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THE MOTOR CAR'S STATUS

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A new vehicle has appeared on the highways and streets, with which it may safely be predicted, the courts and legislatures will have much to do in the future. Already it is making a great demand on their time. One cannot pick up a newspaper which does not contain an account of the payment of a price in a court of justice, for driving a motor car at an excessive speed, or of the happening of some sad accident which could have been easily avoided by the exercise of the slightest care.

It was not long ago that we read of the sentence of an autoist by a French court, to three months' imprisonment and the payment of four thousand dollars damages for causing the death of a person by carelessly operating a motor car. Such was the price for a death.

Are we to condemn the automobile as a dangerous machine?

The automobile, or "self-moving" carriage, has not as yet been judicially defined. The only definition which the writer has been able to find in any of the law books, is that in a law dictionary which states that the term means, "All motor traction vehicles capable of being propelled on ordinary roads. Specifically horseless carriages." [1]

It has been declared that the automobile is a source of danger, [2] and capable of such a high rate of speed, and careless operation, that regulation is necessary for the safety of the public. [3] Many of the automobile acts, recently adopted by the various states, expressly define the terms "automobile," and "motor car." For example, in Rhode Island it is provided that the terms shall include all vehicles propelled by power, other than muscular power, excepting railroads and railway cars, and motor vehicles, running

1. See English's Law Dict., p. 78.

Automobile vehicles have been divided into three classes; heavy omnibuses or cars, for road use in carrying passengers or goods; pleasure carriages for use in driving on the streets or roads in place of the ordinary horse and carriage; bicycles, tricycles or quadricycles furnished with a motor, to relieve the rider of the work of operating the pedals and to increase speed.

Ency. Brit., Vol. 25, p. 303.

2. *Christie v. Elliott*, 216 Ill., 31, *Bertels v. Laurel Run Turnpike Co.*, 31 Pa. Co. Ct. Rep. 129.

3. *Com. v. Boyd*, 188 Mass. 79.

only upon rails or tracks, and steam rollers.[4] The New York act contains a similar provision.[5]

There seems to be no question as to whether the term "carriage" includes the modern machine of transportation, for it has been emphatically laid down in two cases that an automobile is a carriage.[6]

The court will assume judicial knowledge of an automobile and its characteristics, and the consequences of its use, under a statutory provision requiring courts to take judicial notice "of the true significance of all English words and phrases."[7]

Whether a motor vehicle may be included within the general terms of a statute passed before the horseless carriage was known, and in use, it may be impossible to say, as such a question would depend largely on the particular statute. In a District of Columbia case it was held that a statute of the nature above mentioned, did not include automobiles.[8]

One who is motoring on the streets and highways may be said to be "driving."[9]

In the use of the public highways and streets by useful modern vehicles of conveyance the authorities should be fair and should not unnecessarily restrict their operation. The unpardonable practice of spotting speeding motor cars for the purpose of revenue is to be condemned, as much as the reckless driving of the machines.

The automobile occupies a position of importance and interest on the public ways. Its right to use the avenues of travel has been judicially declared to be equal to the right of other vehicles.[10]

4. See Pub. Laws R. I., Jan. 1904, chap. 1157, sec. 7.

5. See Laws, N. Y., 1904, vol. 2, chap. 538, sec. 1, subd. 2.

6. *Baker v. Fall River* (Mass., 1905), 72 N. E. Rep. 336; *Com. v. Hawkins*, 14 Pa. Dist. Rep. 502.

7. *Ex parte* Berry (Cal., 1905), 82 Pac. Rep. 44, wherein the court said: "We may assume . . . to have what is common and correct knowledge about an automobile. Its use as a vehicle for traveling is comparatively recent. It makes an unusual noise. It can be, and usually is, made to go on common roads at great velocity—at a speed many times greater than that of ordinary vehicles hauled by animals; and, beyond doubt, it is highly dangerous when used on country roads, putting to great hazard the safety and lives of the mass of the people who travel on such roads in vehicles drawn by horses. Fearful accidents to persons driving animals which are frightened into unmanageable terror by automobiles are of common occurrence."

8. *Washington Electric Vehicle Trans. Co. v. District of Columbia*, 19 App. Cas. (D. C.) 462. But see *Com. v. Hawkins*, 14 Pa. Dist. Rep. 592.

9. *Com. v. Crowninshield*, 187 Mass. 221.

10. *Christie v. Elliott*, 216, Ill., 31; *Indiana Springs Co. v. Brown* (Ind. 1905), 74 N. E. Rep. 615. See also *Upton v. Windham*, 75 Com. 288.

Is this declaration true? Independently of statutory regulation, and in theory, it is, but as a practical result of the statutory enactments concerning the registration and licensing of automobiles, the rights of the owners thereof are unequal compared with the rights of the owners of other vehicles, yet not illegally unequal since legislation especially regulating the right to operate motor carriages as a class, is constitutional,[11] and the automobile has no right to run on the public ways unless the owner has complied with the conditions prescribed in statutory provisions.[12]

It seems that a turnpike company has the power to exclude motor vehicles from its road because of the danger caused by their use,[13] and it has been held that an ordinance passed by county supervisors, which prohibited the running of automobiles on country roads between sunset and sunrise was not void as unreasonable.[14] Prohibiting the use of country roads at night would seem to be exercising the right to regulate motoring to its limit, and possibly beyond lawful regulating power; especially in view of the fact that horses have no superior rights on the road. Such a regulation comes very near amounting to prohibition. The frightening of horses, beyond doubt, is an incident to the lawful use of the public highways and does not constitute a wrong *per se.*

Even after having obtained authority to operate one's car in the state, county or city, the license is a protection only within the jurisdiction of the authorities granting it,[15] except where by statute non-resident licensed operators are exempt. Thus in Rhode Island it is provided that machines owned by non-residents and driven by persons residing and registered in some other state may be operated on the roads and highways.[16]

A provision of an act regulating owners of automobiles to take out a license is obscure where the title provides for licensing operators. The title is misleading and the owner may be one person and the operator another. Even though the legislature may have intended to license the machine or the operators, a penal statute must be taken as it is written.[17] In line with the discussion of the motor car's rights on the public ways, it should be mentioned that it has been held under act of Congress that an automobile under power has no right on a ferry boat.[18]

11. *Christie v, Elliott*, 216 Ill., 31; *Com. v. Boyd*, 188 Mass., 79; *People v. Schneider* (Mich., 1905), 103 N. W. Rep. 172; *People v. Mac Williams*, 91 N. Y. App. Div. 176; *Com. v. Densmore*, 13 Pa. Dist. Rep. 639.

12. *Bertels v. Laurel Run Turnpike Co.*, 31 Pa. Co. Ct. Rep. 129. But see *Chicago v. Banker*, 112 Ill. App, 94.

13. *Bertels v. Laurel Run Turnpike Co.*, 31 Pa. Co. Ct. Rep. 129.

One who operates an automobile should possess something more than expert knowledge of the machine's construction, or the best mode of operating to obtain the greatest power and speed. A motor vehicle is not a machine of danger when controlled by an intelligent prudent driver. The hazard to which the safety of pedestrians and, in most cases, persons with horses, may be exposed, results from the personal part played in motoring, rather than from the nature of the vehicle. It is evident therefore, that it is in the manner of driving the machine, and that alone, which threatens the public safety. The ability immediately to stop, its quick response to guidance, its unconfined sphere of action, seem to make the automobile one of the least dangerous of conveyances if properly driven.

Xenophon P. Huddy.

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14 *Ex parte Berry* (Cal. 1905), 82 Pac. Rep. 44. In this case the court said: "While there are usually laws regulating and limiting the speed at which they [automobiles] may be driven, it is a matter of common knowledge that these laws are frequently violated, and that it is exceedingly difficult for officers, even in the daytime, to stop them when going at forbidden speed and arrest the drivers. And it is apparent that this would be much more difficult to do in the night time. Moreover, in the night time, even those drivers of automobiles who might be considerate of the safety of others, would not be able to see an approaching team in time to take the proper precaution. Considering these matters, and many others which might be suggested, we see nothing unreasonable in the regulation, which forbids the use of automobiles on country roads in the night time. Of course, if the use of automobiles gradually becomes more common, there may come a time when an ordinance like the one here in question would be unreasonable. As country horses are frequently driven into cities and towns, many of them will gradually become accustomed to the sight of automobiles, and the danger of their use on country roads will grow less."

15. *State v. Cobb* (Mo. App., 1905), 87 S. W. Rep. 551.

16. See Pub. Laws R. I., Jan., 1904, Chap. 1157, sec. 5.

17, *Com. v. Densmore*, 13, Penn. Dist. Rep. 639, 29 Pa. Co. Ct. Rep. 217.

18. The Texas, 134 Fed. Rep. 909.