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Suggestions for the Trial of Automobile Damage Suits

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SUGGESTIONS FOR THE TRIAL OF AUTOMOBILE DAMAGE SUITS

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Every lawsuit is in fact a logical syllogism. It has its major premise, its minor premise and its conclusion. The major premise of course is the law which is applicable to the situation, while the minor premise is made up of those particular facts which bring the matter before the court for adjudication. The conclusion is the inference which must necessarily follow and results from the application of the rule of law constituting the major premise to the facts constituting the minor premise.

All too frequently, we find plaintiffs rushing into court with a statement of particular facts without having first taken any steps whatever to develop the major premise controlling those facts. In other words, they have made no investigation whatever to determine the precise rule of law which is applicable to their particular case. Before any complaint is filed, there should be a close, intimate and thorough investigation of the law and then the complaint should be drafted so that the facts adduced in evidence will come squarely within the rule of law which constitutes the major premise. This is what is meant by the phrase which is so often used to the effect that the pleader should adopt some particular theory upon which he brings his case.

This brings us to a consideration of the first step involved in the commencement of a lawsuit which is the preparation of the complaint. The careful practitioner will usually find that a great part of his work is done when he has made a careful study of the law applicable to his particular situation and has carefully drafted his complaint to call those rules into play.

However, there are many things which can be done which will have a tendency to simplify the complaint and, at the same time, operate to the benefit of the plaintiff, in the subsequent steps of the action.

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* An address by the Honorable Charles A. Lowe of the Lawrenceburg, Indiana, Bar before the Legal Institute sponsored by the Indiana State Bar Association at the Claypool Hotel, Indianapolis, Indiana, on January 24, 1941.

Our Supreme Court on September 2, 1940, adopted certain rules of practice for the nisi prius courts. I refer particularly to rule 1-2 with reference to the stating of the claim or defense. This rule provides that in all proceedings, except criminal cases, the averments of claim or defense, shall be stated in separate rhetorical paragraphs numbered consecutively so that the contents of each rhetorical paragraph shall be limited so far as practicable, to the statement of a single set of related circumstances.

This rule, I believe, is a good one, and careful attention to its provisions, and a diligent effort to comply therewith, will result in benefit to the practicing lawyer. In the first place, it will tend to produce clear thinking and a concise statement of the cause of action in an orderly and succint manner. This alone would be accomplishment enough, but I believe also, that it will prove of more practical benefit to the plaintiff. I make this statement on account of the provisions of Rule 1-3 which was adopted by the Supreme Court at the same time. This particular rule abolishes the general denial, as it was known and used in this State, and substitutes therefor, an answer or other pleading specifically admitting or denying the facts stated in each rhetorical paragraph. The rule further states that the pleader may admit or deny a part of a rhetorical paragraph, in which event he shall specify the allegations which he admits and those which he denies.

Already we are meeting with considerable difficulty in the carrying out of this rule and the tendency is fast developing to admit only those rhetorical paragraphs which can be safely admitted in toto and to deny the whole of a rhetorical paragraph which the pleader cannot admit as a whole. In view of such tendency, it should be the effort of the pleader in the drafting of his initial pleading, to subdivide the facts into rhetorical paragraphs which are capable of being admitted or denied as a whole. I have in mind, for example, the ordinary complaint in an automobile damage suit, in which there should be a rhetorical paragraph dealing only with the capacity of the plaintiff to sue; another rhetorical paragraph setting up the corporate existence of the defendant, if it is a corporation; a third setting out briefly and concisely, the inducing facts leading up to the accident, such as the existence of certain public highways, the width, nature of surface and other details having to do with the physical

setting; another rhetorical paragraph might contain the allegations, if necessary, with reference to agency; then still another giving the bare facts of the accident. These could be followed by a paragraph setting out the acts which are claimed to have been negligently done and ending with a paragraph containing the allegations of damage. When the plaintiff has prepared and filed a complaint in this manner, it may well be that the answer will admit all of the clauses with the exception of those dealing with the allegations of negligence and damage. Usually those are the only facts in dispute.

After having thus carefully drafted his complaint, the plaintiff should then insist upon specific denials in accordance with Rule 1-3 ,with the idea in mind of narrowing the issues as much as possbile by securing admissions from the defendant of all the facts not really in dispute.

Guest Law

Prior to the Act of 1929, one riding as a guest passenger in the automobile of his host, might sue the host for injuries negligently inflicted and the rights of the host and the guest were adjudicated within the field of ordinary negligence. There were few, if any limitations upon such right. One recognized in Indiana and in many other states was that a wife could not sue her husband for personal inuries caused by his negligence. Blickenstaff v. Blickenstaff (1929) 89 Ind. App. 529. But even this limitation did not prevail in states such as Alabama, Arkansas, Connecticut, North Carolina, North Dakota, South Carolina and Wisconsin.

The spectacle of a mother suing a son or a daughter suing a mother or father and, in the states mentioned, husband or wife suing each other for damages presented such a revolting scene that it was only a question of time until some change in the system would be brought about, either by the trend of court decisions or by the positive enactment of statute. Impetus was added to this movement by the realization that such actions were almost uniformly collusive for the purpose of collecting damages from an insurance company involved in the action upon the part of the defendant.

A third situation giving rise to such statutes was the innate and inherent feeling that it was unjust to permit the benefactor of a person taking a free ride to be penalized by

his guest passenger for an act of kindness, hospitality or sociability for which the benefactor received no reward or benefit whatever.

The result was the passage of Guest Statutes in numerous states and in Indiana, in 1929, as I have stated.

The original Statute in Indiana provided two cases in which liability might be asserted by a guest passenger against the host. (1) where the accident was intentional upon the part of the host; (2) where the accident was caused by his reckless disregard of the rights of others. The cases arising under the first branch of the Statute, that is, the intentional accident portion thereof, were very few, but numerous actions arose involving the second ground, that is, "reckless disregard of the rights of others." This phrase was construed in the case of Coconower v. Stoddard, 96 Ind. App. 287, where the court defined "reckless disregard of the rights of others," as being a situation where the defendant,

"Voluntarily does an improper or wrongful act, or with knowledge of existing conditions, voluntarily refrains from doing a proper or prudent act under circumstances when his action or his failure to act evinces an entire abandonment of any care, and a heedless indifference to results which may follow and he recklessly takes the chance of an accident happening, without intent that any occur."

Under this Statute, it was held by the courts that something more was required to make a case involving "reckless disregard of the rights of others," than "mere" negligence or "simple" negligence, but the courts were rather indefinite about what that something more had to be; as a result, practically all of the cases were submitted to a jury upon the question of fact whether the particular conduct involved amount to "reckless disregard of the rights of others." This situation was very favorable to the plaintiff, much more so than in some other states like Michigan, for example, where the rule of gross negligence prevailed and where the courts frequently decided, as a matter of law, what facts did and what facts did not constitute gross neglegence.

The amendment of 1937 to the Guest Statute entirely eliminated the feature involving, "reckless disregard of the rights of others," so that the Statute now gives a right of action in favor of the guest passenger against his host for wanton or willful misconduct of the operator, owner, or person responsible for the operation of the automobile.

There has been considerable hazy thinking in connection with the application of this Guest Statute. It should be borne clearly in mind that there are three situations in which a passenger injured while being transported in a motor vehicle of another, may avoid the limitation of the Guest Statute. These three conditions are as follows:

1. That he is not a guest.
2. That he is being transported for payment.
3. That the injuries were caused by the willful or wanton misconduct of the operator.

If any one of these conditions exist, the Statute will not operate to deny a recovery. The third condition, in effect, is a fulfillment of the conditions of the Guest Statute. The first two render the Statute inapplicable and the case is thrown back within the field of general negligence.

Voelkl v. Latin (1938 Ohio App.)
58 Ohio App. 245,
16 N. E. (2d) 519.

In considering the Guest Statute as it exists at present in the State of Indiana, it may be useful to consider certain Ohio cases for the reason that the Ohio Statute and the present Indiana Statute, are identical.

The Supreme Court of Ohio has defined wanton misconduct in the following language:

"Wanton misconduct is such conduct as manifests a disposition to perversity, and it must be under such surrounding circumstances and existing conditions that the party doing the act or failing to act, must be conscious, from his knowledge of such surrounding circumstances and existing conditions that his conduct will, in all common probability, result in injury."

Universal Concrete Pipe Co. v. Bassett
130 O. S. 567,
200 N. E. 843

This would seem to be about as clear a statement of the matter as could be made.

It might be of benefit to illustrate further, the two situations in which the Guest Statute is not applicable at all; that is (1) where the passenger is not a guest and (2) where he is a pay passenger. Two Ohio cases clearly illustrate the distinction. The first is that of Bailey v. Neale, (1939), 63 Ohio App. 62; 3 N. E. (2d) 702. In that case, Bailey was a

law teacher in connection with the Akron Law School, of which the defendant, Neale, was the sole owner. In order to meet certain requirements imposed upon his law school, he and the plaintiff, Bailey, were engaged in making a trip to Cleveland, for the purpose of discussing a similar situation with the officials of another law school. While returning home, Neale drove the car into a bridge-head and Bailey was injured. It appeared that Bailey was going along solely for the benefit of the defendant Neale. It was true that there was a rather indefinite and intangible benefit accruing to Bailey in connection with the trip in that, he might retain his teaching position through a continuance of operation of the law school. The court, however, held that the Guest Statute was not applicable and that Bailey was not a guest and upheld the trial court in applying the rule of "simple" negligence to the case. They applied the following rule for the purpose of testing whether a passenger was a guest or otherwise.

"A guest withing the meaning of the Guest Law, is one who is invited either directly or by implication to enjoy the hospitality of the driver of an automobile, who accepts such hospitality, and who takes a ride either for his own pleasure or on his own business without making any return to or conferring any benefit upon the driver of the automobile other than the mere pleasure of his company."

While this rule has been criticized (McCann v. Hoffman, 9 Cal. (2d) 279, 70 Pac. (2d) 909), it has been adhered to by the courts of Ohio so that we may say that under a Statute precisely similar to ours, the courts have laid down the test as being whether there is a definite tangible benefit to the operator of the automobile. This rule of a definite tangible benefit has also been adopted in Massachusetts, with the limitation that the benefit must be a pecuniary benefit to the driver or operator of the automobile.

Foley v. McDonald, 283 Mass. 96,
185 N. E. 926.
Woods v. Woods, 295 Mass. 238.
3 N. E .(2d) 837.

Time will not permit the discussion of all of the various rules of law arising under the Guest Statute. It has been held universally, that contributory negligence under such Statutes, is not a defense but there has been a pronounced

disposition upon the courts to allow the defense of assumption of risk under the maxim "volenti non fit injuria."

An illustrative case is that of Munson v. Rupker (1925), 96 Ind. App. 15. This case, of course, was decided prior to the Guest Statute and involved the question of what rule of law to apply to an accident involving injury to a guest-passenger, the conclusion finally being that the rule of reasonable care should apply to such a situation. The court, however, on page 30, said:

"He who enters an automobile to take a ride with the owner also takes the automobile and the driver as he finds them."

Here, we have the germ of the rule of the defense known as, "Assumption of Risk." It may be sufficient upon this subject to quote the language of some of the states:

Arkansas:

"The guest takes the automobile and the driver as he finds them."

Howe v. Little (1931) 182 Ark. 1083, 34 S. W. (2d) 218.

In California, where a girl was permitted to ride on a truck with her legs dangling from the truck bed, by reason of which she was bounced off, the court said:

"If, during the usual and ordinary movements of the truck on which she was riding, the plaintiff, solely by reason of the position she had taken, had been bounced off the truck, she probably would have had no remedy against the defendant for the very good reason that in that case, she would have to attribute her injury solely to her own voluntary conduct. That would be one of the risks ordinarily incident to plaintiff's position on the truck."

Gornstein v. Priver, (1923) 64 Cal. App. 249, 221 Pac. 396.

In North Dakota, in a case involving skidding on an icy road, the court said:

"A guest in an automobile takes the automobile as is." and in an instruction, the court told the jury,

"The plaintiff assumed the risk of the car skidding and he cannot recover unless he has shown you that the skidding and overturning was proximately caused by the defendants negligence."

Eddy v. Wells (1930) 59 N. D. 663, 231 N. W. 785.

The doctrine seems also to obtain in the Federal Courts.

Liggett and Myers Tobaccc Company v. DeParcq, 66 Fed (2d) 678.

That case involved an accident caused by driving over a ridge of gravel, with the resultant collapse of a wheel. The court said:

"When the guest enters the car, he accepts it in the existing condition, except as to latent defects known to the driver, and he likewise accepts the driver with his habits of driving so far as known to him, with such skill . . . . as he actually possesses."

It will thus be seen that there is room for the defense of assumption of risk and the plaintiff should take this matter into consideration in the bringing of his action.

I have said before that it is the universal holding that contributory negligence is not a defense under the Guest Statute. There is, however, another question often arising which is whether willful or wanton misconduct upon the part of the plaintiff himself, that is the precise kind of conduct which is alleged against the defendant, will constitute a defense.

It has been held by a number of courts that where the action is founded upon willful or wanton misconduct, that while contributory negligence is not a defense, nevertheless, willful or wanton misconduct upon the part of the plaintiff, will bar a recovery if a proximate cause of the accident. This is illustrated by the case of

Hinkle v. Minn. etc., Railway Co., (1925) (Minn.) 202 N. W. 340,
41 A. L. R. 1377.

In that case, the court gave the following explanation of the matter:

"One is liable for negligence only when such negligence is the proximate cause of the injury. When a defendant is charged with ordinary negligence, contributory negligence is a good defense. Why? The answer is founded in proximate cause. In the absence of the doctrine of comparative negligence, they are equally to blame. When two persons are equally at fault in producing the injury, the law leaves them where it finds them. Contributory negligence is not a defense to wanton and willful negligence for the very simple reason that the parties are not equally delinquent in the violation of duty. In such case, the negligence of the defendant is the proximate cause of plaintiff's injury, while his negligence is not more than a remote cause.

The theory of these variations of negligence leads to but one logical conclusion and that is that the same basic reason which causes contributory negligence to prevent a recovery in an action sounding in ordinary negligence, also prevents a recovery by one who is guilty of willful and wanton negligence. Such negligence is just as efficient to offset the defendant's negligence of the same character as contributory negligence offsets ordinary negligence. There can be no more comparative wantonness than there can be comparative negligence. When both parties are guilty of such negligence neither can be selected as that which is the proximate cause and hence the law must leave both where it finds them. The conclusion is inevitable even though its application be fraught with difficulties."

This rule is supported in Kentucky, Michigan, Missouri, Pennsylvania, California and Kansas.

In the case of Schneider v. Brecht, (1935) 6 Cal. App. (2d) 379, the court held that while contributory negligence was not a defense under the Guest Statute, that participation in the drinking party by the plaintiff amounted to misconduct equal to that of the defendant and the court concluded that if the defendant was guilty of willfulness, the plaintiff was likewise guilty of willfulness.

In the case of Koster v. Matson, (1934) 139 Kan. 124, 30 Pac. (2d) 107,

The court said:

"The host provides and drives the car, and the guest provides the liquor; or the guest urges the host to 'step on it.' The inevitable occurs. The guest may not recover because he was a participant in creation of the peril, and this is true in case of willful, reckless, or wanton misconduct."

I appreciate that the matter of defenses is one that should be more properly discussed by the speaker of the afternoon when he comes to speak to the subject-matter under discussion from the standpoint of the defendant but it is always important for the plaintiff to know what defenses may be and may not be interposed to his action and for that reason, I have discussed it here.

Service On Defendant

Ordinarily no question will arise in connection with the service of summons upon resident defendants but sometimes

a serious problem is presented with reference to service upon non-resident defendants. Of course provision is now made by Section 47-1043, providing that the operation of an automobile by a non-resident within the boundaries of the State of Indiana, shall automatically operate as an appointment of the Chief Administrative Officer of the Department of Treasury as the agent for service of process. These Statutes have been held constitutional and no doubt longer remains about their validity and effectiveness.

There is however, one recent provision of the Indiana Statutes which may affect the service of summons upon foreign corporations. I refer particularly to Chapter 60 Section 1 of the Acts of 1939 (Burns Supplement 25-316). This Statute deals with service of process on corporations not admitted to do business in Indiana and provides a method for obtaining service upon foreign corporations by serving the Secretary of State, very similar to the one above mentioned. The existence of this Act should be borne in mind because by its terms, it is broad enough to include accidents caused by automobiles used in connection with work done by a foreign corporation within the State of Indiana.

Some states have gone to extreme lengths in connection with this matter of insuring to residents, the opportunity of bringing their actions in the courts of their own state. For example, Wisconsin permits the action to be brought against the insurance company alone, without joining the insured and this often permits the action to be brought in the court of the county wherein the plaintiff resides without even attempting to make use of the Statutes providing for service upon the Secretary of State or other administrative officer.

Ordinarily however, no difficulty is experienced in the matter of service and the Statutes of Indiana are ample to meet almost any situation which can arise.

Answer

After having carefully prepared the complaint and having seen to it that his complaint is divided into rhetorical paragraphs, the plaintiff should then insist upon the defendant complying with the rule himself by denying or admitting each specific allegation of the complaint, all with the idea of narrowing the issues, to those facts which are really in issue between the parties.

Pleading Foreign Law

It has always been the law of Indiana and of the other states, that if the plaintiff desired to rely upon the law of a foreign state, that he must plead such law as a fact. In other words, he must treat the law of a foreign jurisdiction not as a part of his major premise but as a part of his minor premise. However, in 1937, the Legislature adopted what is known as the Uniform Judicial Notice of Foreign Law Act. The provisions of this Act should be carefully studied and the proper proceedings taken to take advantage of the Act if the law of the foreign jurisdiction is not set out in the complaint. My own recommendation is that wherever the law of a sister jurisdiction is to be relied upon, that the law be pleaded in the same manner as heretofore. This is the safe and sure way. It does not in any way prevent the use of the Uniform Act but merely puts the plaintiff in position where he may make use of both methods or either at his option. It is to be noted however, that Section 4 of the Act (Burns Supplement Section 2—4804) provides that before the party shall offer evidence of the law of another jurisdiction or ask that judicial notice be taken thereof, reasonable notice should be given to the adverse party, either in the pleadings or otherwise. Of course, if the matter is not set out in the pleadings, then a separate notice should be given to the opposite side before the trial, specifically advising such party of the intention to offer evidence as to the law of the foreign jurisdiction, and the same kind of notice should be given if the court is to be asked to take judicial notice of such law. It seems to me, that the safest method is to plead the foreign law in the complaint. This takes the place of any notice and the plaintiff is then in a position to ask the court to take judicial notice of the law of the foreign state or to make proof of it, if he so desires, without asking the court to take judicial notice of it.

Pre-Trial Procedure

We have fairly well covered the difficulties most likely to arise prior to trial. It is to be expected that the plaintiff's pleading will have to run the gamut of the usual attacks by motions to strike out, to make definite and certain, of demurrer, but having at last, arrived at the point where the

case has been put at issue, the plainiff may then give consideration to the matter of proving his case. Pre-trial procedure is new in Indiana, although it has been in use in some of the larger cities in the country for sometime with very favorable results. It has been adopted as a part of the Uniform Federal Rules of Procedure.

I think it is possible for the plaintiff to make use of this procedure to his advantage in eliminating considerable unnecessary evidence. It has always seemed to me that it is a waste of time, energy and effort, to start at the very beginning of a lawsuit and prove each and every fact alleged in the complaint with meticulous care when, in reality, there were only one or two questions at issue between the parties. Pre-trial procedure contemplates frank and open admissions by the parties so that the issue will be narrowed down to the real dispute in existence between them. The plaintiff might well ask for a pre-trial hearing in an automobile damage suit, with the idea of securing admissions upon considerations as follows:

1. Corporate capacity of the defendant, if involved in the action.
2. Capacity of the plaintiff to sue, such as his trust capacity or the fact that he is an administrator, etc.
3. Ownership or possession of the automobiles involved.
4. Agency of the driver. This fact is not often in issue and may usually be admitted. However there are some cases in which agency becomes one of the major, if not the all important, issue of the case.
5. Admissions as to correctness of plats, photographs, etc.
6. Agreements as to measurements, distances and physical surroundings.
7. Undisputed facts such as the place of the occurrence of the accident or the occurrence of the accident itself.
8. The kind and make of the automobiles involved and by whom operated.
9. The admission of the fact of death, if such has resulted.
10. The age of the decedent, if such is involved.
11. The expectancy of life.

I mention all of these not as attempting to give a complete list but merely for the purpose of pointing out some of the things which may be admitted in a lawsuit without in any way affecting the litigation of the vital questions in controversy.

Empaneling the Jury

Probably more difficulty arises in connection with the empaneling of the jury in automobile cases than in any other class of cases. This usually comes about by reason of the fact that the plaintiff makes inquiry of the individual members of the jury, whether they are connected in any way with an insurance company which is defending the action.

Of course in those states such as Wisconsin, Rhode Island, Louisiana, and Washington, which permit a joinder of the insurance carrier, there is no incentive upon the part of the plaintiff to apprise the jury of the fact of insurance by making appropriate inquiries upon the voir dire examination. But in states such as Indiana, where the plaintiff has no right to apprise the jury directly of the fact of insurance, it is customary for the plaintiff to examine each individual juror upon his voir dire examination as to his connection with any liability or casualty insurance company, conducting the defense of the action. This is customarily done by asking each individual juror whether he is an agent, policy holder, officer, director, stockholder or connected in any other manner, with the particular insurance company concerned. Our courts permit this action upon the theory that the plaintiff has the right to have this information for the purpose of intelligently exercising a peremptory challenge.

Of course after each of the twelve men in the jury box have been questioned in this manner, they either know of the fact of insurance or they are excessively dumb and the apprising of the jury of the existence of insurance is usually one of the main objects of the question. So far as I know, the Indiana courts have never passed upon the question of the right of the plaintiff to challenge for cause, where the juror upon his voir dire examination answers that he is a policy holder in the insurance company concerned, but states that he is wholly disinterested. This precise question is now pending before the Appellate Court and it would be improper for me to discuss it here.

It might be well however, for us to observe the rule of practice in our sister state of Ohio. Formerly they would not permit the inquiry at all but now the practice is to permit the plaintiff to make inquiry of the prospective juror, whether he is connected in any way with any casualty or liability insurance company; if he answers that he is, the plaintiff may then follow the matter up and make inquiry, further, whether he is connected with the particular insurance company concerned in the action.

Personally, I think this is an excellent practice. It serves to protect the defendant to a certain extent; it prevents the plaintiff from making the inquiry as a mere subterfuge and as a means of conveying information to the jury that such insurance exists and, upon the other hand, it fully protects the plaintiff in all of the rights to which he is entitled under the law. The practice, I repeat, is a good one and might well commend itself to the courts of Indiana.

An unusual practice in this regard exists in the State of Minnesota. In that State, it is not proper to join the insurance carrier as a party defendant but it is possible for the plaintiff's attorney, in the presence of the jury, to request the defendant's counsel to state whether or not an insurance company is conducting the defense and, if the answer is in the affirmative, they may ask the name of the insurance company. The trial judge usually requires the answers to be given. Of course such a practice as this is no better than having the insurance company joined as a party defendant.

All told, our practice in Indiana, conforms very closely to the practice in the majority of the other states and a close supervision of the empaneling of the jury by the trial court and the exercise of those ample powers, with which it is vested, will usually secure to the plaintiff, all that he is entitled to in this phase of the action, while at the same time, protecting the defendant against improper and prejudicial action which will prevent a fair trial of the case.

Tendering Instructions

The new rules of practice make no change in the method of tendering instructions to the court. The rule has to do entirely with the method of taking exceptions thereto. The

plaintiff of course, should tender instructions, not with the idea, as is often done by the defendant, for the purpose of getting error into the record, but for the purpose of presenting his own theory of the action to the court. The instructions should be prepared, therefore, as heretofore, that is, they should be in writing, separately numbered and each one confined as closely as practicable to one specific phase of the case.

It should be borne in mind that it is no longer necessary, under the rule adopted by the Supreme Court, for either party to take exceptions to the refusal to give instructions. Exceptions are automatically given by the rule whenever an instruction is refused. It is only when instructions are given by the court, that objections must be made thereto. As a result, the following practice is recommended:

1. The plaintiff should file specific written objections to each instruction which is given by the court, whether given by the court of its own motion or tendered by the opposite party.

2. The alternative method of making objection is for the party to state his specific objections to each instruction out of the presence of the jury. Already the practice has been indulged in by some of the courts of Indiana, to permit the parties to state their specific objections to each instruction given by the court out of the presence of the court and the other party. This, in my opinion, is not the theory of the rule. It clearly contemplates that the objections of each party should be submitted to the court in the presence of the other party in order that the court may pass upon them and determine whether or not such objections are allowed or overruled. This practice is undoubtedly the outgrowth of the former method of taking exceptions to the oral charge of the judge in the Federal Court. This had to be done in the presence of the court and jury and often resulted in an embarrassing situation arising for the counsel making the objection. The new rules of Federal Procedure now provide that, upon request, the jury shall be excluded and the objections may be made to the Judge out of the presence of the jury. Clearly however, the Federal practice still contemplates that the objections shall be made to the court and this is the usual practice. I believe that it was the intention of our Supreme Court,

to adopt this system of making objections and it was never the intention of the Supreme Court in making this rule, to permit each side to dictate sub rosa, his objections to the official reporter and thus keep them secret both from the opposite party and the court. Such practice should not be commended or indulged in and I sincerely hope that it does not prevail hereafter to any great extent in this jurisdiction.

Motions for New Trial

Under the practice in Indiana, the motion for new trial must specifically state the grounds of objection. This rule is undoubtedly the outgrowth of a desire to prevent questions being raised in the Court of Appeal, which were not presented to the trial court. I think the motive behind the rule is a very worthy one but as a matter of practice, it tends to encumber the record without accomplishing any real purpose. For example, in Ohio, they get along about as well as we do. Their skies are just as sunny; their lawsuits are heard and determined in less time than with us; their citizens are just as prosperous and their economic and social status is just as high as ours. Yet, it has always been the practice in Ohio, that the motion for new trial can be filed setting out only the statutory grounds, and it must be filed within four days after verdict. They also have the rule that specific objections to evidence need not be made. All that is required is that there be an objection and that objection be overruled and exception taken. Of course with us, exceptions are no longer necessary.

It occurs to me that the time required by our court proceedings, might well be cut down. We continually complain of the fact that the jurisdiction of the courts is being whittled away by the various administrative bodies but yet we insist upon the courts lumbering along their unwieldly way, taking months and years to decide a matter, which an administrative body disposes of in a few days or a few weeks at most, and then we quarrel with the administrative bodies and complain of their usurping the province of the courts and making inroads upon the prerogatives of the legal profession. Much of this can be avoided if the lawyer would develop the proper attitude toward the case which he is handling. He should assume the attitude that the case is not his case. He is merely trying it for his client. He has no mandate

to win the case for his client. His client may be wrong. His only mandate and full duty is to see that the facts of his client's case are fairly, honestly and competently presented to the court. When he has done this, he has done his entire duty as a lawyer. Why should he object to the rules of the game being changed so that the disposition of causes may be speeded up? A good player can play the game under the same rules that are applicable to the other fellow and he should be willing to do so. He has no right to have special rules made for the benefit of him or his client.

What I have said with reference to the prompt and efficient trial of lawsuits is applicable to automobile cases but is alike applicable to other cases. It is true today, as it has been in all ages, that "justice delayed is usually justice denied."