Suffolk Alumni News, Vol. 4, No. 5, 1930

Suffolk University

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THE SUFFOLK LAW ALUMNI ASSOCIATION

SUFFOLK LAW SCHOOL is recognized as one of the largest law schools in the country. Its position is at the top and the percentage of its graduates passing the Bar examinations is such as to make it a leader in standing as well as size.

Suffolk Law Alumni Association is not the largest Law Alumni Association in the country. Its membership is not such as to reflect the gratitude, the loyalty and the pride that Suffolk Law School graduates should have in the school. Is there any Suffolk graduate who feels that his knowledge of the law is inferior to that of graduates of other schools? Is there any graduate who feels that because he is a Suffolk graduate he is incapable of handling a case as skillfully or as well as graduates of other schools? If there is it is the Suffolk man’s own fault. Too often the incompetent is prone to berate his school for his own failures.

Suffolk Law Alumni Association was not organized for the purpose of furthering the interests of its organizers or for furthering the interests of any one man. Suffolk men who were present at the organization meetings will remember that the initiative was taken by men who were already successes in their professions, men who needed no help. Mutual co-operation is the keynote to the success of any venture. Mutual co-operation in this case consists of joining the Alumni Association, not because of the personal advantages the Club rooms may offer but for the collective benefits which will accrue to all. No man with any initiative is content to sit back and reap the benefits which are sowed by his neighbor.

We should be able to double the membership of the Alumni Association before June without any special effort. Let us get behind the Association. Let us help ourselves by helping each other. If you are not a member send your name to the secretary today—don’t put it off, do it now.

SUFFOLK LAW ALUMNI NEWS

Suffolk Law Alumni News is the contact between the Alumni Association and its members. Its purpose is to keep the members informed not only on Suffolk activities but on general information of interest to the lawyer. Beginning with this issue, the "News" appears in its new make up. Each issue will carry information valuable to the lawyer, abstracts of Massachusetts decisions, Federal court decisions and special articles on timely subjects. No magazine or paper has ever been printed which from cover to cover, carried matters of interest to all of its readers. The editors of the "News" do not expect to accomplish that which has never been done before but letters of suggestion from readers will materially assist in increasing its value.

S. L.
SUFFOLK ALUMNI NEWS

THE LAW OF GENERAL AVERAGE

By George H. Toole

The principle of contribution in general average had its inception in the Rhodian law in the time of Lycurgus and Solon. It was later adopted into the Roman law, and has come down to us as part of the general maritime law. It is older than the common law, and appears to have been adopted into English jurisprudence without the intervention of any statute. It applies only to shipping, so that its provisions are not so generally known among those whose work does not take them into the realm of admiralty.

General average was defined by the United States Supreme Court, in the case of the STAR OF HOPE (9 Wall. 263), as follows: "General average contribution is defined to be a contribution by all the parties in a sea adventure to make good the loss sustained by one or more of them on account of sacrifices voluntarily made of part of the property or cargo of the ship, or of the lives and the property of those on board from an impending peril, or for extraordinary expenses necessarily incurred by one or more of the parties for the general benefit of all the interests embarked in the enterprise."

This principle may be best explained by an illustration. Let us go back, if we may, before the days of Columbus. A ship, laden with the goods of foreign lands, has just anchored in a Mediterranean harbor. Although the voyage has ended, the affairs of the ship are by no means settled. The master must collect the freight money, and there are certain other accounts to be adjusted. During the prosecution of the voyage, the ship had been aground on a sand bar. It had been necessary to lighten the ship in order to reloat it, and for this purpose the master had thrown overboard part of the ship’s stores.

Furthermore, in getting free of the sand bar, he had carried too much sail for the vessel in the gale that was blowing, and his foresail, a beautiful sail bearing the picture of his patron saint, had been blown from the bolt ropes and lost. The master tells the merchants that since the stores and sail were sacrificed to save their goods from certain destruction that they must contribute a portion of the loss to him. The merchants could not blame the master, for he realized that the surrounions of the situation necessitated the sacrifice, but the parties who had benefited by his loss would have to contribute to him. After much parleying, a settlement is reached. The lucky contribute to the unlucky. The master contributes to the merchant whose velvet he has taken, and collects from all the merchants for the ship’s fittings that he has lost.

Thus did general average originate, and its principles remain unchanged to this day, although their application has been revised to meet the requirements of present day shipping. The latest modification of the principles of general average is known as the York Antwerp Rules of 1924. These features, which must exist to give rise to contribution in general average, are as follows:

(1) The common adventure must be in danger.

(2) The sacrifice must be an intentional act made by the master, or by his authority, as opposed to an accidental loss by perils of the sea. An accidental loss would constitute part average, to which ends the party upon whom it falls, rather than upon all of the parties to the venture.

(3) The act must be prudently and reasonably made.

(4) It must be extraordinary in its nature, and not one which is necessarily involved in the performance of the contract of carrying the cargo.

(5) The object of the sacrifice must be nothing less than the preservation of the property in danger. It must not be for the sake of the safety of the ship, or of the cargo, or merely for the completion of the voyage, but must be for the benefit of all.

(6) The sacrifice must not be caused by any fault of the party asking the contribution.

(7) The sacrifice must be successful in the preservation of the property.

All of the interests involved contribute to the general average in proportion to their value. Let us say that a cargo valued at $100,000 has been jettisoned, or thrown overboard, and the value of the ship, freight and cargo is $900,000. The amount to be contributed good in general average is $100,000, to which the cargo that had been jettisoned would have to contribute its proportion, as well as the cargo that has been saved. The value of the property and the value of the cargo jettisoned totals $1,000,000, to contribute to a loss of $100,000, in the following manner:

<table>
<thead>
<tr>
<th>Value of Property</th>
<th>Value of Cargo</th>
</tr>
</thead>
<tbody>
<tr>
<td>$900,000</td>
<td>$100,000</td>
</tr>
</tbody>
</table>

The ordinary marine insurance policy includes the risk of contribution in general average.

ANNOUNCEMENTS

The May business meeting on Thursday, the 8th, 7.45 P.M., will be preceded by a program presented by Malden-Everett & Suffolk Club with Justice Elbridge G. Davis of Malden Court, and Harry L. Miller, ’23, of the Somerville Suffolk Club as guests and speakers.

A fine program is assured and should be sustained by large attendance.

Proposed changes in Constitution and By-Laws will be presented for adoption after the program.

To ALL ALUMNI: We are pleased to receive letters, personal mentions, and articles for publication in the NEWS from our graduates.

SECRETARY’S REPORT

The monthly business meeting of the Suffolk Law Alumni Association was held April 10th, 8 P.M., at the Club House, President George H. Spillane presiding.

Proposed changes in the Constitution and By-Laws as published in the April alumni NEWS were recommended by the Committee on By-Laws "for adoption, with such additions or amendments as may be submitted, and accepted at said meeting." Lack of a quorum after discussion, the matter was laid on the table until the May meeting, when it will be brought up for consideration following the evening’s entertainment.

Boston’s Welfare Work was admirably presented in an address by Walter V. McCarthy, ’21, who, for many years, has been active in disbursements of Boston’s welfare funds. Refreshments and adjournment.

PAST OFFICERS

Geo. H. Spillane, LL.B., President, 1939.
Thomas J. Finnegan, LL. B., Vice-President.
Martin W. Powers, LL.B., Treasurer.
Alden M. Cleveland, LL.B., Secretary.

For advertising rates apply to Mr. Kerwin.

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Published monthly, October to June, by the Suffolk Law Alumni Association, 73 Hancock Street, Boston, Massachusetts.

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NEGLIGENCE OF RAILROAD

Harris v. Boston, Revere Beach & Lynn R. R., 1930 Adv. Sh. 521. Plaintiff, while standing on a station platform of defendant’s railroad, was injured by a spark which came from one of defendant’s locomotives. It was held, on evidence which showed no more than these facts, that a verdict was rightly directed for defendant, the court saying that the mere happening of the accident did not warrant a finding of negligence on defendant’s part “in not providing and keeping in suitable repair the best well known practical contrivances to prevent the unnecessary escape of sparks from the locomotive.” “Res ipsa loquitur” does not apply.

ACCESS TO BOULEVARD

Gleason v. Metropolitan District Commission, 1930 Adv. Sh. 541. Landowners were entitled to maintain an action seeking a way of access over intervening land of the Commonwealth, to the wrought part of Old Colony Boulevard. The Commonwealth had acquired an adjacent strip of land for the purpose of laying out a boulevard, but the boulevard proper, with its sidewalks, took but a portion of this strip and left a strip about forty feet wide between the sidewalk and petitioner’s land, over which respondent refused to allow a way of access. The respondent’s exceptions to the granting of this petition are overruled, the court saying that, although the respondent has broad powers, it cannot, after a taking of land for purposes of public travel (as distinguished from a taking for park purposes), in such case there is no right of access by abutting owners to parkways or boulevards with the park), deprive abutters of a reasonable access to such public roadway.

CONTRIBUTORY NEGLIGENCE OF INVITED GUEST

O’Connell v. McKeown, 1930 Adv. Sh. 559. Plaintiff was injured while riding as the guest of the defendant. At the trial, evidence showed, inter alia, that the car was a brand new car, when as an agent of the insurance company the auctioneer declared the property sold to respondent, at a price in excess of the amount due on his mortgage, a fact of which respondent was also aware. The court, in effect, holds that the evidence fails to show failure on defendant’s part “in due care, in that the plaintiff knew that he was guilty of gross negligence, but rests his case on the proposition that as matter of law the plaintiff was not required to exercise due care, in that the plaintiff knew that the defendant was under the influence of liquor. The full court overrules the defendant’s exceptions, saying that contributory negligence is an affirmative defense with the burden of proof on the defendant, and that the evidence fails to show that contributory negligence is an affirmative defense with the burden on the defendant, and with rare exceptions presents an issue of fact; and in this case the court is of the opinion that the issue presented did not call for a ruling of law.

STATUTE OF FRAUDS

Weiner v. Slinin, 1930 Adv. Sh. 547. Respondent, the holder of a second mortgage on real estate (on which complainant held a first mortgage), purported to foreclose his mortgage. At the sale the respondent bid on the property, and, there being no other bids, the auctioneer declared the property sold to respondent, at a price in excess of the amount due on his mortgage, but no memorandum of the sale was made by the auctioneer or any other party to the suit and no deposition was made. Complainant brings this bill to compel respondent to execute and deliver to himself a deed of the premises and to an accounting of the proceeds of the sale. The statute of frauds is pleaded, and a decree in favor of respondent is upheld, the court saying that although when a mortgagee forecloses and becomes a purchaser for a price in excess of the amounts due under his mortgage, a suit in equity for the accounting may be maintained by junior lienors, yet in this case the failure of the auctioneer to make a memorandum makes it plain that the mortgage was not enforceable under this act, and the foreclosure proceedings left the parties in the same position as before the attempted foreclosure.

The following propositions of law: (1) As a general proposition, fraud vitiates every contract at the election of the injured party. Parties to a contract freely and intelligently made may agree that representations not therein contained are not binding on them, with the result that false representations of an antecedent thereto do not constitute a defense to an action on the contract. But here the action is not brought on the contract or for violation of its terms, but is brought in tort to recover for defendant’s fraud in inducing him to agree to the terms of the written agreement.

SCHOOL NOTES

A new plan was recently launched under which Kenneth Maclean, assistant in the Suffolk Law School Department of Research and Review has been appointed to act as Resident Student Counsellor to the students of the Freshman Class. Any student whose written work is defective in any material respect is requested to call in as a personal conference with the Counsellor. His papers will be carefully gone over and suggestions made with a view to improving his future work. The method of study and amount of time devoted to it are looked into and his attendance record examined. The student is then given advice on any matter which may perplex or disturb him in connection with his written work. A record of each conference is kept so that if he is again called in, his progress and rate of progress may be readily ascertained. This personal contact is an effective method of aiding the student with possibilities and of weeding out those who for any reason are not adapted to the study of law.

Our Commencement orator this year (June 16) will be U. S. Senator Simeon D. Fess of Ohio, one of the ablest orators in the upper house of Congress. Senator Fess has had a distinguished career both as an educator and statesman. He was for seven years a college professor, dean of a law school and later President of Antioch College. He has written numerous books. He was for many years a Congressman from Ohio, being elected to the Senate seven years ago. * * *

A widely heralded event of the year was the induction of Junior class officers on April 11. When the smoke of the battle of ballots had cleared, A. Ralph Vaccaro of West Somerville found himself the chosen one for 1931, his campaign manager, Alexander MacDonald of Winchester, running a close second.

Patrick J. Savage of Medford was elected vice-president.

The offices of treasurer and secretary were eminently filled by Frank Foster of Bangor, Maine and John H. Johnson of Wollaston. * * *

Dean Archer’s Friday morning broadcasts over the National Broadcasting chain are given at 11:45 Eastern Standard Time (10:45 Central Standard Time) over 39 stations in the following cities:

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WCR ..............................Albany, N. Y.
WWJ ..............................Detroit, Michigan
WGN ...............................Chicago, Illinois

Getchell

Recent Decisions of the Supreme Judicial Court of Massachusetts

By Arthur V. Getchell

This is an action by the receiver of a national bank in South Carolina to recover the reserve balance of that bank in the hands of the Federal Reserve Bank of Richmond at the end of business on October 9, 1928, when the South Carolina Bank, being insolvent, closed its doors. The Richmond Bank claimed the right to retain the reserve balance and charge against it checks payable at the Carolina Bank receiver, and also on October 7, 8 and 9 and forwarded to the latter for collection. The receiver contends that the agreement with the Richmond Bank which provided in substance that checks would not be chargeable against the reserve until the transit time of three days for forwarding checks to the Richmond Bank had expired (the Richmond Bank reserved however the right to charge a "cash letter to the reserve account at any time if it needed it to do so") deprived the Richmond Bank of any lien on the funds until the three days had expired and also called attention to the right of the Carolina Bank to draw checks against the fund reserved to it by law.

In holding for the Richmond Bank the United States Supreme Court said in part:

"The right of the South Carolina Bank to draw against its reserve account was subject to the right of the Richmond Bank to charge it with a cash letter whenever deemed necessary. This power is reserved more obviously in the interest of the depositors than the checks than the Richmond Bank. The latter received the checks for collection with responsibility only for its own negligence. The depositors took the chance of finding that his only debtor was a distant bank in place of the maker of the check discharged (Federal Reserve Bank of Richmond v. Malloy, 264 U. S. 150, 166, 44 S. Ct. 296, 68 L. Ed. 617, 31 A. L. R. 1261)—a bank that might be insolvent, as this one was. His situation was the one that most needed the power to charge the reserve. The language of the circular pointed to the depositor's interest for the cash letter to be charged was merely another name for the checks that the letter contained. The existence of the power must be assumed to have been one of the considerations inducing the owner of the check to give the Richmond Bank authority to send it directly to the drafter. All parties must be taken to have understood that in the event that happened it was the duty of the Richmond Bank when it knew the facts to charge the reserve account of the South Carolina Bank, and if so the account should be charged.

"Judgment affirmed."

Superior Oil Co. v. Mississippi, 59 S. Ct. 169.

Suit by Mississippi to collect a tax on distribution of gasoline. The defendant, a Mississippi corporation, contended the tax which was imposed on gasoline sold by it to packers in biloxi in that it was delivered at the packers' wharves was unlawful as an interference with interstate commerce. The packers later loaded the oil upon their own boats and sent it to Grants Pass, Louisiana, where it was delivered to shrimp fishermen for use in fishing. The fishermen brought their catch back to Biloxi, sold it to the packers and were charged with the oil delivered to them. The bills of lading under which the goods delivered to the packers were consigned to the packers and stated that "the property consigned herein remains the property of the said Superior Oil Co. until it shall be delivered to consignee or consignee's agent at point of destination." The seller, of course, paid no freight, the boats belonging to the purchasers. The court held that the transaction between the defendant and the packers was purely intrastate. The Court said in part: "The (bill of lading) seems to have had no other use than to try to convert a domestic transaction into one of interstate commerce. There was no consignee at the point of destination. The goods were delivered to the so-called consignee before they started, and were in his hands throughout."

REGULATION OF FISHING

Miller v. McLaughlin, decided by U. S. Supreme Court April 14, 1930.

A Nebraska statute prohibits the taking of any fish except minnows from the waters within the state "with nets, traps or seine" and makes possession of these unlawful except as authorized by the department of agriculture.

An Iowa statute makes it lawful to take fish from the Mississippi or Missouri rivers within the jurisdiction of the state with nets or seines upon procuring a license from the state game warden.

The middle of the channel of the Mississippi River is the boundary line between Nebraska and Iowa. Miller, a resident of Nebraska, brought suit in the courts of that state to enjoin the enforcement of the law. He alleged that he had in his possession nets, traps and seines which he intended to use exclusively in taking fish from the Missouri River; that he planned to use them on the Iowa side; and that the Nebraska officials were threatening to prevent their use by enforcing the law.

He contended that in the absence of concurrence by Iowa, Nebraska was powerless to prohibit fishing even in that part of the river within its own boundaries because on admitting Iowa to the Union, Congress granted it "concurrent jurisdiction on every river bordering on the said state of Iowa, so far as the said rivers shall form a common boundary to said state, and any other state." He also contended that prohibition of the mere possession of "innocuous traps, nets and seines" violated the Fourteenth Amendment. The state court held the statute invalid and the Supreme Court of the state reversed the decree. The U. S. Supreme Court sustained the validity of the statute on the ground that the grant of concurrent jurisdiction of the river to Iowa did not deprive Nebraska of the power to regulate with respect to its own residents within its own territorial limits, and that a state may regulate or prohibit fishing within its waters, and for the proper enforcement of such statutes may prohibit the possession within its borders of the special instruments of violation, regardless of the time of acquisition or the protestations of lawful intentions on the part of a particular possessor. U. S. Daily, April 16, 1930.
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PERSONAL MENTION

George H. Spillane, President of the Suffolk Law Alumni Association, and Mrs. Spillane, have been enjoying a two weeks' sojourn in Bermuda.

Joel L. Miller, class historian of '29, and Reginald J. Murphy, marshal of the same class, have formed a partnership for the practice of law at 43 Tremont Street, Boston.

W. Howard Tooker, '25, sends greetings to his many Suffolk friends from La Verne, California, where he is engaged in irrigation projects for large orange and lemon groves.

Aaron Cohen, '29, is entering the practice of law with office at 185 Devonshire Street, Boston.

Arthur F. Laurian, '27, is on an assignment to Java, in the interests of the Goodyear Rubber Company with whom he is actively associated.

Edward V. Keating of 425 Fourth Street, South Boston, has been appointed Assistant Clerk of the Suffolk Superior Court in place of John P. Manning. Since his graduation in the class of 1926 he has been associated with Judge Michael J. Connelly in the practice of law.

John G. Fitzgerald of the class of 1918, who was assistant postmaster in Lexington for nearly a quarter of a century, has been appointed Superintendent of the Lexington Post Office, which is now a branch of the Boston Post Office. Mr. Fitzgerald entered the postal service in Hopkinton and was appointed to the mail railway service at Albany, New York. During the world war he served with the U.S. Secret Service and attained the rank of Captain in the American Protective League auxiliary to the United States Department of Justice.

John J. Mahoney of Cambridge, class of 1922, has recently been appointed a law clerk for the City of Boston.

Joseph L. Shaw, '29, has opened an office for the practice of law at 549 Old South Building, Boston.

Maurice H. Cavanagh

Arthur L. Cavanagh

Charles T. Cavanagh

Francis X. Cavanagh

Suffolk claims four brothers as graduates, all doing honor to the school, and all active in the Somerville Suffolk Club.

Maurice H. Cavanagh, '25, for eleven years an executive of metal and mining companies, including the zinc and lead fields of Missouri and Kansas, the copper districts of Arizona and Old Mexico, the Cobalt Silver Mines of Canada and the Gold Mines of Nova Scotia, is now in general practice in Somerville. He is President of the Somerville Suffolk Club and has a law office second to none.

Arthur L. Cavanagh, '25, and of Harvard Dental School, 1915, is engaged principally in dentistry, but acts also as consulting attorney with his brothers.

Charles T. Cavanagh, '26, has been admitted to the Federal Court at Boston, and is also of the firm of Cavanagh and Cavanagh, 7 Davis Square, Somerville.

Francis X. Cavanagh, '26, has long been connected with the police force of his city and is in line for appointment as sergeant.

Charles L. Morton, in earlier days a student at Suffolk, now a member of the New York bar, is in London with Mrs. Morton, combining business and pleasure on a trip abroad.

William E. Dingwall, '27, has returned to Panama, where he is a member of the bar, there to enter the practice of law, in Ancon, Canal Zone. Address, Rox 816.

Charles H. Walters, '24, announces the removal of his offices to 218 Kimball Building, Boston.
A Good Judge

presiding in a High Court has passed this sentence upon us.

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Purposes, Plans and Possibilities of Suffolk Law Clubs

By Alden M. Cleveland

There is a threefold purpose in forming Suffolk Law Clubs:
First, To acquaint Suffolk men locally with one another.
Second, To stimulate interest in, and active support of local enterprises by Suffolk men.
Third, to develop interest and participation in the great work of the Alumni Association as a whole to increase membership.

Plans and Possibilities for these Clubs are merged with their Purposes, and develop with the fulfillment of those purposes.

DEVELOPING SUFFOLK ACQUAINTANCE

For instance, it was a revelation at the Dorchester meeting on March 13th, to see how few of the seventy-five men present knew one another, and yet, how soon they become acquainted! Who can measure the value of this acquaintance in law and in business?

DEVELOPING LOCAL ENTERPRISES

Some Suffolk men have been instrumental in forming Boards of Trade, governed by By-Laws they drafted, and now operating successfully. Others have formed Business Men's Associations, which have developed uniform regulations respecting local business, and created emergency loan funds for members, to be used in obtaining special discounts, etc. Some interested in promoting local business enterprises have helped them institute

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JOEL L. MILLER, President

The regular monthly meeting of the Dorchester Suffolk Club was held Thursday evening, April 17th, at the Herbert J. Wolf Post, V. F. W. quarters. Following a report of the monthly meeting of the Alumni Association of the president of the club, Joel L. Miller, the club adopted a set of By-Laws similar to those adopted by the Lowell Suffolk Club. It was voted to have the next monthly meeting in the form of a luncheon and a committee was appointed, headed by Rep. Bloomberg to arrange for the affair. The committee included Wm. Neary, Joseph L. Shaw, Harry Sessnovich, David Ginberg, Maurice Beim bach, and Antonio J. Fenardi.

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**ASSUMING DEBT OF ANOTHER AND THE STATUTE OF FRAUDS IN MASSACHUSETTS**

By Kenneth B. Williams

The Massachusetts cases unequivocally establish the rule that where the debtor's obligation is assumed by a third party, the promise to pay is within the statute if the obligation of the original debtor still subsists. So the question of whether or not the statute of frauds applies is not primarily one of consideration, although consideration must exist, but turns solely upon whether or not the liability of the original debtor still continues.

If it does the contract is within the statute and must be in writing. If it does not the promise is not within the statute and need not be in writing to be enforceable. The consideration to be sufficient must move from the creditor to the new promisor, and whether or not consideration flows from the original debtor to the new promisor is immaterial. So the question of whether or not the statute of frauds applies is not primarily one of consideration, although consideration must exist, but turns solely upon whether or not the liability of the original debtor still continues.

In Nelson v. Boynton, 3 Met. 396, B promised to pay notes given by his father in consideration of N's forbearance to sue the father on them. "The father in consideration of N's forbearance, made a mere forbearance without return for a promise by a new debtor to pay the debt the statute of frauds does not apply.

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LIABILITY TO INVITED GUEST

By Sidney S. von Loesecke, Attorney for A. L. A.

The question is often asked: "Suppose I invite a friend to ride with me and he is injured, am I responsible?"

This question cannot be answered without further information as to the exact relation between the person invited and the owner or operator. If it be assumed that the person riding was doing so on a bare invitation, and that there was no agreement to compensate the owner or operator, then the question becomes simply one of contractual relation then existing between the guest and the owner or operator, the answer being that the responsibility of the operator would depend entirely upon the state in which the car was being driven.

In the majority of states the operator of the motor vehicle is liable to his guest if he is guilty of ordinary negligence, while in others he is liable only for gross negligence. In no state is the operator held to be the insurer of the life or safety of his guest, which would permit recovery on the mere happening of the accident... In every case, whether for the guest to recover, there must be a failure of the operator to exercise that duty toward the passenger which the laws of the particular state require.

In 1917 the Massachusetts State Supreme Court established the rule that the invited guest could recover only when the operator was guilty of gross negligence. Washington and Georgia seem to be the only states to have followed the Massachusetts rule by judicial determination, although some courts recognized the harshness of holding the operator liable for simple negligence. Thus in 1917 the Alabama Court said: "It does seem a harsh rule which makes the carrier or host liable to the passenger or guest as for injury or death in the absence of gross negligence or wantonness, especially when the passenger or guest is treated by the carrier or host just as the latter himself is treated, and when both are injured by the same accident. If this be so, the reply is: 'The law is so written, and cannot and should not be changed to meet hard cases; such instability would make shipwreck of the law.'"

However, times have changed. In 1917 there were only 4,983,249 automobiles in the United States. Today there are 26,490,000. The courts and judicial machinery are clogged with cases arising from automobile accidents, and the legislatures of some of the states have enacted laws making the duty of the operator to his guest the same as that which the Massachusetts Court decided it should be in that state.

Thus, in 1929, the Vermont Legislature enacted a law, which became effective on June 1st, that, "The owner or operator of a motor vehicle shall not be liable in damages for injuries resulting to the occupant of the same, occasioned by reason of the operation of said vehicle unless such owner or operator has received or contracted to receive pay for the carriage of said occupant, or unless such injuries are caused by the gross or willful negligence of the operator."

In 1927 Connecticut enacted a law relieving owners or operators from responsibility for injuries to invited guests. This change in the law was perhaps brought about by the perfect epidemic of "invited guest" cases which has visited Connecticut in the past few years, since the so-called Financial Responsibility Act was passed in 1927. Speaking sarcastically, the legislature may have had in mind the preservation of the bonds of matrimony, for a number of cases were suits by a wife against her husband or vice versa.

The wording of the Connecticut statute is so ambiguous that many lawyers, in fact a large number, were of the opinion that after all the law had not been complied with. The text is as follows: "No person transported by the owner or operator of a motor vehicle as his guest, without payment for such transportation, shall have a cause of action for damages against such owner or operator for injury, death or loss, in case of accident, unless such accident shall have been intentional on the part of said owner or operator or caused by his heedlessness or his reckless disregard of the rights of others." The element of culpability which characterizes all negligence is, in gross negligence, magnified to a high degree as compared with that in ordinary negligence. Great negligence is a manifestly smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence."

"The definition means something to the lawyer but the layman requires more. The same court has decided that, where an automobile, after crossing a small bridge, increased its speed to 35 miles an hour, and there was a "thump, thump, thump," of a flat tire on a real wheel and the car swerved. It was found to be a case of gross negligence."

"Again, where an automobile was driven at night at a speed of 35 or 40 miles per hour on a country road which was rutted and covered with snow and ice and an accident occurred, the court said this was not gross negligence."

Again, where an automobile was driven at night on a country road, the operator was not gross negligence. The Marchinowski vs. Saunders 147 N. E. 275.