The election of William F. Shanahan of Swampscott as State Senator in the 1st Essex District over the present incumbent, Frank P. Osborne, marks the first time that a Democrat has been chosen to this position for more than 30 years, and the first time that a Democrat has represented this district since it was redistricted, 20 years ago.

Senator-elect Shanahan was the last Democrat in the State Senate from this district, 35 years ago. At that time the district included only five wards of Lynn. When it was changed over, Ward 6, a Democratic ward, was included, along with Ward 7, giving the Democrats a little better margin but never enough to overcome the strong Republican vote.

Senator-elect Shanahan attributed his election to the independent vote.

Mr. Shanahan was born in Rockland but has spent practically all of his life in Lynn and Swampscott. He was graduated from Lynn Classical High School and passed the Massachusetts bar a few weeks later.

He was one of the first employees of the United States Treasury Department to go to Boston, where the regional office of the War Risk Bureau was established, and was prominent in assisting wounded veterans in obtaining compensation.

He has been engaged in the insurance business as a broker and since passing the bar has been practicing law in the office of Associate Justice Edward B. O'Brien.

Many include Alumni Dues In Their Christmas Club Plan.

Did you? $10, now, pays through Dec. 31, 1931.

**SPECIAL BAR REVIEW ANNOUNCEMENT**

In response to the requests of a number of our graduates, and in accordance with the vote at the special meeting of the Association on Nov. 21st:

Professors Thomas F. Duffy and Leo J. Halloran offer a special review in preparation for the Massachusetts Bar Examination at the Alumni headquarters.

This review is scheduled to begin Monday, February Third, and will cover all required subjects in at least seventy-five lectures. It will continue three nights weekly, through February, March, and April, and four nights weekly in May and June, in two-hour sessions, 6 to 8 o'clock. It is open only for men with the LL.B. degree; fee $75.

This review class will be limited to the rooms and facilities offered at the Club House, hence early registration is desirable.

For further details and enrollment see Secretary Cleveland.

"*WHAT ARE YOUR RIGHTS?*

John Griffin, in the American Magazine for December, in a two and one-half page article, writes of an interview with Dean Archer, in which the Dean answers in his own clear style such questions as:

"Suppose you should see a burglar making a get-away from your home with the family silver. Would you have the right to shoot him?"

"If the city firemen should call upon you, a spectator, to help them fight a dangerous blaze at the risk of your life, would you have the right to refuse?"

Other questions are dealt with.

Are you guessing, or do you know the answers?

Read them.

**COMING EVENTS**

**THURSDAY, DEC. 11th, 7:30 P.M.**

Albert J. Sargent, Chief of Probation Officers, Municipal Court, Boston

Will address the meeting and discuss some of the very practical problems of probation work.

With years of experience, and as chief of thirty men, Mr. Sargent brings a wealth of information of worth and interest to all.

**ENTERTAINMENT**

Frank Lane with his inimitable program of Song, Speech and Surprises

**REFRESHMENTS**

**TUESDAY, DEC. 16th, 1 P.M.**

Suffolk Luncheon-Club

Extends a welcome to new Suffolk members of the bar through Senator-elect William H. Shanahan, '24, of Lynn, Guest and Speaker.

Luncheon promptly at 1, closing sharp at 2.

Call Hay. 0739 for reservation; 75c.

Call Ay. 0739 for reservation; 75c.

**DECEMBER LECTURES**

6 to 7:30 P.M., Dec. 4, 11, 18, 31.

By William J. Kelley, LL.B.

"Marriage and Divorce, Separate Maintenance, Custody of Children," and many questions pertaining to the subject in general. Mr. Kelley's years of practical experience particularly qualify him for this series.

Fee $10 to non-members, and $5 to association members.

Register with the Secretary.

**ANNUAL MEETING**

Election of Officers—Jan. 8th.

at the Club House, 7:30 P.M.

File your nomination papers, with at least twenty signatures, on or before Dec. 15th, with the Secretary.
**SUFFOLK ALUMNI NEWS**

**Suffolk Club News**

**DORCHESTER-MATTAPEAN SUFFOLK CLUB**

The next meeting of this club will be Thursday, 8 P. M., Dec. 4th, at 20 Charlotte St., Wollaston post quarters, with Walter F. Frederick, Clerk of the Supreme Judicial Court as speaker, and Joel Miller, president, presiding.

At the last meeting Deputy Commissioner of Corporations and Taxation, Edward A. Doherty addressed the members on the formation and development of corporations and related many interesting experiences of his department incidental thereto.

**MALDEN-MEDFORD-EVERETT SUFFOLK CLUB**

December rally of Suffolk men of this district on the 17th, at the Kernwood Cafe, 6:30 P. M., when we will enjoy a fine menu and a good speaker. Come!

**EAST BOSTON-WINTHROP SUFFOLK CLUB**

Next meeting Tuesday, December 9th, at the Alumni Club House, 7:30 P. M., for discussion of local problems and plan for future action. James E. Bagley, President.

**LOWER COURT PRACTICE**

Municipal and district courts perform a work of social and political importance, as well as legal service, the value of which is far underestimated because too little considered.

The lower courts are the only courts which the majority of the nation's litigants ever enter. They are the standard by which the ignorant, the humble, the poor, the unsophisticated, and even the average citizens judge the whole edifice of American justice. Their edicts are final for the majority. Only a few whose circumstances permit can appeal beyond their decisions. They are the foundations of faith in the nation's ideals of justice.

It is before the lower court that most attorneys practice. Only a comparatively few cases go up on appeal.

Every attorney therefore should measure his duty as an officer of the court as extending to the American public in general and realize that he owes a special duty to see that every case he enters on the docket of a lower court is as thoroughly prepared and properly presented as an appeal to a higher court. How else can justice prevail?

To thousands we have become the Land of Opportunity. Let us ever have probation service supervised in every court.

To have a central court record bureau; and a state-wide statistical division of criminal court data.

To require registration and preservation of public records (1839) and recording of wills, marriages, births and deaths.

To incorporate business companies. To make laws for registering trademarks and labels.

To have a State Highway Commission; to adopt standard road widths, issue traffic rules, license auto operators and register vehicles and require compulsory insurance.

To grant a bank (1816) authority to do business.

To issue the first paper money in America.

To make the first usual and small loan law.

To have a system of savings life insurance.

To establish a Library Commission and have a free public library in every city and town.

To have a normal school.

To give free text books to children.

To have a college.

To enact a child labor law in America.

To provide a State insurance fund for injured employees.

To compel accident reports.

To restrict hours of work for women and children.

To have a permanent board for arbitration of labor disputes.

**MEET ME AT THE CLUB HOUSE!**

For three years The Alumni Association has been actively functioning, until today it has become a matter of course for men to say, "Meet me at the Club House," for business and legal appointments.

Three hard years of service made it necessary for us to spend about $500 in renovating the interior of the Club House this fall. Of this amount $165 has been paid by voluntary contributions to date. We invite cooperation in this in any amount. We are all interested in keeping our headquarters attractive, for ourselves, for our friends, for our clients, and for the coming Suffolk Alumni.

We acknowledge with thanks the following contributions:

- Wilmot E. Evans ........................................$25.00
- J. P. Purdy ..................................................25.00
- George F. Horgan ..................................20.00
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To establish a probate law and have probate service supervised in every court.

To have a central court record bureau; and a state-wide statistical division of criminal court data.

To require registration and preservation of public records (1839) and recording of wills, marriages, births and deaths.

To incorporate business companies.

To make laws for registering trademarks and labels.

To have the State police, State fire-marshall, require public building codes and factory inspections, licensing of engineers and firemen, and to make steam boiler regulations.

To have a State Highway Commission; to adopt standard road widths, issue traffic rules, license auto operators and register vehicles and require compulsory insurance.

To grant a bank (1816) authority to do business.

To issue the first paper money in America.

To make the first usual and small loan law.

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CONSTITUTIONAL LAW—JURY TRIAL

District of Columbia v. Colt (Decided by U. S. Supreme Court Nov. 24, 1930. See U. S. Daily, November 25, 1930)

Colts was charged with having operated a motor vehicle on the public streets of the City of Chicago recklessly as to "endanger property and individuals." Prosecution was commenced by information and trial without a jury, as permitted by statute. Colt contended that his conviction without jury trial violated his constitutional rights. The Supreme Court upheld his contention, saying, "Whether a given offense is to be classed as a crime so as to require a jury trial, or as a petty offense, triable summarily without a jury, depends primarily upon the nature of the offense. The offense here charged is not merely malum prohibita, but in its very nature is malum in se.

"An automobile is potentially a dangerous instrumentality. To drive such an instrumentality through the public streets of a city so recklessly as to 'endanger property and individuals' is an act of such obvious depravity that to characterize it as a petty offense would be to shock the general moral sense."

TAXATION—COMMUNITY PROPERTY


This case decides that the interest of a wife in community property is the same as in other property, a person owning such an interest vested interest equivalent to that of her husband and that one-half the community income is therefore her income, and that she and her husband are entitled to make separate returns each for one half of such income. Cases from Louisiana, Texas, and California involving income from community property were decided in the same manner in other decisions.

COMBINATIONS IN RESTRAINT OF TRADE

Paramount - Famous - Lasky Corporation et al. v. United States. (Decided by U. S. Supreme Court Nov. 24, 1930. See U. S. Daily, Nov. 25, 1930)

Appellants are the producers and distributors of 60 per cent of the films used for displaying motion pictures throughout the United States. In conjunction with other distributors they control 98 per cent of the theaters in the United States. They had a contract among them to prevent unauthorized use of films, which contained the names of distributors and exhibitors, which prohibits sharing information with them except in the United States. Whether the prohibition is a restraint of trade itself or in aid of trade is a question of federal law. The prohibition is a restraint of trade itself and a violation of the Sherman Act.

United States v. First National Pictures, Inc., et al, decided on the same day, involved a contract among 80 per cent of the distributors in the United States not to enter into contracts with the distributors of films with the same names and the same payments to distributors three days in advance of shipment of the film and the distribution of the film. The prohibition is a restraint of trade itself and a violation of the Sherman Act.

In holding the agreement invalid the court said: "The obvious purpose of the arrangement is to restrict the liberty of those (distributors) who have representation on the film boards and secure their concerted action for the purpose of ensuring certain purchasers to secure the minimum price at which the films are sold."
A GOOD JUDGE
presiding in a High Court has passed this sentence upon us.

"It is a well nigh universal experience with me in asking for service to meet with a succession of misunderstandings, errors, and omissions, and it is a most refreshing exception thereto, to have been given a sitting by you and to have had an order filled with such scrupulous attention and such efficient execution, leaving absolutely nothing to be asked for or to mar the pleasure of the customer. It speaks well for your organization."

Official Photographer to Suffolk Law
NEGLIGENCE

In Harrington v. Cudahy Packing Co., 1930 Adv. Sh. 1855, the plaintiff, who was driving an automobile, saw a truck, approaching her, cut out of line onto plaintiff's side of the road, and plaintiff thereupon slowed down her car, turned off the hard portion of the road onto the soft part at the side, and continued thereon until she struck a tree and was injured; and the court held that it could not be ruled as a matter of law that plaintiff was not in the exercise of due care in failing to bring her car to a stop when she saw the truck; she was entitled to some extent on the expectation that the truck driver would not operate his truck negligently, but would back into the middle of the road so that plaintiff could pass.

COVENANT RUNNING WITH LAND

Rajewski v. MacBean, 1930 Adv. Sh. 1915. Contract, for breach of covenant against incumbrances in warranty deed in usual statutory form containing no mention of any right of way. Defendant had received his title through mesne conveyances from one who had previously conveyed the adjoining property, and, after the description in the granting part of the deed, appeared these words: "It is further understood and agreed that the Grantee is to have a right of way to the land hereby conveyed across land of the Grantors," and this right of way has been continuously to the present time, and the present owner now claims a right of way to her property over the land now owned by plaintiffs. Held: An easement may be created by words sounding in covenant only. The way over the land was recognized by the Grantee as capable of being conveyed as an easement and was intended for benefit of adjoining land conveyed. As the clause conveying the right of way was in the granting part of the deed, it is controlled by the habendum, which created in grantee a fee in the land conveyed, and an easement in fee in the right of way.

CONTRIBUTARY NEGLIGENCE

Jones v. Plotkin, 1930 Adv. Sh. 1921. Tort, for damages to plaintiff's automobile caused by collision with defendant's truck under following circumstances: Sleet, rain, and snow were falling and freezing. The accident occurred at a curve in the road. Plaintiff's windshield was not clean; plaintiff's covered with ice. Plaintiff, travelling 20 to 25 miles an hour, saw defendant's truck 300 or 400 feet away, diagonally across the road, and plaintiff slowed down to 10 miles. When 40 or 50 feet from the truck, plaintiff sounded his horn. Defendant saw plaintiff when 8 or 10 feet away and tried to regain the center of the road. At the time of the accident, plaintiff was on right and defendant on wrong side of road. Plaintiff testified that he had previously removed his tire chains because so doing would prevent his being held. He also testified that he did not use his brake, but used his engine for that purpose. Defendant asked for a directed verdict on the ground that as matter of law plaintiff's negligence was his contributing cause of the accident. In overruling defendant's exceptions to the refusal to grant his motion, the full court said that, while negligence of the defendant would not relieve plaintiff from the duty to exercise reasonable care, yet upon the evidence the judge could not rule that defendant had sustained the burden of proving contributory negligence. The state of the road and testimony of plaintiff made the question of due care one of fact for the jury. It was error for the jury for the jury to decide if plaintiff should have given more warning.

NEGLIGENCE OF DRIVER OF AUTOMOBILE TRUCK

Clay v. Pope & Cottle Co., 1930 Adv. Sh. 1925. Tort, for personal injuries and damage to plaintiff's automobile resulting from collision with defendant's truck. Plaintiff was attempting to overtake and pass the truck, the driver of the truck turned to the left to enter an intersecting street and collided with the plaintiff's truck. The plaintiff testified that he was familiar with the road; the day was clear; there were no cars in sight other than the truck; the plaintiff had not sounded his horn; and that he did not see any signal from the truck. There was evidence for the defendant that the plaintiff was driving 40 to 45 miles an hour; that the truck was not travelling over 15 miles an hour; that the driver of the truck looked back and put out his arm to signal before turning. Held: If plaintiff violated the statutes regulating the operation of motor vehicles on public ways, it was evidence of negligence. Whether such violation contributed to the accident as a cause or was only an attending circumstance and whether plaintiff was wanting in due care or guilty of negligence in attempting to pass the truck were questions of fact. The evidence brings the case within the general rule that, where a collision occurs at intersecting streets, the plaintiff's negligence does not relieve the defendant of his negligence; and (2) that it was evidence of the driver of the automobile, when within a hundred yards of the intersection of the two streets, was traveling at a speed of forty miles an hour and apparently talking to a companion would not justify a finding of wilful, wanton, and reckless conduct; the court saying that the defendant had a right to assume that boys would not be coasting where it was prohibited; that "the knowledge or state of mind of the defendant with reference to the probability of injury to another is an important matter to be considered in determining whether his conduct toward the plaintiff is wilful, wanton and reckless."

COUNSEL FEES

Wallace v. Wallace, 1930 Adv. Sh. 1931, was a petition for counsel fees and expenses incurred, after a decree of divorce and a modified decree, in hearings on the interpretation and enforcement of the decree. The Superior Court denied the petition. The full court upheld the lower court, saying that our statutes do not give the court the right to order payment to libellee for counsel fees and expenses incurred after decree absolute, and no such right exists outside of statute.

WILFUL, WANTON AND RECKLESS MISCONDUCT

In Query v. Howe, 130 Adv. Sh. 1963, the plaintiff, an eleven-year-old boy, who, while coasting on a street from which coasters were barred by ordinance, had coasted off the traveled part of the way into a snow bank and had left his sled, was run over by the automobile. Plaintiff's exceptions to directed verdicts for defendant were overruled, the court holding (1) that the plaintiff's violation of the ordinance barred his recovery in an action of tort for negligence; and (2) that the evidence that the driver of the automobile, when within a hundred yards of the intersection of the two streets, was traveling at a speed of forty miles an hour and apparently talking to a companion would not justify a finding of wilful, wanton, and reckless conduct; the court saying that the defendant had a right to assume that boys would not be coasting where it was prohibited; that "the knowledge or state of mind of the defendant with reference to the probability of injury to another is an important matter to be considered in determining whether his conduct toward the plaintiff is wilful, wanton and reckless."

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PERSONAL MENTION

Frank L. Orfanello, '25, showed real Alumni interest when he flew from New York to attend the meeting of the 21st.

* * *

John H. Hooley, '25, of Ayer, Mass., is County Commander of Middlesex County, American Legion.

* * *

Daniel J. Doherty, '22, of Woburn, is Senior Vice Commander of Middlesex County, American Legion.

* * *

Myles J. Ferrick, '25, is Judge Advocate of the Middlesex County, American Legion.

* * *

A testimonial dinner was given in honor of Thomas M. Burke, '28, Past Commander of Old Dorchester Post, No. 65, American Legion, at Hotel Brunswick, Nov. 18.

* * *

Congratulations from his many alumni friends to Arthur P. Laurian, No. 65, American Legion, at Hotel Brunswick, Nov. 18.

* * *

Mr. and Mrs. Laurian will reside at 15 Sanford Ave., Plushing, Long Island, N. Y.

* * *

As Chairman of the Building Finance Committee, Professor Arthur V. Getchell is to be congratulated on his good work in the reconstruction program of the Eliot Congregational Church, Roxbury, which was destroyed by fire in 1929.

* * *

Aaron Cohen, '30, has opened an office for the practice of law at 185 Devonshire St., Boston.

* * *

On the strength of the report received from Philip Fleischer, '29, that he was "associated with the offices of ——" etc., we inadvertently credited Mr. Fleischer in the last issue of the News as being an attorney. He has not yet taken the bar, being one of the younger members of his class.

* * *

Maurice H. Cavanagh, '25, President of the Suffolk Somerville Club, was recently elected President of the Somerville Board of Trade.

* * *

George R. Farnum, Esq., 6 Beacon St., an honorary member of our association, is the New England member of the Admiralty Commission of five appointed by the American Bar Association this year.

* * *

Edmund H. Gunther, '29, is Assistant Register of Probate, Cambridge.

* * *

Samuel Pearl, '30, announces the opening of offices for the general practice of law at 24 Main St., Peabody.

* * *

Charles T. Cronan, '26, heads the legal department of Hornblower and Weeks.

Charles H. Moore, '30, is credit manager of the Revere Sugar Refining Company.

* * *

Patrick A. Menton and David A. Keohan, both of '29, together with J. Edward Nally, have united for the general practice of law in Cambridge with offices at the College House.

* * *

John E. Chisholm, '30, announces opening an office for the general practice of law at 5 High Street, Medford.

SUFFOLK ALUMNI
RECENTLY ADMITTED
to the Bar

Karl W. Baker
Morris Berzon
Edward G. Boyle
Vincent J. Celia
John E. Chisholm
Ralph H. Cooper
Charles J. Curran
Charles A. Cusick
Frank S. Dewey
Walter G. Dimmock
Frank A. Farrell
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Claude S. Hartwell
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Charles H. Moore
Leonard Novick
Emmanuel Pearl
Charles E. Peltier
Sherman H. Peppard
William J. Polen
Arthur Sandberg
Edward P. J. Spillane
Roger A. Stinchfield
James J. Walsh

IN MEMORIAM

We regret to learn of the death of John E. O'Kane, '29, of Cambridge, a popular and much respected member of his class, who will be missed by his many friends.

* * *

John J. Murphy, '27, also one of the younger members of our association who from the first was successful in law practice, passed away at his Somerville home on October 20th of pneumonia. Mr. Murphy was very active in the Somerville Suffolk Club as well as in local affairs—and the community and association have lost a very interested and useful member.

(Continued on Page 11)

ARE YOU INTERESTED? RE FOREIGN SERVICE

Suffolk Law Alumni Association,
73 Hancock Street,
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Gentlemen:

We are always interested in hearing from men who are qualified for foreign service, and we suggest if you have any prospects of this sort write to us, outlining their experience and general qualifications. We are principally interested in men who have a fairly fluent command of foreign languages, Spanish, French, German, Portuguese, etc.

See Secretary Cleveland personally.

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Salesmanship combined with executive ability.
Ability to speak in conference or address a gathering.
Thorough knowledge of the business of the country to which you are assigned.
A knowledge of the history, customs, habits, business methods, as well as the government of that country.
Higher field executives (particularly in government service), are versatile in several languages, and have either a background of broad business experience, or have pursued courses in economics, commercial geography, modern history, international law, trade movements and practice, interpretation of statistics, export trade technique, the fundamentals of banking, and have developed habits of a master diplomat.

The government offers many opportunities at home and abroad in connection with the Bureau of Foreign and Domestic Commerce. Aside from clerical positions and other vacancies filled by Civil Service examinations, one may well investigate opportunities of appointment offered as commercial attaches, trade commissioners, their assistants or clerks, translators or commercial agents.

This does not of course touch upon other qualifications essential for consular and diplomatic service, which appointments are under the auspices of the Department of State.

A legal training is a distinct asset in the handling of men and affairs efficiently. If a man so trained desires, he may well develop some special qualifications essential to that type of business career he would pursue, and then affiliate himself as

* * *

(Continued on Page 11)
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In a case in which an employer is not insured under the Workmen's Compensation Act, and an employee is killed while working for him, the employer's negligence can cause for the death not more than $10,000 nor less than $500, according to the degree of culpability of the defendant. There is also a right of action for conscious suffering. G. L., c. 229, s. 7. If the employer is insured under the Workmen's Compensation Act, but the employee refuses to come in under the provisions of G. L., c. 229, s. 4, as amended, must be commenced within two years after the injury causing the death. Under G. L., c. 229, s. 4, as amended by St. 1925, c. 346, ss. 9 and 10, which is part of an exception to G. L., c. 229, s. 5, an action for death caused by a motor vehicle accident must be brought within one year from the date of the death. An action to recover for death by negligence which is brought under G. L., c. 229, s. 5, as amended, but is not within the provisions of G. L., c. 229, s. 4, as amended, must be commenced within two years after the injury which caused the death. Power & Electric Co., 238 Mass. 239. If, however, the plaintiff dies, the defendant may attack the declaration by demurrer. Under the death statutes liability is based on negligence, and damages are assessed with reference to the degree of culpability of the defendant. G. L., c. 163, s. 6, provides as follows: No action can be maintained unless notice of the time, place and cause of the injury is given to the employer within sixty days and the action is commenced within one year of the accident which caused the injury to one person. Where the declaration fails to allege the proper notice, the question can be raised by demurrer. It is part of the plaintiff's prima facie case. McGee v. N. Y., N. H. & H. R. R., 199 Mass. 418. Veginan v. Morse, 160 Mass. 143.

There is also a right of action for conscious suffering by the plaintiff's heirs, ifRACTORY DEATH UNDER MASSACHUSETTS LAW

By Maxwell H. Robinson, LL. B.

(Continued from Sept.-Oct., News)
ACTION FOR TORTIOUS DEATH

(Continued from Page 10)

ages under G. L., c. 229, are as follows:

1. For the death itself:
   Under sections 1, 2, 3 and 5 the executor or administrator of the deceased person brings the suit and recovers to the use of the widow and children of the deceased in equal shares, or, if there are no children, to the use of the widow, or, if there is no widow, to the use of the next of kin.

2. A right of action against the employer for damages under section 4 is brought by his widow, or, if he leaves no widow, by his next of kin who at the time of his death were depending upon his wages.

Hypothetical cases:

X, a passenger, was injured through the negligence of the A. R. R. Co. on January 21, 1927. X died February 21, 1928, from the injury. On February 25, 1928, X's administrator brought suit for X's death. There was evidence that X was not in the exercise of due care. The Railroad set up the defenses to be true, can X's administrator recover for X's death?

The Railroad's defense that X contributed to the injury that caused his death. The Railroad's defense that the action was not commenced within the time required by statute. Assuming the Railroad's defenses to be true, can X's administrator recover for X's death?

The Railroad's defense of contributory negligence is a good defense. The second defense is invalid, and therefore the action cannot be maintained.

Suppose that in the above problem X did not die as the result of the injury. Contributory negligence is a defense in all cases where negligence is alleged, except under the death statutes, where the person killed is a passenger. The Railroad's defense of contributory negligence is a good defense. The second defense is invalid, as the one-year period from the date of injury applies only where death results; otherwise the statute of limitations is the same as usual, viz., six years.

... "As one of the younger members of the Alumni (and a member of the bar.—Ed.), I am pleased to learn that the Association will conduct a bar review. In my humble opinion the surest way to insure a powerful Alumni Association is through the steady influx of youthful members. Certainly such a splendid service to the new graduate will be neither overlooked nor forgotten by them. How much less so by the earlier graduate who may wish to attend? Yours very truly, "J. ELMER CHISHOLM, '30." January 21, 1927, and the action was not commenced until February 25, 1928. More than a year had elapsed from the date of the injury, and therefore the action cannot be maintained.

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(Continued from Page 8)

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LIABILITY OF GARAGE KEEPERS
By Sidney S. von Loesecke, Attorney for A. L. A.

Contrary to the general belief, when an automobile is left in a garage for storage the garage man does not absolutely guarantee that it will be returned in the same condition as that in which it was left. In legal terms the garage man is a bailee for hire and as such he contracts with the bailor, the person leaving the car for storage, that he will exercise reasonable care to protect the automobile from being lost or damaged. The care required is that of a reasonable man in the circumstances, or, as is stated by some courts, the garage man need only exercise such care as the ordinarily prudent man would exercise over his own property under similar circumstances. To hold the garage man to an absolute guarantee of safety would make him an insurer and the courts uniformly agree that he is not.

The garage keeper is liable for damage put in or taken out of an automobile by his negligence or by the negligence of his employees acting within the scope of their employment. In some jurisdictions the courts have held that the garage keeper was in good condition when the car was returned to the plaintiff the upholstery was badly damaged by the negligence of his employees and all the customers had keys so that they could enter the garage for the purposes of putting in or taking out their cars after business hours, and the plaintiff knew that such keys had been given out, the court held that the garage keeper was not chargeable with negligence for the theft of the plaintiff's car. Hanna v. Shaw 137 N. Y. Supp. 908, an automobile was returned to the plaintiff the upholstery was badly damaged by moths and it was shown that the usual care was taken of the body of the automobile. The car was returned to the owner the damage would not have resulted. The court held that the plaintiff had made out a prima facie case.

In New Jersey, Pennsylvania and Illinois it has been decided that when a car was taken by an employee of a garage without the knowledge or permission of the garage keeper and during such use the car was damaged, that the garage keeper was, nevertheless, liable. Judge v. Starr 136 Atl. 413; Vannette v. Tolliver 82 Pa. Super. Ct. 546; Evans v. Williams 232 Ill. app. 439.

In a New York case where a garage was only open during the daytime, all the customers had keys so that they could enter the garage for the purpose of putting in or taking out their cars after business hours, and the plaintiff knew that such keys had been given out, the court held that the garage keeper was not chargeable with negligence for the theft of the plaintiff's car. Hogan v. O'Brien 208 N. Y. Supp. 478.

In the Massachusetts case of Doyle v. Peerless Motor Car Co. 226 Mass. 561, where the plaintiff sent his car to the service station with instructions to report to him the cost of necessary repairs before such repairs were made, and before the price could be agreed upon, the car was delivered to the chauffeur for his own purposes, the garage keeper knew of the order of the plaintiff's daughter, and it was later wrecked while being used by the chauffeur for purposes of his own, the court held that the chauffeur was not chargeable with negligence of the plaintiff's daughter. The mere posting of a sign in a parking place and the delivering or calling for the car, the court said, places no liability upon the defendant. Doyle v. Peerless Motor Car Co. 226 Mass. 561.

Thus, in Massachusetts where a car was left in a garage in good condition and the next morning a connecting rod was found broken, and the evidence showed that the damage was caused when the car was left in the care of the garage keeper was in good condition in every respect and when called for was damaged raises a prima facie case against the garage keeper for fire or theft does not relieve the garage owner from using due care unless the sign is called to the attention of the customer, or the customer's car was left there. Where the evidence tends that the engine was overheated before the car was delivered only to certain persons, deliveries or calling for the car, and before the price could be agreed upon, the car was delivered to the chauffeur for his own purposes, the garage keeper knew of the order of the plaintiff's daughter, and it was later wrecked while being used by the chauffeur for purposes of his own, the court held that the chauffeur was not chargeable with negligence of the plaintiff's daughter. The mere posting of a sign in a parking place and the delivering or calling for the car, the court said, places no liability upon the defendant. Doyle v. Peerless Motor Car Co. 226 Mass. 561.

The mere posting of a sign in a parking place and the delivering or calling for the car, the court said, places no liability upon the defendant. Doyle v. Peerless Motor Car Co. 226 Mass. 561.

In the Massachusetts case of Vannetta v. Tolliver 82 Pa. Super. Ct. 546, it was held that the garage keeper was liable despite the fact that it was necessary to go considerably farther to take the customer home than to take the machine. Roberts v. Kinley 89 Kan. 885.

The liability of a garage keeper as a bailee for hire as heretofore described extends only to such cases where the storage is for hire. If the storage is gratuitous the garage keeper is liable only in case of gross negligence. Furthermore, his liability as a bailee for hire does not extend to such articles as robes which he did not contract to care for. His obligation under such a contract extends only to the car and its equipment.