

Follow That Car:

The Law Deals With The Arrival Of The Automobile

by Lawrence Savell

Like most aspects of our daily life, car ownership and operation is subject to and affected by myriad legal requirements: vehicles must be registered, plates must be displayed, drivers must be licensed, insurance must be obtained, speed limits and numerous other directives must be followed, and so on. It might be difficult (if not impossible) to imagine a time when such was not the case, but, of course, there was one. When the automobile first began appearing on roads that were formerly the virtually exclusive domain of feet and hooves, there were no rules specifically addressing what were perceived by some to be the mechanical intruders. But as automobiles were increasingly making their presence known across this country, the law started taking notice.

A hundred years ago, in the February 1908 issue of the Yale Law Journal, Henry B. Brown, formerly an Associate Justice of the Supreme Court of the United States, published an article titled, "The Status of the Automobile." The article included a generous portion of the author's opinions on the issues presented, reflecting some of the pointed resistance the automobile faced in its early years.

"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."

The judge posited that the population was divisible into two groups, those who drove (and supported) automobiles, and those who did not.

"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, . . . [they] 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."

Nevertheless, when the issue of whether automobiles were entitled to the privileges of the use of the roads was presented to the courts, such entitlement was generally upheld. It is interesting to trace some of the historical process by which that came to be, including pre-automobile cases that provided the framework that was followed when the issue was ultimately presented. For example, in an 1859 case, Moses (not that Moses) v. Pittsburgh, Fort Wayne & Chicago Railway, the Supreme Court of Illinois, in ruling that a railroad could not be prevented by neighboring property owners from running track on a public street, did so with language that set the stage for what was to come.

"A street is made for the passage of persons and property; and the law cannot define what exclusive means of transportation and passage shall be used. . . . To say that a new mode of passage shall be banished from the streets, no matter how much the general good may require it, simply because streets were not so used in the days of [18th century English legal scholar] Blackstone, would hardly comport with the advancement and enlightenment of the present age."

Then, in an 1876 decision in Macomber v. Nichols, the Supreme Court of Michigan (perhaps foreshadowing that state's affinity with the automobile) dealt with a case where a horse became frightened, injuring its rider, when the defendant approached with "an engine mounted on wheels" - a steam-powered thresher being relocated. The court stated that "[p]ersons making use of horses as the means of travel or traffic by the highways have no rights herein superior to those who make use of the ways in other modes."

"When the highway is not restricted in its dedication to some particular mode of use, it is open to all suitable methods; and it cannot be assumed that these will be the same from age to age, or that new means of making the way useful must be excluded merely because their introduction may tend to the inconvenience or even to the injury of those who continue to use the road after the same manner as formerly. A highway established for the general benefit of passage and traffic must admit of new methods of use whenever it is found that the general benefit requires them; and if the law should preclude the adaptation of the use to the new methods, it

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From time immemorial it habitual use of pedestrians and to their occasional use as machinery, engines and exceptional, and has given it be further considered. So the public generally shall not must be obtained for the c for a temporary interruption having nine times for the use

THE AUTOMOBILE TRIUMPHS.

Park Commissioners cannot outlaw the automobiles. Judge Gibbons has said it, and the Supreme Court will stand by him if the question ever is carried up to that court. The Judge is emphatic in his assertion that no board of Park Commissioners can bar out any vehicle used for recreation or pleasure so long as it does not endanger the safety of others. The observant

LAST DAY OF GRACE.

Wheelmen Must Provide Themselves With Bells Tomorrow.

This is the last day that bicycles, velocipedes, tricycles and other riding machines, including automobiles, can be used on the streets of Los Angeles without their being equipped with a gong, bell or whistle, unless the rider thereof desires to avoid an arrest and pay the new ordinance which was passed by the board of Park Commissioners and was approved by the city council on the 16th of January last. The ordinance is published in full in the Los Angeles Times for the 16th of January.

SAYS RULE IS AGAINST LAW.
Power of Park Board to Bar Automobiles from Driveways Denied— Illinois Decisions Quoted.

une 16.—[Editor of The Tribune.]—The action of the South Park board in their control brings Chicago face to face with an important legal question. If upheld it will prove a hindering to our hitherto splendid municipal progress. It will be a confession that Chicago is not one of the great cities of the world; because of the automobile in Paris and London, both for pleasure and commerce. It does not own an electric vehicle, nor interest in any concern building or operating the same, but desires to submit these suggestions to the purely legal phase of the ques-

REGULATE AUTOMOBILE SPEED.

The accident to Mrs. Wash in Lincoln Park, reported in yesterday's Tribune, again calls the attention of the public to the chief objection urged against the automobile. The automobile lines evidently come to stay.

LEGAL STATUS OF AUTOMOBILES.

JUDGE SUTHERLAND (Monroe county, N. Y.), on the 19th inst., handed down a decision in the case of Fred Henson and Another v. John W. Jonathan B. West, concerning the legal status of automobiles or other horseless carriages in the various public streets. In the opinion, published in full and as below, for which we are indebted to the Rochester Democrat and Chronicle, Judge Sutherland rules that the vehicles in question have a right on the four wheels, and that the driver or operator is not content responsible for damages which may result from familiar light caused to horses, unless there is contributory negligence.

LICENSING AUTOMOBILE DRIVERS.

The Mayor has taken a commendable step in directing the Corporation Counsel to draw up an ordinance providing for the examining and licensing of all persons who intend to drive automobile vehicles through the streets and parks. The precaution is of the same kind as that which requires the engineer of the smallest steam yacht to give proof of his skill before being allowed to

run. Paris has found an automobile ordinance and there can be no new vehicle in Chicago speed

AUTOMOBILES IN THE PARK

Mr. Buzby Gets Arrested to Test the Law on the Subject.

NOT DANGEROUS TO DRIVERS

Experience in Paris and in This City Shows the Vehicles Do Not Scare Horses.

automobile victoria phaeton a pleasure within the meaning of the Corporation

IN FAVOR OF AUTOMOBILES.

Philadelphia City Officials Plan Measures to Encourage Their General Adoption.

Philadelphia, Pa., June 17.—(Special.)—The law adopted in Philadelphia has been a success in the operations of

MOTOR CARTS FIND FAVOR

SOUTH PARK BOARD'S ORDER AGAINST THEM IS DENOUNCED.

Mayor Says the Commissioners Are Twenty Years Behind the Times—Assistant Corporation Counsel Arthur Declares the Prohibitory Ruling is Illegal—Likely to Be Tested in the Courts if It is Not Rescinded Soon.

mobiles in at merely if the position. The Commission the auto- to rapid The trip m and re-made per- automobiles, tion that erect the ey do not used than nk, should a will re- it will not be.

would defeat, in greater or less degree, the purposes for which highways are established."

In a 1901 case, Mason v. West, a New York court, although ruling on technical grounds to uphold a judgment against the owners of an "automobile . . . of somewhat crude and unusual construction . . . propelled by steam generated by a gasoline burner" that frightened a horse, took pains to note: "That the use of the streets must become extended to meet the modern innovations of rapid locomotion is evident, and we do not mean to suggest that an automobile or any other of the present means of conveyance is an unlawful or improper user . . ."

Given such rulings, an August 22, 1899 New York Times article cited a local official who noted that "there is no known law to prevent" use of an automobile, and "advised all who drive skittish animals to sell them and buy old ones that a cyclone could not frighten."

Although such use was permitted, it was regulated through the government's "police power," which, as Justice Brown

noted, "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." For example, the September 3, 1899 Los Angeles Times reported on a new ordinance requiring automobiles, like bicycles, operated in that city to be "equipped with a gong, bell or whistle . . ."

Such regulation was generally upheld by the courts when challenged (although there were at the time occasional exceptions). Challenges often included the unsuccessful argument that imposing qualifications on drivers and new administrative requirements on automobiles constituted an unlawful discrimination as between cars and other vehicles.

Enforcement in those early days, however, particularly in the context of speed, was difficult, in part an unintentional byproduct of the "any color as long as it is black" automotive manufacturing era. Justice Brown reported:

"[I]t 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 law also developed to extend existing protections to automobile operators. In the 1904 decision in Baker v. Fall River, the Supreme Judicial Court of Massachusetts concluded that an automobile, "a vehicle which can carry passengers or inanimate matter," was thus a "carriage" within a statute providing that towns shall keep highways reasonably safe for teams and carriages.

Of course, automobiles required fuel, and when service stations began appearing to fill that need, the courts tended to support them against challenge. For example, in the 1904 case of Stein v. Lyon, a New York court ruled that the

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construction and maintenance of an automobile station or garage did not constitute a common-law nuisance and was a "perfectly lawful and legitimate" business.

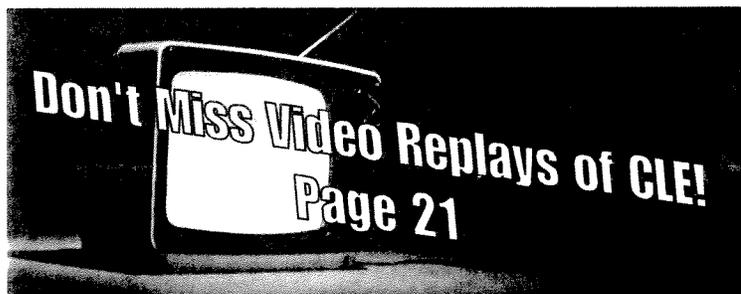
Justice Brown ended his article espousing his less-than-affectionate view of motorists, wishful thinking about the ultimately ephemeral nature of the attraction of the automobile, and nostalgic respect for the former exclusive denizens of the nation's roads.

"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 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."

* * * * *

Roscoe Pound, the former Dean of the Harvard Law School, once stated that, "Law is experience developed by reason and applied continually to further experience." Around the turn of the 20th century, the law took note of the "experience" of the rise of the automobile, and sought to apply to it both existing and new principles. Looking back over the century that followed, it seems fair to say that the law's intervention did not block, and probably helped enable, the automobile to reach its prominent position in our society and in our history. Indeed, the long close relationship between cars and the law may have been part of the motivation behind Adlai Stevenson's musing that, "Law is not a profession at all, but rather a business service station and repair shop." **TL**

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