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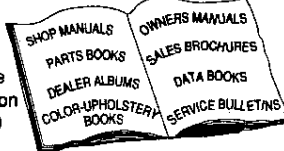

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DEAD MAN'S CURVE

A collector car, if properly cared for, can survive long beyond its originally anticipated life span. Collector car owners, however, are rarely as fortunate.

So what happens if a collector engages someone to restore his or her vehicle, but the collector dies before the work and/or payment is completed? How can a court decide the rights of the parties when one of them is dead and cannot tell his side of the tale?

The case of *Harper v. Wells Estate* presented such a situation.

J.B. Wells was a lawyer. He owned a 1929 Ford Model A that was in need of assistance. As luck would have it, one of his clients, Ed Harper, mentioned that he restored old cars at his home.

What happened after that was a matter of dispute. What was *not* disputed was that (1) Wells subsequently died on May 30, 1988 and (2) Harper, after Wells' death, claimed Wells (and thus Wells' Estate) owed him several thousand dollars for parts and labor for the Ford.

Harper sued the Estate. The Estate responded that it was Harper that owed Wells money for some unpaid legal fees.

At trial, Harper won a judgment against the Estate for \$11,610. The Estate appealed to a higher authority.

On February 27, 1991, the Court of Appeal of Louisiana, Second Circuit, reversed the trial court's decision, and dismissed the case.

The Court of Appeal observed that, in Louisiana, when a claimant seeks payment

on a debt from a deceased's estate based on an asserted verbal (*i.e.*, unwritten) agreement, the claimant must comply with the requirements of the so-called "Dead Man's Statute." In many states, oral promises or declarations of a dead person cannot be admitted into evidence when offered by a person bringing a claim against the decedent's estate. However, some jurisdictions allow such evidence to be admitted under certain conditions. In Louisiana, to introduce evidence of such an alleged agreement, a claimant must file a suit against the estate or heirs within a year of the death. Louisiana law further requires that, to prove the debt of the deceased, the claimant must provide the testimony of at least one "credible" witness other than the claimant. This additional witness requirement seeks to eliminate the possibility of fraud and perjury by witnesses who have an interest in the claim.

The Estate argued that Harper had failed to comply with this requirement, as at trial Harper only called himself as a witness. The Court of Appeal, however, taking a broad view, ruled that Harper's cross-examination of Wells' secretary, Ms. Storms, which he conducted before he rested his case, satisfied the requirement of offering testimony of a witness other than the plaintiff. (The trial court had found Ms. Storms to be a credible witness.)

The Estate then argued that Ms. Storms' testimony had failed to prove fully the "debt or liability" as required under the

LAWRENCE SAVELL

"Dead Man's Statute." The Court of Appeal agreed with this argument. While Ms. Storms' testimony corroborated Harper's claim that a contract between him and Wells to repair or restore the Ford existed, her testimony did not support — and in many ways contradicted — his claims as to the terms of that agreement. The Court of Appeal therefore ruled that the trial court had erred in using her testimony to prove the amount of the debt or liability.

The Court of Appeal resolved the matter in a Solomon-like manner. Rejecting as "clearly excessive" Harper's claim that he was owed over \$19,000 (much higher than Harper's own estimate of the car's value), the Court instead considered an expert witness' estimate of what the parts and labor should have cost. This amount, \$10,912.13, was actually midway in the range of Harper's own estimates of what the finished product would be worth. The Court noted that the evidence supported some upward adjustment of that amount.

The Court observed that Harper had admitted both receiving \$11,000 from Wells before his death and owing Wells \$1,922.22 in unpaid legal fees. The Court concluded: "The total of \$12,922.22 is reasonably near the fair value of Harper's labor and expense; we consider that the payments and unpaid fees evenly offset the parties' mutual obligations." The Court thus dismissed the claims of both sides.

Despite advances in technology, it's unfortunately still the rule that "you can't take it with you." However, rules such as "Dead Man's Statutes" do at least offer some comfort to car collectors (and their estates) that they will not be "taken" after they have passed on.

Laurence Savell is an attorney and writer in New York City. This column provides general information and is not intended as a substitute for consulting a lawyer.



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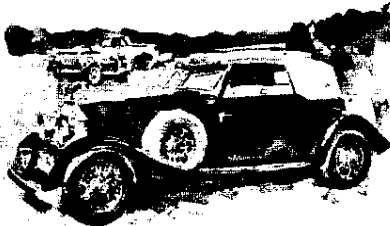
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