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Evidence—Judicial Notice—Automobiles

your verdict?" And the juror answered, "It is, but I consented to it under protest." The court then recorded the verdict and discharged the jury. W. J. P.

EVIDENCE.

Werner v. Pope, 273 S. W. 92 (Ky. App., 1925).

EVIDENCE — JUDICIAL NOTICE — AUTOMOBILES — Plaintiff, driving an automobile, struck defendant at a crossing and injured him. A witness testified that plaintiff stopped within three or four feet after hitting defendant. Defendant excepted to the failure of the court to instruct the jury that it was plaintiff's duty to drive at a reasonable rate of speed. *Held,* such instruction was unnecessary, as there was no evidence tending to show excessive speed. The court took judicial notice of the fact, as a matter of common knowledge, that an automobile cannot ordinarily be operated at a street corner or elsewhere at a much lower rate of speed than such as will permit its being stopped within three or four feet. This illustrates the tendency of the courts to take judicial notice of many facts in the construction and operation of the automobile.

Courts have heretofore taken judicial notice of the fact that application of the brakes or shutting off the power are usual means of stopping an automobile, in determining the driver's duty under certain circumstances (*Waking v. Cincinnati I. & W. R. Co.,* 72 Ind. App. 401, 125 N. E. 799) of the fact that snow will gather on the windshield of an automobile being driven during a snowstorm, and that little progress would be made if it were attempted to keep the windshield entirely clear (*Dube v. Sevigne* [N. H.] 123 A. 894), of the fact that the driver of a Ford car is seated three or four feet to the rear of the radiator and front wheels, in determining whether plaintiff was guilty of contributory negligence in stopping with the front of his car on the railroad track, where he could not see the train approaching until within three or four feet of the track (*Wallen v. Mississippi River & B. T. Ry. Co.* (Mo. App.), 267 S. W. 12), of the fact that economy in gasoline consumption is largely influenced by the ability and experience of the chauffeur, the character of the road, the number and length of stops, etc., in an action for breach of a mileage warranty (*Fleming v. Gerlinger Motorcar Co. et al.,* 86 Ore. 195, 168 P. 289), of the fact that the occurrence of a blow-out in the tire of a running

car impairs the driver's ability to manage the car, in determining whether excessive speed or a blow-out was the proximate cause of an accident (*Ronning v. State* [Wis.], 200 N. W. 394), of the fact that a blow-out of the front tire of an automobile running fifteen miles an hour might cause the car to run into a ditch, in determining whether any cause but defendant's negligence might possibly have caused an accident (*Klein v. Beeten et al.*, 169 Wis. 385, 172 N. W. 736), and of the fact that the speed of an automobile may be changed at different points within a distance of a mile, in determining the admissibility of evidence of a car's average speed for more than a mile before striking a person (*People v. Barnes*, 182 Mich. 179, 148 N. W. 400). But that the judicial notice of the automobile is not unlimited is shown by the following recent cases, decided in 1920 and 1925, respectively: *Texas Co. v. Brandt et al.*, 79 Okl. 97, 191 P. 166, in which the court refused to take judicial notice that automobiles stopping and starting at filling stations emit unusual noises and odors which travel from 50 to 125 feet, in a suit to enjoin the construction and operation of a filling station; *Sherwood v. American Ry. Express*, 158 La. ——, 103 So. 436, in which the court refused to notice the time which would be required to repair an automobile injured in a collision, in determining the adequacy of damages. F. W. F.

McLendon v. State, 105 So. 406 (Fla., 1925).

EVIDENCE—ADMISSIBILITY—EXPERIMENTS—Defendant resisted arrest by an officer, and in the struggle the officer was fatally wounded by a shot from his own pistol. On trial for murder in the first degree, defendant contended that the shot occurred accidentally during the struggle. The prosecution maintained that the shot was premeditated, being fired by defendant after getting some distance from the officer. No powder marks or burns were found on the flesh of deceased. *Held*, paper and cloth targets at which experimental shots were fired with the pistol which fired the fatal shot and similar ammunition, at varying distances, to show that if the shot had been fired as close to deceased as defendant claimed it would have left powder marks and burns on the flesh of deceased, were not admissible, unless it were first shown that the targets were similar to human flesh in texture, vulnerability and susceptibility to powder marks and burns. Experiments to be admissible in evidence must first be shown to have