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THE STATUS OF THE AUTOMOBILE.

The invention of the automobile has introduced upon the public roads of the country a novel and not altogether welcome guest. Although barely ten years since it first made its appearance, it has already conquered an important position in the domain of travel. Indeed, its great power, speed and weight have made it a veritable king of the highway, before whom we are all invited to prostrate ourselves. Though admitted to the use of the roads, in common with other vehicles, certain restrictions have been found necessary to curb its masterful and dominating influence.

From time immemorial the highways have been dedicated to the habitual use of pedestrians and vehicles drawn by animal power, and to their occasional use for the moving of heavy objects, such as machinery, engines and even houses. As the latter use is purely exceptional, and has given rise to little or no litigation, it need not be further considered. So careful are the courts that the rights of the public generally shall not be invaded, that legislative authority must be obtained for the construction of public works, and even for a temporary interruption of such rights by digging trenches or laying pipe lines for the use of gas, water and telegraph companies. Not only must the consent of the people through their proper representatives be obtained, but if the proposed improvement results in an additional burden not originally contemplated, the owners of abutting property are entitled to compensation for damages resulting from the new construction.

After some conflict of opinion, it is now well settled that the construction and operation of a steam railway is a use of land for a purpose so different from the public right of passage for which highways were originally designed, that the abutting owner is entitled to recover such damages as he may have sustained. This is put upon

the ground that the passage of trains not only constitutes a serious embarrassment to the ordinary use of a public road, but practically ousts the public from access to so much as is occupied by the tracks, substituting an exclusive use by the carriages owned by the company for a price paid it, and practically creating a monopoly of that part of the road for the pecuniary benefit of a few. To that extent it is detrimental to the public use for which the road was originally designed, as well as a special injury to the abutting property owners.

These objections apply in a limited degree to the use of the public roads for tramways; but the fact that the cars were originally drawn by horses instead of steam power apparently secured their being treated by the courts as belonging to the class of ordinary vehicles, and requiring only the consent of the municipality to their operation. The fact that their rails are laid flush with the surface of the streets, and offer but a slight impediment to their use by ordinary vehicles, had doubtless much to do in determining this result. The substitution of electric for animal power was not regarded as a fundamental change, that would disentitle the trolley car to the privilege of the most favored class of vehicles.

While the courts were doubtless correct in their original ruling, that the tram car imposes no additional burden upon the abutting property, the great speed of electric cars, as well as the increased size, weight and noise of such cars, particularly those employed in suburban travel, has resulted, as a matter of fact, in a marked depreciation of the value of property upon residence streets. Indeed, there is scarcely a city in the country where some of its finest residential property has not lost a large part of its value through the noise occasioned by the demand for heavy cars and rapid transit to suburban villages. Had the earlier cases presented the features of the later ones, it may be doubted whether the courts would have acquiesced so readily in these growing encroachments upon the common law right of passage. But the successive burdens have been imposed so gradually, that the courts have found it difficult to draw the line between a mere yielding to the growing demand of the public for additional facilities, and that which is really a nuisance. The result too often is that streets originally dedicated in view of the prevailing common uses, have become great arteries of travel to the destruction of abutting property for residential purposes. Clearly nothing of the kind could have been contemplated at the time of the original dedication. The quiet citizen, who desires nothing so much as a house he can call his own, may well exclaim: "Where can I build me a home, and be safe from the rapacities of 'rapid transit' and public improvements?"

With the advent of the automobile the courts were confronted with still another proposition, viz., that of a self-propelled vehicle limited to no part of the highway, capable of the speed of an express train, and attended by a cloud of dust and smoke, and the emission of a noisome odor. Notwithstanding these objections, automobiles have doubtless done much to earn their popularity. They have brought suburban towns within easy access from the city; they do not run upon a fixed track, and have no monopoly of any part of the highway; they do not seriously interfere with its use by other vehicles, and afford a most convenient and expeditious method of traveling between cities and outlying villages or country seats. In the form of electric runabouts, doctor's *coupés*, express and delivery wagons, and other teaming, they are rapidly superseding vehicles drawn by horses. They have largely taken the place of traveling carriages with those who are desirous of speed, and are content with little more than a perfunctory view of the scenery, which, however, cannot be thoroughly "taken in" when running at a rate of over twelve miles an hour. To those who occupy or drive them, they are undoubtedly a fascinating amusement. The speed of which they are capable intoxicates and bewilders the senses, and deadens them to the dangers which surround the machine, and by a sudden mishap may turn it in the twinkling of an eye into a terrible engine of destruction.

There was nothing, however, in the fact, that when improperly managed they became dangerous, to prevent the courts from permitting them to share with other vehicles the privileges of the road, as they were not bound to assume that they would be run habitually at an excessive speed. They were unanimous in holding them entitled to these privileges. Automobiles took their place with other vehicles; and the principles of the common law were held applicable to their management. It was assumed, however, that their regulation was within the police power, which it was soon found necessary to exercise, by requiring them to be registered or licensed, to limit their speed and to carry lights by night and a horn by day, as well as to post their registered numbers conspicuously upon the rear end of the machine. Their popularity among those who used them was only exceeded by their unpopularity with those who did not use them. The reason is obvious. To the *insider* they exhibited only their attractive features; to the outsider, only their repulsive ones. To nearly everyone but the occupants they were an inconvenience; to many a nuisance, and to some a veritable terror. In dry weather they raised a stifling cloud of dust and smoke; their engines produced a disturbing noise, and their speed

frightened horses, and rendered the roads so unsafe that it became a question whether they could be tolerated at all. Under such conditions, it is little wonder that they became so obnoxious that they were prohibited altogether in certain localities, such as Mount Desert and Nantucket Islands, and largely in private grounds. As soon as their beauty and peculiar construction had lost their novelty, and the public had ceased to wonder at their speed, the spectacle of a dangerous and irresistible machine tearing through the streets of a village at thirty or forty miles an hour, raised a storm of indignation, and sometimes called forth a volley of stones, or of eggs which had outlived their usefulness for every other purpose.

The competency of the legislatures and municipalities to regulate their speed has not been questioned. But it has been found almost impossible to enforce a limit in this particular, from the fact that many of these machines largely resemble each other in construction and color; that the faces of those who occupy or control them are often covered by masks, goggles or veils, and that they pass with such rapidity that it is impossible to discern their numbers. The constitutionality of these laws, at least so far as they require the chauffeur to be examined and the machine to be registered and licensed, has been fiercely assailed in several cases; and in a few they were held to create an unlawful discrimination as between automobiles and other vehicles; but the weight of authority is quite the other way. *Chicago v. Banker*, 112 Ill. App. 94; *Commonwealth v. Boyd*, 188 Mass. 79; *People v. Schneider*, 139 Mich. 673; *People v. Williams*, 86 N. Y. Supp. 357; *Christy v. Elliott*, 216 Ill. 31.

The argument was made in these cases that as automobiles, when driven at a proper rate of speed were no more dangerous than vehicles drawn by horses, a provision requiring them to be registered and licensed was an unlawful discrimination, as between two vehicles standing upon the same footing with respect to safety. This might be so if a proper speed were observed, but the history of automobiling shows very plainly that it is practically impossible to enforce these regulations; that the temptation to run as rapidly as possible is almost irresistible, and that the excitement of the sport consists largely in getting out of the machine its best possible work, regardless of the danger to the occupants, or those with whom they come in contact. The legislature may lawfully take this into consideration, and make special provisions for the notoriously frequent violations of its speed laws, by requiring special methods of identification,—in short, wherever a new method of doing a particular thing is attended with dangers peculiar to itself, the legislature under the police power may provide against it by requiring precautions not

applicable to other methods of doing the same thing. It is a fact too notorious to be ignored by the courts, that the excessive speed of automobiles costs the lives of many persons; and that scarcely a week, sometimes scarcely a day passes without chronicling from one to a dozen deaths occasioned by the reckless driving of these machines. Fortunately, the chauffeur and his guests are the usual sufferers, and in their misfortunes as law-breakers, the general public do not much concern themselves. Our sympathies are rather reserved for the hapless farmer whose horses are frightened, or whose wagon is wrecked, for a failure or inability to comply instantly with the chauffeur's signal; or for the bystander who is run down and crushed by the enormous weight of these engines. Bearing in mind that but a small proportion of these cases find their way into the public prints, either because they are not attended by loss of life or because their wide publication might impair the sales of the machines, it is quite probable that the injuries and loss of life among the class who make use of them, exceed those occasioned to the corresponding class,—first class passengers, by railway accidents. Indeed, it is a strong proof of the popularity of these vehicles that neither the dangers which attend their use, nor the frequent accidents to their mechanism, which may leave them stranded by the roadside for hours, seem to diminish their numbers, or impair the esteem in which they are held. For urban and suburban traffic, they are likely to remain until some new invention supplants them. As traveling carriages they will continue to be used by those who love the excitement of rapid motion; are satisfied with glimpses of the scenery, and are not deterred by their great original cost nor by the heavy expense of operating them. For park and other pleasure driving, where speed is objectionable rather than desirable, they are ill adapted, and as soon as they cease to be a fashionable fad, the public will probably return to its carriage and horses. The automobile lacks one of the most attractive concomitants of pleasure driving in the companionship of the horse. This is a feature which may not be considered by those who are indifferent to him, but to those who recognize an instinctive sympathy, more easily felt than described, between man and certain of the lower animals, such as the horse, the dog and the donkey, the cold and heartless mechanism of the automobile furnishes a poor substitute. The automobile is doubtless a most useful vehicle, but one is not likely to lavish upon it the fond attention he bestows upon his horse or dog. A man may admire his own carriage, but his affections are reserved for the horse that draws it and the dog that follows it.

After the automobile has ceased to be a mere fashion its permanent use, like that of the bicycle, will be determined by the real needs of the public, with whom the invention will find its natural level. Legislation will doubtless accommodate itself to these needs.

The legal relations of the automobile to the public and to other vehicles are in a sort of transition state. The newcomer has appeared with a demand for equal rights, which, owing to its greater speed and weight, amounts to a demand for paramount rights, to which all other vehicles not run upon a fixed track are bound to yield the right of way. The question, whether ordinary wagons or carriages are bound to obey the chauffeur's horn and make room for an automobile coming up from behind, does not seem to have been decided; although this concession is usually made voluntarily, if somewhat churlishly, and sometimes to the great inconvenience of the slower vehicle.

In the case of tram cars, ordinary wagons are usually required by ordinance to keep off their tracks. The precaution which the chauffeur is bound to take, not only to prevent contact, but to avoid frightening the horses, depends upon the circumstances of each individual case. It is clear that his duty is not always discharged by limiting himself to the statutory speed. He is bound to watch the conduct of horses attached to carriages which he proposes to pass, and to slow down, or even come to a full stop, if they show a disposition to shy, or any signal otherwise indicating danger is displayed. This subject is carefully considered by Mr. Justice Magruder of the Supreme Court of Illinois in *Christy v. Elliott*, 216 Ill. 31, perhaps the most satisfactory case upon the general subject of the care required, as well as of the right to classify automobiles as a distinct vehicle in the exercise of the police power.

The future of the automobile depends principally upon the chauffeur and his sponsors. If he observes faithfully the speed laws of the various localities (and herein lies the main obstacle to his popularity) he may expect to be accorded such rights as his superior speed requires for the perfect operation of his machine; but if he persists in defying these laws, he must expect legislation more drastic than any yet attempted; for after all, those who do not use automobiles are still a large majority and control the legislatures. It has been proposed that special roads be constructed for automobiles, upon which ordinary vehicles shall be excluded, and to which the speed laws should not apply. This might be satisfactory to the general public, but probably not to the automobilists themselves. Such roads would naturally be made as level as possible, and would avoid running through villages and farming establishments. In

other words, they would seek the least attractive route, and thereby deprive the automobile of what, after all, is one of its greatest charms,—the enjoyment of the best scenery and the excitement of meeting and passing other vehicles.

At the same time, the safety and pleasure of the general public demand some further restriction upon the activity, not to say lawlessness, of these powerful engines. The most important are:—

1. Their total exclusion from parks and pleasure drives of our large cities during the customary driving hours of each day. This is the rule in London, where automobiles are not allowed in Hyde Park during the afternoon and evening, with the result that the famous Rotten Row still maintains its supremacy in the world of fashion for beautiful horses and handsome equipages. On the contrary, in Paris and in Newport, they have been practically driven off the streets and drives formerly distinguished for the elegance and perfection of their turnouts. Indeed, nothing better illustrates the difference between the mercurial Frenchman and the staid and conservative Briton than their treatment of the automobile. By the former it is allowed to monopolize one of the finest highways in the world,—the *Champs Elysées*—to the practical exclusion of everything else but taximeter cabs; by the other, there is a reservation of certain hours, during which the automobile is not permitted to interfere with ordinary driving in its principal park. This is absolutely necessary to its preservation as a pleasure drive. Upon ordinary streets and country roads, the automobile and the horse-drawn carriage may be driven simultaneously. But where pleasure travel is congested, the constant demand upon the carriage to give way to the motors and to receive their dust, smoke and foul odors, practically destroys the pleasure, and will ultimately result in driving them out altogether. Unless, therefore, there be some reservation of exclusive rights during certain hours, the doom of the horse for the purposes of pleasure is sealed. Public opinion will probably compel a concession so vital to the interests of the people who cannot afford the luxury of the automobile, or who prefer the ordinary carriage.

2. In actions for personal injuries occasioned by illegal speed, the plaintiff should not be denied a recovery upon the ground of his contributory negligence, provided that such negligence may be given in evidence in reduction of damages. In view of the fact that automobiles are often, if not usually, driven at excessive speed, and that a vast majority of the injuries inflicted by them are attributable to this cause, in respect to which the injured party is helpless, a variation in the common law rule, which deprives a plaintiff altogether

from a recovery in case of his own contributory negligence, appears just and reasonable. In the light of a punishment, too, it would operate as a strong restraint upon that excessive speed which seems such an irresistible attraction to the chauffeur, and causes such an enormous loss of life. The fact that plaintiff's negligence may be shown in mitigation of damages would prevent any practical injustice and in plain cases limit the recovery to a nominal amount.

3. As automobiles are usually owned by men of wealth, to whom ordinary fines are of no consequence, the fine for excessive speed should not be less than twenty-five dollars, and in case of personal injuries, imprisonment should be compulsory. Where a fine or imprisonment is optional, the temptation to inflict the lighter punishment, or no punishment at all, is so strong that, in serious cases, the option should be taken away entirely.

Upon the other hand, the automobilist has just cause to complain of State laws which require him to obtain a new number, registration and license in every State he may chance to enter, after having been properly documented in the State of his domicile. Conceding that he is bound to comply with the speed and signal laws of each State, so long as he is within its boundaries, the requirement of a new number and registration, though convenient for purposes of identification, imposes a burden out of all proportion to its advantages. As well might a ship be required to take out a new registry in every port she enters. There should be a provision in every State law upon the subject, exempting from registration and license automobiles which have been properly documented in their home State. There is a want of uniformity in State laws, in respect to almost every particular connected with automobiles, such as registration, identification, speed, day and night signals, details of mechanism, and even what shall be considered an automobile;—for instance, whether it shall include motor cycles or not. Uniformity in these particulars is much to be desired.

It has been suggested that under the power to regulate commerce, Congress might enact a general law to the same effect. It is very doubtful, however, whether the interstate commerce clause of the Constitution extends to private carriages not engaged in regular traffic between the States, and only entering them occasionally and irregularly for the purposes of pleasure. Besides this, however, it has always been held that vehicles of commerce, like railway carriages, are bound to comply with the local laws of each State when not unduly interfering with interstate commerce, such, for instance, as specifying the stations at which they shall stop, or in respect to heating or otherwise making their carriages comfortable. The prac-

tice of rushing to Congress to obtain legislation of doubtful validity is one which ought not to be encouraged, when the States can afford a sufficient remedy.

How far the automobile is a mere whim of fashion, and how far it meets a real need of the community, time can alone determine. Judging from its rapidly increasing numbers, it seems to have made a place for itself in the hearts of the people. Whether it will take its rank as one of the favorite vehicles of pleasure and commerce, or supplant them all, we shall eventually know,—but not now. The lesson of the bicycle, for years an absorbing amusement of the highest classes, now a harmless though useful vehicle for school boys and messengers, will not be lost upon us. The automobile has much to contend against in its offensive characteristics, and above all, in the arrogant disregard of the rights of others with which it is often driven; but new inventions may obviate some of these difficulties, and a few sharp lessons from the courts may inculcate more respect for the rights of others. Whatever the outcome may be, every true admirer of the horse will pray that it may not be the extinction or dethronement of the noblest of all domestic animals.

H. B. Brown.