car impairs the driver's ability to manage the car, in determining whether excessive speed or a blow-out was the proximate cause of an accident (*Ronning v. State* [Wis.], 200 N. W. 394), of the fact that a blow-out of the front tire of an automobile running fifteen miles an hour might cause the car to run into a ditch, in determining whether any cause but defendant's negligence might possibly have caused an accident (*Klein v. Beeten et al.*, 169 Wis. 385, 172 N. W. 736), and of the fact that the speed of an automobile may be changed at different points within a distance of a mile, in determining the admissibility of evidence of a car's average speed for more than a mile before striking a person (*People v. Barnes*, 182 Mich. 179, 148 N. W. 400). But that the judicial notice of the automobile is not unlimited is shown by the following recent cases, decided in 1920 and 1925, respectively: *Texas Co. v. Brandt et al.*, 79 Okl. 97, 191 P. 166, in which the court refused to take judicial notice that automobiles stopping and starting at filling stations emit unusual noises and odors which travel from 50 to 125 feet, in a suit to enjoin the construction and operation of a filling station; *Sherwood v. American Ry. Express*, 158 La. ——, 103 So. 436, in which the court refused to notice the time which would be required to repair an automobile injured in a collision, in determining the adequacy of damages. F. W. F.

McLendon v. State, 105 So. 406 (Fla., 1925).

EVIDENCE—ADMISSIBILITY—EXPERIMENTS—Defendant resisted arrest by an officer, and in the struggle the officer was fatally wounded by a shot from his own pistol. On trial for murder in the first degree, defendant contended that the shot occurred accidentally during the struggle. The prosecution maintained that the shot was premeditated, being fired by defendant after getting some distance from the officer. No powder marks or burns were found on the flesh of deceased. *Held*, paper and cloth targets at which experimental shots were fired with the pistol which fired the fatal shot and similar ammunition, at varying distances, to show that if the shot had been fired as close to deceased as defendant claimed it would have left powder marks and burns on the flesh of deceased, were not admissible, unless it were first shown that the targets were similar to human flesh in texture, vulnerability and susceptibility to powder marks and burns. Experiments to be admissible in evidence must first be shown to have

been performed under conditions similar to the circumstances of the case. The court indicated that its opinion was supported by the weight of authority; but an analysis of cases shows a decided conflict on this point.

Of the cases cited by the court, only the following are directly in point: *State v. Justus,* 11 Ore. 178, 8 P. 337 (1883); *People v. Fiori,* 123 App. Div. 174, 108 N. Y. S. 416 (1908); *Morton v. State* (Tex. Cr. App), 71 S. W. 281 (1902). In *Lawrence v. State,* 45 Fla. 42, 34 So. 87, *Spires v. State,* 50 Fla. 121, 39 So. 181, and *Commonwealth v. Piper,* 120 Mass. 185, the general proposition that experiments, to be admissible, must be shown to have been performed under similar conditions to those in the case, was upheld, but the facts were totally dissimilar to those of the instant case. In *McAlpine v. Fdelity and Guaranty Co.,* 134 Minn. 192, 158 N. W. 967 (a civil case), the admission of such evidence was held to be discretionary with the trial court. In the cases of *Hisler v. State,* 52 Fla. 30, 42 So. 692, and *People v. Solani,* 6 Cal. App. 103, 91 P. 654, it was not shown that the gun and ammunition were similar to those used in firing the fatal shot. *Gibbons v. Territory,* 5 Okl. Cr. 212, 115 P. 129, and *State v. Fletcher,* 24 Ore. 295, 33 P. 575, are not directly in point, as the shots in those cases were fired into woodwork, not human flesh. *Reagan v. State,* 84 Tex. Cr. R. 468, 208 S. W. 523, held that experiments with white paper were inadmissible, where the shot had passed into the body of deceased through dark clothes. In *Tesney v. State,* 77 Ala. 33 (1884), the court went so far as to exclude evidence of an experiment with the same coat through which the victim was shot, though this case may have been decided on the ground that a single experiment was insufficient as the general rule is that, where the bullet first penetrates clothing, experimental evidence of the effect of a similar shot on the same or similar material is admissible. (*Newkirk v. State,* 134 Md. 310, 106 A. 694; *Pollock v. State,* 136 Wis. 136, 116 N. W. 851; *State v. Nowells,* 135 Iowa 53, 109 N. W. 1016; *Huestis v. Ætna Insurance Co.,* 131 Minn. 461, 155 N. W. 643; *People v. Fitzgerald,* 138 Cal. 39, 70 P. 1014; *Sullivan v. Commonwealth,* 93 Pa. 284; *State v. Asbell,* 57 Kan. 398, 46 P. 770; *Houston v. State,* 264 S. W. 869 (Ark.); *Hughes v. State,* 126 Tenn. 40, 148 S. W. 543; *People v. Clark,* 84 Cal. 573, 24 P. 313; *People v. Ferdinand,* 229 P. 341 (Cal). Cases holding directly contrary to the instant case, under almost identical facts, are *Irby v. State,* 18 Okl. Cr. 671, 197 P. 526; *Thrawley v. State,* 153 Ind. 375, 55 N. E. 95, and *State v. Jones,* 41 Kan. 309, 21

P. 265 (in which the principal contest was on other items of evidence). A similar conclusion is reached in *Beckett v. Northwestern Masonic Aid Association,* 67 Minn. 298, 69 N. W. 923, a civil case, in which the substances of which the targets were composed was not clearly stated, and in *State v. Asbell, supra,* in which the targets themselves were not introduced, but the testimony of witnesses as to the results of the experiment was given. In all these cases differences in the substances used as targets and the flesh actually shot were considered as going to the credibility, not the competency, of the evidence, and in *Irby v. State, supra,* and in *Rodgers v. State,* 93 Tex. Cr. R. 1, 245 S. W. 697, decided in 1921 and 1922, respectively, it was expressly held that to make experimental testimony admissible it is not necessary that the experiment be made under exactly similar circumstances to those of the case. F. W. F.

REAL PROPERTY.

Farmers' Bank of Hickory v. Bradley. Kansas City Court of Appeals, 1925, 271 S. W. 857.

MORTGAGES—CONSTRUCTIVE SEVERANCE—GROWING CORN. Action in replevin to recover growing corn, and damages for its detention. One Bassfield owed the plaintiff a large sum of money, and gave the plaintiff his note secured by a chattel mortgage on a field of growing corn. The corn stood on land owned by Bassfield, but subject to a deed of trust in favor of the Central Mortgage Company. The deed of trust was executed more than a year before the chattel mortgage. Subsequently, the land was sold under the deed of trust to the defendant, who took possession of the land and corn, and held the same until this action was filed. The plaintiff, as holder of the chattel mortgage, contends that until foreclosure the title and ownership of the land were in Bassfield, that the execution of the chattel mortgage was a constructive severance of the crop from the realty, and therefore the crop did not pass to the purchaser of the land under foreclosure. The court, agreeing with the contentions of the defendant, admitted that there could be constructive severance of a growing crop as between vendor and vendee, and held that the deed of trust on the land covered the crops thereon until severed, and there could be no constructive severance of the corn by the execution of a chattel mortgage as against the deed of trust on the realty.