

NEGLIGENCE FACTOR IN ACCIDENT CASES

OF CONTRIBUTORY TYPE Doctrine of Common Law Which Is Reverted to By Many Lawyers to Wreck Perfect Case

"Contributory negligence is one of the oldest doctrines of the common law, and is one of the most frequently resorted to by lawyers and judges to wreck what otherwise might be a perfect case," says a bulletin issued by the legal department of the Chicago Motor club.

"Contributory negligence is the most frequent defense interposed in automobile litigation, yet its application is frequently misunderstood by motorists. The meaning of the term is that any act of omission or commission on the part of a driver or owner of an automobile that contributes to an accident bars that driver or owner from redress in court.

Free From Neglect
"In other words the driver must come into court free from any neglect when he seeks compensation for damages done or injuries sustained. The complications that arise from the rule of comparative negligence which at one time existed in most states but which is no longer a rule in Illinois and many other states, so confused the courts that it has been abandoned for the more workable rule of contributory negligence. The fact that the person sued was guilty of negligence and even though his degree of negligence was several times more fragrant than that of the person su-

ing, does not help the case, if the driver suing has been negligent.

Contributory Negligence
"Under this rule of contributory negligence, although the defendant's negligence may have been the primary cause of injury complained of, yet an action for such injury can not be maintained if a contributory cause of the injury can be traced to the want of ordinary care and caution on the part of the person seeking recovery. It has been said that no man shall base a right of recovery upon his own fault and that between two wrong doers, the law will leave the consequences to rest where they have chanced to fall; that is, each will have to bear his own loss and neither may seek redress against the other.

"It is a practically universal rule of evidence that the violation of any state law on the part of the plaintiff at the time or immediately before an accident bars recovery. In a great many states including Illinois the violation of any city or village ordinance also will prevent a successful prosecution of a claim. The burden of proof is always on the plaintiff. The law does not impose the duty on the defendant to show that he was not at fault, but a positive duty in all these cases demands that the plaintiff show an absence of ordinary care and neglect on the part of the defendant.

Decision of Courts
"The courts have said that the records do not disclose any case, in which a person has been permitted to recover whose violation of the law proximately contributed to bring about an injury, and that decisions to the contrary are numerous. 'It is immaterial' in the language of the courts of appeal, 'whether a plaintiff's contributing act to his injury is a violation of a code or a common rule of

conduct.' He is precluded from recovery on the ground that the court will not lend it's aid to one whose violation of the law helped in any degree to bring about the result which followed.

"An example of contributory negligence is given in the following case: One motorist sues another and bases his claim on the fact that the other was driving at an unlawful rate of speed. The proof however, discloses that the accident occurred at night, and that the car driven by the plaintiff failed to display headlights. Although the defendant admitted his violation, the plaintiff could not recover, because he had not done that which the law demanded. In such cases no one can recover and the courts afford no redress.

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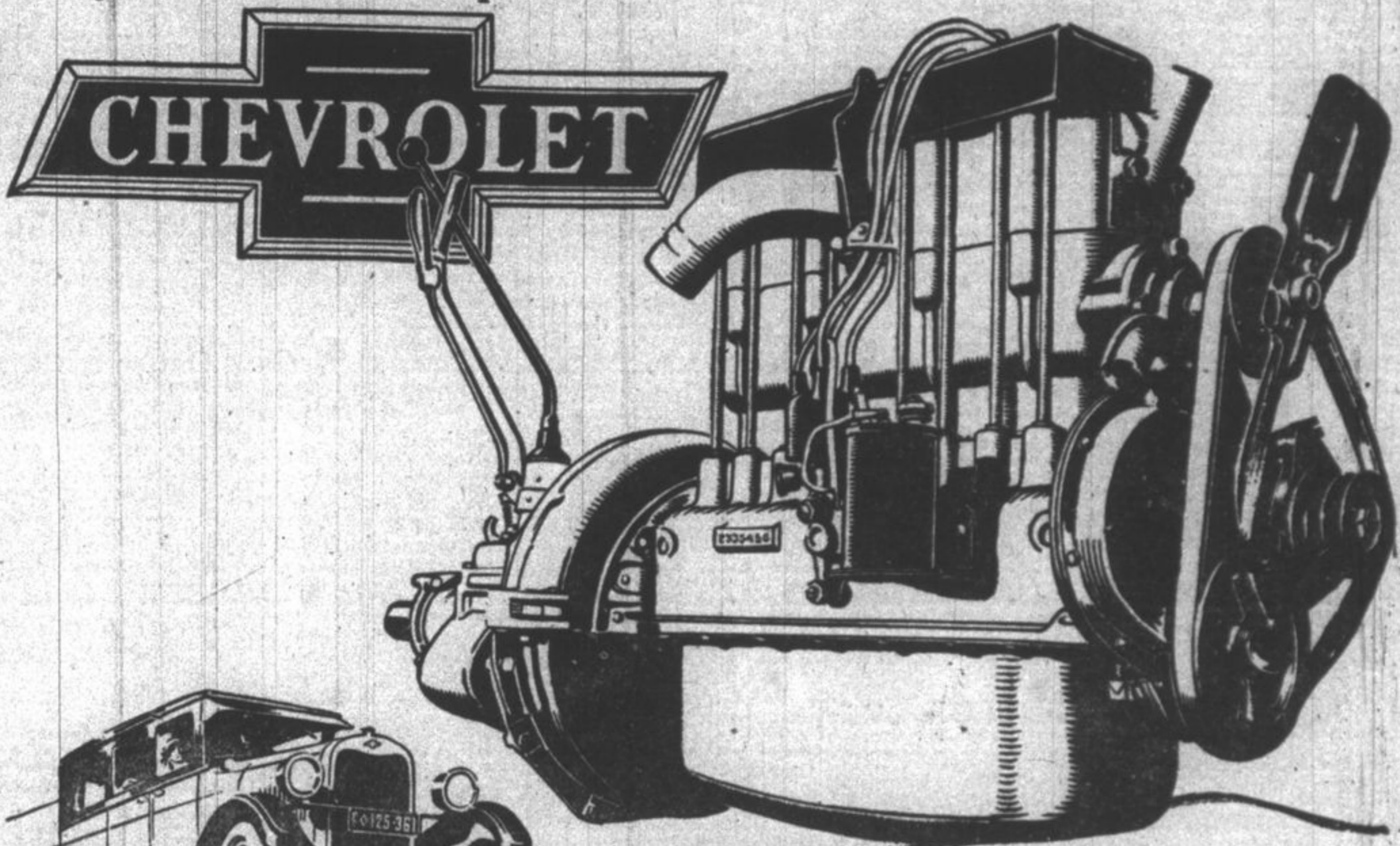
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