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Evidence—Judicial Notice of a Ford Car

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In accord with the principal case holding that it is reversible error to permit jurors to taste liquor introduced in evidence are: *State v. Lindgrove,* (1895) 1 Kan. App., 51, 41 P. 688; *Skinner v. State,* (1925) 101 Tex. Cr. R., 68, 274 S. W., 133; *Peru v. United States, Bird v. United States,* (C. C. A., 8th Circuit, 1925) 4 F., (2d) 881. The case going to the greatest length in this direction is *Commonwealth v. Brelsford,* 161 Mass., 61, 36 N. E., 677, where it was held proper to reject an offer on the part of the defendant to have jurors taste the liquor. There are fewer cases holding that permitting jurors to smell the liquor is improper. Among these is *Jianole v. United States,* (C. C. A., 8th Circuit, 1924) 299 F., 496, where it was held an abuse of discretion for the court to direct an attendant to pour a liquid into a glass "and let the jury smell of it" though no proper objection was made at the time. These courts apparently rest their decisions upon the grounds: (1) that all evidence must be introduced openly in court; (2) that the jury must be satisfied from evidence apart from their individual knowledge and belief; (3) that when jurors acquire knowledge peculiar to themselves they cease to be jurors and should be sworn as witnesses; (4) and that the court should ascertain whether all jurors are equally expert in taste and smell. In *Gallaghan v. United States, Colwell v. United States,* (C. C. A. 8th Circuit, 1924) 299 F., 172, it is said that "the practice is not in keeping with an orderly and dignified administration of justice." That the practice, where permitted, should be in open court, in the presence of the defendant and at all times subject to the control of the court see, *Reed v. Territory,* (1908) 1 Okl. Cr. 481, 98 P. 583, 129 A. S. R., 861; *State v. Dascenzo,* (1924) 30 N. M., 34, 226 P. 1099...*Contra, State v. Elmers,* (1924) 198 Iowa, 1041, 200 N. W., 723; *State v. Barker,* (1912) 67 Wash., 595, 122 P. 335; also *State v. Foell,* (1923) 37 Idaho, 722, 217 P. 608 (statute permitting taking of exhibits to jury room), holding that an examination of the liquor in the jury room was not improper.

T. S. '27.

EVIDENCE—JUDICIAL NOTICE OF A FORD CAR.—This case arose in an action for damages by Mrs. Stone, plaintiff below, in which she seeks to recover for a failure, through negligence of the company, to deliver a telegram. The telegram informed her that her brother had but a few hours to live. It was not delivered until too late for her to attend the funeral, her brother having died shortly after the telegram was sent to her. In the trial court Mrs. Stone was permitted to introduce evidence to the effect that she would have departed for her brother's home immediately upon receipt of the telegram and would have traveled in a Ford car, continuously, making the 300 miles distance in 20 hours. The appellant Telegraph Company assigns the admission of this evidence as error and contend that travel in this manner is not such an established and usual mode as must have been in the contemplation of the parties when the contract was entered into. Considering this objection the court says, "We can not assent to the view that travel by a Ford automobile was not, in 1923, an established and usual mode of travel in this state. Appellee's counsel in their brief have ably defended the Ford car against the reflection upon it implied by the assertion that it is not an established and usual mode of travel in this state. These assignments need not be discussed at length. A few observations will dispose of same and vindicate the Ford. It is a matter of common and general knowledge of which we may take judicial notice that in 1923, and for some years prior thereto, Mr. Ford's car was recognized in Texas as an established, usual, and favorite method of transportation; that, barring accidents and undue heating the motor, it is fully capable of making 300 miles in 20 hours, even if much of the road be unpaved and must be traveled at night. The mastery which this car possesses over bad roads and ability to reach its destination under adverse conditions are also matters of common knowledge." *Western Union Telegraph Company v. Stone* (Tex. 1926) 283 S. W., 259.

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The court then gave judgment for the plaintiff. The case does not seem to be out of line with the modern trend and extension of the matters over which the court will take judicial notice. It is here noted because of its interesting and unusual application.

F. M. H. '27.

INTERNATIONAL LAW—JUDGMENTS—CONCLUSIVENESS OF THE JUDGMENT OF A FRENCH COURT IN A SUIT IN A NEW YORK STATE COURT.—Plaintiff was assignee of triplicate bills of lading issued in New York, under which one Webb shipped certain goods from New York to Havre. He sued defendant company in a New York court for delivering the goods to other parties who obtained them by using an office copy of the bill of lading. Defendant set up judgment rendered by the Tribunal of Commerce at Paris upon the same cause of action, by the same plaintiff. Although no attempt was made to impeach the judgment because of fraud, the lower courts in New York refused to give effect to the French judgment. Plaintiff appealed to the Court of Appeals. *Held,* The judgment of the French court upon the merits is conclusive in a New York court. "It can be impeached only by proof that the court in which it was rendered had not jurisdiction of the subject matter of the action or of the person of the defendant, or that it was procured by means of fraud." Reversed. *Johnson v. Compagnie Generale Transatlantique* (1926), 242 N. Y., 381, 152 N. E., 121.

The lower courts had refused to give effect to the judgment of the French court on the ground that by the law of France no foreign judgment can be rendered executory in France without a review of the judgment *au fond,* that is, of the whole merits of the cause of action on which the judgment rests. They had inquired into the merits of the French judgment and decided that it was contrary to the principles of our law and should be disregarded. In so doing, they had followed the case of *Hilton v. Guyot,* 159 U. S., 113, 16 S. Ct., 139, 40 L. Ed., 95, which held that a judgment of this same French court was not required to be recognized as conclusive in this country because the French courts do not give full faith and credit to the judgments of this country against French citizens. However, the New York Court of Appeals did not feel bound to follow *Hilton v. Guyot,* and reversed the decision of the lower courts. The rule of *Hilton v. Guyot* is still the rule in the federal courts, and is followed in some states. 34 C. J., 1165; 15 R. C. L., 920. The English rule is in accordance with the New York rule as followed in the principal case, and is followed in other states. 34 C. J., 1166; 15 R. C. L., 919. In a Missouri case it was held that "Courts generally through a species of courtesy called comity will recognize the validity of a foreign judgment when it is shown that the court rendering it had jurisdiction of the subject matter and of the persons of the parties litigant," but "the duty to recognize the validity and effect of a judgment or proceedings of a court in a foreign jurisdiction rests upon comity, and it is not regarded as an absolute legal right." *Grey v. Independent Order of Foresters,* (1917), 196 S. W., 779.

C. S. N. '27.

INTOXICATING LIQUORS—TRANSPORTATION OF.—Defendant is charged under an Act of Indiana with transporting liquor, the offense consisting of carrying the liquor from his woodshed to his dwelling house where he hid the liquor, and where the state's officers found it. *Held,* that the defendant's acts were insufficient to constitute transportation and that to "transport" intoxicating liquor is to carry it over, across, or remove it from one "place" to "another" and does not include removing or transferring it about in a particular area or tract by one in possession thereof; "place" being defined as area or portion of land marked off or separated from the rest as by occupancy, use, or character, and "another" as meaning a distinct and different place. *Hamwell v. State,* (Ind. 1926) 152 N. E., 161.

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