the partners prior to the formation of the partnership, and had never been assigned to the firm, contrary to the partnership agreement, but which both the firm and the company had treated and dealt with as a partnership policy, the policy in suit providing for averaging the loss, the first policy could be drawn into the adjustment. This right to contribution from co-insurers has been asserted in *Lucas v. Insurance Company,* 6 Cow. (N. Y.) 635; and in *Millandon v. Insurance Company,* 9 La. 27. The holding of *Williamsburg City Fire Insurance Co. v. Gwinn,* 88 Ga. 65, 13 S. E. 837, was that one recovery bars a subsequent action against a co-insurer.

A Pennsylvania doctrine, set forth in *Clarke v. Assurance Company,* 146 Pa. 561, 23 A 248, 15 L. R. A. 127, is that insurance is not deemed concurrent unless it is also co-extensive; but *Ogden v. Insurance Company,* 50 N. Y. 388, is contra. The modern rule is probably correctly stated in *Turk et al v. Newark Fire Insurance Company,* 4 F (2d) 142, decided Jan. 8, 1925, to the effect that in order to constitute "other" or "contributing" insurance, the policies must cover the same interest, the same property, and the same risk.

J. T. B., '26.

TORTS—RES IPSA LOQUITUR—*Nelson v. Zamboni et al.* Supreme Court of Minnesota, 204 N. W. 943.

An interesting application of the doctrine of *res ipsa loquitur* is furnished by the recent decision of the Supreme Court of Minnesota in an action brought to recover for the death of the plaintiff's decedent. An explosion occurred in an automobile filling station operated by the defendants. The explosion resulted in the death of the plaintiff's decedent, a passing autoist who had stopped and was inside of the station when the explosion occurred. There was no direct evidence as to the actual cause of the explosion. The lower court had dismissed the action at the close of the plaintiff's case. On the appeal to the Supreme Court the only question presented and the only question passed upon by that tribunal was the question regarding the application of the doctrine of *res ipsa loquitur* to the facts of the case. *Held:* That the doctrine of *res ipsa loquitur* was applicable to the facts of the case on the theory that an explosion in a gasoline filling station was the type of accident which would not ordinarily happen if those in control of the "instrumentality" had used the degree of care commensurate with the danger.

No other case deciding this exact point, under the same set of facts, has been found, and the court cited none. However, another recent case, also involving a gasoline filling station although with slightly different facts, is *Newton v. The Texas Company,* 105 S. E. (N. C.), 433. This case also applies the doctrine of *res ipsa loquitur,* and although this case may be distinguished on facts from the principal case, its spirit seems to be in accord.

Although cases dealing with explosions in gasoline filling stations are infrequent, nevertheless the books are filled with cases dealing with explosions of various "instrumentalities" other than filling stations. Among these decisions there seems to be a wide divergence of judicial opinion resulting in a marked conflict of authority.

Probably the most common kinds of explosions where the doctrine of *res ipsa loquitur* has been applied or rejected are the boiler explosion cases. One line of cases holds that the explosion of a boiler resulting in injury to persons or property furnishes a situation where the doctrine of *res ipsa liquitur* is applicable. Under this line of decisions is the case of *Kleinman v. Banner Laundry Co.,* 150 Minn. 515, 186 N. W. 123. This case held the doctrine of *res ipsa loquitur* applicable when a boiler in the defendant's laundry exploded, thereby injuring the adjoining property of the plaintiff. It was upon the authority of this case that the judges in the principal case placed their decision. An earlier Minnesota case reaching the same result is *Fay v. Davidson,* 13 Minn. 523. Other cases reaching similar results are: *Harris v. Mangum,* 111 S. E. 177; *Galveston, H. & S. A. R. Co. v. Perez,* 182 S. W. (Tex.) 419; *Beall v. Seattle,* 28 Wash. 593; *Corbett v. Lymansville,* 69 Atl. (R. I.) 69. There are, however, numerous cases (if not clearly the weight of authority) which hold contra to the preceding cases. In *Huff v. Austin,* 46 Ohio State, 386, 21 N. E. 864, it was held that a man working on the premises at the time of the explosion of the boiler must show negligence causing the explosion, because the mere explosion would not be considered prima facie negligence. The Court pointed out that it was not infrequent for a boiler to explode when there was no negligence upon the part of the owners of the plant; in fact, boilers often exploded even in spite of the greatest precautions taken by the owner. In accord with this rule are: *Bishop v. Brown,* 14 Colo. App. 535, 61 Pac. 50; *Morris Co. v. Southworth,* 154 Ill. 118, 39 N. E. 1099; *Veith v. Hope Salt and Coal Co.,* 51 W. Va. 96, 41 S. E. 187, 57 L. R. A. 410; *Cosulich v. Standard Oil Co.,* 122 N. Y. 118, 25 N. E. 259, 19 A. S. R. 475; *Barron v. Reading Iron Co.,* 202 Pa. 274, 51 Atl. 979.

Another group of cases dealing with explosions in buildings where gas or chemicals were stored also illustrate conflicting results reached by the courts. In *Childes v. Smith Commission Co.,* 216 S. W. (Ark.) 11, where the explosion occurred in an ammonia manufacturing plant, the court applied the doctrine of *res ipsa loquitur* and allowed a recovery. Likewise in *Kearner v. Charles S. Tanmer Co.,* 31 R. I. 203, 76 Atl. 833, 29 L. R. A. (N. S.) 537, it was held that the doctrine was applicable to an explosion in a starch factory, the Court holding that well-regulated starch manufactories do not ordinarily explode if the business therein is conducted with a reasonable degree of care. But cases holding contra are: *Dail v. Taylor,* 151 N. C. 284; *Wheeler v. Laurel Bottling Works,* 111 Miss. 442; *Standard Oil Co. v. Murry,* 119 Fed. 572.

From the two groups of cases above discussed it can readily be seen that there is a conflict in regard to the application of the *res ipsa loquitur* doctrine to explosions from unknown causes in certain types of businesses. As gasoline filling stations have been increasing by the thousands during the past few years, it is quite possible that more and more cases like the principal one may come before our courts in the future. It is also quite probable that the courts will disagree on this question in much the same way that they have in the boiler explosion cases. H. C. A., '27.