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The First Reaction

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jury. Verdict for plaintiff. Defendant appealed, alleging error in the court's denial of requested instruction. HELD: Reversed. Where one who is a guest or passenger in an automobile contributes to the causes of the collision, by over-crowding or similiar acts, it is a question for the jury to determine whether such passenger is guilty of contributory negligence so as to preclude recovery. Where there is a collision between the car in which one is such guest or passenger and another vehicle such passenger cannot recover from the owner or driver of the other car for injuries sustained in the collision between the two cars if the negligence of the driver of the car in which he is a passenger is the cause of the collision, even if the driver of the other car be guilty of contributory negligence.—A. E. A.

THE FIRST REACTION

The following is the first reaction to a recent item in Bar Briefs. It was submitted by J. E. Skulstad, of Maddock:

"I note in your issue of Bar Briefs for October that lawyers have not come to an agreement as to the advisability of judges commenting on the weight of evidence and credibility of witnesses in jury cases, and that you quote expressions, from 'rather authoritative sources,' help matters along. Thank you.

"Of these expressions the one by Dean Pond appears to me quite original, and may prove particularly profitable (?) to the Bar in our deliberations on these subjects. Taking it in connection with your announced stand by laymen and legislators we might, as concerns our state courts, be satisfied as it is. There the privilege of comment in this particular is ours. Take the judges in on it and our final and usually most noted effort on the trial may be badly shattered and its effect to ourself, our clients, the 'pioneer community' et als, fatally impaired. Beside, we may in effect have a directed verdict.

"On the other hand, in due seriousness, and in view of the purpose of the trial and the ultimate dispensation of justice, the wisdom of the practice to submit these delicate and often intricate problems exclusively to the decision of twelve men or women of not more than average intelligence, must be assumed repugnant to higher intelligence. Assuming further that competence to deal with these problems is not a gift to man, but must be acquired by close study and observation, it fairly follows that, as concerns such competence, the prehistoric caveman might compare as favorably to the average juror as does the latter to the trial judge. And in justice to the trial judge, may we not conceive of a situation particularly humiliating to him, when, with hands tied, he sees justice in danger of miscarriage?

"Hence, and with permission, whenever there is anything in or about evidence or witnesses, material to the arrival at a just verdict, patent to the judge, but which he has reason to believe abstruse or, maybe, hidden to the jury, he should not only *have* the right to shed light on it, but it should be his duty; in order that a high degree of care be exercised with a view to enable the jury to perform its function intelligently."