Auto Drivers, Notice.

Union City Commercial, Union City, Tenn.—Gentlemen: I am inclosing you herewith an opinion recently handed down by the Supreme Court of Tennessee, which I am sure will be of interest to the public. If you care to you may publish it.

This case was briefed in the Supreme Court by Mr. Will H. Swiggart, Jr., Assistant Attorney General for the State, and I understand that the court, after a very careful consideration of the law on the subject, adopted General Swiggart's views as correct and followed his brief in delivering its opinion.

Yours very truly,
THOS. O. MORRIS.
Dyersburg, Tenn., Oct. 19, 1915.

Knoxville, September Term, 1915.

Max Lauterbach vs. The State.

OPINION.

Plaintiff in error was indicted in the Criminal Court of Hamilton County for "unlawfully, feloniously and recklessly" driving an automobile upon John D. White, and thereby causing his death. "At the time," continues the indictment, "said Max Lauterbach was driving said automobile along St. Elmo avenue, a public thoroughfare, at a rate of speed in excess of twenty miles an hour, and in disregard of the presence of said John D. White. Whereby the grand jurors present that the said Max Lauterbach has committed involuntary manslaughter, etc." He was convicted and sentenced to an indeterminate period of from one to five years in the State penitentiary. He has appealed to this Court and has assigned errors.

The weight of the evidence shows that, on the occasion referred to, the plaintiff in error was driving his automobile at the rate of from twenty-five to forty miles an hour, as estimated by the various witnesses who testified. The weight of the evidence further shows that John D. White, a child six years old, was walking with his sister on the west side of the avenue, within the traveled way, there being no sidewalk at that point. His sister held him by the hand, but he suddenly jerked away just as the automobile was approaching, ran in front of it, and was killed.

Our Act of 1905, Chapter 173, provides "That no automobile shall be run or driven upon any road, street, highway or other public thoroughfare at a rate of speed in excess of twenty miles per hour." Section 6 of the same Act makes the violation of any of the provisions thereof, a misdemeanor punishable by fine of not less than $25.00, nor more than $100.00. St. Elmo avenue is a much traveled street, in the town of St. Elmo, in Hamilton County.

It is insisted for plaintiff in error that, under the facts stated, his conviction was erroneous. We do not think so. His violation of the statute by running in excess of the speed limit there prescribed was negligence. One who kills another in the act of committing such negligence is guilty of felonious homicide. State vs. Campbell, 82 Conn. 671; 18 Am. Cas., 236; State vs. Goetz, 898 Neb. 34, 130 N. W. 972; 24 Ann. Cas., 495, 53 L. R. A. (N. S.) 403. And the rule is general at common law that one who kills another while committing an act of negligence is guilty in like manner. See extended note to case of Johnson vs. State, 61 L. R. A. 277 et seq.

The plaintiff in error is not relieved by the fact that the child ran suddenly in front of the machine. One who is engaged in the performance of any unlawful act must take the criminal consequences of whatever happens to the third persons as a result of that act. It was his duty to anticipate that he might encounter not only grown persons, but even little children; or even people who were affected with blindness or deafness. One who disobeys the statutory rules as to speed is acting in defiance of law and must be held to have anticipated the possibility of any injury caused by his reckless driving.

The little child was too young to be guilty of contributory negligence; but even if it had been a person who had arrived at years of descretion, and he had committed any act similar to that of the child, the plaintiff in error would not have been free of criminal liability; since the rule of contributory negligence does not apply to criminal cases. State vs. Campbell, supra, Reg. vs. Longbottom, 3 Cox C. C. (eng.) 439, Reg. vs. Kew, 12 Cox C. C. (Eng.') 335, State vs. Moore, 129 Iowa, 514, and other cases in note to Schultz vs. State, 24 Ann. Cases, 1912, C. 510 et seq.

An instruction was offered, in the trial Court, to the effect that if the jury should find that the death of the child "was caused by his suddenly breaking loose from his sister and running into the automobile," the plaintiff in error could not be convicted. In response, the trial Judge said: "The Court gives you that instruction, gentlemen of the jury, and further states to you this proposition again that if the reckless running of the machine caused the death of this child, then he is guilty; if it did not, then he is not guilty." From what has already been said, it is apparent that there is no error in the foregoing of which the plaintiff in error can complain. In our judgment the instruction, as requested, should have not been given at all.

There were certain improper statements made by the District Attorney-General in his address to the jury, to the effect that if anybody should run over a six years old child of his, he would take a cannon and shoot him. On objection being made by counsel for plaintiff in error, the Attorney-General said that he knew that it was against the law to do such a thing, but he would do it. These were improper statements, and should have been rebuked by the trial Judge. We do not think, however, there should be a reversal on this ground. The conviction was thoroughly grounded on the evidence, and we do not think that these improper statements made by the law officer of the State influenced the verdict. This being true, we cannot reverse. Acts of 1911, Chapter 32.

There being no error in the judgment of the trial Court, it must be affirmed. (Signed)

NEIL,
Chief Justice.

NEWS NOTES.

A conference of Pan-American diplomats will be called by Secretary Lansing this week to decide on a basis of recognition for the Carranza Government in Mexico, and it was announced that all the countries were in accord on the American initiative.

With the indictment in New York of Max Lynar, also known as Count Loudon, on a charge of bigamy, U. S. secret service agents began investigations of activities in behalf of Germany and Austria by a man under the name of Lynar.

Delegates of the Laymen's Missionary convention in Chicago were told by a missionary returned from Turkey that aid must be sent to Christian Armenia, where extermination faced the remnants of a race centuries old.

Eldridge Griffith, of Benton, Ky., a freshman of the State University, was killed during a celebration of a class tug of war victory when a street car struck a rope stretched in front of it and was thrown to the pavement.

Plans of Secretary Garrison for a regular army of 140,000, a continental army of 400,000, enlisted for six years, and otherwise strengthening the military establishment, became known Monday.

In the banking offices of J. P. Morgan & Co. the $500,000,000 Anglo-French credit loan contract was signed by Lord Reading and others of the visiting commission and Mr. Morgan.

At Reynolds Theatre, Tuesday Night, October 26

District Conference of Woman's Missionary Society.

Did you ever fail to drive out to the country in October, along the roads thru the woods to some church in the vale? Then you cannot understand what a joy it is to visit Mount Zion and mingle with friends and relatives there. Owing to recent rains many of the delegates were not able to be present, but what was lacking in numbers made good in fine reports.

Those from Union City, Mrs. Swiggart, Mrs. Butler and Miss Clara McConnell were a part of the W. M. S., Mrs. Tittsworth, Mrs. Young, Miss Dahnke and others of the Y. W. M. S. were present and all who could get there.

The meeting was opened with singing, led by the excellent leader, Mr. Thompson, and his wife as pianist. Miss Clara McConnell presided over the meeting, our district secretary. A short scripture lesson and prayer by Rev. C. A. Coleman, of Cayce. Another song was given and all sang like they took pleasure in music. The address of welcome by Miss Bowen was given in her quiet way, yet from a Mount Zion heart of welcome, and responded to by Mrs. H. B. Terry, of Martin, who represented the conference.

A sweet and suitable selection was given by the Misses Bowen as a duet, after which the reports from the delegates were read or spoken. Some of the reports from smaller places ought to put Union City to shame. Why is the subscription so small for our church papers? Mrs. Butler, Mrs. Owens and Miss McConnell made a plea for more subscribers to the Voice, the Midland Methodist and the Young Christian Worker.

The hour spent in discussion was interesting and spirited, the following questions being asked:

What is the pledge fund?

Should an honorary member pay dues?

Mrs. Owens, of Fulton, was complimented as being an ideal worker.

Mrs. Butler's talk on children's work in the church was instructive. She displayed the banner and pins, white and blue, with the pansy, representing fidelity, purity and service, using the beautiful comparison, "The Methodist Church is a succession of links, but no chain is stronger than its weakest link." How earnestly we should strive to make the links strong.

The dinner hour—an occasion for which Mount Zion is noted. Go once there to dinner and you will go again and again. After this refreshing hour we were called in church by the song, "Sweet By and By," and the chapter, "Let not your heart be troubled," and a prayer by Mrs. Swiggart, who conducted the memorial service. A special song by Mr. Thompson was followed by the names of those who have gone on higher in the work. The Union City people will be pleased to know that the name of Mrs. W. W. Hall was called with reverence and many testimonials of love and esteem were tendered to her memory. Mrs. Warterfield read a paper on "Missionary Study."

Mrs. Owens, who read an article on publicity, struck a keynote when she said "This is all the Lord's work," and her words were heartily indorsed by every publicity superintendent present.

Mrs. D. A. Luten read a selection called "Others," a favorite phrase of the noted General Booth, using the poem, "Abou Ben Adlum," to carry out the illustration.

Mrs. Winsett, of Troy, read a touching paper on "Our needs in the missionary work." Motions were made and carried that some of the papers read be published in the Midland Methodist and Woman's Edition soon to be presented in Union City.

Some good talks were made by the pastors after which Rev. Butts dismissed the meeting with prayer. This was decided one of the most instructive and pleasant days ever spent at Mount Zion. The following report, showing the year's work, speaks for the untiring energy of our district treasurer, Mrs. W. H. Swiggart, and our district secretary, Miss Clara McConnell.

DISTRICT REPORT.

Pastors 22. Churches 65. Eighteen churches doing organized work. Twelve with one organization. Eight with two organizations. Seven with three organizations. Sixteen adult societies, 331 members. Eight young people societies, 145 members. Eight junior societies, 173 members. Total membership 649. Mission study classes 7. Mission study membership 188. Subscribers to Voice 132. Subscribers to Young Christian Worker 56. Since January the secretary has written 51 letters, 60 postals, made 10 visits outside of M. E. Church and used the telephone freely. Result: A marked improvement in the general condition of the district. More interest in the work and good results from the membership campaign. An increase of 116 since January. Since October, one new adult society at Troy; four young people's societies, Fulton, Martin, Cayce and Shady Grove. Fulton leads in all three organizations. Five rural orgainzations, Mount Zion, Shady Grove, Palestine, Boyett's Chapel and Walnut Grove.

Amount sent to district treasurer since last October, $1,628.57.

Miss Bowen reporter for Hickman Courier.

Mrs. D. A. Luten, Union City papers.

Real Diplomacy.

A young student at college in want of $25 wrote his uncle as follows:

"Dear Uncle—If you could see how I blush with shame while I am writing you would pity me. Do you know why? Because I have to ask you for a few dollars and do not know how to express myself. It is impossible for me to tell you. I prefer to die. I send you this by messenger, who will wait for an answer. Believe me, my dearest uncle, your most obedient and affectionate nephew.

"P. S.—Overcome with shame for what I have written, I have been running after the messenger in order to take the letter from him. but I cannot catch him. Heaven grant that something may happen to stop him, or that this letter may get lost."

The uncle was naturally touched, but was equal to the emergency. He replied as follows:

"My Dear Jack—Console yourself and blush no more. Providence has heard your prayers. The messenger lost your letter. Your affectionate uncle."—Exchange.

TEXT OF LAST NOTE IN FRYE CASE PUBLISHED

Opportunity to Escape in Lifeboats Not Satisfactory.

Washington, Oct. 18.—Publication to-night of the text of the latest note sent to Germany in the case of the American ship William P. Frye reveals that the United States does not regard "an opportunity to escape in lifeboats" as sufficient safety for passengers and crew of any American vessel destroyed when carrying contraband.

The note, dated Oct. 12, expressed satisfaction that Germany agreed to the American proposal for a joint commission of experts to fix damages for the loss of the Frye, sunk by the commerce raider Prinz Eitel Friedrich.

"Without admitting that the declaration of London is in force," says the note, "and on the understanding that the requirement in article 50 of the declaration that 'Before the vessel is destroyed all persons on board must be placed in safety' is not satisfied merely by giving them an opportunity to escape in lifeboats, the government of the United States is willing, pending the arbitral award in this case, to accept the declaration of London as the rule governing the conduct of the German government in relation to the treatment of American vessels carrying cargoes of absolute contraband."

In the Frye case the commander of the Prinz Eitel Friedrich took all on board his own vessel. When the Leelanaw, an American ship carrying absolute contraband, was destroyed, the crew was taken aboard the submarine and transferred later to small boats when near shore. No complaint has been made, therefore, as to past treatment, but an effort is being made to safeguard American lives in the future.

Join in Attack on Bulgaria.

Athens, Oct. 18. (via London).—French troops in Macedonia have received their baptism of fire near the railway bridge at Hudovo Viladovo, where they were attacked by 40,000 Bulgarians. The fighting continues.

The Bulgarian artillery is bombarding the Vilandovo garrison, which is offering stout resistance.

London, Oct. 18.—The allied forces have begun operations against the Bulgarians with unexpected zeal, and already the Serbo-Anglo-French forces have penetrated into Bulgarian territory just north of the Greek boundary and are attacking the Bulgarian stronghold of Strumnitza, according to Saloniki advices received by Reuter's from Athens.

Mr. Wilson "Nounced."

Two automobiles drew up in front of a hotel on West Eighteenth street, and half a dozen men stepped out of them and into the hotel. They walked right into the elevator and asked to be taken to the apartment of Mrs. A. Wilson Howe, the sister of President Wilson.

"No, sir," said Rupert, the elevator boy. "Y'ain't gwine up unless you's 'nounced."

"All right, then."

"Who'll I 'nounce?" asked Rupert.

"Mr. Wilson."

As Rupert went to the telephone board one of the secret service men added:

"The President of the United States."

Rupert, who was a West Indian training, stood up straight and made this explanation:

"Ah don't care, Miss Anderson, the owner, said jus' th' other day I wan't to leave no one upstairs 'cept they's 'nounced, not even the President of the United States."—New York Sun.
