the third case, where he did not know that an accident had taken place, was the court of the opinion that he could go free.

B. Reckless Driving

The cases involving reckless driving where there has been an attempt to hold someone other than the person behind the wheel are surprisingly few. Again the best case comes from a sister jurisdiction, in this case South Carolina.

In *State v. Davis*, 88 S.C. 229, 70 S.E. 811 (1911), the dedendant was the chauffeur of Dr. Edward F. Parke of Charleston. On one Saturday evening he was instructed to take the car to the garage and lock it up. Instead, he drove it to a restaurant (the evidence suggested that it was also a "blind tiger") where he met two of his friends. When they left the restaurant about midnight the defendant said, "We will take a little spin down the road," to which the others answered, "All right." Edward Johnson, the driver of a horse and wagon, heard them coming, saw them "wobbling from side to side of the road," and pulled all the way over onto a trolley track running beside the road in order to avoid them. Nevertheless they struck and demolished the wagon, knocked the occupants out without injuring them seriously, and demolished the car. There was evidence that Davis, the chauffeur, was not driving at the time.

They were all indicted on several counts, including one of reckless driving, and convicted. Davis appealed, but the Court affirmed the judgment, saying, "The testimony shows that the three defendants agreed to take the automobile out on the highway for a ride, and at that time Louis Davis was driving. Whether Davis or Smith was driving at the moment of the collision was not vital. Davis may have been instructing or aiding Smith, a novice, to run the machine, or Davis alone may have been engaged in

manipulating it, but if the three defendants agreed to so use the machine in their joint enterprise, it was of no consequence which particular one was at the steering wheel."

Again in the case of *Story v. United States*, 57 App. D.C. 3, 16 F. (2d) 342; *cert. denied* 274 U.S. 739, 47 Sup. Ct. 576, 71 L. Ed. 1318, a case from the District of Columbia which involved homicide as a result of reckless driving, the court said, "If the owner of a dangerous instrumentality like an automobile knowingly puts that instrumentality in the immediate control of a careless and reckless driver, sits by his side, and permits him without protest so recklessly and negligently to operate the car as to cause the death of another, he is as much responsible as the man at the wheel."

C. Drunken Driving

The situation has recently arisen in North Carolina with respect to drunken driving. In *State v. Gibbs*, 227 N.C. 677, 44 S.E. (2d) 201 (1947), very few of the facts are given, but it appeared that the driver of a truck was "highly intoxicated"; that the owner, who had also had something to drink, was in the truck with him; and that the truck had been driven some thirty or forty miles from a point in Burke County to the point where it was stopped by the officers. A partially filled half-gallon container of white liquor was found inside. The *owner* was convicted of drunken driving, and the Supreme Court found no error in this conviction, the court pointing out that there was no evidence that he was too drunk to know what was going on, and that during a thirty- or forty-mile drive he had had ample opportunity to find out the driver's condition and to stop him from driving. The court was careful to point out the differences between this case and *State v. Creech*, 210 N.C. 700, 188 S.E. 316 (1936), a manslaughter case in which the owner was so drunk he did not know when he and the driver had left an inn, where they were going, or even that the driver had taken a drink. It also pointed out the differences between this case and *State v. Sherrill*, 214 N.C. 123. 198 S.E. 611 (1938), another manslaughter case in which, according to the court's interpretation, the owner had permitted the driver to go off on a jaunt of his own, and hence had in effect relinquished control of the car, even though he was in it at the time of the accident.

D. Speeding

There are also a few early cases from other jurisdictions in which the owner, who was not behind the wheel, was held guilty of speeding. *Commonwealth v. Sherman*, 191 Mass. 439, 78 N.E. 98 (1906); *People v. Colon*, 31 N. Y. Cr. R. 159, 85 Misc. 229, 148 N.Y.S. 321 (1914). These cases involve municipal ordinances, but the principle would seem to apply to a violation of the speed section of the Motor Vehicle Act as well.

From the foregoing cases it appears that, when the automobile law is violated, it is often possible to indict someone in the car, other than the driver, for the violation involved. In order to secure a conviction it is necessary to show (1) that the other person was on a joint enterprise with the driver, or that he was the owner or otherwise entitled to control the operations of the car; and (2) that he knew that the driver was in some way incapacitated or knew about the specific violation and either directed it or in some way acquiesced in it.

When the principle is so well established, why are there so few cases in which someone other than the driver is indicted? Perhaps it is just because it has seldom been the practice to do so; perhaps it is because of the difficulty of proving that the owner or other person in control of the car knew about the violation and acquiesced in it; perhaps it is because juries and even judges might be reluctant to convict an owner of drunken driving, for instance, if he was not driving and perhaps had never taken a drink in his life.

A word should be said at this point about spasmodic violations. An owner or other person in control of an automobile may not be able to anticipate nor be in any way responsible for spasmodic violations of the automobile law by someone who is driving his car. As was said in the case of *James v. Commonwealth, supra*, ". . . the owner of the automobile is entitled to control its operation. Such owner, riding with a driver to whom he has temporarily surrendered the operation of the car, may or may not be criminally responsible for a single act of recklessness resulting in injury or death to a third party. An accident may happen in a split second, too quickly for the owner to exercise this right of control."

III.

WHAT IS A STREET OR HIGHWAY?

Most of the situations which we shall have to consider involve operating a vehicle, riding, or walking on the streets or highways of North Carolina. In so far as statewide regulation is concerned, little, if any, distinction is drawn between urban streets and rural highways, although, of course, municipalities have additional authority over the one but not over the other. The General Assembly of 1947, in G.S. 116-44.1, extended the operation of the motor vehicle laws to the streets, alleys, and driveways on the campuses of the University of North Carolina, and an earlier statute (G.S. 20-139) extended the penalties for drunken driving to wilfully operating a motor vehicle "over any drive, driveway, road, roadway, street or alley upon the grounds and premises of any public or private hospital, college, university, school, or any of the state institutions, maintained and kept up by the State of North Carolina, or any of its subdivisions, while under the influence of intoxicating liquors, opiates, or narcotic drugs." Otherwise, the violations with which we shall be concerned will be violations on a street or highway.

What, then, is a street or highway? *Black's Law Dictionary* defines a street as "an urban way or thoroughfare" and a highway as "a free and public road, way or street; one which every person has the right to use." The Motor Vehicle Act defines them both together as "the entire width between property lines of every way or place of whatever nature, when any part thereof is open to the use of the public as a matter of right for the purposes of vehicular traffic." G.S. 20-38 (cc). This is hardly a definition, but may keep us from forming too restricted a definition. What it means is that the regulations contained in the statute extend in their operation to the entire width of the right of way and are not confined to those portions of the right of way on which travel ordinarily takes place.

What about a sidewalk? In *State v. Perry*, 230 N.C. 361, 53 S.E. (2d) 288 (1949), the defendant was indicted for operating a motor vehicle on the highway while under the influence of intoxicating liquor. The evidence disclosed that the defendant was just leaving a filling station, where he had hit the gas tank, and was stopped at about the time he entered the street. The judge told the jury that if they found that he was drunk he would be guilty even if he was stopped while he was still on that part of the sidewalk which vehicles used in going in and out of the filling station. He was convicted under that charge. The Supreme Court found no error in the conviction, saying that under the definition in the Motor Vehicle Act the sidewalk was part

of the highway. Earlier civil cases cited in the concurring opinion of Mr. Justice Barnhill suggest that the same rule should be applied to the grass plot or tree space on certain streets between the sidewalk and the curb (*Gettys v. Marion*, 218 N.C. 266, 10 S.E. (2d) 799 (1940)) and to an island or parkway in the center of the street (*Spicer v. Goldsboro*, 226 N.C. 557, 39 S.E. (2d) 526 (1946)).

For roads constructed prior to June 1, 1948, the ordinary right of way was sixty feet, each side-line being thirty feet from the center of the highway. For roads constructed after that date, the ordinary right of way is one hundred feet. In addition, the State Highway and Public Works Commission may acquire additional width on curves, and there may also be local variations, provided the variations are marked by signs on the ground. *General Ordinances of the State Highway and Public Works Commission*, 1949, §23. Sometimes the State Highway and Public Works Commission develops, for the time being, only part of the right of way into lanes for traffic. It is clear that the Motor Vehicle Act applies to the lanes and to the shoulders, but does it apply to the area beyond the shoulders? Theoretically yes, and it seems that the act might well be enforced in roadside parking areas and other locations open to traffic within the right of way. Logically it applies to the roads and fields within the right of way also, but the difficulty of establishing in court the date when the road was constructed, and hence the limits of the right of way, the possibility that it departs from the usual rule at that place, and the firm conviction of juries that such areas are not part of the highway suggest the desirability of making arrests in these areas only when the public safety is seriously endangered.

Suppose the defendant in *State v. Perry, supra*, had been stopped on the filling station grounds before he got to the sidewalk at all; suppose he had been driving on an athletic field (not a "street, alley or driveway") on one of the campuses of the University of North Carolina; Suppose he had been operating an automobile, other than drunk, on the driveways of a hospital, school, or state institution; suppose he had been in a parking lot, a trailer camp, a truck transport terminal used by more than one company, a drive-in theatre? In all of these places motor vehicles are likely to be operated, and all might, for some purposes, be considered "public places." If driving not in accordance with the Motor Vehicle Act takes place in one of these places, may the driver be arrested for violation of the act? The answer is no. The owner, under G.S. 20-170, and probably irrespective of that statute, has the right to lay down rules or conditions within the terms of which such places may be used, but violations of those rules are not violations of the act. They might be trespass, or the driver might be arrested for malicious injury to property, assault, public drunkenness, public nuisance, or some other crime, if he commits it, but not for a violation of the Motor Vehicle Act.

In some areas, such as the outer banks, the right of way over State, government, or privately owned land is so ill-defined that it is extremely difficult to say whether the motor vehicle laws do, or do not, apply.

Of course, so long as a man stays on any portion of his own property to which the public does not have access as a matter of right, a field or cartway, for instance, he may speed, or drive drunk or in any other manner, as he pleases, without being a violator of the act.

IV.

WHERE ON THE HIGHWAYS MAY YOU DRIVE?

When a right of way exists the right of the traveling public is to use that entire right of way, and generally speaking the way itself may not be obstructed nor the right to use it be abridged or interfered with. This does not mean, however, that the legislature or other duly constituted authorities may not lay down limitations as to where, within that right of way, all vehicles, or all vehicles of a particular type going in a particular direction, may drive at a particular time. Wise regulations increase rather than diminish the total usability of a right of way. It is the purpose of this section to point out some of the limitations which the statute lays down as to where, within the right of way, a person may drive.

20-146

A. Driving on the Right-Hand Side of the Road 20-147

20-148

Contrary to the custom in England, it has long been the practice in this country for the man with the horse and buggy, or his successor, the motorist, to pass on the right all vehicles going in a direction opposite to his own. Some of you may remember the old jingle as to what to do when meeting a vehicle:

> Turn to the right as the law directs
> For such is the rule of the road;
> Turn to the right whoever expects
> With comfort to carry life's load.

This jingle applied only to meeting a vehicle, however, and for many years it was permissible for the motorist, except when meeting a vehicle, to drive on any portion of the highway which he might choose.

By a law which went into effect on July 1, 1927, however, it was made mandatory, except on one-way streets, to drive on the right-hand side of the road at all times. As among vehicles, slow-moving ones were required to stay as near to the right-hand edge or curb as possible.

An interesting situation arose in the case of *State v. Toler*, 195 N.C. 481, 142 S.E. 715 (1928). On December 2, 1926, the defendant, who was driving on the left-hand side of the road, ran down and killed a pedestrian. He was indicted for manslaughter, tried, and convicted. The judge had told the jury that the law was as set forth above. The Supreme Court held that the defendant had been prejudiced by the charge and was entitled to a new trial, because on December 2, 1926, it was perfectly legal to drive on the left-hand side of the road, although the law had been changed before the case was brought to trial. That a death proximately caused by a violation of this statute can be manslaughter, however, is shown by the case of *State v. Durham*, 201 N.C. 724, 161 S.E. 715 (1931), where a newsboy was run down and killed by an automobile which was driving, apparently, on the left. In that case the court said, in a quotation from *State v. Rountree*, 181 N.C. 535, 106 S.E. 669 (1921), which it used to express its opinion: "It is generally held that where one is engaged in an unlawful and dangerous act, which is itself in violation of a statute, intended and designed to prevent injury to the person, and death ensues, the actor would be guilty of manslaughter at least."

It may be well to note that while *State v. Durham* was a criminal case, so that the element of contributory negligence was not involved, the newsboy who was killed was walking on his right-hand side of the road. The law requiring a pedestrian to walk on the side of the highway to his left was not passed until 1935 (Public Laws, Chapter 311, Sec. 60(d)), although it was suggested but not proved in *State v. Toler, supra*, that there was already an ordinance of the State Highway Commission to that effect.

The rule requiring a vehicle to stay at all times on the right applies to the whole vehicle. It is, apparently, a violation if the trailer part of a tractor-trailer combination strays

to the left, even though the tractor stays on its side of the road. See *Gladden v. Setzer*, 230 N.C. 269, 52 S.E. (2d) 804 (1949).

There are at least three situations in which the rule we have been considering does not apply. If the highway is so narrow that there is only one lane that is regularly used for traffic it is all right to stay in that lane except when meeting another vehicle. If the right-hand side of the road is obstructed, or if for any other reason it is impracticable to use the right, it is permissible to use the left, subject to such limitations as may be imposed by officers or highway signs. If the motorist behind desires to overtake and pass a vehicle in front, it is permissible for him to pull to the left in order to do so, subject to certain restrictions to be considered in another section.

Perhaps a fourth situation should be added, the law with respect to which has been developed by the courts, and mostly in civil cases. If a sudden emergency arises the driver is afforded a certain leeway of judgment which may involve driving temporarily on the left-hand side of the road. In *Woods v. Freeman*, 213 N.C. 314, 195 S.E. 812 (1938), for instance, the defendant's truck was being driven south on the right-hand side of the road and was approaching the plaintiff's car, which was going in the opposite direction. Two men were engaged in a fist-fight on that shoulder of the road to the right of the driver of the truck. Just before the truck reached the point where the fight was taking place one of the men disengaged himself and ran out into the path of the truck. The defendant's driver, in an effort to avoid the man, pulled to the left and hit the plaintiff's car. Though the case turned upon other grounds, the court was clearly of the opinion that under the circumstances the act of the defendant's driver in pulling to the left did not in any way constitute negligence. To the same effect, see *Ingram v. Smoky Mountain Stages, Inc.*, 225 N.C. 444, 35 S.E. (2d) 337 (1945).

Skidding presents a similar situation. The law with respect to it is not covered by the statute, and again it has been developed by the courts in civil cases. Even the best drivers find that their cars skid occasionally. Business necessity or personal emergency may require the operation of a car in the kind of weather in which skidding is likely, and a trip undertaken under the most favorable weather conditions may conclude under those which are most precarious for driving. Therefore the courts hold that skidding, even though it involves driving temporarily on the left or breaking another of the rules of the road, does not in and of itself constitute negligence (*Hoke v. Atlantic Greyhound Corporation*, 227 N.C. 412, 42 S.E. (2d) 593 (1947)), and that a jury is not justified in drawing an inference of negligence from the fact of skidding alone. *Springs v. Doll*, 197 N.C. 240, 148 S.E. 251 (1929). Of course if there is other evidence of negligence the courts do impose liability (*Waller v. Hipp*, 208 N.C. 117, 179 S.E. 428 (1935)); *Butner v. Whitlaw*, 201 N.C. 749, 161 S.E. 389 (1931), and sometimes they will seize on rather slight evidence, in addition to the skidding, in order to do so. *Williams v. Thomas*, 219 N.C. 727, 14 S.E. (2d) 797 (1941).

1. One-way streets

Local authorities clearly have power to establish one-way streets (G.S. 20-169), and of course on such streets the rule with respect to keeping on the right-hand side of the road does not apply.

2. Laned highways

The section of the statute we have just been considering, G.S. 20-146, inferentially, and the section on turning at intersections, G.S. 20-153, definitely, assume that there may be more than one lane of traffic moving in a particular direction on an ordinary highway at a given time. The section limiting the privilege of passing, G.S. 20-150, assumes that the State Highway and Public Works Commission may paint lines marking the center of the highway, at least on the crests of hills and on curves. In addition, the State Highway and Public Works Commission has the authority to erect signs and markers. G.S. 136-30. Nowhere, however, does the statute give express authority, either to the State Highway and Public Works Commission, or to local authorities, to divide a highway into lanes for traffic moving in the same direction, to indicate passing and no-passing areas with yellow lines, to establish traffic islands,[1] or to do any of several other things, now common practice, which may permit or direct the motorist to drive to the left of the center of the highway, to pass on the right, or to depart in other respects from the rules laid down in the act. Both the State Highway and Public Works Commission and cities and towns have certain general ordinance-making powers (G.S. 136-18(c) and G.S. 160-222), but both are forbidden, except in certain limited and enumerated situations, to make or enforce any rules or regulations contrary to the provisions of the Motor Vehicle Act.

Nevertheless, many of the traffic markings and local regulations which are now in use, although not specifically authorized by the act, are both beneficial to the flow of traffic and conductive to safety, and others are justifiable experimentation in an effort toward better traffic control.

If, then, a motorist disregards one of the markings, or violates one of the regulations not specifically authorized by the act, should he be arrested for the violation? The most one can say is that if the ordinance authorizing the marking or establishing the regulation was regularly adopted, the motorist would, in all probability, be convicted in the lower courts. Whether the Supreme Court would sustain the conviction depends on so many sections and so many possibilities of interpretation that it is impossible at this point to say what the outcome would be. Surely this is an area of the law where legislation ought to be brought as nearly up to date as practice.

B. Safety Zones 20-160

Where else upon a highway may one not drive besides on the left-hand side? One place is a safety zone, such as a municipality has authority to establish for the loading or unloading of busses and for other similar purposes. A safety zone is defined in the statute as "The area or space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone." Through such a safety zone a motor vehicle is not allowed to pass at any time.

C. Scenes Near Fires 20-157(b)

When there is a fire, a congestion of traffic may prevent firemen, policemen, and other people who ought to be there from getting to the fire, may preclude their fighting it effectively after they arrive, and may also increase the number of people endangered by falling walls and other hazards. The statute therefore makes it unlawful for the driver of any vehicle other than one on official business to follow at

---

[1] Local authorities are permitted to modify the method of turning at intersections by indicating with buttons, markers, or other signs within the intersection the course which vehicles shall follow. G.S. 20-153(c).

a closer distance than one block any fire apparatus which is traveling in response to a fire alarm. It also makes it unlawful to drive or park within one block of the place where fire apparatus has stopped in answer to an alarm.

20-121

D. Closed Roads 136-26
160-200(31)

When a street or road is under construction, when it has been injured by rain, snow, or other climatic conditions, or when certain other situations exist which it is not necessary to enumerate here, the State Highway and Public Works Commission and local authorities within their respective jurisdictions have authority to close roads wholly or partially or to restrict travel upon them. They have, of course, the duty to put up appropriate signs. When the signs have been erected the public may use the roads only to the extent that the signs permit. G.S. 136-26 specifically prohibits willfully driving into new construction work and breaking down, removing, injuring, or destroying any of the barriers or signs.

E Too Close Proximity to the Vehicle in Front 20-152

Another portion of the highway on which one may not drive is that in too close proximity to the vehicle in front. The statute says that "the driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, with regard for the safety of others and due regard to the speed of such vehicles and the traffic upon and condition of the highway."

What is a "reasonable and prudent" distance in this connection? The cases do not say. In *Killough v. Williams*, 224 N.C. 254, 29 S.E. (2d) 697 (1944), a civil case, it was held that the plaintiff had not necessarily shown that he was guilty of negligence in following at a distance of about 40 feet another car which was itself driving at about 35 miles an hour. In *State v. Holbrook*, 228 N.C. 620, 46 S.E. (2d) 843 (1948), it was claimed that the defendant had violated this section, among others, although he was indicted for reckless driving. He was held guilty when it was shown that, on a clear day and on an open stretch of road, without turning to the left, he had run into the back of another automobile which was itself traveling at the rate of 45-50 miles an hour. Of course, what is reasonable depends on the road, the day, the traffic, and the speed of the vehicles involved, so that it is not to be expected that the courts would lay down any hard-and-fast rule which could be applied in every case.

1. Special regulation with respect to trucks 20-152(b)

Although the driver of an ordinary motor car is not permitted to follow another vehicle more closely than is reasonable and prudent, the statute lays down a specific rule for trucks to follow when they are traveling upon a highway outside a business or residential district. Under these circumstances they are not to follow one another at a closer distance than three hundred feet. This does not mean, however, that they are prohibited from overtaking and passing each other.

This particular regulation of trucks seems, upon first blush, to be severe. Of course, because of their size and weight, it is dangerous to be followed too closely by a truck. On the other hand, the restriction does not apply to following a passenger car but only to following another truck. The possibility of a quick stop with air brakes by the truck in front may be one explanation of this. Probably, however, the principal reason for the enactment was to prevent trucks from forming into cordons which it might be impossible for the ordinary motorist to pass at all.

The provision is not easy to enforce, because truck drivers are inclined to say, "I was just starting to pass." If, however, the officer can testify that the truck had been following closely for a considerable distance, a jury would perhaps not be quick to draw the inference of an unexecuted intention to pass.

V.

HOW FAST MAY YOU DRIVE?

If Queen Cleopatra, in the year 40 B. C., desired to go anywhere by land she either walked or was carried or drawn by beasts of burden, slaves, for this purpose, being considered beasts of burden. If she desired to go anywhere by water she was either rowed or carried by the wind. If George Washington, eighteen hundred years later, desired to go anywhere by land, he also either walked or was carried or drawn by beasts of burden. If he desired to go anywhere by water, he also was either rowed or carried by the wind. Since then the history of transportation has been in large part a history of increasing speed, and the history of the regulation of transportation involves inevitably a history of regulations concerning speed.

In the case of *Kolman v. Silbert*, 219 N.C. 134, 12 S.E. (2d) 915 (1940), the Supreme Court of North Carolina said that the speeding statute and the reckless driving statute "constitute the hub of the Motor Traffic Law around which all other provisions regulating the operation of automobiles revolve." The two statutes are very closely related. In a tremendous proportion of all automobile cases either the one or the other has been violated. Nevertheless, under the decisions, a person may be guilty of a violation of one without being guilty of a violation of the other, so that it is important to know just what each provides. As we shall see, an exhaustive explanation of the reckless driving statute is difficult, since the statute itself is brief and the matter often left to the determination of the jury under a charge doing little more than quoting the statute and applying it cursorily to the facts in the case. In addition, the opinions of the court are often terse, not to say cryptic. The speeding statute, however, is much more detailed and the opinions construing it much more elaborate. A considerable number of the principles underlying the automobile law, therefore, will be explained in connection with the statute concerning speed.

A. Standards or Rules

There are at least three ways in which speed may be regulated. One is to lay down a *standard*, and say that no one may drive more rapidly or more slowly than is reasonable and prudent under the circumstances then existing. Another is to lay down a *rule* or *set of rules* and say that under such and such circumstances nobody is to drive above or below a particular rate. A third is to work out some sort of combination of the two, and say that nobody is to drive more rapidly (or perhaps more slowly) than an ordinary prudent person would under the same circumstances, and then to fix certain maximum (and perhaps minimum) limits, the failure to observe which is a violation or prima facie a violation.

Although much of the early regulation by local authorities consisted entirely of rules, it is interesting and perhaps surprising to note that in North Carolina *all* of the statewide attempts at the regulation of speed have combined a standard with a set of rules. The Act of 1909 (Public Laws, Chapter 445, Sec. 9), for instance, which was the first state-

wide attempt to control the operation of motor vehicles, provided in part, "No person shall operate a motor vehicle upon a public highway at a rate of speed greater than is reasonable and proper, having regard to the traffic and use of the highway, or so as to endanger the life and limb of any person or the safety of any property, and shall not, in any event, while upon the highway, run at a higher rate of speed than . . . ." Here followed certain specific and mandatory limits which must not be exceeded. The "Uniform Act Regulating the Operation of Vehicles on Highways," which, in a form modified to meet local conditions, was first made a part of the law of the State in 1927 (Public Laws, Chapter 148), combined a standard with an absolute limit of forty-five miles an hour and a series of rules, the violation of which was prima facie unlawful. The Act of 1935 (Public Laws, Chapter 311) made a violation of the forty-five mile limit only prima facie unlawful also. The Act of 1939 (Public Laws, Chapter 275) restored an absolute limit, making it sixty miles an hour. The Act of 1947 (Session Laws, Chapter 1067) reduced the maximum limit to fifty-five miles and made all the limits absolute. At all times, though, in so far as state-wide regulation is concerned, it has been possible for a person to violate the standard, that is, to drive at a speed which was not reasonable and prudent, taking into consideration the conditions then existing, and to be arrested and convicted for it, without at any time violating any of the rules.

B. Present Limitations on the Rate of Speed 20-141

Without attempting to consider all the various combinations of standards and rules which have been embodied in our speed laws from time to time, it is well to proceed at once with a consideration of the present act.

1. The standard 20-141(a)

There is, first of all, a standard. "No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions then existing."

A violation of this standard is a violation of law and subjects the driver to criminal liability, even though a speed which is ordinarily lawful is not exceeded. Of course, the application of the standard in criminal cases is often difficult.

2. The rules 20-141(b) 20-218

In addition to the standard set forth above, the law sets up certain additional limits, a speed beyond which is unlawful. These limits are:

a. In a business district—20 miles per hour
b. In a residential district—35 miles per hour
c. In other areas:
   (1) Passenger cars, regular passenger-carrying vehicles, and pick-up trucks of less than one ton capacity—55 miles per hour
   (2) Other vehicles, except school busses loaded with children—45 miles per hour
   (3) School busses loaded with children—35 miles per hour

This statute may seem clear, but there are a number of questions which may arise with respect to it.

First, *what is a business district* and *what is a residential district?* The statute defines a business district as "the territory contiguous to a highway where seventy-five per cent or more of the frontage thereon for a distance of three hundred (300) feet or more is occupied by buildings in use for business purposes," and a residential district as "the territory contiguous to a highway not comprising a business district, where seventy-five per cent or more of the frontage thereon for a distance of three hundred (300) feet or more is mainly occupied by dwellings and buildings in use for business purposes."

Just what territory is to be considered contiguous and just how is the distance to be measured? Is the area of an intersection to be included, or the area beyond an intersection? What about the area on cross streets? Those are just a few of the questions to which an attempt to interpret the statute gives rise. As so often happens, the law, in so far as it has been developed at all, has been developed in civil cases.

In *Mitchell v. Melts*, 220 N.C. 739, 18 S.E. (2d) 406 (1942), the defendant's truck killed the plaintiff's intestate as he was walking across a street which ran east and west near the point of its intersection with a street which ran north and south. The plaintiff alleged various acts of negligence including a violation of the speed laws. There was evidence that the truck was going at a speed too great for a business district but within the law if the district was residential. The plaintiff introduced evidence as to the type of buildings in all four directions from the intersection. If only the two sides of the block in which the accident took place were considered, the district was residential, and there was no liability. If the other blocks were taken into consideration, particularly the continuation of the same street beyond the intersection, the district was possibly business. There was a judgment of nonsuit, which the Supreme Court affirmed, saying, "Pertinent to situation in hand, as cities and towns are usually laid off into streets and blocks, and as intersections are not within the purview of the statutes, the particular blocks contiguous to the street on which an accident occurs may be said to properly comprise the territorial limits within which to measure the three hundred feet specified in the statute." It then went on to clarify its opinion that the condition of the same street across the intersection was not to be taken into account.

The importance of showing what the type of district was is demonstrated by the case of *Fox v. Barlow*, 206 N.C. 66, 173 S.E. 43 (1934). In that case the plaintiff, a child, broke away from its mother and started running across the street to meet its sister who was coming home from school. As it did so it was struck by the defendant's automobile and severely injured. It was only five and a half years old, so the question of contributory negligence was not involved. The defendant testified that shortly before the accident he had been running at twenty or twenty-five miles an hour; but that he had slowed down to about twenty miles an hour for an intersection. For the purposes of the case we may assume that he was running at between twenty and twenty-five. The plaintiff made some attempt, not very conclusive, to prove what the type of district was. The jury brought in a verdict for the plaintiff, and judgment was rendered accordingly. The Supreme Court reversed, however, saying that the defendant's liability depended on the type of district, and that "as we interpret the record, there is no definite evidence of the number of residences measured from the point of the collision or as to whether in a space of 300 feet the surface of the earth is mainly occupied by dwellings and buildings in use for business."

Suppose the place where alleged speeding occurs is within a city but the property contiguous to the highway at that point is completely undeveloped. As we shall see, the State Highway and Public Works Commission and local authorities have power, subject to certain restrictions, to fix speeds in areas within their respective jurisdictions. But suppose they have not done so, and the road is unmarked. Does the rule for residential districts or the rule for the open road apply? The present statute does not say, so presumably the motorist would be within his rights, if no special

hazard exists, in driving at a speed permitted on the open road. At least that seems to be the assumption of the court in the case of *Bobbitt v. Haynes*, 231 N.C. 373, 57 S.E. (2d) 361 (1950).

As we shall also see, when the State Highway and Public Works Commission or local authorities establish special speeds they must erect signs to show what those speeds are. This is not true with respect to business districts and residential districts. In those areas the law establishes the speed, irrespective of signs. It is proper, therefore, to arrest a man who is driving more rapidly than is permitted in those areas, even though the district is not marked.

Second, *what is the type of vehicle?*

The statute permits pick-up trucks of less than one-ton capacity to drive at the same speed as passenger cars. What does it mean by one-ton capacity? Does it mean the manufacturer's rated capacity, the capacity on the basis of which a license has been issued, or the weight of the load being carried at the time? Probably it means the manufacturer's rated capacity.

Nothing is said about panel trucks, yet they may be just as light as pick-up trucks of less than one-ton capacity. Presumably, however, since they do not fall within the ordinary conception of what a pick-up truck is, they must observe the lower speed.

If a passenger car or pick-up truck of less than one-ton capacity has a trailer or semi-trailer attached to it, what speed must it observe? The former statute made some clarification of this; the present statute makes none at all. A trailer or semi-trailer is a vehicle under the definitions contained in the Motor Vehicle Act. G.S. 20-38 (r). Therefore, if it is designed for carrying property it is neither a passenger car nor a regular passenger-carrying vehicle, so presumably the combination must observe the lower speed. But what about a house trailer? There is no law against riding in a house trailer. Whether it is a regular passenger-carrying vehicle is an open question. Until the matter is clarified by the legislature or decided by the courts, officers would do well to follow such administrative practice as their departments direct.

A school bus loaded with children is restricted to thirty-five miles an hour. Nothing is said about a school bus not loaded with children. Does that mean that it can drive sixty, seventy, or eighty miles an hour without violating the law? Hardly. It is, presumably, a regular passenger-carrying vehicle, even though empty at the time, and therefore restricted to fifty-five miles.

3. Duty to decrease speed 20-141(c)

The sections of the statute which we have considered are not all the regulations with respect to speed. The statute goes on to provide that the fact that the speed of a vehicle is lower than the foregoing limits shall not relieve a driver from the duty to decrease speed:

a. When approaching and crossing an intersection
b. When approaching and going around a curve
c. When approaching a hillcrest
d. When traveling upon a narrow or winding roadway
e. When special hazard exists because of
   (1) Pedestrians
   (2) Other traffic
   (3) Weather conditions
   (4) Highway conditions

It is to be noted that this section of the statute does not prescribe any particular speeds, not even at intersections. Instead, it says that speed shall be decreased as much as may be necessary "to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care." This practically makes it illegal to have an accident at any of these places, at least with another person who is himself using due care.

4. Additional provisions with respect to speed

The statute has, in addition, several provisions with respect to speed which apply only at certain specified locations or in certain particular situations; of these we shall consider here, not those provisions requiring a complete stop, but only those permitting a continuation of motion at a speed not greater than that specified.

a. *Speed while being overtaken by another vehicle* **20-151**

It is illegal to increase speed while being overtaken by another vehicle. Nothing is said in the statute about decreasing speed too abruptly while being overtaken, but there is a hazard in doing so, as the car behind may not have room to pull out. Nevertheless, the first is indictable; the second, standing alone, is not.

b. *Safety zones* **20-159**

When a railway, interurban, or street car has stopped, or is about to stop, for the purpose of receiving or discharging passengers at a point where a safety zone has been established, the driver of an overtaking vehicle must pass to the right of the safety zone, with due care for the safety of pedestrians and at a speed not greater than ten miles an hour.

There are now no street cars in North Carolina. In a few cities railways do still occasionally use the old street car tracks. This section is therefore not quite obsolete, although the opportunities of applying it are likely to be few.

We shall consider elsewhere another section of the statute with respect to passing railway, interurban, or street cars which are loading or unloading passengers at a point where there is no safety zone.

c. *Speed on mountain highways* **20-164**

The driver of a motor vehicle, while traversing defiles, canyons, or mountain highways, is required to keep his vehicle at all times under control. Additional requirements when driving in these localities will be considered later.

d. *Driving too slow* **20-141(h)**

Although the statute with respect to minimum speed was passed in 1927, it took a long time for the public to learn that there was such a statute on the books. Nevertheless, keeping traffic moving is one of the paramount duties of the State Highway and Public Works Commission and also a duty of the law-enforcing officer. All motorists have at one time or another been impeded in their reasonable progress by the slowness of the driver in front of them.

Even now the statute has no teeth. It provides merely that no one shall drive a motor vehicle so slowly "as to impede or block the normal and reasonable movement of traffic, except when reduced speed is necessary for safe operation or in compliance with law." Police officers are authorized to enforce the provision by direction to drivers. Only continued slow operation is a misdemeanor and not then unless the violation is wilful and coupled with a refusal to comply with the directions of an officer.

C. Vehicles to Which the Foregoing Rules Do Not Apply 20-145

The foregoing rules with respect to speed do not apply to:

1. Vehicles operated under the direction of the police when engaged in the chase or apprehension of violators of the law or of persons charged with or suspected of such a violation.

2. Fire department and fire patrol vehicles when traveling in response to a fire alarm.

3. Public and private ambulances when traveling in emergencies.

4. Vehicles operated by the duly authorized officers, agents, and employees of the North Carolina Utilities Commission when traveling in performance of their duties in regulating and checking the traffic and speed of busses, trucks, motor vehicles, and motor vehicle carriers which are subject to the regulations and jurisdiction of that commission.

Even these vehicles must be operated with due regard for safety. If the driver of one of them does not so operate it, he is not protected from the consequences of a reckless disregard of the safety of others. In *Glosson v. Trollinger*, 227 N. C. 84, 40 S.E. (2d) 606 (1946), for instance, the plaintiff, a deputy sheriff, was following at more than forty miles an hour in a residential district a truck which was violating the law. The road was wet and slick, and he knew that it made a right-angle curve at a distance of about 100 to 150 yards. He was about a car's length behind the truck. He pulled to the left in order to give the truck a signal with his siren but saw a car coming around the curve and dropped behind again. Suddenly the truck stopped in order to allow a car in front to make a left turn, and the officer ran into the rear end of the truck. He brought suit to recover for the damage to his automobile, but the jury found that he had been guilty of contributory negligence, and a judgment was signed giving him nothing. The Supreme Court found no error in the judgment, quoting the statute and saying that on the evidence it was quite proper to let the jury pass on the issue of his contributory negligence.

D. The Power of the State Highway and Public Works Commission and of Local Authorities to Modify, Alter, or Amend the Speed Laws

The geographical diversity of North Carolina is one of its most notable attributes. As a result, regulations which are appropriate for a broad highway in the East may not be appropriate for a winding road in the West. In addition, each hill, each curve, each bridge, and each crossing presents its own traffic problems and perhaps its own traffic hazards. Within certain fairly narrow limits defined in the statute, therefore, both the State Highway and Public Works Commission and local authorities have the power to make local modifications in the rules of the road. Beyond these limits they may not go. We shall consider here their powers only as they apply to speed.

1. Powers of the State Highway and Public Works Commission **20-141 20-144**

a. *General power*

The State Highway and Public Works Commission is the agency charged with the construction, maintenance, and control of the state highway system (G.S. 136-18), and for many purposes its authority extends, not only to rural highways and to county or township roads which it has taken over, but also, within cities and towns, to streets which have become a part of the system. On any part of the system of streets and highways under its control the State Highway and Public Works Commission may establish lower speeds than those authorized by the statute, provided two conditions are fulfilled. First, it must determine, on the basis of an engineering and traffic investigation, that the speed authorized in the statute is greater than is reasonable or safe under the conditions found to exist at that point on the highway; and second, it must erect signs giving notice of the lower speed. The regulation is effective when the signs have been posted.

Under the *General Ordinances* of the commission, §42, a blanket limit of 35 miles an hour has been adopted for areas where its investigations show that the ordinary speeds would be unsafe, and the Division Engineers, with the approval of the Chairman, are authorized to erect signs in those areas giving notice of the lower speed. Of course the existence of this ordinance does not preclude the commission from establishing other speeds in particular areas.

The commission is undoubtedly within its rights in delegating to its division engineers the task of ascertaining those areas where lower speeds are needed. Probably the recommendations of the engineers do not have the effect of law until they are approved by the full commission and some record is made of the commission's decision. Signs, even if they are erected before this is done, however, may have a wholesome deterrent effect on motorists.

b. *Special power with respect to bridges*

High speed on a bridge may not, in a particular instance, be unreasonable or unsafe for the traveling public but may be injurious to the structure itself. Therefore, if the State Highway and Public Works Commission finds, after an investigation, that any public bridge, causeway, or viaduct cannot safely withstand vehicles traveling at the ordinary speeds, it may establish a lower speed to be observed on the structure.

The commission may initiate such an investigation itself and must do so when requested by local authorities.

The regulation becomes effective when signs stating the maximum speed to be observed have been erected one hundred feet beyond each end of the structure.

c. *Power with respect to truck routes*

The State Highway and Public Works Commission has authority to establish and mark truck routes. While ordinary passenger vehicles are not prohibited from using these routes and are not restricted to the permissible speed for trucks while on them, the authority of the commission in this respect is mentioned here, because its exercise does affect the prevailing rate of traffic on these routes.

2. Powers of local authorities **20-141 20-169**

a. *Power at intersections*

At any intersection, local authorities may establish a lower speed than that authorized by the statute, provided they observe two conditions similar to those required of the State Highway and Public Works Commission; that is, that they determine, on the basis of an engineering and traffic investigation, that the speed authorized in the statute is greater than is reasonable or safe under the conditions found to exist at that intersection; and that they erect, at the intersection or upon its approaches, signs giving notice of the lower speed.

Local authorities seem to have this power even though the intersection involved is part of the state highway system.

b. *Power to lower speeds elsewhere*

On any streets which are not part of the state highway system and are not maintained by the State Highway and Public Works Commission, local authorities may, by ordinance, establish lower speeds than those authorized by the statute, but in no case lower than twenty-five miles an hour. Engineering and traffic investigations are not required, but signs must be placed giving notice of the lower speeds.

By a somewhat unusual provision, the penalty for the violation of an ordinance passed under the authority of this section is fixed, not by the ordinance, but by the statute itself. That penalty is a fine of not more than fifty dollars or a prison sentence of not more than thirty days.

Suppose there is a city school on a street which is part of the state highway system. Under the present statute it appears that the State Highway and Public Works Commis-

sion may lower the speed at that school but the city may not.

Suppose the school is on a street which is not part of the state highway system. The city may, by proper ordinance, lower the speed at the school, but not below twenty-five miles an hour.

c. *Power to raise speeds elsewhere*

On through highways, or on highways or streets where there are no intersections, or between widely-spaced intersections, local authorities may, by ordinance, establish higher speeds than those authorized by the statute, but in no case higher than fifty miles an hour. Engineering and traffic investigations are not required, but signs must be erected giving notice of the higher speeds.

d. *Power to regulate speed in parks*

On highways within their own public parks, local authorities have unlimited power to regulate the speed of traffic. The only requirement of the statute is that they erect appropriate signs.

E. Criminal Liability for Violations of the Speed Statute

Of what crimes may a person be guilty if he has violated the law with respect to speed? In considering that question it should be borne in mind that in a criminal case the State is under the necessity of proving all the elements of the crime and of proving them beyond a reasonable doubt.

1. Murder

If someone is killed by a motor vehicle, may there be an indictment for murder?

If the driver should run down a pedestrian intentionally, he might well be indicted for murder in the first degree. The same might be true if he should run his own car into a telegraph pole with the intention of killing a passenger. Although there have been cases in the lower courts in which such elements may have been involved, no case seems to have reached the Supreme Court where a person, because of a death resulting from the operation of an automobile, has been convicted of murder in the first degree.

No case seems to have reached the Supreme Court either where a person has been convicted of murder in the second degree on account of a death caused principally by excessive speed, although when we come to the section on drunken driving we shall consider a case involving certain additional elements where a person was so convicted.

2. Manslaughter

In a discussion of the automobile laws, however, we are not concerned primarily with persons who kill with premeditation and deliberation or even with malice. We are very much concerned with persons who drive negligently and carelessly with reckless and wanton disregard of the safety and rights of others. We have seen that a violation of the law with respect to driving on the left-hand side of the road which results in death may be manslaughter. The same is true of a violation of the law with respect to speed.

In *State v. McIver*, 175 N.C. 761, 94 S.E. 682 (1917), the defendant was operating a truck in the City of Asheville on the right-hand side of the road but at a rate of speed twice as rapid as that permitted by State law and four times as rapid as that permitted by local ordinance. This heinous rate was thirty miles an hour. An eleven-year-old boy, also apparently exceeding the speed limit, rode his bicycle down the steep grade of a narrow street and into the path of the defendant's truck, where he was run over by the truck and killed. The defendant was indicted for manslaughter, tried, and convicted. On appeal this conviction was upheld, the court saying, "It is, however, practically agreed . . . that if the act is a violation of a statute intended and designed to prevent injury to the person, and is in itself dangerous and death ensues, that the person violating the statute is guilty of manslaughter at least, and under some circumstances of murder." As to the fact that the deceased was himself exceeding the speed limit, the court said, quoting McClain's Criminal Law, "It is immaterial that there was negligence on the part of the deceased himself contributory to the result, the doctrine of contributory negligence having no place in the law of crimes."

In the case of *State v. Whaley*, 191 N.C. 387, 132 S.E. 6 (1926), the court pointed out that the excessive speed must be the proximate cause of the injury. In that case the defendant and two companions, Fred White and a man by the name of Green, were proceeding in a Ford automobile eastwardly along Bright Street in the residential section of the City of Kinston. The defendant was driving. Just after they passed East Street they had a collision with a truck which had recently been parked at an angle to the curb. The defendant's car was turned over two or three times and Fred White pinned under it and killed.

The evidence was conflicting as to whether the defendant had been driving at twelve to fifteen miles an hour or at thirty-five to forty miles an hour and also as to whether the truck had backed into or immediately in front of the car or whether the car had run into the parked truck. It was in evidence that it was about 7:30 in the evening and "that a storm was gathering at this time, dust was flying in the streets and rain was beginning to fall." The defendant was indicted for manslaughter. At the trial the judge instructed the jury that even if they found that the truck backed out in front of the car, if they also found that the defendant was violating the speed limit or any other phase of the traffic laws it would be their duty to render a verdict of guilty. The jury brought in such a verdict and judgment was rendered accordingly. On appeal the Supreme Court found the charge erroneous and reversed the judgment, saying, "Under this instruction, it will be observed, the guilt of the defendant is made to depend on whether 'the defendant was violating the speed limit or any other phase of the traffic laws' at the time of the collision, regardless of any other cause and without a finding that White's death ensued as a result of such violation or was occasioned thereby. It does not follow, as a necessary corollary, that the deceased met his death at the hands of the defendant, simply because he was driving in violation of some phase of the traffic laws, when it further appears if the defendant's version of the matter be accepted, that the proximate cause of the injury was the backing of the truck into the defendant's car."

3. Reckless driving

Since the statute with respect to reckless driving will be treated in some detail later, it is important to consider here only its relationship to the law with respect to speed. Our court has said that "culpable negligence in the law of crimes is something more than actionable negligence in the law of torts," and that "the simple violation of a traffic regulation, which does not involve actual danger to life, limb, or property, while importing civil liability if damage or injury ensue, would not perforce constitute the criminal offense of reckless driving." Dictum in *State v. Cope*, 204 N.C. 28, 167 S.E. 456 (1933). On the other hand, speed may be one element in the crime of reckless driving under the statute which provides, in part: "Any person who drives any vehicle upon a highway . . . without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving . . . ." G.S. 20-140.

In the case of *State v. Folger*, 211 N.C. 695, 191 S.E. 747

(1937), the trial court instructed the jury that the defendant would be guilty of reckless driving if he operated his automobile "without due caution and circumspection, *or* at a rate of speed or in a manner so as to endanger or be likely to endanger any person or property." The defendant was convicted, but the Supreme Court reversed the judgment saying, quite correctly, that the charge was not in accordance with the statute, and that where a defendant is charged with a statutory crime it is incumbent on the State to satisfy the jury beyond a reasonable doubt of all the facts which constitute the crime as defined by the statute. Logically, however, the decision seems to put the court in the position of saying that a person may drive at a speed or in a manner that is likely to endanger person or property but nevertheles do so not only with circumspection (which may be literally true) but also with caution.

Reckless driving and speeding are both misdemeanors, and the penalty for both is now the same. G.S. 20-140, 20-141, 20-180, and 20-176. On the other hand, conviction on two charges of reckless driving committed within twelve months makes the revocation of a license mandatory (G.S. 20-17), whereas conviction on two charges of speeding between fifty-five and seventy-five miles an hour is ground only for suspension for not more than six months. G.S. 20-16 and 20-19. Ever since the penalties were made the same, however, it has seemed about as easy to secure a conviction for reckless driving as one for speeding.

4. Assault

A person injuring another by driving at excessive speed may be indicted under still another provision of the law, not the automobile law this time. Our court has clearly held that if a person injures another through the illegal operation of an automobile he is guilty of assault and battery. *State v. Sudderth*, 184 N.C. 753, 114 S.E. 828 (1922). That case involved not only excessive speed but also driving on the left-hand side of the road, but the principle in either case would be the same. The court, quoting Greenleaf on Evidence, said that "a battery is the unlawful infliction of violence on the person of another, and may be proved by evidence of any unlawful touching of plaintiff's person, whether by the defendant himself or by any substance put in motion by him." Criminal negligence must of course be shown, not merely the kind of negligence which would form the basis for a civil action. *State v. Agnew*, 202 N.C. 755, 164 S.E. 578 (1932). The Supreme Court has held that charges of drunken driving, reckless driving, and assault may all be joined as separate counts in one indictment. *State v. Fields*, 221 N.C. 182, 19 S.E. (2d) 486 (1942).

5. Indictment for excessive speed only.

Even though there is no manslaughter, reckless driving, or assault, excessive speed is a violation of law in and of itself, and may be punished as such.

The case of *State v. Mills*, 181 N.C. 530, 106 S.E. 677 (1921), is interesting in this connection, because there the defendant was indicted for both assault and speeding. He was acquitted of the assault but held guilty on three different counts of excessive speed in three different types of district, the court saying that each was a separate and distinct crime.

One other aspect of the present statute should be noted. G.S. 20-141, the speeding statute itself, makes no distinction between speeding at from fifty-five to seventy-five miles an hour and speeding at over seventy-five miles an hour. G.S. 20-16, however, authorizes the Department of Motor Vehicles to suspend a license after one conviction of the latter, but only after two convictions of the former. If, therefore, it is desired to get an unusually speedy driver off the roads, it is necessary to make the charge and see that the judge enters the judgment with precise particularity.

VI.

MEETING A VEHICLE 20-148

We have seen that it was the custom, long before the enactment of the automobile law, for vehicles to pass on the right any vehicles which they met. The requirement that they should do so was incorporated into the first state-wide automobile statute (Public Laws of 1909, Chapter 445), and has always remained a portion of the law. The present statute reads as follows: "Drivers of vehicles proceeding in opposite directions shall pass each other to the right, each giving to the other at least one-half of the main-traveled portion of the roadway as nearly as possible." Of course that provision is now fortified by the requirement of driving on the right-hand side of the road at all times, except under the circumstances already discussed.

In *State v. Wooten*, 228 N.C. 628, 46 S.E. (2d) 868 (1948), the defendant John David Wooten and the defendant Webb Ward met on a curve at night, both driving at a rapid but lawful rate of speed, and ran head-on into each other in the middle of the road. The center of the road was not marked. Of the seven occupants of the two cars, two were dead by the time the officer got there, a third died the same night, and the other four were sent to the hospital. Both drivers were indicted for manslaughter and convicted. The Supreme Court cut through a great maze of conflicting testimony to sustain the conviction, resting its decision largely on the simple fact that neither car was on the right-hand side of the road.

A. Suppose the Vehicle You Meet Is Not on Its Right

If the vehicle you meet is not observing the law, and is on its own left-hand side of the highway, or in the center, there are four possibilities of physical action open to you: you can pull over further to the right; you can keep right on on the assumption that the other vehicle will pull back to its right; you can yourself pull over to the left; you can stop your car. Which is the wise thing to do and which does the law require? Ordinarily, the wise thing to do is to pull over to the right as far as possible. Unless there are exceptional circumstances, however, the law says that you may proceed directly on, assuming that the other car will pull back to its right.

In *Shirley v. Ayers*, 201 N.C. 51, 158 S.E. 840 (1931), a civil case, for instance, the plaintiff was riding as a guest in an automobile which was being driven at a rapid rate of speed down the center of the highway. The defendant, Ayers, approached from the opposite direction, driving on his right. Ayers saw the other car approaching in the center of the highway, but thinking it would pull back to the right he did not, until within about ten feet of it, pull out further in an effort to avoid it. The two cars collided, and the plaintiff was seriously injured. He sued the owners of both cars, but the court gave instructions under which the jury found that the defendant Ayers was not negligent. The Supreme Court found no error in the instruction, saying in part: "The driver of each automobile, who is himself observing the rule, has the right, ordinarily, to assume that the driver of the other automobile will observe the rule, and thus avoid a collision between the two automobiles when they meet each other. Neither is under a duty to the other to anticipate a violation of the rule by him. When the driver of one of the automobiles is not observing the rule, as the automobiles approach each other, the other may assume that be-

fore the automobiles meet, the driver of the approaching automobile will turn to his right, so that the two automobiles may pass each other in safety."

B. Suppose It Is Apparent That the Other Vehicle Cannot Pull Back to the Right

If it is apparent for any reason, however, that the other vehicle cannot pull back to the right, a different situation is presented. If the other vehicle is helpless or out of control, then it is the duty of the driver who is himself observing the law to pull even further to the right, or to do whatever else may be necessary in order to avoid a collision; and this is true, even though the other driver is helpless by reason of his own negligence.

The following civil cases illustrate the rule:

In *Taylor v. Rierson*, 210 N.C. 185, 185 S.E. 627 (1936), the car in which the plaintiff was riding skidded through the negligence of its own driver. The defendant Taylor, proceeding in the opposite direction, saw that it was out of control and had skidded to the left, but did not turn out further in order to avoid it, although he could have done so, since there was at the time a distance of seventeen feet between him and the curb. The lower court allowed recovery against both Taylor and the driver of the car in which the plaintiff was riding, and the Supreme Court did not find error in the judgment, even though Taylor was on his own side of the road.

A similar situation arises where the condition of the road itself prevents the other driver from pulling out. In *Brown v. Southern Paper Products Co.*, 222 N.C. 626, 24 S.E. (2d) 334 (1943), the plaintiff, Brown, was driving slightly to the left because the Highway Commission, in cleaning the road of snow, had left a bank which encroached somewhat upon the right. He entered the narrow portion of the highway first and collided with the defendant's car, driven by its agent, Hampton, who had entered later driving at a more rapid, though ordinarily lawful, rate of speed. The court allowed Brown a recovery against the defendant saying: "If Hampton did see and observe this condition which created a special hazard and made it impossible for two cars to pass in safety, or if by keeping a proper lookout he could have seen, it was his duty to slow down and if necessary to stop in order to yield the right of way within the narrow lane to plaintiff. If he failed to do so he was guilty of negligence which the jury may find was the proximate cause of the collision."

Conceivably, also, there may be circumstances where it would be the driver's duty to pass to the left. Most drivers have had the experience where circumstances seemed to compel them to do so. There does not seem to be a very good case on the point. In *Ingram v. Smoky Mountain Stages*, 225 N.C. 444, 35 S.E. (2d) 337 (1945), the defendant's agent pulled to the left to avoid a car which was approaching, not from the front but from a side road, and the court said it was not negligence for him to do so. In *Hoke v. Atlantic Greyhound Corporation*, 227 N.C. 412, 41 S.E. (2d) 593 (1947), the court said that the rule for a driver to follow in emergencies is the rule of the prudent man.

VII.

OVERTAKING AND PASSING A VEHICLE 20-149

If you want to pass another vehicle which is going in your own direction, the law has three requirements that you must observe in all cases, except as hereinafter noted. The first is that you shall pass on the left. The second is that you shall leave at least two feet between the cars when you pass. The third is that you shall not pull back to the right side of the highway until safely clear of the overtaken vehicle. There is a fourth requirement that applies except in business and residential districts. That is that you shall give audible warning with your horn or other warning device before attempting to pass. In a business or residential district it is not necessary to sound the horn. Apparently it is necessary elsewhere in a city if there is an area that is neither business nor residential. No provision is made for any signal to pass except an audible one.

A. Limitations on the Privilege of Overtaking and Passing 20-150

The driver of a vehicle, however, does not have the privilege of passing another vehicle at any point on the highway at which he may feel inclined to do so. The statute lays down four limitations on the privilege of passing by naming four situations in which it shall not take place. The first two apply to passing if it involves driving to the left of the center of the highway; the remaining two apply to passing in any event.

1. Vision obstructed

The driver may not drive to the left of the center of the highway for the purpose of passing unless the left side of the highway is visible and free of oncoming traffic for a sufficient distance to allow the passing to be done in safety.

2. Hillcrests and curves which have been marked

The driver may not drive to the left of the center of the highway for the purpose of passing upon any hillcrest or curve where a center line has been placed upon the highway by the State Highway and Public Works Commission and is visible.

This section inferentially gives the State Highway and Public Works Commission the authority to paint a center line on the highway at least at hillcrests and on curves.

3. Vision obstructed at hillcrest or curve

The driver may not pass another vehicle under any circumstances upon the crest of a grade or upon a curve where the driver's view along the highway is obstructed within a distance of five hundred feet.

4. Railway crossings and highway intersections

The driver may not pass another vehicle under any circumstances at a steam or electric railway grade crossing nor at the intersection of any two highways unless such passing is permitted by an officer.

It is to be noted that there is no provision of the statute prohibiting passing on a bridge.

A recent civil case from Greensboro shows that the fourth limitation above applies, irrespective of whether the intersection involved has been marked with a traffic light. In *Donivant v. Swaim*, 229 N.C. 114, 47 S.E. (2d) 702 (1948), the plaintiff, Mrs. Nellie Donivant, was standing on the sidewalk at the southwest corner of West Lee Street and Highland Avenue waiting for the trackless trolley. The defendant Swaim's truck was proceeding west on Lee Street and preparing to make a left turn. There was a conflict of evidence as to whether the driver gave a signal as to his intention to make the turn. The defendant Siler's car was following the truck and attempted to pass it at the intersection. He did not sound his horn, but apparently the district was residential, so that he was not required to do so. Siler's car came into contact with the truck, got out of control, and ran across the intersection and into the plaintiff. At the trial the judge told the jury that the section of the

statute we have been considering did not apply, as the city had neither placed a stop light nor stationed a police officer at the intersection. Nevertheless judgment was rendered against both defendants. On appeal the Supreme Court reversed, saying that the instruction had been clearly erroneous, and that the statute applied irrespective of the existence of a stop light or the presence of a police officer.[1]

B. Overtaking and Passing on Laned Highways

It will be noticed that nothing has been said in the discussion thus far about one-way streets and three- or four-lane highways. As we have seen, local authorities have the power to establish one-way streets. G.S. 20-169. It is at least arguable that the power to establish one-way streets involves the power to regulate passing on those streets, and that therefore, if the ordinance establishing a one-way street specifically permits passing on the right, it is permissible for the motorist so to pass. It might conceivably be argued that the very idea of a one-way street involves the idea of more than one line of traffic moving in a particular direction; that if there is more than one line of traffic the lines may move at different rates; that if the lines are moving at different rates the line on the right may move the more rapidly, and that therefore passing may take place on the right.

Local authorities have the power to change the method of turning at intersections. G.S. 20-153(c). They also have the power "to provide by ordinances for the regulation of traffic by means of traffic or semaphores or other signaling devices on any portion of the highway where traffic is heavy or continuous."[2] G.S. 20-169. There is also a provision requiring motorists to stop at stop lights erected outside cities when they are emitting a red or stop signal. G.S. 20-158(c). Finally, the State Highway and Public Works Commission has the authority to erect guide signals, warning signs, and numbered highway markers. G.S. 136-30. Otherwise there seems to be no authority in the statute to establish laned highways.

It might be that the State Highway and Public Works Commission could help its own authority in this respect by passing a general ordinance with respect to laned highways. G.S. 136-18 (c). Apparently it has not done so.[3] It might be that a four-lane street in a city could be considered two one-way streets laid out contiguously. It might be that some such term as "sign" or "signal" could be stretched to include lane markings. It might be that a motorist who failed to observe such markings would not be using due care, even though the authority to establish the markings was questionable. Actually, legislation in this field is so badly needed that very little more can be said on the subject.

VIII.

BEING OVERTAKEN AND PASSED 20-151

If a vehicle wants to pass you, and gives notice of its intention to do so by suitable and audible warning, it is your duty to give way to the right to let it pass. It is also your duty not to increase your speed until the passing has been completed.

The principle underlying this section of the statute is old and was embodied in a somewhat similar provision long before the passage of the statute requiring driving on the right-hand side of the road at all times. Since the enactment of the latter statute there is a question as to just how far the driver being overtaken has to "give way," since he is already on the right. Presumably he must give way as much as an ordinary prudent person would do in the light of conditions then existing on the road. This might mean keeping on in a perfectly straight line. It might mean pulling all the way off on the shoulder.

As we have seen, the statute says nothing about not slowing down too fast on hearing the warning. There is a hazard in doing so, but the statute does not make it criminal unless it becomes so dangerous as to amount to reckless driving.

The warning must be audible, and even then the right to pass is not necessarily instantaneous and absolute. In *Dreher v. Devine*, 192 N.C. 325, 135 S.E. 29 (1926), the plaintiff was attempting to pass a truck in front and sounded his horn. The driver of the truck did not hear it, as his own truck was making a great deal of noise, nor did he see the plaintiff's car. In attempting to pass under these circumstances the plaintiff ran off the road on the left. He instituted an action against the owner of the truck, but there was a judgment for the defendant in the lower court. On appeal the Supreme Court refused to disturb the judgment, saying that it was not the duty of the defendant to keep as constant a lookout behind as in front, and that, although it was his duty to yield the road to one desiring to pass, it was his duty to yield it only when he was apprised of the presence of the other vehicle and when conditions were such as to render a passage reasonably safe.

It may be interesting to note that the section we have been considering is the only provision in the law, except the speed statute, which prohibits racing.

IX.

INTERSECTIONS 20-155

If you are driving along a street or highway and come to an intersection with another street or highway it is important to know what your duties as a driver are at that point. We will assume for the moment that neither road is marked in such a way as to give the other dominance.

A. What Is an Intersection?

In the first place, it might be well to consider what an intersection is. For two streets to "intersect" is it necessary that they meet and cross, or is it sufficient if one comes to an end at the point of junction? The civil case of *Manly v. Abernathy*, 167 N.C. 220, 83 S.E. 343 (1914), is the leading authority for the proposition that it is not necessary that the streets meet and cross, but that if one leads off the other they are said to intersect. In that case the court said, and it applies equally under the present law, "We are clearly of the opinion that the Legislature intended to use the word in the sense of 'joining' or 'touching' or coming in contact with, or 'entering into,' and did not intend that the word 'intersect' should be so restricted in its meaning as not to protect pedestrians and other persons using a public street, at a point or space where another street comes into it, although it does not cross it." This broad interpretation was followed in *Fowler v. Underwood*, 193 N.C. 402, 139 S.E. 155 (1927), and has now been adopted into the statute,

---

[1] Only Swaim appealed. From the standpoint of civil law the court does not make it clear why an instruction unduly favorable to Siler should result in a reversal as to Swaim, when both had been found guilty of negligence. The same is not true of three- or four-lane highways.

[2] "Signaling devices" are not defined in the statute. A "traffic-control signal" is defined in the *Uniform Act Regulating Traffic on Highways*, published by the (federal) Public Roads Administration as "any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and to proceed." §19(b).

[3] See the *General Ordinances of the State Highway and Public Works Commission*, Raleigh, 1949.

where the definition is: "Intersection—The area embraced within the prolongation of the lateral curb lines or, if none, then the lateral boundary lines of two or more highways which join one another at any angle whether or not one such highway crosses the other." G.S.20-38(l).

The definition is still not very satisfactory. Apparently, since the term "highways" is used, private drives are not included. What about alleys? What about abandoned sections of a straightened road? The statute simply does not say. Apparently a public alley would be included. The abandoned section of a public highway might or might not be, depending on whether it was blocked, used as a private drive (see *Ingram v. Smoky Mountain Stages*, 225 N.C. 444, 35 S.E. (2d) 337 (1945), or, although abandoned by the State Highway and Public Works Commission, still open to the public as a matter of right for use by vehicular traffic. Even if the junction has been ascertained to be an intersection, its limits are not clear. If the roads come in at a curve, is the "prolongation" of their lateral boundary lines a straight line or a curve? If four or more roads come together like the arrows grasped in the eagle's talon on the Great Seal of the United States, is it possible to come in one and go out another without ever traversing the intersection at all?

B. Duties When Approaching an Intersection

1. Duty to slow down 20-141(c)

When you approach an intersection your first duty is to slow down. The present statute does not say that any particular speed is proper or improper in approaching and traversing intersections. The State Highway and Public Works Commission and local authorities within their respective jurisdictions may, after surveys, establish maximum speeds at particular intersections and give notice of those speeds by erecting appropriate signs. G.S. 20-141 (d) and (f). Irrespective of that, however, speed must be decreased sufficiently to avoid colliding with any vehicle which is legally on or entering the highway and is itself using due care.

Where a special hazard exists, a reasonable speed in approaching an intersection may be lower than where the intersection is free from such a hazard. In *Wooten v. Smith*, 215 N.C. 48, 200 S.E. 920 (1939), the defendant was approaching an intersection in his automobile as he went eastwardly on Williamson Street in the Town of Whiteville. A fourteen-year-old boy was approaching the same intersection on his bicycle, going southwardly on Madison Street, which was down hill. The view at the intersection was obstructed on the northwest corner by a retaining wall above which shrubbery was growing. The bicycle ran into the side of the defendant's automobile and the boy riding it was killed. The administratrix of the boy brought suit for his death and recovered a judgment. The Supreme Court reversed on other grounds but said that, although the automobile had the right of way, and although it had not been shown that it was exceeding a speed which would ordinarily be lawful, the trial court had been right in submitting to the jury an issue as to whether or not the defendant had been negligent in failing to keep a proper lookout and in approaching at too great a speed an intersection where the view was obstructed.

2. Duty to see that the intended movement can be made in safety 20-154

Tucked away in the section on signals to be given by the motorist is a provision which is so important that it will be mentioned separately here. That is, that the motorist at an intersection, or elsewhere on the highway, for that matter, before starting, turning from a direct line, or stopping, must first see that the movement can be made in safety.

The statute says "starting." That includes any starting, but the provision with respect to signals to which the phrase is attached seems to apply particularly to pulling from the curb into traffic.

Does "turning from a direct line" mean turning right or left, or does it include pulling from one traffic lane into another? Certainly before doing the latter the motorist should see that the movement can be made in safety. Whether he must also give a signal is not clear. See *State v. Ogle*, 224 N.C. 468, 31 S.E. (2d) 444 (1944).

3. Duty to give the correct signal 20-154

The motorist before starting (pulling from the curb into traffic), turning from a direct line, or stopping, must, if the operation of another vehicle will be affected by his movement, give a signal plainly visible to the driver of the other vehicle indicating the movement he intends to make. This signal may be given by the hand and arm or by a mechanical or electrical signal device approved by the Department of Motor Vehicles. It must be given by a mechanical or electrical device if the vehicle is constructed or loaded in such a way that the hand and arm signal cannot be seen both from the front and from the rear. The signal must be given during the last fifty feet the vehicle travels before making the movement. If it is given by the hand and arm, they must be extended from and beyond the left side of the vehicle, and the signals are as follows:

1. Left turn—hand and arm horizonal, forefinger pointing.
2. Right turn—hand and arm pointed upward.
3. Stop—hand and arm pointed downward.

In *Holland v. Strader*, 216 N.C. 436, 5 S.E. (2d) 311 (1939), the plaintiff was a passenger in an automobile en route to Chapel Hill to see a football game. There was a long line of cars approaching Chapel Hill from the west. The defendant's car was immediately in the front of the plaintiff's car, and both were traveling at the rate of thirty or forty miles an hour some two or three car lengths apart. Suddenly the defendant stopped his car because of a tie-up of traffic in front. He neglected to give the hand signal, and the plaintiff was injured in the resulting crash. The plaintiff recovered a judgment which the Supreme Court refused to disturb, saying that a violation of the section of the statute with respect to the giving of hand signals was negligence and would provide the basis for a recovery.

It is to be noticed that the signals are made by extending the *hand and arm* from the car. It is not a compliance to extend one faltering finger nor to raise the hand and arm inside the car. The hand and arm signal as described in the statute is, of course, completely ineffective in some situations, such as pulling into traffic from angle parking or from a parking place on the left-hand side of a one-way street.

In practice the Department of Motor Vehicles has been willing to pass almost any mechanical or electrical device of standard make. Perhaps it should publish a list of approved devices, as motorists find some of them very helpful, but others confusing.

The statute says that the signal must be given "during last fifty feet traveled." Does that mean throughout the time that the last fifty feet are being traveled or at any time, at the election of the motorist, while they are being traveled? Probably the legislators intended the former, but the ambiguity makes the enforcement of the provision difficult. In addition, in some of the mechanical and electrical devices the stop signal is operated by the brake. If the road is uphill, or if the vehicle, because of heavy traffic, has to

stop, and start, and stop again, the brake, and hence the signal, will almost inevitably not be operated continuously during the last fifty feet. In *Banks v. Shepard*, 230 N.C. 86, 52 S.E. (2d) 215 (1949), a civil case, the Supreme Court said that a bus driver who, in preparing to let a passenger alight, merely let the momentum of the bus die down and applied his brakes and so gave the signal, if at all, only during the last four or five feet, was not acting in compliance with the statute, even though the brake-signal device had been inspected and approved by the Utilities Commission.

If a motorist's movements are governed by a lane marking or a stop light, does he still have to give the signal? There is nothing in the statute that relieves him of the duty of doing so unless it might be said, probably without justification, that under those circumstances the other cars would not be affected by *his* movement.

The duty to give the signal is not absolute but applies only if there is another car or other cars that will be affected by the movement. In *State v. Lowery*, 223 N.C. 598, 27 S.E. (2d) 638 (1943), the testimony was somewhat conflicting, but apparently the defendant, on a Saturday night, in order to allow his companions to make an illegal purchase of intoxicating liquor, pulled off the highway to the left, in front of the walk to a house his companions pointed out to him. He was told to back up and go into the driveway of a garage which adjoined the house. He saw no cars approaching at the time and did not give a signal of his intention to back into the road. Before he had completed the movement, however, one C. C. Allison came from the direction in which the defendant had originally been headed, around a slight curve and over a slight crest, at a rapid rate of speed, and ran into the defendant's car while he was still partly on the highway. One of the defendant's companions died as the result of her injuries. The defendant was indicted for manslaughter, tried, and convicted, but the Supreme Court reversed, saying, among other things, that the defendant was under no obligation to give a signal if there was no car in sight at the time.

Perhaps the leading authority for this principle of law is the civil case of *Stovall v. Ragland*, 211 N.C. 536, 190 S.E. 899 (1937). In that case the plaintiff, proceeding at a reasonable rate of speed, was in the act of making a left turn into his own driveway. He had looked up and down the road, but seeing no car he had not given the statutory signal for turning. The reason he did not see the defendant's car was that it was approaching from the rear at a rapid rate of speed *on the left-hand side of the road*. If it had intended to pass it had given no audible signal of its intention to do so. There was ample room on the right in which it might have passed. The plaintiff brought suit for his injuries, but the trial court nonsuited his case on the ground that he was obviously guilty of contributory negligence. The Supreme Court reversed, saying that the defendant had violated the law in driving on the left and in failing to give a signal if it was his intention to pass, and that since the signal for a left turn is mandatory only if there is other traffic which will be affected by it, the plaintiff was not guilty of contributory negligence in failing to give the signal when he had looked up and down the road and seen no car.

C. Route to Be Followed 20-153

Unless local authorities decide otherwise, the person desiring to turn to the right at an intersection should approach the intersection in the lane for traffic nearest the right-hand side of the highway, and, in turning, should keep as near to the right-hand curb as possible. The person desiring to turn to the left should approach the intersection to the right of the center of the highway, but in the lane for traffic nearest the center, and in turning should go around the center of the intersection but as near to it as possible. Thus two cars approaching an intersection from opposite directions at approximately the same time, and each desiring to turn to the left, should keep to the right in passing each other. Nothing is said in the statute about the poor motorist who wants to go straight through. Presumably, since slow-moving vehicles are directed to keep as far to the right as possible (G.S. 20-146), and the motorist probably wants to get through as rapidly as possible, he will stick to the lane nearer the center, assuming that there are only two lanes for traffic moving in that direction. There seems to be nothing in the statute, however, which prevents him from continuing straight through from the right-hand lane.

Local authorities, within their respective jurisdictions, may modify the foregoing methods of turning at intersections, provided they indicate by buttons, markers, or other direction signs within an intersection the course to be followed by vehicles turning at that intersection. Two of the more frequent modifications of the usual methods of turning are allowing left turns without going around the center of the intersection and, at corners where left turns are likely to be delayed, throwing all through traffic into the right-hand lane.

Local authorities are undoubtedly authorized under this statute to initiate the more complicated procedures of traffic islands, but the statute does not mention them.

D. Right of Way

Suppose you are approaching an intersection and another car is approaching it also. If the cars are approaching from opposite directions and both desire to go straight ahead there is no point of conflict, that is, since each car is presumably driving on the right, there is no point at which a collision will take place if each car continues in the direction which it intends to take. The same is true if the cars are approaching from opposite directions and either or both desires to turn to the right. If, however, either car desires to turn to the left there is a point of conflict, that is, a point at which a collision will take place if both cars reach it at the same time. The same is true if one car is approaching the intersection desiring to go straight ahead and there is another car approaching from the right which desires to go in any direction, or one approaching from the left which desires to go in any direction except to its right. It is in order to avoid actual collisions at these and other points of conflict that the rules with respect to right of way have been devised. These rules affect, not the routes which vehicles shall take, since points of conflict are inevitable, but the precedence of vehicles in point of time in following their appropriate routes.

In this section we shall consider procedures where neither highway is dominant and there is no stop light and procedures where neither highway is permanently dominant but there is a stop light. The procedures where one of the highways is permanently dominant will be considered in the next section.

1. Right of way where neither highway is dominant and there is no stop light 20-155

If neither highway is dominant and there is no stop light there are two rules which must be observed.

a. Rule when one car enters the intersection first

If one car enters the intersection first, it may complete its movement, even though that movement involves a right

or left turn, and the other car must yield the right of way to it. This rule is subject to one qualification. If the vehicle which entered the intersection first desires to make a right or left turn, it retains its right of way to do so only if the driver has given a proper signal indicating the turn he wishes to make.

b. Rule when both cars approach the intersection at approximately the same time

If both cars approach the intersection at the same or approximately the same time, the car on the left must yield the right of way to the car on the right.

Suppose two cars are approaching in opposite directions, and one desires to make a left turn. The car desiring to make the left turn has thrown itself into the line of traffic approaching the other car from the left, and therefore must let the other car go first. *Piner v. Richter,* 202 N.C. 573, 163 S.E. 561 (1932).

Suppose two cars are approaching in opposite directions, one desires to make a left turn, and behind the other there is a long line of raffic. May the car desiring to make the left turn cut in ahead of the second car, or must it wait until the whole line has passed? The statute gives no clear-cut answer to this question. Theoretically the car desiring to make the left turn has the right of way, since it has reached the intersection first. However, the Supreme Court tells us that right of way is not an absolute right *(Jackson v. Browning,* 224 N.C. 75, 29 S.E. (2d) 21 (1944)), and as we have seen, G.S. 20-154 says that the motorist, before undertaking to make any turn, shall first see that the movement can be made in safety. Can the movement be made in safety if it is into a solid line of traffic? The right of way given by the statute, therefore, seems somewhat shadowy. As a practical matter the motorist in this position often cannot break into a line of traffic that is going straight through. He often, but not always, can follow a car that is turning to the right.

2. Right of way where neither highway is dominant but there is a stop light **20-169 20-158(c)**

As we have seen, local authorities have the power, within their jurisdictions, to establish stop lights at any point where traffic is heavy or continuous, and the State Highway and Public Works Commission inferentially has this power in rural areas, since failure to stop at a traffic light outside a city or town is made a misdemeanor. The State Highway and Public Works Commission also has power to erect guide signs, warning signs, and numbered highway markers, which shall conform as nearly as possible to the system used in other states. G.S. 136-30. Traffic lights do not seem to fall within these classifications. Nowhere in the statute is there any definition as to what a traffic light is, and nowhere is there a comprehensive provision assigning meanings to the various colors which are sometimes used.[1] If, therefore, a city or town wants to make a purple light mean "Go," and a blue light mean "Stop," there is apparently nothing in the statute to prevent it from doing so.

Having recourse, however, to custom, and to such publications as the *Uniform Act Regulating Traffic on Highways,* already referred to, and the *Manual on Uniform Traffic Control Devices for Streets and Highways,*[2] one learns that the colors ordinarily used, that is, green, yellow, and red, have certain widely-recognized meanings, whether they have those meanings in a particular community or not. One learns also that lights of those three colors, without more, have no effect on turning at intersections, but only on whether vehicles must stop or may proceed.

The ordinary meanings of lights of the three usual colors are as follows, in so far as they affect vehicles. Their meanings as they affect pedestrians will be considered later.

a. Green light

While the green light is on, vehicles facing the signal may proceed straight through or turn right or left but must yield the right of way to other vehicles which were lawfully in the intersection at the time the green light appeared.

b. Yellow light

When the yellow light is on, vehicles facing the signal are warned that the red or stop signal will follow immediately thereafter and that they must not be entering or crossing the intersection when the red or stop signal is exhibited.

c. Red light

While the red light is on, vehicles facing the signal must not enter the intersection and must remain standing until the green light reappears.

The meaning of the green signal is usually clear to motorists, but this meaning may, of course, be limited by signs notifying drivers that a particular turn is not permitted.

The use of a yellow signal after a red signal is no longer recommended. Formerly the yellow signal after a green signal required all motorists who could do so with saftey to stop. Now it does not so require, provided they can, with safety, clear the intersection before the red signal comes on. Of course the permitted movement may be modified by signs, as in the case of the green signal.

The red signal should mean stop and stop alone. Experiments in permitting a particular turn on a red signal standing alone have not been very successful. If a particular turn is to be permitted while the red signal is on, it should be indicated by a green arrow used in conjunction with the red signal.

3. Right of way where neither highway is dominant but there is a flashing red signal

A flashing red signal does not change the right of way at all. It means that the intersection is very dangerous, and that all motorists must come to a complete stop before entering it. Thereafter they may proceed according to the usual rules as to right of way.

4. Right of way where neither highway is dominant but there is a flashing yellow signal

A flashing yellow signal does not change the right of way at all, nor does it require motorists to come to a complete stop. It means that the intersection is dangerous, and that motorists may proceed, according to the usual rules as to right of way, but only with caution.

Confusion sometimes results from using both a stop sign and a flashing signal at a particular corner, particularly if the flashing signal is illuminated for only part of the day. Of course, when the signal is not working, the stop sign controls. When the signal is working, some sort of legislative enactment is needed to declare whether the signal takes precedence over the sign, or whether the sign modifies the right of way.

A special low penalty is fixed in the statute 20-158(d) for disregarding a stop light outside a city or town. This penalty is a fine of not more than ten dollars or imprisonment for not more than ten days.

---

[1] The sole provision of any kind seems to be G.S. 20-158(c), with respect to lights in rural areas, where the expression "red light or stop signal" is used. Even there one learns only from the context whether the terms are used as alternatives or synonyms.

[2] Washington, Public Roads Administration, 1948.

5. Special rule with respect to police vehicles, fire department vehicles, and ambulances 20-156(b)

At all intersections, however they are marked, the ordinary motorist must yield the right of way to police vehicles and fire department vehicles at all times and to either public or private ambulances when they are traveling on official business and are indicating that fact by sounding a bell, siren, or exhaust whistle. This provision does not, however, relieve the driver of such a vehicle from the duty to use due care, nor from liability if he exercises his right of way arbitrarily.

X.

SERVIENT HIGHWAYS 20-158

The State Highway and Public Works Commission and local authorities, in their respective jurisdictions, have the power to designate certain roads or streets as main traveled or through highways by erecting at the points where other highways enter them signs notifying motorists to stop.

Another section of the statute says that failure to stop shall not be considered contributory negligence per se in a civil action, and the Supreme Court has held, in a well-established line of cases, that if failure to stop is not, in a civil action, to be considered negligence on the part of a plaintiff (contributory negligence), then it cannot be considered negligence on the part of a defendant either. *Sebastian v. Motor Lines*, 213 N.C. 770, 197 S.E. 539 (1938); *Lee v Robertson Chemical Corporation*, 229 N.C. 449, 50 S.E. (2d) 181 (1948).

If, however, failure to stop, standing alone, is not even negligence in a civil case, but only evidence of negligence, can it be the basis of liability in a criminal case? In other words, can a person be arrested and convicted solely for failing to stop at a stop sign? The Supreme Court has noticed this discrepancy and commented on it (*State v. Satterfield*, 198 N.C. 682, 153 S.E. 155 (1930)), but has not decided one way or the other. We must assume, therefore, that, since it is a specific violation of the statute, an arrest may be made and a conviction can be had, whatever the policy of a particular police department may be about making arrests under these circumstances.

The case of *State v. Satterfield, supra*, is particularly interesting in this connection because there the defendant was indicted, not for failure to stop at a stop sign, but for manslaughter growing out of a wreck which occurred on the dominant highway close to the intersection. The defendant's failure to stop was established, and he was convicted in the lower court. The Supreme Court reversed, not on the theory that the defendant had not violated the automobile law, but on the theory that the statute was passed to enable the person entering from a servient highway to get a good view before entering a possibly hazardous situation, and that here, since the defendant had seen the situation but misjudged it, possibly because of the condition of the road and the weather, it had not been established that the failure to stop was the proximate cause of the accident. The case probably represents a reluctance on the part of the court to impose serious criminal liability on an omission which the civil law considers venial.

A violation of this section of the statute carries the same low penalty as failure to stop at a stop light outside a city or town, that is, a fine of not more than ten dollars or imprisonment for not more than ten days.

XI.

PRIVATE DRIVES 20-156(a)

The situation of a vehicle entering a public highway from a private drive is somewhat different. The driver of such a vehicle must yield the right of way to all vehicles on the highway approaching from either direction. On the other hand, there is no requirement that he bring his vehicle to a complete stop.

XII.

RAILROAD CROSSINGS

If you come to a railroad grade crossing there are a number of situations which may arise and several statutory provisions which apply to them.

A. Provisions That Apply Irrespective of Markings

Although some provisions with respect to railroad grade crossings apply only if the crossings are marked in a particular way, there are others that apply irrespective of markings. We shall consider first the provisions that apply under all circumstances and later those that apply only if there are markings.

1. Duty to slow down 20-141(c)

In the case of *Hinton v. R.R.*, 172 N.C. 587, 90 S.E. 756 (1916), the court had up for construction a statute which fixed the maximum speed limit at which one might approach "an intersecting highway" and was under the necessity of deciding whether the statute had any application to a railroad grade crossing. The court held that a railroad was such an "intersecting highway" and that the statute did apply. Although that particular statute has been repealed, it seems probable that the court would make a similar interpretation of the statute, already considered, which requires slowing down "when approaching and crossing an intersection," and that the law therefore is that in approaching and crossing a railroad grade crossing one must at least slow down. The general principle, also, which requires the keeping of a proper lookout would apply equally here.

2. Duty to keep to the right 20-147

Railroads are specifically included in the statute which requires keeping to the right at intersections, so that at the intersection of a highway with a railroad grade crossing one must keep to the right. Of course the provision does not apply if the right half of the intersection is obstructed or impassable.

3. Duty not to pass 20-150(c)

Railroads are also specifically included in the statute which prohibits passing at intersections, although, as at other intersections, such passing may be permitted by a traffic or police officer.

B. Obedience to Warning Signals 20-142

Formerly railroad grade crossings were often protected by gates which were lowered upon the approach of trains. Now electrical and other signal devices have largely superseded the earlier method of protecting crossings. Whichever method is used, the law provides that when a clearly visible and positive signal of the immediate approach of a train or railroad car is given the motorist must bring his vehicle to

a complete stop before he proceeds to traverse the intersection.

C. Observance of Stop Signs **20-143**
20-158

The State Highway and Public Works Commission, by express enactment, and probably local authorities also, under the statute dealing with through highways, have power, within their respective jurisdictions, to designate those railroad grade crossings at which vehicles using the highways shall be required to stop. When a crossing has been so designated it is then the duty of the *railroads* to erect signs notifying drivers. After the signs have been erected it is unlawful for the driver of any vehicle not to stop within fifty feet but not closer than ten feet from the tracks before crossing the intersection. School trucks and passenger busses are required to stop at all railroad grade crossings, not merely at those that are marked.

Webster's New International Dictionary defines a grade crossing as "a crossing at grade," and defines at grade as "on the same level." As used in the statute, however, the term grade crossing apparently includes every crossing that is not by overpass or underpass, whether the point at the railroad tracks is higher or lower than the rest of the highway.

We have noted that the duty to put up the railroad signs is placed by the statute primarily on the railroads. Nothing is said about the type of signs which they must put up. Presumably the State Highway and Public Works Commission (and perhaps local authorities) can, and the fact is that they often do, put up the signs themselves. There is, however, no difference in the legal effect of the signs, whether they are put up by the railroads or by the State Highway and Public Works Commission, or whether they are standard highway signs or not, provided they are erected with legal authority.

This section of the statute has a provision, similar to that in the section with respect to stopping at through highways, which provides that failure to stop shall not be considered contributory negligence per se in an action against the railroad. It does not, like that provision, carry a lower penalty for its violation than the other sections of the act. The penalty for the violation of this section is the smaller of the two usual penalties provided in the act, that is, a fine of not less than ten nor more than fifty dollars, or imprisonment for not more than thirty days.

XIII.

WINDING OR MOUNTAINOUS ROADS 20-164

If you are driving on a winding or mountainous road, of course you first duty is to use such care as is demanded by the condition of the road, the visibility along it, and the state of the traffic. The statute makes mandatory on mountain roads what, of course, should be the situation on all roads: that is, that you keep your vehicle under control. It also requires that you drive, not only on the right, but as near the right-hand side of the highway as is reasonably possible. There are, in addition, certain other provisions that deserve separate treatment.

A. Duty to Decrease Speed **20-141(c)**

As we have already seen under the speed statute, it is the duty of a person when traveling on a narrow or winding roadway to decrease speed as much "as may be necessary to avoid colliding with any person, vehicle, or other conveyance on or entering the highway in compliance with legal requirements and the duty of all persons to use due care."

In *Brown v. Southern Paper Products Co.*, 222 N.C. 626, 24 S.E. (2d) 334 (1943), the civil case we have already referred to in the section on meeting and passing other vehicles, the negligence of the defendant, on the basis of which the plaintiff hoped to impose liability, was that he entered a portion of a mountain road, which, on account of the snow, had become practically a one-way lane, at a speed that would not ordinarily have been unlawful, but was too great in view of the conditions existing at the time. The alleged negligence of the plaintiff, on the basis of which the defendant hoped to escape liability, was that he was driving on the left. The trial court nonsuited the plaintiff, but the Supreme Court reversed, saying that from the evidence offered it appeared that the defendant had violated this and other sections of the statute in entering a narrow section of the highway without decreasing speed and without keeping a proper lookout for the hazards ahead, and that the plaintiff had not shown himself guilty of contributory negligence as a matter of law in driving on the left, when he had shown that there was a snowbank on the right.

B. Duty to Sound Horn **20-164**

When the motorist is "traversing defiles, canyons or mountain highways" he must, if his view is obstructed within a distance of two hundred feet, give audible warning of his approach with a horn or other signal device.

C. Duty Not to Coast **20-165**

If the motorist is going down grade it is illegal for him to coast with his gears in neutral.

In *Dillon v. Winston-Salem*, 221 N.C. 512, 20 S.E. (2d) 845 (1942), another civil case, a car under the direction of Henry Lee Dillon was being driven down hill by a boy fourteen years of age who had a driver's license but had misrepresented his age in order to obtain it. Although the gearshift was apparently in gear, the boy had his clutch out, so that the gears were disengaged. The street had a dead end, and when the car reached it it crashed into a railroad embankment. Henry Lee Dillon and one other passenger were killed and the other occupants severely injured. The plaintiff, Dillon's administratrix, brought suit against the city and the railroad company on the ground that the embankment was illegally constructed and negligently maintained. The trial court refused even to let the case go to the jury, and the Supreme Court affirmed, pointing out that since the car was being operated under Dillon's direction he was responsible for the acts of the driver of the car, and the driver of the car had been negligent because he was coasting with his gears in neutral. Apparently the court assumed that coasting with the clutch out was as much a violation of the statute as coasting with the gearshift disengaged.

XIV.

STOPPING ON THE HIGHWAY

A vehicle stopped on the highway is one of the greatest hazards to traffic, as is shown by the large number of cases

reaching the Supreme Court which involve stopped vehicles. It is like a stump in the woods. You may bark your shins on it, and there is no telling what will emerge from behind it. On the other hand, there are many situations in which the motorist using the highways is required to stop, and many others in which he may find it necessary or convenient to do so.

There is no general provision in the statute prohibiting stopping on the highway. There are numerous provisions prohibiting or limiting "parking" or "leaving" a vehicle "standing" "whether attended or unattended." Just what is the difference? In *State v. Carter*, 205 N.C. 761, 172 S.E. 415 (1934), the Supreme Court said, with respect to the word "park," "This word is in general use, with reference to motor driven vehicles, and means the permitting of such vehicles to remain standing on a public highway or street, while not in use." And in *Peoples v. Fulk*, 220 N.C. 635, 18 S.E. (2d) 147 (1942), the court said, "The clause 'whether attended or unattended' limits the meaning of the word 'park' as well as of 'leave standing.' The two terms, as thus limited, are synonymous. A vehicle which is left standing is parked and a vehicle which is parked is left standing. Neither term includes a mere temporary stop for a necessary purpose when there is no intent to break the continuity of the 'travel.'"

We shall consider first the situations in which parking or leaving a vehicle standing is prohibited and second the situations in which the stopping is so temporary as not to be called parking or in which parking is, for one reason or another, permitted.

A. Prohibited Parking

1. Parking on pavement **21-161**

Except in business and residential districts, no person may park a vehicle or leave it standing on the paved, improved, or main traveled portion of a highway if it is practicable to park the vehicle off the pavement or outside the improved or main traveled portion. This applies whether the vehicle is attended or unattended. Even if it is not practicable to park the vehicle on the shoulder or entirely off the highway, it must not be left standing upon the main traveled portion unless there is at least fifteen feet of the main travelled portion opposite the vehicle left open for the free passage of other vehicles and unless a clear view of the vehicle may be obtained from a distance of two hundred feet in each direction.

2. Parking on bridges **21-161**

No parking is permitted on a highway bridge.

3. Parking in front of private drives **20-162**

No parking is permitted in front of private drives.

4. Parking in front of fire hydrants **20-162**

No parking is permitted within fifteen feet in either direction of a fire hydrant. Local authorities may, by ordinance, decrease this distance.

5. Parking near entrances to fire stations **20-162**

No parking is permitted within fifteen feet in either direction of the entrance to a fire station.

6. Parking near intersections **20-162**

No parking is permitted within twenty-five feet of the curb lines of an intersection. If there are no curbs, no parking is permitted within fifteen feet of the intersection of the property lines.

B. Permitted Parking

1. Parking at edge of highway when 15-foot lane is left open for traffic **20-161**

Except for the provisions we have considered, there is no statutory prohibition against parking on the highway. In other words, in an area where a parked car can be seen for two hundred feet in each direction, if it is practicable to use the shoulder, it is perfectly legal to park on the shoulder; if it is practicable to get only part of the car off on the shoulder, it is perfectly legal to park partly on the shoulder and partly on the main traveled portion of the highway; if it is not practicable to use the shoulder at all, it is perfectly legal to park on the main traveled portion of the highway, always provided at least fifteen feet of the main traveled portion is left open for the free passage of other vehicles. This is true at night as well as in the daytime. The Supreme Court has even said that it is permissible to park on the left shoulder (*Webb v. Hutchins*, 228 N.C. 1, 44 S.E. (2d) 350 (1947). See also *State v. Lowery*, 223 N.C. 598, 27 S.E. (2d) 638 (1943), even though it is obvious that the motorist must have been driving on the left-hand side of the road in order to get to the left shoulder.

What has been said about the permissibility of parking on the highway should be qualified in three respects. First, the State Highway and Public Works Commission has an ordinance against parking on the highway under any circumstances for a longer period than ten hours. *General Ordinances of the State Highway and Public Works Commission*, §11. Second, in parking at night certain lights are required. The requirements in this respect will be considered elsewhere, in the chapter on the necessary equipment of vehicles. Third, there occurs at two places in the statute (G.S. 20-124 (b) and G.S. 20-163) a somewhat antiquated provision that if the vehicle is left unattended the brakes must be set, the motor stopped, and the wheels turned to the curb or side of the highway.

2. Parking in business and residential sections **20-161**

In business and residential sections the ordinary prohibitions on parking do not apply. Thus, pulling a vehicle up to the curb in a business or residential district and leaving it standing there is not a violation of the statute, even though the street is paved to the curb, and hence the parking does take place on the paved portion of the highway. *Hammet v. Miller*, 227 N.C. 10, 40 S.E. (2d) 480 (1946).

We shall consider later the special authority of cities and towns with respect to parking.

3. Disabled vehicles **20-161(c)**

The statute specifically provides that when a vehicle is disabled while on the paved, improved, or main traveled portion of a highway in such a manner and to such an extent that stopping and leaving it there temporarily cannot be avoided, such action is permissible. A special proviso adds that if a truck, trailer, or semi-trailer is disabled upon the highway, the driver must display a warning signal at a distance of not less than two hundred feet to the front and rear[1] for as long a time as the vehicle is disabled. In the daytime the signal is a red flag; at night, a flare or lantern.

---

[1] The statute says "or rear," meaning, apparently, that the distance must not be less than two hundred feet either to the front or to the rear. The wording is very unfortunate, since it seems to leave a loophole by which truck-drivers might escape liability.

When is a vehicle disabled? The statute does not go into particulars, so that it has been necessary for the courts to do so, in at least one criminal case and several civil cases.

In *State v. McDonald*, 211 N.C. 672, 191 S.E. 733 (1937), a truck loaded with lumber had a blowout on the road at night. The driver pulled the truck out on a muddy shoulder on the right-hand side of the road as far as he thought was safe, to within about two feet of a deep fill, leaving the left wheels about three or four feet on the paved surface of the highway. He went to telephone his employer, leaving the lights on the truck burning. Finding that his employer could not send help that evening, he spent the night with a friend at a filling station. Upon his return to the scene the next morning he found that his lights had gone out and that one William Odell Price had had a collision with the unlighted truck and had been hit by the lumber and killed. He was indicted for manslaughter, tried, and convicted, but the Supreme Court reversed, saying that the stopping was permissible and that the driver of the truck had done everything that it was possible for him to do under the circumstances.

It was after the accident in this case had taken place that the statute was passed making it mandatory for a disabled truck to set out flares.

In *McKinnon v. Motor Lines*, 228 N.C. 132, 44 S.E. (2d) 735 (1947), the Supreme Court did not have to pass on the question, since the case turned on other grounds, but the trial court had been of the opinion that stopping entirely on the highway to switch to an auxiliary gas tank when trouble had developed with the gas feed line did not constitute negligence.

In *Lambert v. Coronna*, 206 N.C. 616, 175 S.E. 303 (1934), on the other hand, the defendant stopped his Pontiac on the hard surface at night to fix a puncture. There was evidence that the shoulder of the road was wide enough that he might have drawn out upon it. There was also evidence that his tail light was not burning. The plaintiff, driving a Chrysler, had had to dim his lights for an approaching car and, without seeing the defendant's car, crashed into it from the rear. He brought suit for his injuries and recovered a judgment. This the Supreme Court affirmed, saying, "No one testified the Pontiac was disabled in any manner except by a flat tire, or that it could not have been stopped so as to leave fifteen unobstructed feet for the passage of the Chrysler."

In *Burke v. Carolina Coach Co.*, 198 N.C. 8, 150 S.E. 636 (1929), where the defendant had stopped on or partly on the pavement to wipe off his windshield, the Supreme Court again did not have to pass on the question, but the opinion is entirely consistent with the idea that this was negligence.

4. Temporary stopping

"Starting and stopping," said Mr. Justice Barnhill in *Peoples v. Fulk*, 220 N.C. 635, 18 S.E. (2d) 426 (1942), "are as much an essential part of travel on a motor vehicle as is 'motion.' . . . The right to stop when the occasion demands is incident to the right to travel." There are many situations in which the statute requires the motorist to stop: at a stop light; at the entrance to a dominant highway; at a marked railroad crossing; to allow a vehicle with the right of way to precede; to avoid hitting a pedestrian; upon the approach of a police or fire department vehicle; in the event of an accident. There are many other situations in which a motorist may desire to stop and in which *at the time of the stopping* no danger may be apparent from doing so.

Suppose a bus wants to stop to take on a passenger. Suppose it wants to stop to let a passenger off. Suppose the road in front is blocked by other cars which have had a wreck. Suppose there are injured persons who require first aid. Suppose a wrecker wants to pull a disabled car off the road. Suppose a politician wants to stick a campaign poster on a telegraph pole. Suppose a milkman, merchant, or bootlegger wants to make a delivery. Do these and many other kinds of temporary stopping constitute such "parking" or "leaving" a vehicle "standing" as to constitute a violation if they take place on the main traveled portion of a highway?

The Supreme Court, in civil cases, has answered the first three questions and given a strong intimation about the third. The rest, for the present, remain unanswered in North Carolina. Of course it should be remembered that a type of stopping that would ordinarily be permitted might become illegal if it was done without taking into consideration the condition of the road, the weather, and the traffic, in other words, without due care, as if a signal for stopping was required and not given.

Subject to those qualifications, it is perfectly legal for a bus to stop on the main travelled portion of a highway for the purpose of taking on a passenger, *Peoples v. Fulk, supra.*

Subject to those qualifications also, it is perfectly legal for a bus to stop on the main traveled portion of a highway to let a passenger off. *Leary v. Bus Corporation*, 220 N.C. 745, 18 S.E. (2d) 426 (1941).

In *Stallings v. Transport Co.*, 210 N.C. 201, 185 S.E. 643 (1936), the defendant's truck with trailer attached stopped on the right-hand side of the road behind two cars which had become interlocked in a collision, around which several people were working. The evidence was conflicting as to whether it was there a fraction of a minute or several minutes. A Chevrolet behind, the driver of which was blinded by the lights of a car approaching in the opposite direction, ran into the trailer and both the driver and his guest were killed. In civil actions against the owner of the truck for damages on account of both their deaths the trial court entered judgments of nonsuit which the Supreme Court affirmed, saying that there was no evidence that the defendant had been negligent in stopping under those circumstances.

In *Beck v. Hooks*, 218 N.C. 105, 10 S.E. (2d) 608 (1940), the defendant's truck came to a halt, partly on and partly off the pavement, behind a Plymouth automobile which had lost a wheel and overturned diagonally across the road. The driver and his companion, Seward, heard cries of distress and went to help the occupants out of the Plymouth. The driver stayed to help the men in the Plymouth get it off the road while his companion went to set out flares. Before the flares could be set the car in which the plaintiff was riding ran into the truck and the plaintiff was injured. The plaintiff brought suit for his injuries and recovered a judgment. The Supreme Court reversed. It did not have to say whether this defendant's driver was negligent in leaving his truck partly on the hard surface, as the case turned on another point, but it did say, "In this connection one who is required to act in the face of an emergency is not held by the law to the wisest choice of conduct, but only to such choice as a person of ordinary care and prudence, similarly situated, would have made."

	20-134
	20-162
C. Power of Local Authorities	20-169
	160-200(11)
	160-200(31)

We have seen that the ordinary requirements with respect to parking on the highway do not apply in business and residential districts. Instead, cities and towns are, by

several provisions of the statutes, specifically authorized to regulate parking within their jurisdictions. Under the general principles of law governing municipal corporations the regulations must have some relevance to the evil sought to be remedied (*Rhodes, Inc. v. Raleigh*, 217 N.C. 627, 9 S.E. (2d) 389 (1940)) and must be reasonable. Subject to those limitations the power of cities and towns in this respect is very broad. The following examples of specific statutory provisions and Supreme Court decisions are illustrative merely and by no means include all the possible regulations which cities and towns may make with respect to parking. Thus cities and towns may provide by ordinance that no lights need be displayed on parked vehicles when there is sufficient light on the highway to reveal a person within a distance of two hundred feet. G.S. 20-134. See *Hammett v. Miller*, 227 N.C. 10, 40 S.E. (2d) 480 (1946). They may prohibit parking on certain sides of certain streets where the conditions of traffic justify the prohibition. *State v. Carter*, 205 N.C. 761, 172 S.E. 415 (1934). They may establish parking meters and parking lots. G.S. 160-200 (31). They may reduce below fifteen feet the distance from fire hydrants within which vehicles may be parked. G.S. 20-162.

D. Duties of Officers **20-161(b)**

The statute specifically provides that whenever a peace officer finds a vehicle illegally parked on the highway he may require the driver to move the vehicle to a position permitted by the statute or he may move it himself.

If the peace officer undertakes to move the vehicle himself he must, of course, use due care in doing so. When he leaves it he should see that the brakes are set and, if it is dark, that proper parking lights are left on. If the vehicle can be properly parked in the vicinity in compliance with the statute and with safety to the vehicle and to the traveling public it should ordinarily be so parked. If it cannot be, it is the duty of the officer to get it to a place where it can be legally and safely parked. If this means having it towed in, the statute, by implication, but by implication only, authorizes the officer to have it towed in. No personal liability attaches to the officer provided he does what is reasonable under the circumstances and uses due care in doing it.

If a peace officer has to have a vehicle towed in and stored, who is responsible for the towing and storage charges? There is nothing in the statute to suggest that the peace officer is responsible for them personally. The garage owner of wrecker would apparently have a lien on the automobile for his storage charges. G.S. 20-77 (d). It is not clear that he would for his hauling charges. He would, however, probably have a civil claim for them against the owner. The statute needs further amplification and clarification with respect to this whole subject.

XV.

BACKING

There is no provision in the statute which prohibits backing on the highway. It is therefore impossible to arrest and convict a driver for backing; it is possible to arrest and convict him if, in backing, he violates the section on reckless driving or some other provision of the law. In *Newbern v. Leary*, 215 N.C. 134, 1 S.E. (2d) 384 (1939), the Supreme Court said, "It is not negligence *per se* to back a car upon a highway . . . . Such an act is not prohibited by statute nor in itself by any principle of the law of negligence. It is a matter of common observation that the practice is habitual amongst drivers of automobiles and other vehicles—in towns and cities for the purpose of backing into a selected parking space, and in sections more remote for the purpose of returning to a point inadvertently passed by. And it is equally the practice, in so doing, to use that side of the street or highway which the driver is required to use in going forward." In *The Law of Automobiles in North Carolina* (3rd ed.; Charlottesville: The Michie Co., 1947), 1, 536, the author says, "The general rule is that the backing of vehicles on the highway is not prohibited by law. But manifestly even an act as to whose lawfulness no doubt can be entertained may be rendered unlawful if done in an improper or inappropriate way." And in *Hall v. Bain*, 222 N. C. 375, 23 S.E. (2d) 330 (1942), the leading civil case on the subject, the court said, "No reasonable person would move along the highway in reverse for any length of time, and in the wrong traffic lane as a preferable mode of travel."

In the latter case the defendant, in a truck, passed a driveway he desired to enter and then started backing up in order to be in a position to pull in. The defendant and one Joe Williams, who was with him, told the officers that they looked back and saw no one approaching. Just after the truck started backing, however, it was run into from behind by a boy on a bicycle, who was thrown to the ground, run over by a wheel of the truck, and killed. The boy's administrator started suit against the driver of the truck. At the close of the plaintiff's evidence the trial court dismissed the case as of nonsuit, but the Supreme Court reversed, saying that "the requirements of prudent operation are not necessarily satisfied when the defendant 'looks' either preceding or during the operation of his car. It is the duty of the driver of a motor vehicle not merely to *look*, but to *keep an outlook* in the direction of travel," and that the jury should have had an opportunity to say whether this obligation had been complied with.

XVI.

PEDESTRIANS

What is a pedestrian? The statute does not say. It does, however, define a vehicle as "every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon fixed rails or tracks." It then goes on to say that for the purposes of the act bicycles shall be considered vehicles and shall be subject to all the provisions of the act except those which by their nature can have no application. G.S. 20-38 (ff). A subsequent section says that persons who, on the highway, are riding animals, or are driving animals which are drawing vehicles, are likewise subject to all applicable provisions of the act. G.S. 20-171. What about a man leading a horse, a cow, a sheep, a dog? What about a cripple riding in a cart which he pushes with his one good leg? What about a child on a tricycle? What about a man pushing a hand organ with a monkey on a leash?

In *Lewis v. Watson*, 229 N.C. 20, 47 S.E. (2d) 484 (1948), one Henry Gordon Law was pushing a handcart westwardly on the right-hand side of Highway No. 29 leading from Charlotte to Gastonia. He was in the midst of heavy traffic and was run down from behind and killed by a truck tractor owned by the defendant Troy Whitehead Machinery Company and driven by the defendant Watson. The circumstances were considerably in dispute. Law's administrator brought suit for his death, but judgment was rendered for the defendants in the lower court. The Supreme Court reversed, partly because of errors it is not necessary to consider here, partly because the court read to the jury the first forty-one lines of the old speed statute, which the Su-

preme Court said was unintelligible and likely to confuse unless the pertinent parts were picked out and applied, and partly because the trial court did not point out to the jury the rights and duties of pedestrians, the Supreme Court being of the opinion that the man behind the push cart was a pedestrian.

From the statute and the foregoing case it therefore appears that anyone proceeding under human power, except on a bicycle, is a pedestrian.

A. Where on the Highways Pedestrians May Walk

The general rule is that pedestrians, like motorists, have a right to use any portion of a street or highway. As in the case of motorists, however, certain restrictions have been laid down which limit this right in the interest of the use of the highway by all. At the present time three such restrictions apply to the use of highways by pedestrians.

1. Walking on the left-hand side of the road — 20-174(d)

The statute provides that when a pedestrian is walking along the *traveled portion* of a highway he must walk on the extreme left-hand side. In addition, the *General Ordinances of the State Highway and Public Works Commission* contain a provision as follows: "It shall be unlawful for pedestrians to walk along highways except on the left-hand side thereof." §22. Apparently the ordinance, at least, is broad enough to require walking on the left-hand side of the road at all times.

In a case in the United States Circuit Court of Appeals, *Arnold v. Owens*, 78 F. (2d) 495 (1935), concerning an accident in North Carolina, there was a very interesting situation in which the pedestrian deserted the left shoulder for the right because the walking was better and he expected to turn right at the next cross-road, and in which the ordinance of the Highway Commission was introduced into evidence. The court, however, in reversing a judgment for the defendant, did not discuss the questions of how bad the left-hand side of the road would have to be before a pedestrian would be privileged to use the right, nor of how far from the intersection he might cross and still be using due care in walking a brief distance on the right.

2. Crossing when adjacent intersections are both marked by stop lights — 20-174(c)

When adjacent intersections are both marked by stop lights, a pedestrian must cross at one of the intersections or, if there is a marked cross-walk between, at the cross-walk; he may not cross elsewhere in the block.

The method adopted by the statute of designating the areas in which "jaywalking" shall be prohibited is, at best, a haphazard one. It does prohibit the practice in certain highly-congested business and residential districts. There may, however, be locations where traffic is just as heavy beyond the last stop light as between stop lights and other locations of great hazard to pedestrians where there are no stop lights at all.

It might be mentioned also that a marked cross-walk between intersections is a dangerous asset for pedestrians, as motorists may not know about it and may not be prepared to slow down or stop.

3. Hitchhiking — 20-175

When a person, while hitchhiking, is in the process of soliciting a ride, he must stand at the side of the road; he may not stand on the main traveled portion of the highway.

B. Right of Way

1. Right of way at intersections where traffic is being directed by an officer — 20-155(c)

At an intersection where traffic is being directed by an officer, it is, of course, the duty of a pedestrian to obey the directions of that officer.

2. Right of way at intersection where there is a stop light — 20-155(c), 20-175.2, 20-172

At an intersection where a traffic light is in operation a pedestrian must cross in obedience to the light. There are, however, many local variations in the interpretation of traffic signals as they affect pedestrians, and the statute has absolutely nothing to say as to what the signals shall mean to pedestrians. The following interpretation, therefore, is taken directly from the *Manual on Uniform Traffic Control Devices for Streets and Highways*, to which reference has already been made. Many officers will find that this is not the interpretation required by their local ordinances.

a. *Green light*

"Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk unless directed otherwise by a pedestrian signal."

b. *Yellow light*

"Pedestrians facing such signal are thereby advised that there is insufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right-of-way to all vehicles."

c. *Red light*

"No pedestrian facing such signal shall enter the roadway unless he can do so safely and without interfering with any vehicular traffic or unless a separate Walk indication is shown."

In addition to the foregoing signals many cities and towns now have a separate set of signals for pedestrians, which are often timed differently from the signals for vehicles, and which bear the legends "Walk" and "Don't Walk" or "Wait."

The 1949 General Assembly added a provision that if a blind or partially blind pedestrian who is carrying a white cane or being guided by a seeing eye dog is partially across an intersection at the time the light changes he shall continue to have the right of way until he has completed his crossing.

3. Right of way at intersections where there is no stop light and at marked crosswalks elsewhere — 20-155(c), 20-173, 20-175.2

At an intersection where there is no traffic light a pedestrian has the right of way over motorists, provided he stays within the limits of the marked crosswalk, if there is one, and if there is none, then within the limits of the regular pedestrian crossing. This rule applies, not only in business and residential districts (G.S. 20-155 (c)), but elsewhere on the highway as well. G.S. 20-173. See *Gaskins v. Kelly*, 228 N.C. 697, 47 S.E. (2d) 34 (1948). It is the duty of motorists to slow down in order to yield pedestrians this right of way, and even to stop, if necessary. If one vehicle has stopped in order to yield the right of way to a pedestrian another vehicle may not pass it at that point.

The same rule applies at marked crosswalks between intersections.

If, at an intersection, there are no marked cross-walks, the "regular pedestrian crossing" is ascertained by extending the sidewalk lines, if there are sidewalks. G.S. 20-155 (e). If there are none, the limits of the pedestrian crossing

are more vague. Presumably, however, if the pedestrian is to retain his right of way, he must go straight across one of the highways, at or very near the intersection. In *Gaskins v. Kelly, supra*, where the pedestrian was apparently killed at about the center of the intersection, the court did not discuss this aspect of the case.

The 1949 statute to which we have already referred has a very peculiar provision about a blind or partially blind pedestrian who desires to cross an intersection at which there is no traffic light and no traffic officer. If such a person is accompanied by a seeing eye dog, or if he holds out in front of him at arm's length a cane that is white or white tipped with red, he has the right of way, and all vehicles at or approaching the intersection must come to a complete stop, leaving a clear lane through which the blind person may pass, and must remain standing until the blind person has completed his crossing.

4. Right of way where there is a pedestrian tunnel or overheal crossing — 20-174(b)

Wherever a pedestrian tunnel or overhead pedestrian crossing has been provided the pedestrian is, of course, encouraged to use it. He is not thereby precluded, however, from crossing at the level of the street or highway, but if he does so he must yield the right of way to all vehicles.

5. Right of way elsewhere on the highway — 20-174 (a) and (e)

Elsewhere upon the highway a pedestrian must yield the right of way to all vehicles.

This rule applies if the pedestrian is crossing the highway at a point where there is no intersection. It applies equally if he is walking along the shoulder or edge of a rural highway. In the latter case, how much of the highway must he yield? There is no one answer. The standard of due care applies to pedestrians as well as to motorists. The pedestrian must yield as much of the highway as is reasonable under the circumstances existing at the time.

In *Arnold v. Owens*, 78 F. (2d) 495 (1935), to which reference has already been made, the plaintiff was walking on the shoulder, about a foot from the pavement, when she was hit from behind by the overhang of the defendant's truck. It was not clear whether the truck ran off the pavement or whether the driver, who had a full view of the pedestrian, miscalculated the overhang. The judge of the District Court directed a verdict for the defendant, but the Circuit Court of Appeals reversed. The court did not say that the plaintiff was not negligent, as she was walking on the right-hand side of the road in violation of the Highway Commission ordinance, and the reversal was on other grounds, but one wonders what the court would have said if she had been walking on the left shoulder and had been hit from in front.

C. Sounding the Horn as a Notice to Pedestrians — 20-164, 20-154, 20-174(e)

We have seen that it is the duty of a motorist when traversing defiles, canyons, or mountain highways, to sound his horn on curves where the view is obstructed. G.S. 20-164. In addition, there are two provisions of the statute designed specifically for the protection of pedestrians. G.S. 20-154 provides that the motorist, before starting, stopping, or turning, must not only see that the movement can be made in safety but must also, if a pedestrian might be affected by the movement, give a clearly audible signal by sounding his horn. G.S. 20-174 (e), in the main section dealing with pedestrians, provides that the motorist "shall give warning by sounding the horn when necessary."

When is sounding the horn necessary? Again it is a question of due care. Clearly the statute does require sounding the horn if there is a pedestrian on the main traveled portion of the highway in the proposed route of a vehicle and the pedestrian is apparently oblivious of the approach of the vehicle. Probably the same is true if there is a pedestrian who appears about to place himself in such a position. What about a pedestrian who is standing on the shoulder? In *Williams v. Henderson*, 230 N.C. 707, 55 S.E. (2d) 462 (1949), Mr. Justice Barnhill went to considerable length to quote authorities from other jurisdictions to the effect that a motorist owes a duty to a pedestrian who is in close proximity to a highway, and not on a sidewalk, to give timely warning of his approach if the pedestrian appears unaware of it. Since a ruling on that point was not absolutely necessary for the decision, the case is a weak authority as to what the law is in this State. Nevertheless it is interesting to note that in that case and in *Sparks v. Willis*, 228 N.C. 25, 44 S.E. (2d) 343 (1947), the failure to sound a horn was at least one of the elements the court took into consideration in passing upon the defendant's negligence.

D. Other Provisions for the Protection of Pedestrians — 20-183.1, 20-174(e)

We saw on the first page of this guidebook that the Highway Safety Act, now in large part repealed, opened with a statement framed partly for the protection of pedestrians. In addition, G.S. 20-174 provides, in part, as follows: "Notwithstanding the provisions of this section [about right f way, etc.], every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway . . . and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway."

Just what additional duty this section imposes on a motorist, or what additional privilege, if any, it confers on a pedestrian, is not clear. Nor is it clear that this section changes any of the rules of practice, once a case gets into the courtroom. Nevertheless the courts do cite the section and sometimes go to considerable lengths to see that a pedestrian has, at least, his day in court. See the following recent cases, most of which have already been cited: *Williams v. Henderson*, 230 N. C. 707, 55 S.E. (2d) 462 (1949); *Gaskins v. Kelly*, 228 N.C. 697, 47 S.E. (2d) 34 (1948); *Morgan v. Coach Co.*, 228 N.C. 280, 45 S.E. (2d) 339 (1947); *Lewis v. Watson*, 229 N.C. 20, 47 S.E. (2d) 484 (1948); *Baker v. Perrott*, 228 N.C. 558, 46 S.E. (2d) 461 (1948).

With respect to children and obviously incapacitated persons, careful drivers do exercise greater vigilance when they see such persons on or in close proximity to the roadway, and the courts do seek to impose this greater vigilance on others:

"The vigilance and care required of the operator of an automobile vary in respect to persons of different ages and physical conditions. He must increase his exertions in order to avoid danger to children, whom he may see, or by the exercise of reasonable care should see, on or near the highway. More than ordinary care is required in such cases." *State v. Gray*, 180 N.C. 697, 104 S.E. 647 (1920).

"Children, wherever they go, must be expected to act upon childish instincts and impulses, and others who are chargeable with a duty of care and caution toward them must calculate upon this, and take precautions accordingly." Mr. Chief Justice Cooley in *Power v. Harlaw*, 57 Mich. 107, 23 N.W. 606 (1885), quoted in *Goss v. Williams*, 196 N.C. 213, 145 S.E. 169 (1928).

"Children are capricious. They act heedlessly without giving the slightest warning of their intentions. They dart here and there with the exuberance of youth. No law or

edict of court will stop them; we shall not attempt to do so, but rather warn those who meet them to be on the lookout." Mr. Justice Kephart in *Frank v. Cohen*, 288 Pa. 221, 135 Atl. 624 (1927), quoted in *Hughes v. Thayer*, 229 N.C. 773, 51 S.E. (2d) 488 (1949).

The case last cited was a school bus case and will be discussed in a subsequent section.

XVII.

FRIGHTENED ANIMALS 20-216

Most people have forgotten what to do in case they meet a frightened animal, although in the early days of automobiling the frightened horse or mule was a usual concomitant of driving. Now there are far fewer animals on the roads, and most of those that remain have become accustomed to the speed and noise of automobiles. Nevertheless, there is still on the books a statute telling the motorist what to do in case an animal becomes frightened.

A. Duty to Stop

If the person riding, leading, or driving the animal makes a signal by raising his hand it is the duty of the driver of the automobile to bring his vehicle to a complete stop. If the animal is going in a direction opposite to that of the automobile the automobile must remain stationary for a reasonable time in order to allow the animal to pass. If both are going in the same direction the automobile may resume motion but must use reasonable caution when it attempts to pass.

In *Gaskins v. Hancock*, 156 N.C. 56, 72 S.E. 1101 (1911), the plaintiff, an old man, was driving a pair of mules across the Neuse River Bridge, which was approximately a mile long and only eighteen feet wide. At about the middle of the bridge he met the defendant in an automobile. As the car approached, the mules became first excited and then uncontrollable. The plaintiff instructed the Negro who was with him to signal to the car to stop, but the car did not do so. The plaintiff was thrown to the floor of the bridge and rolled over by the wheels of the wagon. On these facts the court found no difficulty in allowing recovery.

B. Duty to Turn Off Motor

If the animal appears badly frightened, and the person operating the motor vehicle is signaled to do so, it is his duty to turn off his motor for as long a time as is reasonably necessary to prevent accident and insure the safety of others.

Although this situation is not so likely to arise now, in view of the comparative inaudibility of contemporary motors, there was a time when the provision was tremendously important. The case of *Tudor v. Bowen*, 152 N.C. 441, 67 S.E. 1015 (1910), presents such a situation, involved some very prominent people, and enlisted the services of some of the ablest counsel in the State. Since its interest is now largely antiquarian, however, it is unnecessary to recapitulate the facts.

C. Duty to Render Assistance

When passing any horse or other draft animal which appears frightened, it is also the duty of any male operator of a motor vehicle, and of other male occupants over sixteen years of age, if requested by the person in charge of the animal, to give such assistance as is reasonable to prevent accident and to insure the safety of all persons concerned.

XVIII.

SCHOOL, CHURCH AND SUNDAY SCHOOL BUSSES 20-127

A special provision applies to overtaking and passing and to meeting and passing a school, church, or Sunday school bus. This provision applies only if the bus is actually transporting children to or from school, church, or Sunday school; if it is plainly marked "school bus," "church bus," or "Sunday school bus" in letters not less than five inches high both on the front and on the rear; and if it has stopped and is engaged in receiving or discharging passengers. Every motorist approaching such a bus on the same street or highway under these circumstances must bring his vehicle to a complete stop and must remain standing until the loading or unloading has been completed and until the "stop signal" has been withdrawn or the bus has moved on.

There was formerly some question as to whether the statute applied only to overtaking and passing or to passing in any direction. The Supreme Court, in *State v. Webb*, 210 N.C. 350, 186 S.E. 241 (1936), held that it applied to passing in any direction, and the statute has now been amended to incorporate clearly the interpretation arrived at by the Supreme Court.

If a motorist is approaching on one highway and the school bus has stopped on another, very near the intersection, does the statute apply? The danger against which the statute was aimed is certainly present, as the children are almost as likely to cross one highway as the other. However, the statute seems not to apply, as it says "on the same highway." The Supreme Court has not passed clearly on the question, but the decision in the case of *Morgan v. Coach Co.*, 228 N.C. 280, 45 S.E. (2d) 339 (1947), seems to suggest that the court did not consider the statute applicable in a case where a school bus had stopped about twenty-five feet down a side road and the defendant's bus, on the main highway, passed it without stopping.

The danger to children is often delayed. In *Hughes v. Thayer*, 229 N.C. 773, 51 S.E. (2d) 488 (1948), the deceased, an eight-year-old boy, with a companion, got off a school bus which stopped on the right. The other boy crossed the road ahead of the bus while it was stopped and got to the other side in safety. The deceased waited until the "stop signal" had been withdrawn and until the bus and two cars behind it, which had stopped in compliance with the statute, had passed on and then attempted to cross the road, where he was killed by a truck coming from the other direction. His administratrix brought suit for his wrongful death against the owner of the truck and recovered a judgment. On appeal, the Supreme Court admitted that the "letter of the statute" did not apply, since the "stop signal" had been withdrawn and the bus had moved on. It held, however, that the driver of the truck had been put on special notice, by the very fact that the school bus had stopped and displayed its signal, that children were likely to be in the vicinity; that he might well have been negligent in failing to keep a proper lookout, in failing to sound his horn, in driving at too great a speed under the circumstances, or in other respects; and that therefore a judgment allowing recovery was not erroneous. The case is probably decided correctly on its facts, but the language of the court is unfortunate, since it seems to suggest a desire to stretch the statute to a case where, by its terms, it has no application.

The statute is vague enough, as it is. How far away from the bus must the motorist stop? The statute does not say. Must he stop, even though the stop signal is not raised? Apparently so, as the withdrawal of the stop signal is merely one of the alternatives on the happening of which

the motorist may move forward. How is the late-approaching motorist to know whether the "stop signal" has simply not been shown, in which case he must stop, or has been shown and withdrawn, in which case he may proceed?

When and how is the stop signal supposed to be shown? G.S. 115-377 makes it the duty of the State Board of Education to promulgate rules and regulations concerning this with respect to school busses. These rules are very vague. *A Handbook for School Bus Drivers*, p. 33. Apparently there is no section of the statute requiring church busses and Sunday school busses to have stop signals at all.

The penalty for the violation of this section is slightly different from the lesser of the two usual penalties for violations of the act. It is a fine of not more than fifty dollars or imprisonment for not more than thirty days.

XIX.

RAILWAY, INTERURBAN, AND STREET CARS 20-159

It has been mentioned that there are now no street cars in North Carolina. Therefore the various practices, customary and statutory, with respect to meeting and passing and to overtaking and passing street cars will not be considered in this guidebook. There is one provision with respect to overtaking and passing, however, which, since it applies to railway cars also, may be worth mentioning at this point. We have seen that an automobile is ordinarily overtaken and passed on the left. A street car, on the other hand, was overtaken and passed on the right, since its tracks were likely to be in the middle of the street. Only if there was no travelable portion of the highway on the right was it permissible to pass on the left. The same practice, of course, applies to railways, if their tracks run down the middle of the street.

The section of the statute with which we are now concerned provides that if the driver of any vehicle overtakes "any railway, interurban or street car" which has stopped or is about to stop to receive or discharge a passenger, he must bring his vehicle to a complete stop not closer than ten feet from the nearest exit of the street car [or interurban or railway car] and must remain standing until the passenger has boarded the car or reached the sidewalk.

We have already considered the special provision with respect to speed which applies to any vehicle overtaking and passing a railway, interurban, or street car while it is receiving or discharging passengers at a point where a safety zone has been established.

XX.

POLICE AND FIRE DEPARTMENT VEHICLES 20-157

Frequently a police car or fire engine, when on official business, has to run at a rapid rate of speed. Occassionally it is necessary for it to violate traffic regulations that would apply to ordinary vehicles. In order to promote the safety of all, therefore, the law provides that when such a vehicle approaches, giving audible signal by bell, siren, or exhaust whistle, it is the duty of the driver of every other vehicle to pull over to the right parallel to the curb or edge of the highway and as near to it as possible, to stop, and to remain there, unless otherwise directed by a police or traffic officer, until the official vehicle has passed. Of course an intersecting highway must not be blocked in so doing.

We have already considered the limitations placed on following fire apparatus to the scenes of fires.

XXI.

VEHICLES WHICH MUST BE LABELED

We have seen that school, church, and Sunday school busses must be labeled before the statute comes into operation which requires motorists to stop when approaching such busses while they are loading and unloading passengers. In addition, certain other vehicles must be labeled because of the loads that they are carrying or the uses to which they are put.

A. Vehicles Hauling Gasoline 119-41

If a vehicle is hauling gasoline or other motor fuel over the highways of this State it must be clearly and visibly marked on the rear with the word "Gasoline" in plain letters not less than six inches high and of appropriate corresponding width, and with the name and address of the owner of the vehicle in letters not less than four inches high. This provision does not apply to gasoline in a supply tank which is regularly connected with the carburetor of a vehicle and has a capacity of a hundred gallons or less, nor to gasoline in a supply tank which is regularly connected with the carburetor of a franchise carrier engaged solely in transporting passengers between points in North Carolina.

The penalty for a violation of this section is a fine of not more than twenty-five dollars.

B. Vehicles Hauling Explosives 20-167

While a vehicle which hauls gasoline is likely to be used for that purpose habitually, a vehicle which hauls explosives may be used for that purpose only temporarily. Such a vehicle, therefore, may be marked in either of two ways. It may be painted or placarded on each side and the rear with the word "Explosives" in letters not less than eight inches high, or it may display on the rear a red flag not less than two feet square with the word "Danger" written across it in white letters six inches high.

Such a vehicle must also be equipped with two fire extinguishers filled, ready to use, and located at a convenient point on the vehicle.

The commissioner of motor vehicles is authorized to make additional regulations from time to time.

C. Franchise Bus Carriers, Franchise Haulers, and Contract Haulers 20-101

All motor vehicles licensed as franchise bus carriers, franchise haulers, or contract haulers must have printed on the side in letters not less than three inches high the name and home address of the owner, or such other identification as the utilities commissioner shall approve.

XXII.

DUTY TO STOP IN EVENT OF ACCIDENT 20-166 20-182

In every jurisdiction in this country the problem has presented itself of the driver who, having had an accident, drives on without making known his identity and without repairing or attempting to repair the damage to person or property he may have caused. Therefore, universally, statutes have been passed imposing on drivers certain duties which they must perform after they have had an accident. These statutes differ from jurisdiction to jurisdiction but generally involve four elements: (1) a duty to stop, (2) a duty to give certain information, (3) a duty to render assistance, and (4) a duty to file a report. State and local law enforcement agencies have become extremely adept at

locating so-called "hit-and-run" drivers, and the laboratory of the Federal Bureau of Investigation has rendered notable aid in cases of this kind. At least three interesting North Carolina cases involve the problem of identification of vehicles after accidents of this sort. *State v. Durham*, 201 N.C. 724, 161 S.E. 398 (1931); *State v. King*, 219 N.C. 667, 14 S.E. (2d) 803 (1941); and *State v. Newton and West*, 207 N.C. 323, 177 S.E. 184 (1934). For many points as to the interpretation of these statutes and as to their validity it is necessary to go to the law of other states.

A. To Whom Does the Statute Apply?

The statute imposes certain duties on "the driver of any vehicle involved in an accident." Under the section "Who Is Driving?" we saw that the term "driver," as used throughout the Motor Vehicle Act, may include the owner who is in control of the vehicle as well as the person behind the wheel, and that it may also include a person on a joint expedition with the person behind the wheel. We also saw that this interpretation applies to the section on "hit-and-run" driving as well as to other sections of the act. But what does the statute mean when it says "involved in an accident"? In the first place, it is clear that fault has nothing to do with the application with the statute. In other words, a driver "involved in an accident" must perform the duties required by the statute even though he was entirely without blame. In *State v. Hudson*, 314 Mo. 599, 285 S.W. 733 (1926), for instance, it was said, "It does not matter whether the person leaving the scene caused the injury by a culpable act, or whether it occurred through pure accident."

Must there be a collision? *People v. Kinney*, 28 Cal. App. (2d) 232, 82 P. (2d) 203 (1938), says not. The court, after quoting a statute very similar to ours, said: "That language clearly does not limit the performance of such acts to the drivers of automobiles which strike and injure a pedestrian, or which are involved in a collision with other vehicles. It includes all machines which are involved in accidents of any nature whatever in which another individual is injured or killed." In that case the person who was injured was in the driver's own car, which overturned, and the court upheld his conviction for failing to render proper assistance. In *People v. Green*, 215 P. (2d) 127 (Calif. Dist. Ct. of Appeal 4th 1950), the injured person fell out of a car which did not stop, and the driver and others were held guilty of violating the act. In *People v. Sell*, 215 P. (2d) 771 (Calif. Dist. Ct. of Appeal 4th 1950), there was a slight touching of another car, but the serious collision was between the car touched and a third car. Nevertheless, the driver of the first car was held guilty of failing to perform the duties required by the act. Unfortunately there does not seem to be any clear decision holding the driver of one car which causes or contributes to the wreck of another car but does not touch it. There is no good reason why there should not be, as the statute seems broad enough to cover such a situation. In *Butler v. Jersey Coast News Co.*, 109 N.J. Law 255, 160 Atl. 659 (1932), where the driver of a car in close proximity to an accident was not held, his possible connection with the accident was so remote that the court was probably right in saying he was not "involved" in it.

B. Duties Imposed by the Statute

The statute imposes four duties on the driver of a vehicle involved in an accident. All must be complied with in so far as they are applicable, and the failure to perform any one is a violation of the act. See People v. Scofield, 203 Cal. 703, 265 Pac. 914 (1928).

1. The duty to stop

It is the duty of the driver of any vehicle involved in an accident to stop his vehicle immediately at the scene of the accident. This is mandatory if the accident has resulted in the death or injury of any person. It is equally mandatory if there has been damage to any property, although in the latter case the offense of failing to stop is a misdemeanor rather than a felony.

The rule applies even though the property damaged is an inanimate object, like a parked car. *Scott v. District of Columbia*, 55 A. (2d) 854 (Munic. Ct. of App. D.C. 1947); *Commonwealth v. Baker*, 53 Pa. Dist. and Co. 702 (1945). It applies also if the object struck is an animal (*State v. Hudson, supra* (a herd of cattle); *People v. Timbres*, 109 Cal. App. (Supp.) 778, 288 Pac. (1930) (two dogs), although there is some authority to the contrary in the case of animals. *Mills v. State*, 62 Ga. App. 491, 8 S.E. (2d) 727 (1940) ("black female hog"—no one around to whom information could be given).

It is generally held that it is necessary that the driver know that an accident has taken place before he will be held under the statute. In *State v. Kay*, 229 N.C. 40, 47 S.E. (2d) 494 (1948), Miss Sara Ellington, traveling in a Ford automobile, was injured in a collision with the rear end of a tractor-trailer combination which swerved across the center line of the road. From a declaration made by the defendant at the time of his arrest, introducted by the State, it appeared that he did not know that any accident had taken place. The defendant himself put on no evidence and was convicted. The Supreme Court reversed, saying that the section of the statute imposing the penalty for failure to stop in the event of injury to a person (G.S. 20-182) applies by its very terms only to one who "wilfully" violates the act. The term "wilfully" is not used in the section of the statute imposing the penalty for failure to stop in the event of injury to property (G.S. 20-166 (b)). Nevertheless the reasoning of the court is broad enough to cover that situation also: "It would be a manifest absurdity to expect or require the driver of a motor vehicle to perform the acts specified in the statute in the absence of knowledge that his vehicle has been involved in an accident resulting in injury to some person. Hence, both reason and authority declare that such knowledge is an essential element of the crime created by the statute now under consideration." It has been made very clear in other jurisdictions, however, that knowledge that an accident has taken place is sufficient. It is not necessary that there be knowledge that anyone has been injured. *Bevil v. State*, 139 Tex. Cr. 513, 141 S.W. (2d) 362 (1940).

The phrases "immediately" and "at the scene of the accident" will be interpreted reasonably. Thus in *State v. Brown*, 226 N.C. 681, 40 S.E. (2d) 34 (1946), a man was held not to have complied with the statute when he stopped two hundred yards away and sent someone back to render aid, but did not himself return to the scene. In *Oden v. District of Columbia*, 65 App. D.C. 50, 79 F. (2d) 175 (1935), on the other hand, a woman was held to have complied with the statute when the accident was caused by a guest opening an insecurely fastened door and scraping a parked car, and when the driver did not know about the accident at the time, but, when she found out about it, parked at the first available parking place, which was 150 feet away.

Fright is not an excuse for failure to stop. *Oney v. State*, 145 Tex. Cr. 613, 170 S.W. (2d) 738 (1943). Neither is fear of an assault. *Garcia v. State*, 131 Tex. Cr. 84, 96 S.W. (2d) 977 (1936). On the other hand, in *McDonald v. State*, 54 Okla. Cr. 122, 15 P. (2d) 149 (1932), where the defend-

ant, a Negro, had had an accident with a car containing white men, and where, when he went back to investigate, one of them pulled off his coat, cursed him, and said if he had a gun he would kill him, it was held that he was justified in leaving the scene without performing the duties required under the act.

2. The duty to identify yourself

It is the duty of the driver of any vehicle involved in an accident resulting in injury or death to any person or damage to any property to identify himself to the person who has been struck or to the driver or occupants of the vehicle with which the collision has taken place. G.S. 20-166 says that he shall give his name, his address, the number of his operator's or chauffeur's license, and the registration number of his vehicle. G.S. 20-29 adds that, if an officer or "any other person" requests it, he shall not only give his name and address, but shall write his name for the purpose of identification, give the name and address of the owner of the vehicle, and *exhibit* his license for examination.

The North Carolina statute omits the sections of the Uniform Act telling what to do in case the object struck is inanimate. *Uniform Act Regulating Traffic on Highways*, §§42-43. The term "property" in the North Carolina act is broad enough to include any property, whether it be a car in motion, a parked car, a house, a tree, a fire hydrant. On the other hand, the only persons the statute mentions to whom the information must be given, except upon request, are "the person struck or the driver or occupants of any vehicle collided with." It is certainly good practice in a case of this kind to locate the owner or other person in charge of the object immediately or to leave in some conspicuous place on the object a written notice giving the required information. However, in the present state of the law it is difficult to say whether some other method of notification, such as a telephone call or even a letter, would be held sufficient, or whether, if the owner cannot be located immediately, the notification can be dispensed with. Surely some statutory clarification is badly needed at this point.

This section of the statute, like the previous one, will be interpreted reasonably. Thus it has been held that the driver who stays at the scene will not be held guilty of failing to give his name and address if the other driver leaves without giving him a reasonable opportunity to do so. *Commonwealth v. Schwalm*, 55 Pa. Dist. and Co. 692 (1946). If the occupants of the other car are all unconscious it is not necessary to state for their unhearing ears the information required by the statute. *People v. Martin*, 114 Cal. App. 337, 300 Pac. 108 (1931). If the thing injured is an animal, and there are no persons about, it is not necessary to exhibit the license. *People v. Fimbres, supra.* In that case the court, after saying that it was necessary to stop, went on to interpret the California statute as follows: "A dog or any other animal, not being a person, cannot qualify as 'the person struck.' Dogs and other animals are not found driving vehicles on the highways, so we hardly think the Legislature meant to include them in the term 'driver of any vehicle'; and, in view of the utter futility of submitting a written document to the inspection of a dog or other animal, the term 'occupant' must also be limited to persons."

3. The duty to render assistance

It is the duty of the driver of any vehicle involved in an accident to render reasonable assistance to any person injured. This reasonable assistance may involve carrying such person to a physician or surgeon for treatment if it is apparent that such treatment is necessary. The injured person must be taken to a physician or surgeon if he specifically requests it.

This duty is a very important one and is not to be taken lightly. It cannot be escaped by delegation if the person to whom it is delegated fails to perform it. See *People v. Curtis*, 225 N.Y. 519, 122 N.E. 623 (1919). The statute is not complied with if the driver of a vehicle involved in an accident goes back, finds the other driver unconscious, so that he cannot ask to be taken to a physician, and goes off and leaves him there. *State v. Sterrin*, 78 N.H. 220, 98 Atl. 482 (1916). It has been held that the driver of a vehicle involved in an accident who goes back, comes to the conclusion that the other driver is dead, and hence beyond the need of assistance, and leaves him, has not complied with the statute because it is not in his province but in that of a physician to pass on the issue of life and death. See *People v. Hoaglin*, 262 Mich. 162, 247 N.W. 141 (1933). It has even been held that the driver of a vehicle involved in an accident who goes off and leaves an irrefutably dead body has not complied with the statute, since there is some respect due even to the lifeless remains of the indubitably dead. See *People v. McKee*, 80 Cal. App. 200, 251 Pac. 675 (1926).

On the other hand, this section of the statute, like the others, will be interpreted reasonably. Thus, if the driver of the car is rendered unconscious and, when he regains consciousness, finds that aid is already being rendered to the occupants of the other car, it is not necessary for him to render it. *People v. Scofield*, 203 Cal. 703, 265 Pac. 914 (1928). It is not necessarily a violation of the statute for the driver of a vehicle to render aid to the occupants of his own car to the exclusion of the occupants of the other car. *Woods v. State*, 135 Tex. Cr. 540, 121 S.W. (2d) 604 (1938). It is not necessary to carry out a demand made in bad faith for the treatment of wounds received in a fight prior to the accident. *People v. Kaufman*, 49 Cal. App. 570, 193 Pac. 953 (1920).

As to the amount and type of aid which must be rendered, the Supreme Court of West Virginia in *State v. Masters*, 106 W. Va. 46, 144 S.E. 718 (1928), had this to say: "A common-sense interpretation, therefore, must be given to such statute, giving some effect to each part of it. It is patent that it would be impracticable for the Legislature to undertake to say that in a certain kind of accident particular aid should be extended, and in another accident aid of some other character would be proper. Every case must be governed by the circumstances attendant upon it."

4. The duty to report the accident **20-166**

a. Reports by Drivers

If anyone is injured, or if there has been property damage to the apparent extent of $25.00 or more, it is the duty of the driver of any vehicle involved in an accident to report the accident. The report must be filed within twenty-four hours after the accident has taken place. If the accident takes place in a rural area, the report is to be filed with the Department of Motor Vehicles; if in an incorporated city, with the police department of that city. The report must be made on a form approved by the department. The department has had such forms printed, and they are widely disseminated and easily obtained. If one of the vehicles belongs to a common carrier, the common carrier must file a report before the tenth day of the following month, in addition to the report filed by the driver.

b. Reports by occupants or other witnesses

Sometimes it happens that the driver of a vehicle involved in an accident is himself injured, so that it is impossible for him to make the report. In that case the duty to make the report devolves on any other occupant of the

vehicle who is able to do so. If, also, the department is of the opinion that the original report is insufficient, it may require a supplemental report from the driver or reports from occupants or other witnesses.

c. Reports by officers

The State Highway Patrol and the various city and county police departments have ample authority under G.S. 20-49, G.S. 20-188, and G.S. 20-183 to investigate traffic accidents and file traffic accident reports. When and how they shall do so is governed by the regulations of their own departments. The statute which we are considering, however, says that the driver of any vehicle involved in an accident shall "file or cause to be filed" a report, etc. If a police officer or highway patrolman files the report, has the driver "caused it to be filed"? Apparently the original intent of the statute was to have a report from each driver and, in addition, such reports from police officers as the regulations of their departments require them to file. As a matter of practice, however, the highway patrolman or police officer usually files the report after interviewing the drivers of both vehicles, or the driver and the pedestrian, and his report is ordinarily the only one filed. Under the present administrative interpretation of the law, therefore, the individual driver or occupant needs to be concerned with filing the report only in cases where an officer does not appear.

d. Inadmissibility of the reports

Reports filed during any month covering accidents in cities are forwarded by the local police department to the Department of Motor Vehicles on the fifth day of the following month. Reports covering accidents in rural areas are, as we have seen, filed directly with the department. The reports are used for statistical purposes, for locating road defects, and for improving enforcement by the department. *They may not be used as evidence or for any other purpose in any trial, civil or criminal,* growing out of the accident. Those reports which are made by *officers* are, however, open to the inspection of the public at all reasonable times.

In order that courts may know whether the statute that requires filing the reports has been complied with, the department will, on the demand of any court, furnish a certificate showing whether the report of a particular accident has or has not been filed.

C. Constitutionality of the Statute

In the beginnig the validity of statutes such as the one we have been considering was attacked on various grounds, but almost universally they have been upheld as a valid exercise of the police power. Thus, in *State v. Masters,* 106 W. Va. 46, 144 S.E. 718 (1928), it was held that such a statute was not void for vagueness and uncertainty, although the statute in that case, like ours, imposed many duties, not all of them performable under all circumstances, and many of them leaving much to the discretion of the driver as to what he thought was "reasonable." In *Lashley v. State,* 236 Ala. 1, 180 So. 717 (1938), it was held that the statute did not violate the due process clause. In *People v. McKee, supra,* and in *Woods v. State,* 15 Ala. App. 251, 73 So. 129 (1916), it was held that the statute did not involve double jeopardy, since it did not cover events leading up to and including the accident itself, which might form the basis for a conviction of such a crime as manslaughter, but only the failure to perform certain duties *after* the accident. In *People v. Rosenheimer,* 209 N.Y. 115, 102 N.E. 530 (1913), it was held that while disclosing a person's identity might be a "link in the chain of evidence" establishing his criminal liability, if there was any, requiring it was no more a violation of his privilege against self-incrimination than compelling him to testify in a civil case. And in *People v. Thompson,* 259 Mich. 109, 242 N.W. 857 (1932), it was held that even the requirement of filing a report of the accident did not violate the privilege against self-incrimination, since the report itself could not be used in any court action. Taking an even broader view, the court, in *Ex parte Knedler,* 243 Mo. 632, 147 S.W. 983 (1912), said: "We have several statutes which require persons to give information which would tend to support possible subsequent criminal charges, if introduced in evidence. Persons in charge are required to report accidents in mines and factories. Physicians must report deaths and their causes, giving their own names and addresses. Druggists must show their prescription lists. Dealers must deliver for inspection foods carried in stock. We held a law valid which required a pawnbroker to exhibit to an officer his book, wherein were registered articles received by him, against his objection based on this same constitutional provision. We held this to be a mere police regulation, not invalid, because there might be a possible criminal prosecution in which it might be attempted to use this evidence to show him to be a receiver of stolen goods."

XXIII.

RECKLESS DRIVING 20-140

Reckless driving was originally thought of as a very serious crime. Although the term "recklessly" had been used in the statute as far back as 1913, the offense received its present definition in the year 1927. At that time the penalty for a first offense was a fine of not more than $500.00 nor less than $25.00 or imprisonment for not more than ninety days nor less than five days, or both such fine and imprisonment, whereas the penalty for a first offense under most of the other sections of the statute, including speeding, was a fine of not more than $100.00 or imprisonment for not more than ten days. *Public Laws of 1927,* Ch. 148, Art. V, §§58, 60. Although the penalty is now merely the higher of the two usual ones for violations of the act (G.S. 20-180 and G.S. 20-176), the crime is still treated as more serious than most of the others in those sections of the statute that deal with the suspension and revocation of licenses.

A. The Definition

What is reckless driving, and why is it regarded as so serious a crime? As a matter of fact, the statute really says that any person who has committed either of two offenses is guilty of reckless driving. *Barkley v. State,* 165 Tenn. 309, 54 S.W. (2d) 944 (1932). See also *State v. Folger,* 211 N.C. 695, 191 S.E. 747 (1937). For purposes of clarity it may be well to discuss these offenses separately.

1. The "wilful or wanton" offense

Separating the statute, therefore, the first offense is defined as follows: "Any person who drives any vehicle upon a highway carelessly and heedlessly in wilful or wanton disregard of the rights or safety of others . . . shall be guilty of reckless driving . . . ." Webster's Dictionary says of the words "careless" and "heedless," "Careless implies want of pains or thought; heedless, lack of attention." But driving without giving adequate thought to what you are doing and without paying adequate attention to where you are going *is* a violation of the standard of due care; is, in other words, negligence. Therefore negligence is one of the ingredients of the crime of reckless driving. But the Supreme Court of North Carolina has said that "culpable

negligence in the law of crimes is something more than actionable negligence in the law of torts." *State v. Cope*, 204 N.C. 28, 167 S.E. 456 (1933). In other words, negligence, standing alone, will be the basis for civil liability if anyone is injured as a result of it but will not be the basis for conviction of a serious crime unless something else is added to it. For the criminal element we must look to the rest of the definition, therefore, which is "in wilful or wanton disregard of the rights or safety of others." "Wilful," we are told, means "intentional," but the courts having statutes similar to ours are not in agreement as to whether the intention involved must be an intention to injure somebody, an intention to drive recklessly, an intention to disregard the safety of others, or an intention to do a particular act which is itself dangerous. Compare, for instance, *Barkley v. State, supra*, with *People v. McNutt*, 40 Cal. App. (2d) Supp. 835, 105 P. (2d) 657 (1940). Fortunately the statute has an alternative in the word "wanton," which is more easily defined: "To constitute wanton negligence, the party doing the act or failing to act must be conscious of his conduct, and, though having no intent to injure, must be conscious, from his knowledge of surrounding circumstances and existing conditions, that his conduct will naturally or probably result in injury." *Barkley v. State, supra.* The Supreme Court of North Carolina seems to draw no distinction between the amount of wilfulness or wantonness necessary for a conviction of assault (see *State v. Sudderth*, 184 N.C. 753, 114 S.E. 828 (1922); *State v. Agnew*, 202 N.C. 755, 164 S.E. 578 (1932), of reckless driving (see *State v. Durham*, 201 N.C. 724, 161 S.E. 398 (1931)), and of manslaughter. Perhaps the best statement comes from a manslaughter case: "The degree of negligence necessary to be shown on an indictment for manslaughter, where an unintentional killing is established, is such recklessness or carelessness as is incompatible with a proper regard for human life." And again: "Culpable negligence, under the criminal law, is such recklessness or carelessness, resulting in injury or death, as imports a thoughtless disregard of consequences or a heedless indifference to the safety and rights of others." *State v. Rountree*, 181 N.C. 535, 106 S.E. 669 (1921).

2. The offense of endangering person or property

The second offense is defined in this way: "Any person who drives any vehicle upon a highway . . . without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property shall be guilty of reckless driving . . . ." "Caution" is defined as "prudence in regard to danger," and "circumspection" is literally "a looking around." But driving without due prudence and without looking where you are going is simply driving without due care under another name. It *is* negligence, and therefore the first part of this definition is for all practical purposes identical with the first part of the previous one. As the Supreme Court of Iowa said in the case of *Neessen v. Armstrong*, 213 Iowa 378, 239 N.W. 56 (1931): "The second alternative, to wit, 'or without due caution and circumspection,' constitutes no more than negligence; for if one drives a motor vehicle upon a highway without due caution and circumspection, that is, without such caution and circumspection as an ordinarily careful and prudent person would exercise under the same circumstances, he is guilty of negligence."

Is the second part of the definition identical also? Before answering that question it might be well to note that excessive speed is not a necessary element in constituting the crime under the second definition. The case of *State v. Mills*, 181 N.C. 530, 106 S.E. 677 (1921), was decided before the present statute went into effect, and the facts are not given, but the principle enunciated therein is still clear law today: "A person may drive carelessly, or even recklessly, without exceeding the prescribed speed limits, and this case furnishes a clear illustration of it." In *State v. Mickle*, 194 N.C. 808, 140 S.E. 192 (1927), the trucks involved were not going over twenty to twenty-five miles an hour and were clearly within the speed limit, but they were crossing back and forth from side to side of the highway to kill time until a third truck overtook them,[1] and the court said that this was enough evidence to be submitted to the jury and tended to show reckless driving. Excessive speed, then, is merely one of the alternatives out of which the second part of the offense may be constituted. It seems that under this definition, therefore, a warrant or an indictment could be drawn which would charge that a person drove "without due caution and circumspection and at a speed so as to endanger or be likely to endanger person or property," or that he drove "without due caution and circumspection and in a manner so as to endanger or be likely to endanger person or property," and that it is unnecessary for it to charge both, but there are no decisions on this point. Certainly, however, the important point is again the likelihood of endangering person or property. Is the definition, then, the same as for the first offense? By no means. There the standard was subjective; here the standard is objective. In other words the difference, and the only difference, is that in order to be guilty of the first offense the person must do and intend to do something which he knows is likely to be injurious to the rights or safety of others (if one accepts that definition of wilful), or at least must "not give a damn" whether what he does is injurious or not; in order to be guilty of the second offense he must do something which the ordinary prudent person would say endangers or is likely to endanger person or property, although the actual intentions of the man behind the wheel may be perfectly pure.

It is interesting to note that although the present statute was taken from the Uniform Act, the second part of the definition has been omitted entirely from the later editions of that act. *Uniform Act Regulating Traffic on Highways*, §55.

B. The Relation between Reckless Driving and a Violation of the Motor Vehicle Law

1. Reckless driving without violation

May there be reckless driving without the violation of any section of the motor vehicle law except the reckless driving statute itself? The answer is yes, although it is hard to imagine many situations in which some other section of the law would not be violated. Suppose a man driving at a fairly rapid rate of speed in heavy traffic makes frequent stops, giving the signal each time, but stopping suddenly. It seems that this conduct would be negligent and perhaps wilful and would be likely to endanger both persons and property. Suppose a man undertakes to back half a mile up the road, around a curve, and over the crest of a hill. In *Wall v. Bain*, 222 N.C. 375, 23 S.E. (2d) 330 (1942), which we considered under "Backing," the court said, "No reasonable person would move along the highway in reverse for any length of time, and in the wrong traffic lane, as a preferable mode of travel." It seems that such conduct therefore would be negligent and might be done under such circumstances that it would endanger persons and property.

---

[1] The facts of this case are not given in the official reports. They are given in the Southeastern Reporter.

2. Violation without reckless driving

If someone violates a traffic statute or ordinance, is he, by reason of that fact alone, guilty of reckless driving? In the beginning it looked as though the court might take the position that he would be. *State v. McIver*, 175 N.C. 761, 94 S.E. 682 (1917); followed by *State v. Gash*, 177 N.C. 595, 99 S.E. 337 (1919). However, it has now come definitely to the conclusion that, while the violation of a traffic statute or ordinance may supply the negligence element necessary to a conviction of reckless driving, it does not, standing alone, supply the criminal element. "The simple violation of a traffic regulation, which does not involve actual danger to life, limb or property, while importing civil liability if damages or injury ensue, would not perforce constitute the criminal offense of reckless driving." *State v. Cope, supra.*

We have already considered the case of *State v. Lowery*, 223 N.C. 598, 27 S.E. (2d) 638 (1943), in the discussion under "Intersections." In that case the defendant, who had parked temporarily on the left-hand side of the road, failed to give a signal for a left turn before backing up to pull into a driveway, also on the left. His car was hit by another car coming very rapidly from the opposite direction around a curve and over the crest of a hill. One of the occupants of the defendant's car was killed. We have seen that the court took the position that, if there was no car in sight at the time the defendant initiated his movement, he was under no obligation to give the signal. But the reasoning of the court is not confined to so narrow a ground. It goes on to say that even if the circumstances were such that he should have given the signal; even if, therefore, he acted in violation of the statute, his conduct did not show such recklessness or such probable consequences of a dangerous nature as should form the basis for criminal liability. A conviction of manslaughter was therefore reversed.

In *State v. Ogle*, 224 N.C. 468, 31 S.E. (2d) 444 (1944), the defendant pulled to the left while crossing a bridge, either through inadvertence or because he intended to turn left shortly beyond the end of the bridge. He gave no signal of his intention to pull to the left, and his car collided with another car which was following, somewhat to his left, but had given no signal of its intention to pass. A pedestrian standing on the bridge was injured as a result of the crash. The defendant was convicted of reckless driving and of assault with a deadly weapon (an automobile) with intent to kill, but the Supreme Court reversed, saying again that his conduct did not have in it elements sufficient to form the basis for criminal liability.

In *State v. Stansell*, 203 N.C. 69, 164 S.E. 580 (1932), there was some evidence that the defendant's car was on the left-hand side of the road. There was also some evidence that he was speeding. At any rate there was a collision between his car and another car going in the opposite direction, and one of the occupants of the other car was killed. The defendant was indicted for murder but was prosecuted for manslaughter only. The trial judge told the jury, "The charge is that he was violating one or more of those provisions of the law of North Carolina that were passed for the benefit and protection of the traveling public. To violate any of them is made criminal, and therefore it is culpable or criminal negligence for anyone to violate any of those laws of the highway." Under this charge the defendant was convicted of manslaughter. The Supreme Court awarded a new trial for error in the charge, saying: "If the defendant at that time, in violation of law, was operating his car recklessly, as recklessly is defined at common law or by statute . . . or was operating his car while under the influence of intoxicating liquor, and ran into the other car and thereby proximately caused the death of one of the occupants, he was guilty of manslaughter at least. But if he exceeded the speed limit, or drove on the wrong side of the marked line, not intentionally or recklessly, but merely through a failure to exercise due care and thereby proximately caused the death he would not be culpably negligent unless in the light of the attendant circumstances his negligent act was likely to result in death or bodily harm."

3. A series of violations

If a man cannot be convicted of reckless driving merely because he violates one traffic regulation, can he be convicted if he violates two or more? The view that he can be has sometimes been taken by text writers; not by the Supreme Court. It seems perfectly clear that a man might, for instance, be arrested and convicted for parking overtime on a clear day with a defective wiper on his windshield and a nontransparent college sticker on his rear window without being guilty of reckless driving, even though he committed three violations simultaneously. It seems equally clear that he might, on a clear night, in a rural area, when there is little traffic, successively fail to dim his lights on meeting another vehicle, fail to come to a complete stop at a stop sign where his view was unobstructed, and get partially over the center line of the highway without once having his conduct attain that quality of wanton disregard of, heedless indifference to, or likelihood of endangering the rights and safety of others necessary for a conviction of reckless driving. In *State v. Stansell*, the case last cited, the violations, if established, were fairly serious, but the court was sure that they did not constitute criminal negligence unless they were done intentionally or recklessly or were likely to result in death or bodily harm.

C. The Relation between Reckless Driving and Actual Injury to Person or Property

1. Reckless driving without injury

May there be reckless driving without actual injury to either person or property? The answer is yes. In *State v. Mickle, supra*, the trucks were merely going back and forth across the road, playing a game, but since their gyrations were likely to cause injury if anyone came along, the court held that the action of the trial court had been proper in giving the jury an opportunity to pass on whether the defendants were guilty of reckless driving. In *State v. Vanhoy*, 230 N.C. 162, 52 S.E. (2d) 278 (1949), the defendant, at about 1:00 A.M., drove eighty or ninety miles an hour on a highway on which other vehicles were moving at the time. The sheriff who arrested him found two bottles of non-taxpaid liquor in the glove compartment of his car. There is no indication in the report of the case that there was a collision of any kind. The defendant was convicted of illegal transportation, reckless driving, and speeding, and the Supreme Court found no error in the judgment. In *State v. Perry*, 231 N.C. 469, 57 S.E. (2d) 774 (1950), another bootlegger case, the defendant drove eighty or ninety miles an hour, failed to make a curve, and ended in a ditch. There was non-taxpaid liquor in the car at the time, which the defendant and his companion hid, some of it further up the ditch, some of it under a brush pile. Apparently no one was injured, and it does not appear that any property was damaged, unless some broken jugs found near the car when the officers arrived had been in the car and were broken in the smash-up. Nevertheless the defendant was found guilty both of reckless driving and of the illegal possession and transportation of non-taxpaid liquor, and the Supreme Court found no error in the judgment.

2. Injury without reckless driving

If someone is injured in a collision is one or both of the drivers necessarily guilty of reckless driving? The answer is no. In *State v. Lowery*, *State v. Ogle*, and *State v. Stan-*

sell, all *supra*, the injury was in every case serious, and in two of the cases fatal, yet convictions were reversed in every case, and only in the last was the procedural situation such that there could be a new trial. As the Supreme Court of Iowa said in *Neessen v. Armstrong*, *supra*, in which Neessen was killed, "The mind is prone to look upon the result, but unless the acts of the defendant would have been reckless within the meaning of the law without injury resulting to Neessen, they are not reckless merely because Neessen lost his life." To the same effect see *State v. Sullivan*, 58 N.D. 723, 227 N.W. 230 (1929), and *Howard v. State*, 24 Ala. App. 191, 132 So. 459 (1931).

D. Illustrations of Criminal Negligence

Enough has been said to make it abundantly apparent that one is not likely to gain an adequate conception of what reckless driving is by definition alone. The standard of criminal non-liability is not easy to define. "The operation of an automobile upon a way is a clearly defined act, susceptible of being easily understood. Its operation so as not to endanger the lives or safety of the public is the description of a fact. While it may not be easy to formulate in words a comprehensive definition of that fact applicable to all cases, it is not difficult to comprehend with some approach to accuracy the thought conveyed by the description of that fact." *Commonwealth v. Pentz*, 247 Mass. 500, 143 N.E. 322 (1924). We have given several illustrations of what reckless driving is not. We shall now pick out twelve situations and illustrate them by cases in which the element of criminal negligence has been found. The situations are typical but are by no means exhaustive of all those in which reckless driving might occur. The facts in some of the cases are extreme, and in those cases it should be remembered that much less flagrant recklessness might still have resulted in a conviction for reckless driving. On the other hand it should also be remembered that some of the same violations might not have been called reckless driving had the circumstances involved less danger to life, person, and property. Assault, reckless driving, and manslaughter cases will be cited indiscriminately, as the court draws no distinction between them in so far as the element of criminal negligence is concerned.

1. Driving very fast drunk and passing another car

In *State v. Blankenship*, 229 N.C. 589, 50 S.E. (2d) 724 (1948), the defendant had been drinking. It was a cold night in December with wisps of a recently fallen snow blowing across the road. He and his friends left a country store in two separate cars at about 8:00 P.M. After a while they stopped and changed passengers. The defendant resumed the journey at about fifty miles an hour. The other car passed him. He then passed the other car at about fifty-five or sixty. He began running from one side of the road to the other, met and passed a third car and, when he came to a slight curve, lost control completely and careened into the ditch and out to the center of the road again, where the car turned over. There were scuff marks for 267 feet along the road. One of the defendant's companions was killed and the other knocked unconscious. He was convicted of operating an automobile while intoxicated, reckless driving, and manslaughter, and the Supreme Court found no error in the judgment.

2. Repeatedly overtaking and passing other cars and cutting close in front

A North Dakota case, *State v. Lyon*, 59 N.D. 374, 230 N.W. 1 (1930), gives a better example of this type of reckless driving than any to be found in North Carolina. On a late afternoon in June the defendant, a free-lance salesman for an automobile company, took a new Chevrolet car belonging to the company, which did not have a license, and to the use of which he was not entitled, and drove his family to another town. Several times on the way he passed other cars and cut in very short in front of them. Finally he struck the front fender of an Oldsmobile, crowded it into the ditch, and drove on into the night. He explained afterwards that he had cut short in front of one of the cars because he had seen a friend in it and "knew it would make him a little sore," but he attempted to establish the fact that he was elsewhere at the time the Oldsmobile was struck. His car was subsequently identified, partly by a streak of red paint from the hub-cap of the Oldsmobile. He was convicted of reckless driving, and the Supreme Court affirmed the judgment. (Quite irrelevantly to the present discussion the court disposed of the alibi by coming to the conclusion that he could both have been on the road at the time the Oldsmobile was wrecked and at a friend's home at the time he established, remarking that "days are long in June.")

3. Speeding on the left-hand side of the road

State v. Swinney, 231 N.C. 506, 57 S.E. (2d) 647 (1950), is a fairly recent case. On the afternoon of December 4, 1948, Fred Swinney was driving a Chevrolet pick-up truck in a highly congested area on Highway No. 87 in Rockingham County. The speed of his car is not given in the report of the case, but the speed limit in the area was thirty-five miles an hour. At the time of the matters complained of his brother, Frank Swinney, was in a Ford automobile abreast or slightly in front of Fred Swinney, on the left-hand side of the road, and traveling at a speed of from fifty to seventy miles an hour. He ran head-on into another car, killing one of the occupants of the other car and injuring the other occupants and himself. Fred Swinney was cleared of all charges. Frank Swinney was convicted of manslaughter, and the Supreme Court found no error in the conviction. See also *State v. Merritt*, 231 N.C. 59, 55 S.E. (2d) 804 (1949); *State v. Sudderth*, *supra*, *State v. Wooten*, 228 N.C. 628, 46 S.E. (2d) 868 (1948); *State v. Jessup*, 183 N.C. 771, 111 S.E. 523 (1922); *State v. Palmer*, 197 N.C. 135, 147 S.E. 817 (1929); *Hancock v. Wilson*, 211 N.C. 129, 189 S.E. 631 (1936); *King v. Pope*, 202 N.C. 554, 163 S.E. 447 (1932).

4. Driving on the left-hand side of the road at night without lights

Hill v. State, 27 Ala. App. 202, 169 So. 21 (1936), is an Alabama case. The accident occurred at about eight o'clock in the evening. The defendant, in a T-model Ford, was driving on the left-hand side of the road up grade and around a slight curve. He was driving at about twenty-five miles an hour without lights. He hooked bumpers with a Ford V-8 going in the opposite direction and about as far to the right-hand side of the road as it could get. He was convicted of reckless driving, and the judgment was affirmed on appeal. See also *State v. Midgett*, 214 N.C. 107, 198 S.E. 613 (1938), where it was held that an acquittal on a charge of reckless driving on facts somewhat similar to those described above would not bar a further prosecution for manslaughter growing out of the same occurrence.

5. Driving at night without lights

Perhaps the best case to illustrate this situation is *State v. Crutchfield*, 187 N.C. 607, 122 S.E. 391 (1924). On an evening in April, 1923, at about eight o'clock, six small boys in the village of Walkertown were on their way to a band concert. They had a string of pennants, each boy

having his hand on the string. They were walking one in front of another along the left-hand side of the road. They were all in the ditch except Peter, a child of six, who was about ten inches out in the road. The defendant, who had been drinking, approached from the opposite direction on his right-hand side of the road at about thirty or thirty-five miles an hour. He was driving without lights. His car "dived in and hit Peter," knocked him about thirty feet, and did not stop. The defendant was indicted for murder and convicted of manslaughter, and the Supreme Court found no error in the judgment.

6. Driving or excessive speed and ramming vehicle from behind

State v. Holbrook, 228 N.C. 620, 46 S.E. (2d) 843 (1948), represents a surprisingly frequent situation. On a clear Sunday afternoon an unnamed motorist was driving at from forty-five to fifty miles an hour on Highway No. 67 between Booneville and East Bend. Suddenly he was rammed from behind by the defendant's car. There were no other cars in sight at the time. The defendant had been drinking. Considerable damage was done to both cars. The defendant was convicted of both drunken driving and reckless driving, and the Supreme Court found no error in the judgment. See also *State v. Wilson,* 218 N.C. 769, 12 S.E. (2d) 654 (1940); *State v. Steelman,* 228 N.C. 634, 46 S.E. (2d) 845 (1948); *State v. Hough,* 227 N.C. 596, 42 S.E. (2d) 659 (1947).

7. Tremendous speed

We said earlier that violation of the speed statute alone did not constitute reckless driving. *State v. Vanhoy* and *State v. Perry,* both *supra,* were cases in which the speed was so excessive that convictions of reckless driving were upheld. *State v. McMahan,* 228 N.C. 293, 45 S.E. (2d) 340 (1947), is an even more flagrant instance of excessive speed. In that case the defendant was traveling in a 1940 Chevrolet from Thomasville toward High Point. Having been drinking, he very kindly stopped to pick up two hitch-hikers, Barnes and Farlow. Barnes took a seat in front with the defendant. Farlow got in the back. When the defendant entered the city limits of High Point he was going at from seventy-five to eighty-five miles an hour. When he reached Phillips Street he lost control of the car, clipped off first a highway sign and then a telegraph pole, after which his car came to rest against a tree a hundred feet away. Barnes was thrown from the car. Farlow was crushed and killed. The defendant was convicted of manslaughter, and the Supreme Court found no error in the judgment.

8. Allowing two people to have their hands on the wheel

In *State v. Gray,* 180 N.C. 697, 104 S.E. 647 (1920), the defendant Gray was an experienced truck-driver, but he was permitting the defendant Ballentine, a novice, to drive. Gray was sitting beside Ballentine, keeping his hands on the wheel. The truck rounded a corner at a slow speed and then picked up to about twenty miles an hour. One hundred and sixty-five feet from the corner it ran down and killed a three-year-old child who was crossing the street. No brakes were put on; no horn was sounded; and the direction of the truck was not changed before the child was hit. At a distance of thirteen feet beyond where the child was killed the brakes were applied, and the truck skidded 33½ feet. Both drivers were convicted of manslaughter, and the Supreme Court found no error in the judgment. See also *State v. Harrell,* 204 N.C. 32, 167 S.E. 459 (1933).

9. Zigzagging

State v. Newton and West, 207 N.C. 323, 177 S.E. 184 (1934), has already been referred to several times in other connections. In that case three children, Inez Turner, Helen Beaman, and Helen Jones were walking on the dirt shoulder on the left-hand side of a concrete highway. Helen, the oldest, saw a car coming behind them and told them they had better get off the road. Two got as far as the ditch; one up the bank. The car, which, apparently, was driving only twenty to twenty-five miles an hour, had been zigzagging across the road. When it approached the children it went to the left, on the shoulder or into the ditch, breaking both legs of one of the children and one leg of another. It then drove on at increased speed. The car was later found, wrecked, further down the road. Near it but not in it were the defendants, who had been drinking. They were tried under an indictment which charged drunken driving and reckless driving in one count and hit-and-run driving in the other. They were convicted on both counts, and the Supreme Court found no error in the judgment. See also *State v. Dills,* 204 N.C. 33, 167 S.E. 459 (1933); *State v. Miekle,* 194 N.C. 808, 140 S.E. 192 (1927). In *State v. Lancaster,* 208 N.C. 349, 180 S.E. 577 (1935), a conviction probably would have been upheld except for an error in the charge.

10. Hitting a pedestrian who is on the shoulder of the road

State v. Lutterloh, 188 N.C. 412, 124 S.E. 752 (1924), is a little-known case. Mr. and Mrs. Bryant, with several friends, were out for a ride. As they returned, after dark, they had a puncture and pulled partly off the hard surface to fix it. The defendant, a respectable colored man, ran into the group from the rear, knocking the parked car fifty-one feet, hitting one of the guests, and dragging Mrs. Bryant forty-one feet, causing her death. There was some evidence that the defendant had been drinking. There was a conflict of testimony as to whether the defendant was driving twenty or forty miles an hour. There was some evidence that Mrs. Bryant was standing so as to obstruct the defendant's view of the rear light of the parked car. The defendant was indicted for murder and convicted of manslaughter. The Supreme Court refused to disturb the judgment, feeling, apparently, that it was a close case and peculiarly one for the jury to decide. See also *State v. Huggins,* 214 N.C. 568, 199 S.E. 926 (1938); *State v. Rountree,* 181 N. C. 535, 106 S.E. 669 (1921); *Smith v. Miller,* 209 N.C. 170, 183 S.E. 370 (1936); *Puckett v. Dyer,* 203 N.C. 684, 167 S.E. 43 (1932).

11. Speeding with slick tires when it is raining

In *Waller v. Hipp,* 208 N. C. 117, 179 S.E. 428 (1935), the defendant and a guest were riding, at about forty to forty-two miles an hour, in an automobile that belonged to the corporation for which the defendant worked. The surface of the road was damp, and the car began to side-slip. The defendant remarked that his tires were worn out but that his district manager had forbidden him to purchase new ones. At the request of the guest the defendant slowed down to from thirty-five to thirty-seven miles an hour. Nevertheless he lost control of the car and finally went off the highway and down an embankment. Both occupants of the car were injured. This was a civil case, and the guest was allowed recovery against both the driver and the corporation. The defendants appealed, but the Supreme Court was of the opinion that there was ample evidence from which the jury might have found that the reckless driving statute had been violated.

12. Recklessness at intersections

A number of cases involve recklessness at intersections. In *State v. Leonard*, 195 N.C. 242, 141 S.E. 736 (1928), the Rev. C. K. Gentry had attended religious services in Concord and was on his way home to Kannapolis in his modest automobile, with his wife, his two daughters, and a grandchild in the car with him. Seeing that he had plenty of time to make a turn before a car which he saw approaching from the opposite direction could reach the intersection, he started to turn left into Mulberry Street. Suddenly, from behind the car he had seen, emerged the defendant's car traveling at the rate of from sixty to seventy-five miles an hour. It passed the car in front of it and tore into the intersection. Mr. Gentry speeded up in an attempt to avoid it, but it caught his rear end. The Gentry car was overturned, and the other car ended up in a field 160 feet away from the point of the collision. The body of Evelyn Gentry, Mr. Gentry's younger daughter, only fourteen years of age, was found, horribly mangled and totally decapitated, fifty feet south of the wreckage of the Gentry car. The defendant, who was very drunk, first admitted and later denied that he had been driving the car. He was indicted for murder and convicted of manslaughter, and the Supreme Court found no error in the judgment. See also *State v. Landin*, 209 N.C. 20, 182 S.E. 689 (1935). In *State v. Agnew*, 202 N.C. 755, 164 S.E. 578 (1932), a conviction would probably have been upheld except for an error in the instructions. In *State v. Satterfield*, 198 N.C. 682, 153 S.E. 155 (1930), it was held that on the facts of that case a motion to dismiss should have been granted.

XXIV.

DRUNKEN DRIVING 20-138

Another statute in which two separate offenses are covered in the same section is that with respect to drunken driving. One offense is for "any person, whether licensed or not, who is a habitual user of narcotic drugs to drive any vehicle upon the highways within this state." The other is for "any person who is under the influence of intoxicating liquor or narcotic drugs to drive any vehicle upon the highways within this state."

It will be noted that both provisions of the statute apply to any vehicle; not merely to a motor vehicle. It is, therefore, apparently possible to indict and convict under this section a person who is driving a horse and wagon or riding a bicycle and is an habitual user of narcotic drugs, under the influence of intoxicating liquor, or under the influence of narcotic drugs.

Fortunately the number of "dope fiends" is somewhat limited. As to them it is sufficient to know that any person who is an habitual user of narcotic drugs is absolutely prohibited from driving a vehicle upon the highways. The rest of the present discussion, therefore, will be devoted to a consideration of the reasons for and the incidents of a prohibition against driving by a person who is temporarily under the influence of intoxicating liquor or of narcotic drugs.

A. Where the Statute Applies 20-138, 116-44.1, 20-139

G.S. 20-138, as we have just seen, prohibits operating a vehicle under the influence of intoxicating liquor or narcotic drugs "upon the highways within this state." G.S. 116-44.1 extends the operation of the motor vehicle laws, including this section, to the "streets, alleys and driveways on the campuses of the University of North Carolina." G.S. 20-139 extends whatever penalties for drunken driving may be in force at any given time to wilfully operating any *motor* vehicle "over any drive, driveway, road, roadway, street or alley upon the grounds and premises of any public or private hospital, college, university, school, or any of the state institutions, maintained and kept up by the State of North Carolina, or any of its subdivisions, while under the influence of intoxicating liquors, opiates, or narcotic drugs.

B. Driving under the Influence of Narcotic Drugs

Very often a person who is not an habitual user of narcotic drugs will, upon the advice of a physician, take a greater or lesser amount of one or another of those drugs for the relief of a temporary ailment or as part of the treatment of a more serious disease. Occasionally, also, one of these drugs is included in a prescription, the ingredients of which are not known to the patient.

"Narcotic drugs" are not defined in the Motor Vehicle Act. They are, however, defined in the Uniform Narcotic Drug Act (G.S. 90-87(o)), and the courts might find the definition in that act persuasive in an interpretation of the section with respect to them in the Motor Vehicle Act. That definition is as follows: "'Narcotic drugs' means coca leaves, opium, cannabis, and every substance not chemically distinguishable from them." Coca leaves are, of course, the source for cocaine and other derivatives. From opium are derived morphine, codeine, laudanum, and other drugs. Cannabis is the dried flowering spikes of pistillate plants of the hemp, from which marijuana is made. In so far as this definition is persuasive, therefore, it is clear that it is illegal to drive a car while under the influence of cocaine, opium derivatives, or marijuana.

In recent years drugs derived from barbituric acid, the so-called "hypnotic drugs," veronal, luminal (phenobarbital), nembutal, seconal, alonal, pentothal, sodium amytal, and others, have come to be prescribed more and more by physicians, so that altogether the amount of these drugs consumed reaches somewhat staggering proportions. A recent writer has estimated that in one North Carolina city one out of every three prescriptions filled by pharmacists contains a greater or lesser amount of barbituric acid or one of its derivatievs. Chester S. Davis, "State's Failure to Control Sales of Barbiturates Is Creating a Dangerous Public Health Problem," *Sunday Journal and Sentinel* (Winston-Salem: July 23, 1950), section C, page 1. Though used legitimately to induce sleep and cause relaxation of muscles, these drugs may have after-effects that reduce the inhibitions of drivers and alter their reaction time. When they are taken with even small amounts of alcohol the combined effect may be far greater than the sum of the two individual reactions. In 1945 and again in 1949 bills were introduced in the General Assembly to amend the statute which prohibits driving under the influence of narcotic drugs so as to bring driving under the influence of barbiturates or "hypnotic drugs" specifically within the act. Those bills, however, were reported unfavorably by committees of the House of Representatives. Therefore, if the definition in the Uniform Narcotic Drug Act should be followed by the courts in interpreting the Motor Vehicle Act, driving under the influence of barbiturates is not now a crime in North Carolina.

In very recent years also the antihistaminic drugs have been used widely to break up colds or give relief from hay fever or sinus trouble. These drugs also, in some people, may have after-effects that are deleterious in driving.

Amphetamine (benzedrine), when misused, may have an extremely exhilarating effect.

Though used medicinally for very different purposes, insulin and the sulphonimides, if taken by certain individuals or in certain amounts, also have after-effects which may make it extremely dangerous for one who has been taking them to drive a car.

Perhaps subsequent legislation will strike at the condition rather than at the particular drug which has been taken and provide that anyone who has taken narcotic drugs "or any other drug or substance" to the extent that his faculties are appreciably impaired in prohibited from driving a car.

C. What Is Drunken Driving?

Very clearly a man who has taken only a sip of wine or whiskey is not guilty of drunken driving if he thereupon drives a car, although he may even then have difficulty in exculpating himself if he is so unfortunate as to have an accident. Very clearly, also, it does not take a large amount of alcohol, any more than of the drugs we have been considering, to affect a man's reaction time and make him dangerous upon the roads. From the legal standpoint, however, the question is not how much alcohol a man has drunk but whether the amount which he has drunk has resulted in an appreciable impairment of his mental or physical faculties. ". . . a person is under the influence of intoxicating liquor or narcotic drugs, within the meaning and intent of the statute, when he has drunk a sufficient quantity of intoxicating beverage or taken a sufficient amount of narcotic drugs, to cause him to lose the normal control of his bodily or mental faculties, or both, to such an extent that there is an appreciable impairment of either or both of these faculties." *State v. Carroll*, 226 N.C. 237, 37 S.E. (2d) 688 (1946).

From the scientific standpoint, a man's reactions are ordinarily not influenced to a sufficient extent to impair his driving when he has less than .05% of alcohol in his blood. On the other hand, he is likely to be utterly incompetent to drive if he has as much as .15%. While individuals vary greatly, the ordinary person reaches the first point when he has had about two ounces of whiskey, or two weak drinks; he passes the second when he has had as many as six or seven drinks. Between these points a person may be influenced sufficiently to incapacitate him from driving a car, and a great many people are. It is therefore not only extremely dangerous to the public but extremely unwise, from the standpoint of possible criminal or civil liability, for the individual even to consider driving if he has had more than about two drinks. If he does, he may have to answer before a jury of his peers as to whether or not he was in fact influenced to the extent of an appreciable impairment of his faculties by the amount of liquor he had drunk.

D. How May Drunkenness Be Proved?

The fact that the defendant was under the influence of intoxicating liquor may be established in any number of different ways. Drunkenness has for so long had such an intimate relation to the law of crimes that a number of methods of proving it are well established in the law. More recently scientific tests have been devised that are likely to find more and more acceptance by the courts as supplements to, or even as substitutes for, the traditional methods of proof. An attempt will be made in the following paragraphs to discuss briefly both the traditional and the scientific methods of proof. The methods outlined are suggestive only and are not intended to exhaust all the possible methods of proving drunkenness.

1. Traditional methods of proving drunkenness

a. *Access to liquor*

The fact that the defendant has taken one or more drinks may always be proved by eyewitnesses. This is one of the facts from which the jury may draw the inference that the defendant was under the influence of intoxicating liquor. If the amount is also known the jury is in an even better position to decide whether or not to draw the inference. The presence of liquor in or near the car, particularly in an opened container, is circumstantial evidence only but may be considered in an attempt to determine the defendant's condition. *State v. Jessup*, 183 N.C. 771, 111 S.E. 523 (1922). Even the odor of liquor or wine in the car provides another bit of circumstantial evidence which may be taken into consideration. See *State v. Dills*, 204 N.C. 33, 167 S.E. 459 (1933).

b. *Appearance of defendant*

Liquor affects different people in different ways, and the affect on one person is not the same in different stages of intoxication. Nevertheless, the appearance and demeanor of the defendant have always been considered competent evidence to establish intoxication. Since most of the symptoms may arise from other causes, however, this type of evidence should be subjected to a considerable amount of scrutiny.

The odor of liquor on the breath has likewise always been considered good evidence of the fact that a drink has been taken. Some mouthwashes, however, contain a high percentage of alcohol, and the use of these may create a similar odor.

A florid face seems to go with certain types of coloring. In other people it may represent a chronic high blood pressure. However, floridity of countenance is frequently a symptom that liquor has been drunk.

Staring and glassy eyes may be a symptom of recent drinking; blood-shot eyes of a hangover.

Disordered clothing may show a lack of care of the person also characteristic of the drunk.

c. *Demeanor of defendant*

It has been said that under the influence of drink a person's true nature comes to the surface. Since, however, differences in demeanor seem to be characteristic of different stages of drunkenness, it might be more accurate to say that a person's demeanor represents rather the stage of drunkenness to which he will permit himself, or at any rate has permitted himself, to go. Hilariousness and jocularity, the tendency to fight, weeping and sentimentality, drowsiness or stupor may represent either the effect of liquor on a particular individual or the stage of liquor-drinking that has been attained.

d. *Lack of muscular coordination*

Until the stage of drowsiness or stupor is reached, it is the alteration in reaction time and the lack of muscular coordination that render drunken driving so extremely dangerous on the roads. The fact that the defendant has been zigzagging across the road, or, when he has stopped, that he is slumped over the wheel, walks with a stagger, or speaks incoherently, may well be evidence of an advanced state of drunkenness. However, since shock may produce many of these symptoms, it is important to know, particularly after an accident, whether the defendant did receive a blow on the head or any other injury that might have helped to produce the symptoms.

e. *Opinion evidence*

Since the characteristics of drunkenness are matters of common knowledge, and scientific tests have only recently been devised, it has always been permissible for even the non-expert witness to say whether or not, in his opinion, a

defendant was drunk or under the influence of intoxicating liquor at a particular time. *State v. Harris*, 213 N.C. 648, 197 S.E. 142 (1938). From drunkenness shortly before the accident (*State v. Jessup, supra*), or shortly afterwards (*State v. Newton and West*, 207 N.C. 323, 117 S.E. 184 (1934)) the inference may be drawn of drunkenness at the time of the accident. This is not true, however, if the time was too distant (*State v. Kelly*, 227 N.C. 62, 40 S.E. (2d) 454 (1946)), unless it can be shown that the defendant was drunk continuously in between. *State v. Dawson*, 228 N.C. 85, 44 S.E. (2d) 527 (1947).

f. *Admissions*

Admissions by the defendant, or a failure by him to deny a charge that he is drunk or has been drinking under circumstances that call for such a denial (sometimes called a vicarious admission), are also admissible under the usual rules which govern the acceptance of admissions in evidence.

g. *Testimony of doctors*

The testimony of a doctor that in his opinion a particular defendant was or was not under the influence of intoxicating liquor has, of course, the additional elements of experience and scientific training to give it more weight than the testimony of a layman not similarly trained. It should be noted, however, that both blood pressure and rapidity of heartbeat, on the basis of which such diagnoses are frequently made, vary greatly with different individuals and with the same individual at different times, so that, if the doctor's testimony is to have the greatest possible evidentiary value, he should state what scientific tests, if any, he has used in making his diagnosis.

2. Scientific methods of proving drunkenness

As alcohol is absorbed into the system after drinking, the various body fluids begin to show more and more traces of alcohol. If, therefore, specimens of these fluids may be obtained, it is possible, by scientific means, to show the extent to which alcohol has been absorbed into the system and thereby the extent to which conduct is likely to have been affected. Among the fluids into which alcohol is absorbed, an analysis of which, therefore, may show the probable effects upon action are urine, blood, saliva, and spinal fluid. Of course, specimens of blood must be taken only by a doctor or laboratory technician, and specimens of spinal fluid are withdrawn only in exceptional cases. From a scientific analysis of any of these specimens it is possible to show the percentage of alcohol in the fluid and the fact that the absorption was insufficient to render the driver unsafe or was sufficient to render his actions possibly unsafe or indubitably dangerous. As a result of many scientific experiments, formulas have been developed for arriving at the percentage of alcohol in the blood if the percentage in one of the other fluids, urine, for instance, is known, and usually the evidence is given to the jury in terms of the percentage of alcohol in the blood.

It is possible also, by capturing the breath, perhaps by persuading the defendant to inflate a balloon, and analyzing its contents, to tell whether a defendant has been drinking. This test can be made quickly, and equipment for making it can even be carried to the scene of the accident. In its early stages the equipment for making this test was somewhat unreliable and tended to show a higher percentage of alcohol when the drink had recently been taken than later on when the alcohol might have been more completely absorbed into the system. With the improvement of the equipment, however, and of the techniques in making the test, it is now possible to arrive from this test at a very close approximation of the amount of alcohol which has been absorbed into the blood.

If any of these specimens are taken and the defendant does not object to the introduction into evidence of the results of the analysis, of course the evidence will be admitted. If he does object, whether or not the evidence is admissible depends on what happened at an earlier time. If, when the specimen was taken, the defendant protested, or if any compulsion was used in order to obtain the specimen, the evidence is not admissible (*Apodaca v. State*, 140 Tex. Cr. R. 593, 146 S.W. (2d) 381 (1940)), at least in those states which, like North Carolina, have constitutional or statutory provisions against compelling a defendant to give evidence against himself. N. C. Const. Art. I, § 11; G.S. 8-54. Probably the fact that the defendant protested, and that the specimen was not taken for that reason, cannot be shown in evidence. If no compulsion is shown, the North Carolina court has held that the evidence will be admitted. *State v. Cash*, 219 N.C. 818, 15 S.E. (2d) 277 (1941) (not an automobile case). Apparently, if the defendant consented to the taking of the specimen, he cannot thereafter object to the introduction into evidence of the result of the analysis. *Spitler v. State*, 221 Ind. 107, 46 N.E. (2d) 591 (1943).

Since evidence as to the result of scientific tests for drunkenness is admissible in North Carolina, why is there such a wide-spread belief that legislation is necessary in order to make it usable? The reasons are two. In the first place, unless the statute specifies what the significance is of .05%, .10%, .15%, or any other amount of alcohol in the blood, it is probably necessary in every case to have a qualified expert testify, not only as to the making and result of the test, but also as to the probable effect on the actions of the individual of having in his blood the amount of alcohol shown by the test. In the second place, even if an expert testifies, a jury can, in the absence of statute, give to the evidence as much or as little weight as it sees fit. In *Kuroske v. Aetna Life Insurance Co.*, 234 Wisc. 394, 291 N.W. 384 (1940), for instance, suit was brought on an accident insurance policy for the death of the insured following a collision between an automobile which he was driving and a passenger train. The policy contained a provision that it should not cover any accident occurring while the insured was "under the influence of any intoxicant." A specimen of the blood of the deceased, taken before he died, showed .25% alcohol by weight, and two doctors, who qualified as experts, testified that persons with that much alcohol in their blood are intoxicated. There were witnesses, not doctors, however, who testified that the deceased was not drunk, and the plaintiff, the deceased's wife, brought out that during the previous winter the deceased had been drinking heavily and had been confined, during part of the period, in a hospital for chronic alcoholics. She contended that her husband had developed such a tolerance for alcohol that .25% in his blood was not enough to make him drunk. In the absence of statutory guidance, the jury believed the lay witnesses, credited the wife's contention, and allowed recovery on the policy.

D. Criminal Liability for Violations of the Statute against Drunken Driving

As in the case of speeding and many other violations of the automobile law, if one violates the statute with respect to driving under the influence of intoxicating liquor, and an accident occurs, there are many other things for which one may be indicted besides a violation of that particular section of the law. A brief discussion, therefore, of some of the other crimes which may have been committed, and of the cases illustrating them, may be interesting at this point.

1. Murder.

If a man violates the statute against driving under the influence of intoxicating liquor, and someone is killed as a result, the cases say that he will be guilty of manslaughter at least. Drunkenness, even intentional, does not constitute the premeditation and deliberation necessary to make the crime first degree murder, but it might not negate the existence of such premeditation and deliberation if they in fact existed. On the other hand, the Supreme Court does not seem to have decided a case involving drunken driving where such elements have been found.

What about murder in the second degree? In *State v. Trott*, 190 N.C. 674, 130 S.E. 627 (1925), the defendant and one Michael, after an afternoon spent at Lookout Dam and other places where liquor had been consumed, and after one escapade in which the car had been driven off the road, reached the cotton mill office in North Newton at which the defendant was employed. At that point Fred Yount, who had been with them, walked home, and Lewis Yoder refused to ride any further with the defendant on the ground that he was too drunk. The defendant finally turned the driving of the car over to Michael on the excuse that he was "tired," since he had been at the wheel all day. They took Yoder home and drove on down to Warlick's garage, forgetting to turn on their lights. While they were there someone called their attention to a policeman, and the defendant said, "Get on the wheel and get away." They went back up the street by which they had come, on the wrong side, at about fifty or sixty miles an hour, and ran into a Ford roadster in which Paul Yount and Joe Cline were taking home from a Children of the Confederacy meeting eight girls, six of whom were on the inside and two on the outside. The Ford was carried twenty-five or thirty feet down the street and the girls on the outside flung twenty and sixty feet respectively, one of them being severely injured and the other killed. Both Trott and Michael were tried and convicted for murder in the second degree, and this conviction was upheld by the Supreme Court.

2. Manslaughter

The leading case on the results of drunking driving constituting manslaughter is *State v. Dills*, 204 N.C. 33, 167 S.E. 459 (1933). In that case the defendant and three other persons were riding in a stripped-down Chevrolet from Blowing Springs toward Nantahala Station on Highway 10. The defendant was occupying the only seat, and the deceased was in a "crate or enclosure." At Blowing Springs the defendant had been slumped over the wheel. A bystander, being of the opinion that he was drunk, had told him and his companions that "they were not fit to operate that little truck." There was testimony that, as they proceeded on their way shortly thereafter, going at a speed variously estimated at from twenty-five to fifty miles an hour, the car "wabbled," that it ran "wavery across the road," "zigzagging in the road going back and forth." Just prior to the accident it was on the right shoulder of the road, then on the hard surface, then on the loose dirt at the left. Soon thereafter it turned over, injuring all the occupants, one of whom died as the result of his injuries. After the accident the car had the odor of wine about it, and something that appeared to be wine had been spilled in the car. The defendant testified that he was not drunk and that something had gone wrong with the steering gear which caused him to drive across the road. Some time after the accident the steering gear was found to be loose. The defendant was convicted of manslaughter. Though the evidence had been mostly opinion evidence and circumstantial evidence, the Supreme Court had no difficulty in holding that it was ample to sustain the conviction.

3. Other crimes

The relation between reckless driving and drunken driving is very close, since the drunken driver very often drives recklessly also, and the reckless driver may also be drunk. Drunkenness is frequently more difficult to prove than recklessness, however, so police practice often involves charging the defendant with both drunken driving and reckless driving. The conviction may then be on either or both counts.

A similar situation often arises with respect to drunken driving and hit-and-run driving, since the drunken driver, being conscious of his drunkenness, is often anxious to get away from the scene of the crime as rapidly as possible, and not being in full possession of his faculties, is not aware of the cowardliness or of the danger of doing so. *State v. Newton and West*, already referred to, is a case in which the defendants were convicted of both drunken driving and hit-and-run driving.

Nor is the driver precluded by his drunkenness from committing many of the other crimes discussed under "Speeding" and in other sections of this guidebook.

XXV.

PENALTIES 20-176 20-177

Murder, manslaughter, and assault, even though committed with automobiles, carry their own penalties, quite irrespective of the motor vehicle law. G.S. 20-177, which provides the punishment for any violation of the motor vehicle law which is declared to constitute a felony by that law or any other law of the state, and for which no other penalty has been provided, probably has no application to violations of the rules of the road. The penalties for a few minor violations have already been discussed in connection with the violations themselves. Otherwise, the penalties for violations of the rules of the road are set out in the following paragraphs.

A. Ordinary Violations 20-176

Most violations of the rules of the road are misdemeanors and are punishable by a fine of not more than one hundred dollars ($100.00) or by imprisonment in the county or municipal jail for not more than sixty days, or by both such fine and imprisonment. Speeding and reckless driving, which formerly carried penalties higher than those for most of the other violations, are now punishable under this section of the act.

B. Minor Violations 20-176

Certain other violations of the rules of the road are considered somewhat minor and carry a fine of not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) or imprisonment for not more than thirty days. They are therefore within the jurisdiction of justices of the peace. These violations include:

G.S. 20-142 and G.S. 20-143. Failure to obey railroad warning signals.

G.S. 20-144. Exceeding the special speed limit on a posted bridge.

G.S. 20-146. Driving on the left-hand side of the road.

G.S. 20-147. Driving on the left across a railroad.

G.S. 20-148. Improper procedure in meeting another vehicle.

G.S. 20-150. Certain kinds of improper procedure in passing another vehicle.

G.S. 20-151. Failure to give way to overtaking vehicle.

G.S. 20-152. Following too closely.

G.S. 20-153. Turning improperly.

G.S. 20-154. Failure to give proper signal.

G.S. 20-155 and G.S. 20-156. Violation of the rules as to right of way.

G.S. 20-157. Improper procedure upon approach of police or fire department vehicle.

G.S. 20-159. Improper passing of street car.

G.S. 20-160. Driving through safety zone.

G.S. 20-161. Improper stopping.

G.S. 20-162 and G.S. 20-163. Certain types of improper parking.

G.S. 20-165. Coasting.

C. Driving When an Habitual User of Narcotic Drugs; Driving While under the Influence of Intoxicating Liquor or Narcotic Drugs — 20-179

The various offenses of driving when an habitual user of narcotic drugs, or when under the influence of intoxicating liquor or narcotic drugs are punishable as follows:

For the first offense, a fine of not less than one hundred dollars ($100.00) or imprisonment for not less than thirty days, or both such fine and imprisonment.

For the second offense, a fine of not less than two hundred dollars ($200.00) or imprisonment for not less than six months, or both such fine and imprisonment.

For a third or subsequent offense, a fine of not less than five hundred dollars ($500.00), or both such fine and imprisonment in the discretion of the court. (A careful reading of the whole statute at least suggests the idea that there was an error, either in the drafting or amending of this statute, or in the way in which it was incorporated into the Session Laws. Apparently the intention was to have the term of imprisonment for a third offense of drunken driving fixed, the discretion of the judge going, not to the length of the imprisonment, but to whether there should be imposed a fine, imprisonment, or both.)

D. Failure to Dim Lights

The penalty for failing to dim or depress headlights upon meeting another vehicle is a fine of not more than ten dollars ($10.00) or imprisonment for not more than ten days.

E. Failure to Stop in Event of Accident Involving Injury or Death to a Person

Failure to stop in event of an accident which involves injury to property only is a misdemeanor and is punishable as in subsection (A) above.

On the other hand, *wilful* failure to stop in the event of an accident which involves injury or death to a person, and to perform the other duties required under the act, is a felony and is punishable by a fine of not less than five hundred dollars ($500.00) or by imprisonment for not less than one nor more than five years, or by both such fine and imprisonment. The statute provides that no court, in such a case, has power to suspend judgment upon payment of the costs.

The modern, 100-bed hospital at Sylacauga, Ala., was designed in architectural concrete by Charles H. McCauley, A.I.A. of Birmingham. General contractor was Algernon Blair of Montgomery.

ARCHITECTURAL CONCRETE

For Hospital Buildings Offers Fine Appearance--Economy--Firesafety

ARCHITECTURAL concrete fulfills every important construction requirement for modern hospitals, including sanitary cleanliness, firesafety, attractive appearance and economy. The rugged strength and durability of concrete structures keep maintenance costs at a minimum, giving many years of service at consistently **low annual cost.**

Portland Cement Association

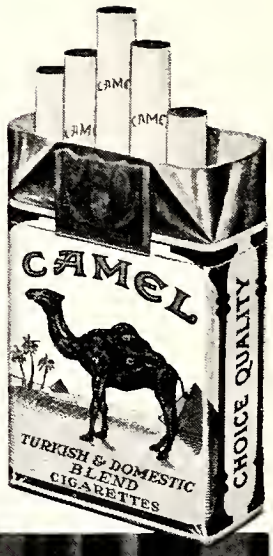
State Planters Bank Bldg., Richmond 19, Va.

A national organization to improve and extend the uses of concrete . . . through scientific research and engineering field work

How MILD can a cigarette be?

MAKE THE 30-DAY CAMEL MILDNESS TEST—SEE WHY...

More people smoke Camels than any other cigarette!



"With all the singing I do, I have to be kind to my voice. I smoke Camels—the cigarette that agrees with my throat!"

Martha Tilton

POPULAR SINGING STAR

"I know how mild a cigarette can be ever since I made the 30-Day Camel Mildness Test!

"It was fun. It was sensible. It didn't ask me to make up my mind on just one puff or one sniff...one inhale or one exhale. I had a chance to enjoy flavorful Camels day-after-day for 30 days. I had plenty of time to find out how welcome Camel mildness is to my throat!"

BLONDE AND BEAUTIFUL...Martha Tilton has sung her way to fame via the big name bands...top radio shows...motion pictures...personal engagements ...and popular recordings. Many of Miss Tilton's recordings have passed the million mark!

R. J. Reynolds Tobacco Co., Winston-Salem, N. C.

NOTED THROAT SPECIALISTS REPORT ON 30-DAY TEST OF CAMEL SMOKERS...

NOT ONE SINGLE CASE OF THROAT IRRITATION due to smoking CAMELS

Yes, these were the findings of noted throat specialists after a total of 2,470 weekly examinations of the throats of hundreds of men and women who smoked Camels—and only Camels—for 30 consecutive days.

Let your "T-ZONE" be the judge
(T for throat, T for taste)