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# New Jersey Court of Errors and Appeals.

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| HERMAN KOPPER and JOSEPH KLEIN, partners trading as Kopper & Klein, *Plaintiffs, Appellees,* v. JOHN F. BERNHARDT, *Defendant, Appellant.* | On Appeal from Supreme Court |

## Brief for Appellant.

This appeal is from a judgment of the Supreme Court affirming the judgment of the Perth Amboy District Court.

The questions involved are:

1. Whether the District Court should not have held the plaintiffs guilty of contributory negligence.

2. Whether said District Court should not have held that there was no negligence on the part of the defendant.

3. Whether there was evidence of damage to the amount awarded by the said District Court.

4. Whether the said District Court should have failed to make any finding at all upon the various requests to find.

5. Whether the failure of the District Court to make any finding in response to the numerous requests to find on behalf of the defendant was error.

6. Whether the District Court should have refused the motion to non-suit.

7. Whether the District Court should have refused the motion for judgment in favor of the defendant.

8. Whether the Supreme Court should have rendered judgment reversing the judgment of the District Court.

The grounds of appeal relied on are:

1. The District Court of the City of Perth Amboy refused the motion made on behalf of the defendant at the conclusion of the plaintiff's testimony to order a judgment of non-suit.

2. Said Court refused the motion made on behalf of the defendant upon the conclusion of the evidence on both sides to give judgment in favor of the defendant.

5. Said Court refused to find that there was no negligence on the part of the defendant proved.

6. Said Court refused to find that contributory negligence on the part of the plaintiffs had been proved.

9. Said Court refused to find that the accident was caused by the failure of the plaintiffs to have a light on their wagon as required by law.

12. Said Court refused to find that the plaintiffs' wagon was not equipped with such a light as the law requires.

14. Said Court gave judgment for plaintiffs for a larger amount of damages than was legally proved.

18. Said Court failed to make any finding in response to defendant's request to find that no negligence on the part of the defendant had been proved.

19. Said Court failed to make any finding in response to defendant's request to find that contributory negligence on the part of the plaintiffs had been proved.

22. Said Court failed to make any finding in response to defendant's request to find that the accident was caused by the failure of the plaintiffs to have a light on their wagon as required by law.

25. Said Court failed to make any finding in response to defendant's request to find that the plaintiffs' wagon was not equipped with such a light as the law required.

27. Because the Supreme Court affirmed the judgment of the Perth Amboy District Court, whereas said Court should have rendered judgment reversing the judgment of the said District Court.

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# District Court of the City of Perth Amboy.

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HERMAN KOPPER AND JOSEPH KLEIN, PARTNERS TRADING AS KOPPER AND KLEIN,

*Plaintiffs, Appellees,*

*vs.*

JOHN F. BERNHARDT,

*Defendant, Appellant.*

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## BRIEF.

The appellee recovered a judgment against the appellant in the District Court of the City of Perth Amboy for damages to his horse, wagon and harness caused by a collision with appellant's automobile. The automobile was properly lighted but the wagon did not display a light as required by section 92 A, 4 C. S., page 4470, which reads:

> "Every vehicle drawn by a horse, horses or other beasts shall carry, during the period from one hour after sunset to one hour before sunrise, at least one lighted lamp, showing a light visible at least two hundred and fifty feet. Said light shall be so displayed that it may be seen, either in the direction toward which or from which the vehicle is proceeding; and if any person shall offend against this provision, such person shall forfeit and pay the sum of one dollar for

the use of the township, to be sued for and recovered by any person who shall sue for the same."

A motion to nonsuit for this and other reasons was refused (p. 47), and requests to find that the plaintiff was guilty of contributory negligence, and also that the accident was caused by failure to carry a light on the wagon as required by law, were made (p. 67) and exceptions allowed (pp. 68 and 73).

Plaintiff's driver, Steve Lengyel, testified on his direct examination (p. 25):

Q. Did you have a light on the wagon?
A. Yes, sir.
Q. Was it lighted?
A. Yes, sir.
Q. Where was it?
A. Inside wagon in the back.
Q. Whereabouts in the back?
A. Way back on the side.
Q. How was it fastened in the wagon?
A. It was tied.
Q. How was it fastened?
A. I tied him on.
Q. Hanging from what part of the wagon?
A. Left-hand side.
Q. Near the top?
A. On the side from the top—it was hanging down from the side; I tied him with a string so he couldn't fall off.
Q. Tied from the top and side?
A. Yes, sir.
Q. How far could you see that light from the back of the wagon?
A. About 200 feet.

It nowhere appears that the light on that wagon that night could be seen at a greater distance than 200 feet. This may have been due to the incapacity of the lantern; or because the light was not turned

high enough, or because the glass was dirty, or because it hung in the wagon improperly, or for other reasons which may suggest themselves. The defendant testified that the wagon displayed no light at all, but we have, of course, now to deal with the testimony on behalf of the plaintiff.

## I.

### Plaintiff's Driver was Guilty of Negligence Per Se in Failing to Obey the Law.

(a) Because the light could not be seen 250 feet away, and

(b) Because it was hung within the wagon in a manner which defeated the purpose of the statute.

The statute requires that "said light shall be so displayed that it may be seen," &c., as above quoted.

A light displayed in the usual manner on horse-drawn vehicles throws an unobstructed glare into the road, greatly increasing its efficiency for the purpose intended. When hanging near the top and side and inside a vehicle, that glare is not thrown upon the highway where other drivers can see it. This light, moreover, must have been more plainly visible on one side of the highway than on the other, and when the vehicle came to a turn in the road, as the testimony shows it did in this case, it might be entirely obscured by the side of the wagon near which it hung.

It is submitted that a light hung inside of a wagon is not displayed in compliance with the requirements of the statute, and that it would be a most dangerous precedent to hold otherwise.

The word display of itself has a meaning inconsistent with the manner in which this light was carried. Display has the meaning, according to the dictionary definition, of spreading wide or expanding, spreading before the view. A light will shine under a bushel, but is not displayed there within the meaning of this statute, and a light shining inside a covered wagon is not displayed

within the meaning of this statute, even though the rear curtain is rolled up.

In *Weller* v. *Chicago, M. & St. P. Ry. Co.*, 23 *S. W.* 1061, *at page* 1065, *subdivision* 4, the Court held that the violation by plaintiff of a speed ordinance which contributed to cause his death was negligence *per se*, and quoted with approval *Shearman and Redfield on Negligence* (section 13): "The violation of any statutory or valid municipal regulation established for the purpose of protecting persons or property from injury, is of itself sufficient to prove such a breach of duty as will sustain a private action for negligence if the other elements of actionable negligence exist." And also quotes with approval an excerpt from *Boschart* v. *Tuttle*, 59 *Conn.* 8; 21 *Atl.* 925: "In every case which we have been able to examine where it appears that disobedience to the law directly contributed to the injury it has been accepted as a perfect defense." And cites, also, *Newcomb* v. *Protective Dept.*, 146 *Mass.* 600; 16 *N. E.* 555; *Shearman and Redfield on Neg.*, 646. And proceed to say, "While one is transgressing the law he should not be permitted to claim indemnity for an injury from the wrongful act of another to which his own transgression contributed."

The presence of this improperly safeguarded horse and wagon upon the highway was in fact a nuisance. Whether that be so, however, it was contributory negligence, disentitling its owner to recover.

See, also, *Banks* v. *Highland*, 136 *Mass.* 485.

In fact independently of any statute violation the presence of an unlighted wagon at night on a highway under modern conditions of travel is of itself negligence.

## II.

### Defendant was Not Negligent.

Not only was the plaintiff guilty of negligence *per se*, but the defendant was not guilty of any negligence in failing to see a vehicle displaying a light so hung.

This was also covered by the motion to nonsuit and a refused request to find.

An openly displayed lantern diffuses its light on all sides and is plainly observable in the darkness from all directions. A light hung inside and near to one side of a covered wagon would not be seen by the driver of a vehicle approaching from the rear if there were a slight bend in the road. That being so, the testimony of the plaintiff and of the defendant are consistent, the one saying that his wagon carried a light and the other saying that it did not, because in going around this bend the light would naturally be shut off from the view of the automobile driver. The latter's headlights being flashed into a field because of the turn, instead of into the body of the road, he would not see the wagon in front of him because it failed to *display* a light, and there was, therefore, no negligence on the part of the automobile driver. The only duty which the defendant owed to the plaintiff was to refrain from wilfully injuring him.

The Court found (p. 64, l. 12) that both drivers were "going slowly on the proper side of the road."

In *Menger* v. *Laur,* 55 *N. J. L.* 205, the defendant was driving slowly along the street looking at the roofs of houses and ran into plaintiff's instrument, which he did not see and had no reason to expect to encounter, and it was held that plaintiffs were guilty of contributory negligence and that there was no negligence proved on the part of the defendant. (See paragraph 4 of the syllabus, page 206.)

In the present case the defendant was in a much better position because he was on the lookout for vehicles, and failed to see plaintiff's because it did not properly exhibit a light.

## III.

### The Judgment was Rendered for an Excessive Amount.

At page 35, line 32, the witness Campion testified as follows:

> Q. The wagon itself wasn't worth much more than the repairs?
>
> A. The wagon is worth a hundred and twenty-five dollars, that is to the man when he has to get a new one.
>
> Q. He couldn't have sold it for a hundred and twenty-five?
>
> A. He couldn't sell it, but he would have to pay that for a new one. He couldn't get fifty dollars for it if he wanted to after the accident.
>
> Q. How much could he have got before the accident?
>
> A. He could get more than fifty dollars, according to who he was selling it to; you might get fifty, seventy-five or a hundred; you can't tell about that.
>
> Q. The day before it was injured, was it worth sixty dollars?
>
> A. Yes, sir.
>
> Q. Sixty-five?
>
> A. Yes, sir, or more in the open market; I don't suppose it would bring more than seventy-five dollars in the open market.

So that the nearest the witness could come to the value of the wagon the day after the accident was that you could not get fifty dollars for it, from which it is fair to assume that he meant that not much less than fifty dollars was what it was worth. He then testifies that in the open market before the accident he didn't suppose it would bring seventy-five dollars. The damage to the wagon, therefore, was about twenty-five dollars.

As to the injury to the horse, the veterinarian testified (p. 38, l. 24) that he presumed the injury to the horse would take fifty dollars off his value.

These witnesses to values were not qualified to testify to them, errors which are also covered by exception.

The only testimony as to damage to the harness offered by the plaintiff was as follows (p. 58, l. 22, &c.):

Q. The harness that was on the horse, what was the matter with that?

A. I showed it to Mr. Bernhardt.

Q. Is the harness there?

A. There torn apart; the only thing left is the bridle that goes on the horse.

Q. How much did that harness cost you?

A. I don't exactly remember the price.

Q. What is the price of harness of that kind?

A. From thirty-two to thirty-five dollars.

Mr. Strong—When it is new?

The Witness—Yes, sir.

Q. How old is this harness?

A. One and a half years old.

There was no evidence, it will be observed, to show what the value this year-and-a-half-old harness was at the time of the accident. The only test of the damage is furnished by the defendant, who, being recalled and cross-examined by plaintiff's attorney and examined by the Court, testified that it would cost probably five dollars to repair it (p. 60, l. 2), and who repeated that testimony on the same page at line 28 on redirect.

The point is not that there was conflicting evidence as to the damages, and that they were excessive because against the weight of evidence, but that there is no evidence whatever to sustain a larger finding than the sum of eighty-three or eighty-four dollars, as follows:

Damage to the wagon, twenty-five dollars; damage to the horse, fifty dollars; damage to the harness, five dollars; damage for doctor's bills, three or four dollars. (See statement of plaintiff's counsel, p. 65, l. 24.)

The judgment was rendered for one hundred and thirty-three dollars damages (p. 12, l. 23).

## IV.

### It was Error to Refuse to Render any Finding at all Upon the Various Requests to Find.

Repeated decisions of this Court hold that there should be requests to find where trials are had without a jury in order to found an appeal.

Numerous requests were made in the present case and entirely ignored by the trial judge, who, however, allowed an exception on his failure to find at all (p. 73). It may well be that his findings on some of these requests, if rendered, would have been inconsistent with a judgment for the plaintiff.

Defendant was entitled to have a ruling on each of his various requests in order that he might take advantage of any failure of the Court to properly rule the law or apply it to the facts as found.

If defendant's driver, while driving carefully, was blinded by the lights of an approaching automobile, it would have been an unavoidable accident, for which there would have been no liability.

THEODORE STRONG,
*Of Counsel with Appellant.*

# New Jersey Court of Errors and Appeals

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|---|---|
| HERMAN KOPPER and JOSEPH KLEIN, Partners, Trading as KOPPER & KLEIN,<br><br>Plaintiffs-Appellees,<br>vs.<br><br>JOHN F. BERNHARDT,<br>Defendant-Appellant. | On Appeal from Supreme Court. |

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BRIEF FOR APPELLEES.

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**STATEMENT.**

This cause is on appeal before this Court, from a judgment of the Supreme Court affirming a judgment of the District Court of the City of Perth Amboy, in the sum of $133.00, in favor of the Appellees for damage to a horse, wagon and harness caused by the negligent operation of an automobile of the Appellant.

30

The collision occurred on a moonlight night, in the month of May, 1916, while the servant of the appellant was driving an automobile truck along a public highway leading from Rahway to Woodbridge. The truck was driven with such a degree of negligence that it collided with a horse and wagon that was going in the same direction, and caused what is known as a "rear-end collision."

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The horse was a young horse, and the wagon was a covered top wagon, with a back curtain rolled up and a light hanging therein, which was lighted, and visible for a distance of three or four hundred feet. The horse and wagon and harness were in use about a year, and were in good condition. The wagon one year before the accident, cost one hundred and twenty-five ($125.00); the horse two hundred and fifty dollars ($250.00); the harness thirty-five dollars ($35.00), and the lettering on the wagon eighteen dollars ($18.00). As a result of the accident, the horse received a bruise or cuts about the body, and a sprained leg. The harness was broken, so as to be of little use, and the wagon was demolished.

The Appellant relies upon twelve grounds of Appeal in his Brief, which grounds may be placed under four general classes.

1st. Those asking the Court to grant a non-suit, or direct a verdict in favor of the defendant.

2nd. Those directed to the Court's refusal to find that there was contributory negligence on the part of the plaintiffs, or that the accident occurred because of some other intervening force, for which the defendant was not responsible.

3d. That the judgment was for a larger amount of damages than was supported by the testimony.

4th. Because the Court did not make a finding as requested by the Appellant.

## I.

## THE PLAINTIFF'S DRIVER WAS NOT GUILTY OF NEGLIGENCE "PER SE," AS ALLEGED IN THE APPELLANT'S BRIEF.

The Appellant in his Brief relies upon Section 92-A of the "Roads' Act," 4 C. S., Page 4470. The Plaintiff

is in error when he refers to this Act, as this Act was amended by the supplement P. L. Laws 1911, page 39, Chapter 27, which Act was again amended by a supplement passed P. L. 1916, Page 230, Chapter 204, which requires that a vehicle drawn by a horse shall carry a light during the period from thirty minutes before sunrise to thirty minutes after sunset, and when a fog prevails, and it is impossible to see for a long distance, the light shall be of such a nature and display so that it may be seen at a point at least two hundred and fifty feet in the direction towards which the vehicle is proceeding and from a point at least two hundred and fifty feet from the direction in which the vehicle is proceeding. A violation of this Act is attended by a fine of not less than Two Dollars and Fifty Cents and not more than Five Dollars, to be paid to the Collector of Taxes of the municipality within which the proceeding is taken.

Assuming that the plaintiffs in this case had no light on their wagon, the defendant had no right to run them down.

The foregoing statute is a penal statute, and the violation thereof does not give a private right of action, and the defendant would have to prove more than a violation of the statute; he would have to prove that the violation of the statute was the cause of the injury in this case.

(Evers vs. Davis, 86 N. J. Law, Page 196.)

The Appellant evidently is of the opinion that a violation of penal statute is per se negligence. This is not the law. A person may violate the law of the Road, and still recover, providing that the violation was not the cause of the injuries sustained by him.

This is the decision of this Court in the case of Decou vs. Dexheimer, 73 Atl. Rep. Page 49.

This case is a case similar in character to the case at bar.

In the "Decou" case the wagon did not carry any lights; nevertheless, the Court held the defendant was not justified in running him down, and that it was a question for the jury, the Court saying "the fact that the wagon carried no light is immaterial." "Even if it had been compelled to carry lights and had failed to do so the defendant would not have been justified in running it down."

The evidence in this case not only shows that there was a light on the wagon that fulfilled the requirements of the statute, but it also shows that the defendant could plainly see the wagon if he was looking.

John Kenna, (Case, Page 21) states that it was a moonlight night, and (Case, Page 17) that the wagon was past the turn, and that the point of the collision was a straight road; that a person could see nearly for half a mile up the road; that he saw the wagon three or four hundred yards from the turn, and that he saw a light on the wagon.

Steve Lengyel, the driver of the wagon, testified (Case, Page 25) that he was driving in the wagon on the right hand side "right alongside of the ditch," the wheels of the wagon being partly on the 'Macadam' and partly in the dirt; that the road was straight at the point where his wagon was struck by the automobile; that he had a light on the inside of the wagon and "way back on the side;" that the light was secured from the top of the wagon with a string (Case, Page 26). This witness further testified that "you could see the light from the back of the wagon about two hundred feet;" that the automobile, without any warning struck the wagon in the rear.

Henry Neider, a witness, testified (Case, Page 41) that the wagon was on the right hand side of the road between the 'Macadam' and the dirt; that one wheel was on the 'Macadam' and one on the soft dirt; that he saw a light in the wagon and an automobile coming approximately one hundred feet; that when the automobile got within ten feet, he knew it was going to hit; that the road was straight at the point where the collision occurred; that he was about one hundred feet away from the wagon where the collision occurred. (Case, Page 42) this witness testifies as follows:

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"Q. Could you see the light?
A. Yes.
Q. In the wagon?
A. Yes.
Q. How far could you see that light?
A. I could see that at least two or three hundred feet in front of me."

20

Joseph Klein, one of the plaintiffs, (bottom of Case, Page 45 and top of Page 46) testifies as follows:
"Q. How far could you see that light?
A. I can see it further than an automobile light, because it don't glare.
Q. How far, I am asking you?
A. Two hundred yards or three hundred, I can't tell you.
Q. Indicate a distance.
A. From here to the corner, where that Street is blocked off.

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Mr. Brown: Will you agree that that is three hundred yards to where it says "Street Closed," down there?

Mr. Strong: I am inclined to think it is about that.

40

The driver of the automobile, Sebastion Polgar, testified (Case, Page 48) that he had four good lights on his truck, and then the following testimony appears:

"Q. With the lights you had could you easily see?
A. Three or four hundred feet I could see.
Q. Could you see the road in front of you with these lights?
A. Sure.
10 Q. What is three hundred feet?
A. That corner (indicating.)
Q. Where they have the street closed?
A. More than that.

The case was tried without a jury (Case, Pages 11, 12, 13 and 14).

There being evidence upon which the trial Court could base its judgment, this Court should not reverse
20 the judgment of the Court below.

Phelps vs. Seymour, 70 N. J. Law, page 626.
Upton vs. Slater, 83 Law, page 372.
Backes vs. Movsovich, 82 Law, page 44.
Cloister Dairy Farmers vs. N. J. Central R. R., 88 Law, 557.

It is intended by this point to cover the motions for a non-suit and a direction of a verdict.

30 For the reason that there was evidence before the Court of the negligence on the part of the defendant, the court was justified in finding for the plaintiff.

## II.

## THE DEFENDANT WAS GUILTY OF NEGLIGENCE

As referred to under the First point, the driver of the plaintiff's wagon was on the extreme right hand
40 side of the road, part of which wagon being on the

Macadam. The road was a straight road, and it was a moonlight night, and according to the testimony of the driver of the automobile, he could see at least three hundred feet ahead of him with the lights that he was carrying on the automobile.

John Kenna, an eye witness, testified as follows, (Case, Pages 17 and 18).

"Q. Tell the Court what you saw. 10

A. The automobile had come around the curve in the road and it didnt slacken down and we knew it was going to hit, and Mr. Klein's driver was on the right-hand side of the road and the automobile was on the right-hand side of the road, and he made no effort to turn out. You could just about make out the automobile and he came right into the wagon. When it stopped we asked the driver what was the matter. He seemed to be asleep and we picked up his light and 20 handed it to him, and he wanted to know what that was."

That the truck was going about twelve or fifteen mies an hour, and that the horse was walking; that the automobile did not give any sign or blow any horn; that the horse galloped and ran down the road, and that thereupon Kenna went to the driver; that he picked up the head light of the automobile and passed it to the operator of the automobile, who answered 30 "What's that?"

Cross examination (Case, Page 22) Kenna testified that the driver of the wagon did not jump out; that the wagon was swinging from side to side.

Henry Neider (Case, Page 40) testified that the automobile hit the rear of the wagon, and that as soon as the automobile hit the wagon it shoved the wagon 40

against the horse, and the horse became frightened and galloped down the road like a "strick of lightning."

The driver of the automobile, Sebastian Polgar, (Case, Page 52) testified that he could see a man walking at least two hundred and fifty feet away, with the lights he had on his automobile.

If the road being straight and it being a moonlight night, and the horse and wagon being on the extreme right hand side of the road with two of the wheels off the 'macadam,' and a light in the wagon that could be seen at a distance of at least three hundred feet, it was the duty of the driver of the automobile to avoid colliding with the wagon; consequently, the defendant's servant was negligent.

The Court and counsel in this case viewed the road and scene of the accident. (Case, Pages 63 and 65).

## III.

## THE DAMAGES AWARDED BY THE COURT BELOW ARE SUPPORTED BY LEGAL TESTIMONY.

There was much testimony upon which the judgment for damages could legally be awarded.

Mr. Campion, a man of about forty-five years of age, testified that he was in the blacksmith business (Case, Page 34) since he was 13 years of age. That he knew the horse and wagon very well (Case, Page 33). "That the wagon simply busted all to pieces." One hind wheel broken, spring, shaft and axle bent.' That the cost of repairing the wagon would be $90.00 (Case, Page 34;) that the cost of painting the wagon would be $18, and that the wagon was worth $125.00 (Case, Page 35) before the collision.

Seth Lockwood, a licensed veterinary of the State of New Jersey for over forty years says that he administered to the horse the next day; that the horse was about seven (7) years old. On page 39 he said that he treated the horse when he came from the West; that the horse had one hind leg strained and his belly skinned; that the injury to the leg caused the cord in the leg to swell so that the horse was knuckled and that the horse will be knuckled as long as it lives. (Page 38, State of the Case); that the value of the horse before the accident was $225 or $250. Then the following testimony appears:

"Q. After the accident?

A. That is hard to say. For ordinary work he will do his work. If he wants to sell him, that's an eye-sore. Nobody would want to buy a horse that is up on the ankle.

Q. What would be the difference in value?

A.

Mr. Strong: I object; he has not qualified.

The Court: I think he is qualified; forty years a veterinary."

If a veterinary of forty years' standing does not know the value of a horse, it will be hard to get a person who does. The doctor testified that the injury to the horse had depreciated its value at least fifty dollars ($50.00). (See page 38, State of the Case.) This is no doubt a very modest estimate of the permanent injury that was sustained by the horse. The Doctor further testified that he treated the horse four or five times after the accident, and charged a dollar for each visit.

Joseph Klein, one of the plaintiffs, testified (Case, Pages 44 and 45); that the wagon was one year old; that it cost $125.00 new, and $18.00 for painting; that

the wagon was always kept in good condition; that the horse was five or six years old, that he paid two hundred and fifty dollars ($250) for the horse one year ago; that the horse was laid up for two weeks because of his injuries; that the horse is knuckled because of the accident, the injured leg having swollen bigger than the other legs. He testifies (Case, Page 58) that the harness was torn apart; that the price of the harness was from $32.00 to $35.00; that the harness was one and one-half years old (see page 59, State of Case); that he bought a simliar delivery wagon to the one that was damaged at the time of the accident and it cost him $125.00.

Mr. Bernhardt, the defendant himself, a witness who was not a qualified witness, testified as to the value (Case, Page 55) that he imagined that the horse was worth about $155.00. He testified (Case, Page 57) that he saw the horse in the stable the morning after the accident, and that the horse was still nervous and excited; and (Case, Page 60) that it would cost $5.00 to fix the breeches and strap that were broken; that he didn't remember seeing the remaining part of the harness.

The Court, therefore, in estimating damages had the full testimony before it. The testimony of Mr. Kenna, who has been working as a wheelwright and blacksmith all his life, who said $90.00 to repair the wagon, and $18.00 for painting and lettering. And that of Dr. Lockwood that the horse was permanently damaged to the extent of $50; that he charged $4.00 for his visits. The testimony of Mr. Klein that the wagon was completely demolished, and that it cost $125.00 a year ago; that the damage to the harness was from $32.00 to $35.00. Mr. Bernhardt puts the damage to the harness at about $5.00. The horse was in the stable for two weeks, according to Mr. Klein's testimony.

It will be seen by computing these figures, supported by legal testimony, that the sum of $133.00 judgment for all the damages sustained, was clearly within the testimony.

If there are two conclusions to be drawn from the testimony, that which supports the judgment should be followed. Cloister Dairy Farmers vs. Central R. R., 88 Law, page 557.

10

The appeal in this case in regard to excessive damages, is the same as a writ of error and the damages therefore are not a subject of review.

Streuli vs. Wowitz, 80 N. J., Law, page 180,

There was legal evidence to support the amount of damages found, and therefore the judgment of the Court below should be affirmed on this point.

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(Hoisting Machinery Co. vs. Goller Iron Works, 84 N. J. Law, page 504.)

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(Streuli vs. Wowitz, 80 N. J. Law, page 180.)

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## IV.

## THERE WAS NO ERROR IN THE COURT REFUSING TO MAKING THE FINDINGS REQUESTED BY THE APPELLANT.

The Requests for findings were not submitted to the Court until after summoning up of counsel in the case (Case, Page 66). The requests may be found on pages 67 and 68, State of the Case.

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After the requests were offered, counsel for Appellant made the following statement to the Court (Case, Page 68):

> "If your Honor should find adversely, could I now be considered as taking a general exception to your Honor's failure to find as specifically requested to find?
>
> The Court: Yes, sir."

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The Court reserved decision at the conclusion of the trial (Case, Page 12) and did not render judgment until the 5th day of August, 1916.

The Court by this judgment refused to find the requests as made by the Appellant, and rightfully so according to the testimony which was then before him.

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The Court was warranted in law in finding adversely to the defendant on all of the requests, as they pertained to blended questions of law and fact.

The Court's determination was, therefore, legal and proper.

Edward Co. vs. Drum Works, 88 N. J. Law, 189.
Blanchard Bros. vs. Berondge, 86 N. J. Law, 561.
Webster vs. County of Hudson, 86 N. J. Law, 256.

40

The Appellant objects that the Court did not make any ruling in regard to his requests. He evidently overlooked the fact of the general exception that he made in the Court below (Case, Page 58).

The judgment rendered by the Court was, therefore, an answer and ruling on all of the requests that were made.

It is respectfully submitted that the judgment of the Supreme Court be affirmed with costs to the Appellees.

THOMAS BROWN,
of Counsel with
Appellees.

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40

The Appellant objects that the Court did not make any ruling in regard to his requests. He evidently overlooked the fact of the general exception that he made in the Court below (Ca

THOMAS BROWN,

Of Counsel with
Appellees.

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# New Jersey Court of Errors and Appeals.

| | |
|---|---|
| HERMAN KOPPER and JOSEPH KLEIN, partners trading as Kopper & Klein, *Plaintiffs, Appellees,* v. JOHN F. BERNHARDT, *Defendant, Appellant.* | In Tort On Appeal from New Jersey Supreme Court |

## State of Case.

THOMAS BROWN,

*Attorney for Plaitntiffs, Appellees.*

THEODORE STRONG,

*Attorney for Defendant, Appellant.*

# INDEX.

REBUTTAL.

# District Court of the City of Perth Amboy.

| | |
|---|---|
| HERMAN KOPPER and JOSEPH KLEIN, *Plaintiffs,* vs. JOHN F. BERNHARDT, *Defendant.* | In Tort. |

10

To the said Herman Kopper and Joseph Klein, plaintiffs, and Thomas Brown, Esq., their attorney.

Take notice that the defendant hereby appeals to the New Jersey Supreme Court from the judgment of the District Court of the City of Perth Amboy rendered in the above stated action on the fifteenth day of August, A. D. nineteen hundred and sixteen.

20

Dated August 23, 1916.

THEODORE STRONG,
Attorney for Defendant.

Service acknowledged August 24th, 1916.
(Signed) THOMAS BROWN,
Attorney for Plaintiff.

---

DISTRICT COURT SUMMONS.

30

*State of New Jersey,*
*Middlesex County,*
*City of Perth Amboy, ss.*

[L.S] The State of New Jersey, to the Sergeant-at-Arms of the District Court of the City of Perth Amboy or any Constable of the County of Middlesex: Summon John F. Bernhardt to appear before the District

Court of the City of Perth Amboy, to be held at the City Hall, in said City, on the second day of June, one thousand nine hundred and sixteen at ten o'clock in the forenoon to answer unto Herman Kopper, and Joseph Klein, partners, trading as Kopper & Klein, in an action In Tort, Demand five hundred dollars ($500.00). Hereof fail not.

Witness Charles C. Hommann, Esq., Judge of said District Court at Perth Amboy aforesaid the twenty-
10 second day of May in the year one thousand nine hundred and sixteen.

JOHN J. QUINN, Clerk.

THOMAS BROWN,,
Plaintiff's Attorney.

No. 8564.

---

DISTRICT COURT OF THE CITY OF PERTH AMBOY.

| | |
|---|---|
| 20 HERMAN KOPPER, and JOSEPH KLEIN, partners, trading as Kopper & Klein, *Plaintiffs,* vs. JOHN F. BERNHARDT, 140 Ward Street, New Brunswick, *Defendant.* | Summons on Contract. |

30 Demand $500.00.
Court Cost $3.60.
Milage .96.

Returnable June 2d, A. D. 1916, 10 o'clock A. M.

I served the within summons May 25, 1916, on John F. Bernhardt the Defendant by reading the same to him and delivering to him a copy thereof.

WM. H. HOFFNER,
Sergeant-at-Arms.

*State of Demand.*

DISTRICT COURT OF THE CITY OF PERTH AMBOY.

| | |
|---|---|
| HERMAN KOPPER, and JOSEPH KLEIN, partners, trading as Kopper & Klein, *Plaintiffs,* vs. JOHN F. BERNHARDT, *Defendant.* | State of Demand. |

10

1. Plaintiffs demand of the defendant, the sum of five hundred dollars ($500.00), for that, whereas, on or about the ninth day of May, 1916, the plaintiffs were the owners of a horse and wagon, then and there being driven along the public highway or street in the Township of Woodbridge, County of Middlesex, and known as St. George's Avenue, in a Southerly direction.

20

2. That while said horse and wagon was being driven by the servant of the plaintiffs, as aforesaid, the defendant through his servant, was then and there operating and directing an automobile in the same direction as the plaintiffs, on the street or highway aforesaid.

3. That the defendant through his servant did then and there negligently and carelessly operate said automobile so as to lose control of the same, and did negligently and carelessly drive into and against the horse and wagon of the plaintiffs, thereby destroying said wagon, and injuring the said horse severely, and did also destroy the harness then and there used by the plaintiffs in hitching and fastening their horse to said wagon.

30

Plaintiffs sustained, and claim damages in the sum of five hundred dollars ($500.00).

(Signed) THOMAS BROWN.

(Filed May 26, 1916.)

DISTRICT COURT OF THE CITY OF PERTH AMBOY.

| | |
|---|---|
| HERMAN KOPPER, and JOSEPH KLEIN, partners, trading as Kopper & Klein, *Plaintiffs,* vs. JOHN F. BERNHARDT, *Defendant.* | In Tort. |

10

Application having been made to me for the appointment of a stenographer to transcribe the proceedings at the trial of the above cause and take down the testimony therein, I do hereby designate Harold Vaughn a stenographer to act as aforesaid in said cause at the expense of the party so applying.

20

(Signed) C. C. HOMMANN,
*Judge.*

Dated July 26th, 1916.

(Filed July 29, 1916.)

---

Know all men by these presents, that we, John F. Bernhardt and William J. Banker, of the City of New Brunswick in the County of Middlesex and State of New Jersey, are held and firmly bound unto Herman Kopper and Joseph Klein in the sum of four hundred dollars, for payment of which sum we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

30

Sealed with our seals and dated this twenty-third day of August, nineteen hundred and sixteen.

Whereas, a judgment was rendered in the District Court of the City of Perth Amboy on the fifteenth day of August, in the year nineteen hundred and sixteen, in a suit therein depending wherein Herman Kopper and

Joseph Klein are plaintiffs and John F. Bernhardt is defendant for the sum of one hundred and thirty-three dollars damages and ten dollars and twenty-one cents costs of suit, and the defendant John F. Bernhardt is about to appeal from said judgment of the said District Court of the City of Perth Amboy to the New Jersey Supreme Court.

Now, the condition of this obligation is such, that if the said John F. Bernhadt shall pay the costs of the said appeal, whatever be the result thereof, and shall pay to the said Herman Kopper and Joseph Klein the judgment of the District Court of the City of Perth Amboy so as aforesaid rendered against the said John F. Bernhardt if the said appeal be not prosecuted by the said John F. Bernhardt, or be dismissed, then this obligation to be void; otherwise, to remain in full force and virtue.

(Signed JOHN F. BERNHARDT. [L.S.]
(Signed) WILLIAM J. BANKER. [L.S.]

Signed, sealed and delivered
in the presence of
I. BENJ. GLUECKFELD.

---

*State of New Jersey,*
*County of Middlesex, ss.*

William J. Banker, being duly sworn on his oath says, that he is the surety in the within named bond; that he is a freeholder in the County of Middlesex and has property subject to execution worth the sum of four hundred dollars over and above all his just debts and liabilities.

(Signed) WILLIAM J. BANKER.

Subscribed and sworn to before me
this 23rd day of August, 1916.
I. BENJ. GLUECKFELD,
A Master in Chancery of New Jersey.

*Extension of Time to Settle Case on Appeal.*

*State of New Jersey,*
*County of Middlesex, ss.*

Be it remembered that on this 23rd day of August, nineteen hundred and sixteen, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared John F. Bernhardt and William J. Banker, to me known to be the parties who executed the foregoing bond, and I having first made known to them the contents thereof, they severally acknowledged that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

10

(Signed) I. BENJ. GLUECKFELD,
Master in Chancery of New Jersey.

I approve of the within bond. Let it be filed.
(Signed) C. C. HOMMANN,
Judge, District Court of the City of Perth Amboy.
(Filed August 25, 1916.)

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20 DISTRICT COURT OF THE CITY OF PERTH AMBOY.

| | |
|---|---|
| HERMAN KOPPER, and JOSEPH KLEIN, partners, trading as Kopper & Klein, *Plaintiffs,* vs. JOHN F. BERNHARDT, *Defendant.* | In Tort. Order. |

30

It is ordered that the time within which the case on appeal shall be agreed upon or settled, be and the same hereby is extended until the second day of October next, (1916).

(Signed) C. C. HOMMANN,
Dated August 28th, 1916. Judge.
(Filed August 30, 1916.)

DISTRICT COURT OF THE CITY OF PERTH AMBOY.

| | |
|---|---|
| HERMAN KOPPER, and JOSEPH KLEIN, partners, trading as Kopper & Klein, *Plaintiffs,* vs. JOHN F. BERNHARDT, *Defendant.* | In Tort. Order. |

10

It is ordered that the time within which the case on appeal shall be agreed upon or settled, be and the same hereby is further extended until the tenth day of October next, (1916).

(Signed) C. C. HOMMANN,
Dated September 29th, 1916. Judge.

(Filed October 2, 1916.)

20

DISTRICT COURT OF PERTH AMBOY, N. J.

| | |
|---|---|
| HERMAN KOPPER, and JOSEPH KLEIN, partners, trading as Kopper & Klein, *Plaintiffs,* vs. JOHN F. BERNHARDT, *Defendant.* | In Tort. Demand $500.00. Thomas Brown, Pl't'ff Att'y. Theo. Strong, Def'ts Atty. |

30

Filed A. D. 1916.

Summons was issued tested May 22d, A. D. 1916, Returnable June 2d, A. D. 1916.

The summons was returned as follows, viz:

I served the within summons: May 25, 1916, on John

F. Bernhardt, the defendant, by reading the same to him and delivering to him a copy thereof,

WM. H. HOFFNER, Sergeant-at-Arms.

Plaintiff's demand was filed May 26th, A. D. 1916.

June 2d, A. D. 1916. This cause adjourned until June 9th, 16th, 23d, July 7th, 26th, 1916.

July 26th, A. D. 1916. This cause was called at ten o'clock in the forenoon.

10 Plaintiff appeared by Thomas Brown.

Defendant appeared by Theodore Strong.

Harold Vaughn sworn as stenographer.

Sworn for Plaintiff: John Kenna, Stephen Lengyel, Lawrence Campion, Dr. Seth Lockwood, Henry Nieder, Joseph Klein.

Sworn for Defendant: Sebastian Polgar and John F. Bernhardt.

Application for appointment of stenographer made by defendant July 26th, 1916; said application being 20 granted by Court. Appointment filed July 29th, 1916.

All testimony being in the Court announced that decision in this cause would be reserved.

August 15th, 1916, judgment was rendered for Plaintiff for the sum of One hundred and thirty-three dollars and —— cents damages, and ten dollars and twenty-one cents, cots of suit.

Costs

| City | Al. | |
|---|---|---|
| 1.50 | | Summons. |
| | .60 | Service. |
| | .96 | Mileage. |
| 1.50 | | Trial Fee. |
| 1.00 | | Notice of Appeal and Appeal Bond filed August 25th, 1916. |
| 1.00 | | Order extending time to settle case on appeal filed August 30th, 1916. |
| 1.00 | | Order extending time to settle case on appeal filed October 2d, 1916. |

30

*Certificate of Stenographer.*

I, John J. Quinn, Clerk of the District Court of the City of Perth Amboy, do hereby certify that the foregoing is a true and correct copy of a certain judgment record, together with all papers appertaining thereto, as the same are recorded in my office.

[L.S.] In witness whereof, I have hereunto set my hand and affixed the seal of said Court this seventh day of October, nineteen hundred and sixteen.

JOHN J. QUINN, Clerk. 10

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DISTRICT COURT OF THE CITY OF PERTH AMBOY.

| | |
|---|---|
| HERMAN KOPPER, and JOSEPH KLEIN, partners, trading as Kopper & Klein, *Plaintiffs, Appellees.* vs. JOHN F. BERNHARDT, *Defendant. Appellant.* | In Tort. On Appeal. |

20

I, Harold Vaughn, do hereby certify that the following is a true transcript of all the testimony and the proceedings taken by me as official stenographer on the twenty-sixth day of July, nineteen hundred and sixteen, on the trial of a certain cause in the District Court in the City of Perth Amboy, wherein Herman Kopper and Joseph Klein, partners, trading as Kopper & Klein were plaintiffs and John F. Bernhardt was defendant, and the rulings and findings of the Court thereon. 30

HAROLD VAUGHN.

Dated October 6, 1916.

DISTRICT COURT OF THE CITY OF PERTH AMBOY.

| | |
|---|---|
| HERMAN KOPPER, and JOSEPH KLEIN, partners, trading as Kopper & Klein, *Plaintiffs,* vs. JOHN F. BERNHARDT, *Defendant.* | In Tort. |

10

I, Charles C. Hommann, Judge of the District Court in the City of Perth Amboy, in the County of Middlesex, do hereby certify that the following is a true transcript of the proceedings and testimony taken before me on the twenty-sixth day of July, in the year nineteen hundred and sixteen, on the trial of a certain cause in said court wherein Herman Kopper and Joseph Klein, partners, trading as Kopper & Klein, were plaintiffs, and John F. Bernhardt was defendant, and of the rulings and findings of the Court thereon, and that the same were transcribed by Harold Vaughn who was duly appointed by me and duly sworn as the stenographer for that purpose; and I further certify that said transcript of proceedings and testimony so made by said stenographer together with the exceptions allowed to my failure to find the several requests of defendant to find as requested, is the State of the Case to be used on the hearing of said appeal.

20

30

Witness my hand and the seal of said Court this ninth day of October in the year nineteen hundred and sixteen.

[L.S.]

CHARLES C. HOMMANN, Judge.

THE DISTRICT COURT OF THE CITY OF PERTH AMBOY.

HERMAN KOPPER and JOSEPH KLEIN, partners trading as Kopper & Klein,
*Plaintiffs,*
vs.
JOHN F. BERNHARDT,
*Defendant.*

10

Transcript of shorthand notes taken in the above entitled cause, before Hon. Charles C. Hommann, Judge, on Wednesday, the twenty-sixth day of July, A. D. 1916.

Thomas Brown, Esq., for the plaintiffs.
Theo. Strong, Esq., for the Defendant.

20

Harold Vaughn, sworn as stenographer.

Mr. Brown: If the Court please, the action is brought by Herman Kopper and Joseph Klein, partners trading as Kopper and Klein, against John F. Bernhardt. The facts are these: that on the ninth day of May, 1916, the plantiffs were the owners of a horse and wagon that was being driven by one of their drivers along St. George's avenue, coming in the direction of Perth Amboy—.

30

The Court: In what locality is St. George's avenue?

Mr. Brown: It is in Avanal of this county, just a little this side of the road that leads to Avanal Station—

The Court: The old school house?

Mr. Brown: That is it. We will show that this man was driving on the extreme right hand side of the road. He had a light lighted in the wagon. While driving along—

The Court: This was night?

Mr. Brown: Yes, it was night; and the truck of the defendant ran into the wagon and demolished the wagon, and caused the horse to run away, with damages to the horse and harness. It was a rear-end collision—ran right into the wagon. We will show that the lights on the truck were almost invisible and only small lamps at that, and it will be shown that the driver when accosted as to the damage he said he couldn't see
10 because of some other obstacle in the roadway. We have sustained the loss of the wagon, horse and harness, amounting to about the sum of five hundred dollars.

Mr. Strong: If the Court please, we shall show that this accident happened without any fault on the part of the driver of this automobile which was going slowly at the time. Just before the accident an automobile had been approaching, throwing the glare of its lights in the eyes of defendant's driver, and he slowed up on that
20 account, and after making the turn this wagon was in front. He did not see it because there was no light upon it as required by law. He struck the wagon very slightly, and the driver, instead of remaining in the wagon as he should to manage the horse, jumped out, and the horse ran away.

The Court: It didn't upset the wagon?

Mr. Strong: No, just hit very slightly. The only damage, I think, was one light struck on the automobile, and a very slight damage at that.

30 The Court: What time of night?

Mr. Strong: About ten o'clock, I think.

Mr. Brown: As I understand it, there is no denial of the ownership of the truck?

Mr. Strong: No, there is no denial of that.

*John Kenna,* a witness produced on behalf of the plaintiff, being duly sworn, testified as follows:

*Direct Examination,* by *Mr. Brown.*

*Q.* You live where? *A.* Woodbridge.

*Q.* Where were you on the night of the damage to Messrs. Kopper and Klein's wagon?

*A.* We were taking a walk, myself and two other fellows.

*Q.* What were the names of those two others? 10

*A.* Harry Neider and Roger Sullivan.

*Q.* Where were you going? *A.* Into Rahway.

*Q.* What did you see? *A.* We saw a wagon coming towards us.

*Q.* What wagon? *A.* Mr. Klein's wagon.

*Q.* Who was driving? *A.* That fellow (indicating man in court room).

*Q.* How near were you to the wagon?

*A.* When we seen the wagon we were several hundred feet from the turn. When we come up to the 20 wagon it was past the turn.

*Q.* What part of the road? *A.* Midway between the school and Avanal Road.

*Q.* What is the direction of the road at that point?

*A.* Almost straight at that point.

*Q.* For how far can you see? *A.* Very near half a mile.

*Q.* How far below that is the turn?

*A.* Three hundred yards.

*Q.* How far was the wagon away from the turn when 30 you saw it? *A.* Three hundred or four hundred yards

*Q.* What did you see first on the wagon?

*A.* The light.

*Q.* What kind of a light? *A.* A lantern.

*Q.* Did you get up to the wagon? *A.* We were right alongside when it happened.

*Q.* Tell the Court what you saw.

*A.* The automobile had come around the curve in the road and it didn't slacken down and we knew it was going to hit, and Mr. Klein's driver was on the right-hand side of the road and the automobile was on the right-hand side of the road and he made no effort to turn out. You could just about make out the automobile and he came right into the wagon. When it stopped we asked the driver what was the matter. He seemed to be asleep and we picked up his light and
10 handed it to him and he wanted to know what that was.

*Q.* What light? *A.* The headlight on the automobile.

*Q.* What sort of light? *A.* One of these round search lights.

*Q.* Where was it? *A.* Right in front, on the right-hand side of the truck.

*Q.* What was the matter with the light? A. Turned very low, just about lit.

*Q.* What light did you pick up? *A.* Right-hand
20 side.

*Q.* Going toward Woodbridge? *A.* Yes.

*Q.* What was the situation of the wagon on the road at the time it was struck?

*A.* It was coming towards Woodbridge. Two of the wheels on the left side of the wagon was on the Amesite and the horse was walking on the dirt.

*Q.* How fast was the truck going? *A.* About twelve or fifteen miles an hour.

*Q.* What was the horse doing? *A.* Was walking.

30 *Q.* Was any signal horn or whistle blown? *A.* No, there wasn't a thing.

*Q.* You say you picked the light-up? *A.* Yes, and handed it to the driver.

*Q.* Where did it come from? *A.* In front of the truck.

*Q.* What did he say? *A.* He said, "what's that."

*Q.* Do you see the driver here? *A.* That fellow there (indicating man in court room.)

*Q.* Was anybody with him? *A.* No.

*Q.* What part of the wagon did he strike? *A.* The rear end.

*Q.* What part? *A.* More to the right hand side.

*Q.* More to the right hand side? *A.* Yes. He was hugging the ditch.

*Q.* Did you see what damage was done?

*A.* When he hit the wagon the horse bolted and run down the road. We went to the machine; we didn't know whether he was hurt; we went to the machine first. 10

*Q.* Did the horse go as soon as the wagon was struck? *A.* Yes, towards Woodbridge.

*Q.* Where was the driver? *A.* Right-hand side of the wagon, up agin the side.

*Q.* How close were you when you saw it?

*A.* Fifteen feet, almost opposite on the other side of the road.

*Q.* Nothing to obstruct your view at all? *A.* Nothing. 20

*Q.* And how far from the curve in the road was it the accident happened? *A.* Three hundred yards.

*Q.* Did you see the horse afterwards? *A.* No.

*Q.* The wagon afterwards?

*A.* No; when it hit the wagon it started going across the road as though something was broke on it.

*Q.* What part of the automobile hit the wagon?

*A.* The front end. 30

Mr. Brown: That is all.

*Cross Examination, by Mr. Strong.*

*Q.* Where do you live? *A.* Woodbridge.

*Q.* What is your business? *A.* Working in the factory.

*Q.* Working there now? *A.* Yes.

*Q.* What factory? *A.* Baird Chemical Company.

*Q.* Have you worked there long? *A.* About six weeks.

*Q.* Where did you work before that. *A.* I was laid off and didn't do anything. I went back again——

*Q.* How long were you laid off? *A.* One month and a half.

*Q.* How long did you work there before that? Before you were laid off? *A.* From November.

*Q.* From last November? *A.* Yes, sir.

10 *Q.* And how long were you laid off before that? *A.* That was when they started.

*Q.* For whom did you work before they started up? *A.* In the Aluminum Works at Seawarren.

*Q.* When that company started? *A.* No, I was out of work for a little while.

*Q.* How long? *A.* Four weeks.

*Q.* How long did you work for the Aluminum Company? *A.* One year and nine months.

*Q.* How long before that had you been out of work?

20 *A.* I left the Oil Works to go to the Aluminum Works.

*Q.* What one is that? *A.* Orange.

*Q.* How long did you work there? *A.* One month.

*Q.* Why did you leave there? *A.* I didn't like the job.

*Q.* Why? *A.* Too dirty.

*Q.* Whom did you work for before that?

*A.* American Smelting Works.

*Q.* How long? *A.* About two or three months.

30 *Q.* Why did you leave them? *A.* Didn't like the job.

*Q.* Whom had you worked for before you worked for the American Smelting Works? *A.* Terra Cotta Works.

*Q.* How long after you left the Terra Cotta Works before you went to the American Smelting Works? *A.* Two or three weeks.

*Q.* Why did you leave the Terra Cotta Works?

*A.* To better myself.

*Q.* You weren't discharged? *A.* No, sir.

*Q.* How long did you work for the Terra Cotta Company? *A.* Four or five months.

*Q.* Whom had you worked for before that?

*A.* Nobody.

*Q.* How long have you known these plaintiffs?

*A.* Two or three years, since they came to Woodbridge. 10

*Q.* How much were you paid to come here today?

A. I didn't get paid anything to come here today.

*Q.* Came here for nothing? *A.* Yes.

*Q.* Were you facing this wagon at the time it was hit? *A.* Right facing.

*Q.* How do you know that the automobile was traveling fifteen miles an hour? *A.* That's about what I judge it was going.

*Q.* How did you judge it? *A.* Just from judgment; nothing to show as it was going that fast. 20

*Q.* It was ten o'clock at night? *A.* Between nine and half-past.

*Q.* It was dark, wasn't it? *A.* Yes.

*Q.* And that automobile was coming toward you?

*A.* Yes.

*Q.* And when it struck that wagon it stopped, didn't it? *A.* Yes.

*Q.* And you say that you could tell that the automobile was going twelve or fifteen miles an hour?

*A.* It seemed to be going that fast. 30

*Q.* You can tell when an automobile is coming toward you how fast it travels? *A.* It was moonlight.

*Q.* By moonlight you can judge the speed of an automobile coming toward you very accurately?

*A.* Not accurately.

*Q.* You can judge by moonlight when a car is going twelve or fifteen? *A.* I judged it was.

*Q.* You say you can judge accurately? *A.* No.

*Q.* This was a covered wagon, wasn't it, that the man was in? *A.* Yes.

*Q.* The man jumped out when the wagon was hit?

*A.* No, he didn't jump out; the wagon was swinging from side to side and that's all we saw of the driver; we went to the automobile.

*Q.* That is all you saw of the driver and you went to the automobile—you thought the automobile needed
10 help, and not the driver? *A.* We couldn't catch up with the horse.

*Q.* You can tell how fast the automobile coming toward you is going, but you can't tell how fast the wagon coming toward you is going, is that it?

*A.* We didn't pay any attention to the wagon. We thought the driver was hurt on the automobile because he made no move to get out.

*Q.* It was a big truck, wasn't it? *A.* One of those light delivery trucks.

20 *Q.* The driver sat up high? *A.* No.

*Q.* Down low? *A.* Yes.

*Q.* And you thought the driver was hurt? *A.* Yes.

*Q.* You didn't think the other fellow was hurt?

*A.* We didn't pay any attention to the wagon; there was nothing to do.

*Q.* If you didn't pay any attention you couldn't tell whether you could help or not. You went over to see the automobile, didn't you? *A.* Yes.

30 *Q.* When did you next see that driver? *A.* Ten minutes after—he came walking back.

The Court: Was that the horse driver?

The Witness: Yes, sir.

*Q.* Had you a watch with you? *A.* Yes.

*Q.* You timed the driver? *A.* No, it was about ten minutes after that he came walking back.

Mr. Strong: That is all.

*Re-Direct Examination, by Mr. Brown.*

*Q*. You testified on direct examination that you were opposite the wagon and truck on the road, and now on cross-examination you say you were facing the wagon. *A*. We were just like that (extending his arm).

*Q*. What do you mean? *A*. On an angle.

*Q*. Directly across? *A*. No, not directly across.

*Q*. How far away? *A*. Ten feet we were on the right hand side coming up and they were on the right hand side going down. 10

*Q*. It was ten feet from you? *A*. Yes, we were right alongside the ditch when it happened.

*Q*. And you say you could see the light on the wagon? Yes.

*Q*. Was it on the side of the wagon? *A*. No, it was hung from the back of the wagon inside, we could see it right through the wagon.

*Q*. After the accident, was the light lighted then? 20
*A*. Yes it was lit when the horse started to run.

*Q*. Were you subpoenaed to come here? *A*. Yes, sir.

Mr. Brown: That is all.

*Re-Cross Examination, by Mr. Strong.*

*Q*. How do you know you could see it through the wagon; you did not see it both ways?

*A*. When the wagon was coming toward us we could see it and when it started to go we could see it too. 30

*Q*. You say you didn't pay any attention after it started to go? *A*. No, we couldn't follow it.

The Court: Where was this light, in the wagon or under the wagon?

The Witness: Hanging in the wagon, inside the wagon.

*Q.* That is, hanging from the roof? *A.* Yes.

Mr. Brown: Objected to as leading.

*Q.* Where was it hanging from? *A.* From the roof.

*Q.* You say you did'nt pay attention to the wagon?

*A.* That is, we didn't follow the wagon.

*Q.* That is what you mean when you say you didn't pay attention? *A.* Yes.

---

10 *Steve Lengyel,* a witness produced on behalf of the plaintiffs, being duly sworn, testified as follows:

*Direct Examination, by Mr. Brown.*

*Q.* Mr. Lengyel, you worked for Kopper and Klein?

*A.* Yes, sir.

*Q.* You were the driver driving their wagon on the night of their collision with the defendant's truck?

*A.* Yes, sir.

*Q.* What kind of horse and wagon were you driving that night? *A.* Single horse, a good horse.

20

*Q.* What kind of wagon? *A.* The wagon was green, a grocery wagon.

*Q.* Was it open or covered? *A.* Covered, light grocery wagon.

*Q.* A top wagon? *A.* A top wagon.

*Q.* Was the back on the wagon closed? *A.* It was rolled up.

*Q.* Rolled up? *A.* Yes, sir.

*Q.* Where were you coming from? *A.* Rahway.

30 *Q.* And do you know where the curve in the road is after you leave Rahway? *A.* Yes, sir, I know.

*Q.* Did you pass that? *A.* I came up—

*Q.* Up the hill? *A.* Yes, sir.

*Q.* How far away from the curve? *A.* I can't tell you how far, I don't know.

*Q.* What happened to you when you were coming up? *A.* Right up—the old school, on the other side, the right hand side.

*Q.* This side? (Indicating). *A.* The right hand side coming home from Rahway.

*Q.* How far this side of the school house were you?

*A.* As far as—I don't know how many feet.

*Q.* As near as you can tell. *A.* Ten, fifteen.

*Q.* What happened to you; did anything hit your wagon? *A.* Automobile hit the wagon.

*Q.* Automobile hit the wagon; what side of the road were you on? *A.* Right hand side.

*Q.* What place in the road—how far on the right hand side? *A.* Right alongside the ditch. 10

*Q.* You know the Macadam? *A.* Yes, sir.

*Q.* Were the wheels on the Macadam? *A.* One on one side.

*Q.* Where was the other side? *A.* Right alongside the ditch.

*Q.* Were you driving fast or were you driving slowly? *A.* Driving slow, up-hill, walking.

*Q.* Did you get up the hill? *A.* Yes, sir.

*Q.* And you passed the school house, you say? 20

*A.* Passed the school house.

*Q.* And could you look up the road where you were?

*A.* Yes, sir.

*Q.* How far could you see? *A.* I don't know how many feet. I can't say so far; it wasn't very far.

*Q.* It was a straight road? *A.* A straight road, yes, sir.

*Q.* Did you have a light on the wagon? *A.* Yes, sir.

*Q.* Was it lighted? *A.* Yes, sir.

*Q.* Where was it? *A.* Inside wagon in the back. 30

*Q.* Where abouts in the back? *A.* Way back on the side.

*Q.* How was it fastened in the wagon? *A.* It was tied.

*Q.* How was it fastened? *A.* I tied him on.

*Q.* Hanging from what part of the wagon?

*A.* Left hand side.

*Q.* Near the top? *A.* On the side, from the top; it was hanging down and I tied him with a string so he didn't fall off on the side.

*Q.* Tied from the top and side? *A.* Yes, sir.

*Q.* How far could you see that light from the back of the wagon? *A.* About two hundred feet.

*Q.* Did you hear any horn or anything before you were struck with the automobile?

*A.* I hear a noise, an automobile coming after me;
10 I don't know anything about it; I listen to the front; I never look to the back; I keep right hand side and just look in the front.

*Q.* What happened to the wagon? You say the wagon was hit; what part of it was hit? *A.* The back.

*Q.* What part of the back? *A.* The back wheel.

*Q.* Which wheel? *A.* Left-hand side.

*Q.* Going toward Woodbridge?

20 The Court: The left-hand side of the wagon. Mr. Brown.

Mr. Brown: Yes.

*Q.* What was the damage to the wagon? You say the left-hand wheel was struck? *A.* Yes, sir.

*Q.* Was that broken? *A.* I don't know whether the wheel is broke; the horse started to run; soon I got scared myself; I don't know what broke.

*Q.* How far did the horse run? *A.* I don't know how many feet; he run so far—about a hundred feet,
30 that horse; I don't exactly——

*Q.* Do you know how far a hundred feet is? *A.* He run over a hundred feet; he runs way up to the Colonia Road.

*Q.* That's near a quarter of a mile? *A.* About that.

*Q.* Were you in the wagon at the time—

*A.* When the horse started to run I put my foot on the iron and I tried to stop the horse; the breeches

strap was broke; the horse start to kick up; I sit right-hand side the wagon; I hold the line and I want to stop the horse and I fall right off the wagon. The wagon is swinging and the horse is running too fast; I sit right on the side; I don't want the horse to kick me off.

*Q.* When did you see the horse after that? *A.* I see him right home.

*Q.* Did you have to walk home?

*A.* No; when I fell out of the wagon I took a little rest, and when I got up I look around for the wagon; I see the automobile and I walk right back and I ask the fellow what's the matter, and I forget already what he say. I ask automobile driver take me right home because I can't walk. I walk a little back and my leg just a little bit hurt when I get off the automobile. I just jump with one leg when I get off the automobile on Main street, Woodbridge. Policeman ask me what's the matter——

Mr. Strong: I object.

*Q.* Did you see the horse and wagon? *A.* I just see him home.

*Q.* When you went home? *A.* I just see him home.

*Q.* You didn't take him home? *A.* No.

*Q.* You didn't see him after you fell out? *A.* No.

*Q.* You went right home? *A.* I went home with the automobile.

The Court: But after you got to the main street of Woodbridge, what did you do?

The Witness: Right in the store.

The Court: Did you see the horse and wagon?

The Witness: No.

The Court: When did you next see the horse and wagon?

The Witness: I just see the horse home.

The Witness: The horse is wet, but the left

wagon is broke and horse is all wet and harness is broke; that's what I seen.

*Q.* What other damage to the wagon besides the damage to the wheel? *A.* I don't know what I had on the wagon.

*Q.* How was it broken, where at? *A.* I didn't see that time the wagon was broke.

*Q.* When did you next see the wagon? *A.* Four or five days.

10

*Q.* Where was it four or five days afterwards?

*A.* Blacksmith shop; the front wheels and shafts was in the yard; that's the place I seen.

*Q.* You said the hind part was struck; what was the matter— *A.* The wheel is broke, the board is broke, and the box is broke; it's all broke.

Mr. Brown: That is all.

*Cross-Examination, by Mr. Strong.*

20

*Q.* How long have you been in this country?

*A.* Sixteen years.

*Q.* How long have you worked for Kopper and Klein? *A.* About four years ago.

*Q.* What country did you come from? *A.* From Hungary.

*Q.* How long have you been driving for Kopper and Klein? *A.* About four years ago.

*Q.* You were peddling for them that day? *A.* No, I am not.

30

*Q.* You were not? *A.* I am not peddler.

*Q.* You were collecting money when you sold things?

*A.* I just delivered the order.

*Q.* You just delivered the order? *A.* Yes.

*Q.* Whom did you work for before you worked for Kopper and Klein? *A.* Where I worked before, I used to work for Elias grocery.

*Q.* You were asleep at the time this automobile hit your wagon? *A.* I don't sleep.

*Q.* You don't sleep; aren't you a good sleeper?

*A.* No.

*Q.* What time had you started out? *A.* It was May ninth.

*Q.* Yes; what time had you started out? *A.* I started out noon time; I started to go up the road.

*Q.* What time did you go to work in the morning?

*A.* I had a job to do before noon.

*Q.* What time in the forenoon did you go to work?

*A.* About six o'clock I started. 10

*Q.* When you got there at six o'clock what did you do? *A.* I got to feed the horse and get horse ready and hitch up.

*Q.* What did you do the rest of the morning?

*A.* Next morning?

*Q.* The same morning. You got there at six o'clock and then what? *A.* I put my horse up and got ready to go out.

*Q.* Did you go out that morning? *A.* Yes, sir.

*Q.* Where? *A.* To Seawarren, and to Woodbridge. 20

*Q.* What time did you get home? *A.* Eleven o'clock.

*Q.* Where did you go? *A.* Go home for the dinner.

*Q.* Then what? *A.* Load on and go to Rahway at one o'clock.

*Q.* Then you started out at one o'clock to go to Rahway? *A.* Yes, sir.

*Q.* With this load? *A.* Yes, sir.

*Q.* And did you drive about all afternoon delivering groceries? *A.* Delivering groceries and taking order 30 for the next.

*Q.* What? *A.* And I took order for the next day.

*Q.* And you were doing that up to the time of the accident? *A.* No.

*Q.* What time did you finish up getting orders?

*A.* Nine o'clock.

*Q.* Then you started for home? *A.* I started home nine o'clock.

*Q.* What time were you hit? *A.* About half-past nine.

*Q.* And did you have the same horse the day before?

*A.* No, not the same horse.

*Q.* What time did you go on the day before?

*A.* The day before I didn't go to Rahway. Twice a week I go there, Tuesday and Friday.

*Q.* What time did you go to work the day before?

*A.* I don't understand.

10 *Q.* What time did you start to work for Kopper and Klein the day before this accident? *A.* The same time.

*Q.* And worked how long? *A.* Six o'clock at night.

*Q.* The day before that? *A.* Six o'clock, outside work up to supper and after supper work inside.

*Q.* Until what time? *A.* Nine o'clock.

*Q.* And when you went to Rahway, what time would you get back? *A.* Nine o'clock, sometimes 9:30; sometimes if the road is bad, ten o'clock.

20 *Q.* Is this horse a gentle horse? *A.* Yes, sir.

*Q.* The kind of a horse that you could go to sleep and he would find his way home? You didn't have to drive the horse and you could take a sleep?

*A.* I would have to hold the lines always with a young horse when automobiles go around.

*Q.* It is a young horse? *A.* I don't know how old he is.

*Q.* He was a gentle horse?

30 Mr. Brown: He didn't say gentle horse.

The Court: He was asked and he said yes.

*Q.* But you went to sleep, didn't you? *A.* I never sleep on the wagon when I am working.

*Q.* No matter whether it is an old horse or young horse? *A.* I have to listen to the horse I am driving.

*Q.* Have to listen to him? *A.* Yes, certainly.

*Q.* You could listen to him in your sleep couldn't you? *A.* No.

*Q*. Just listen to him and let the horse take care of himself; and you listen to him? *A*. Watch the horse and drive him all the time. That's what I do.

*Q*. Did you go back to see how far you could see that light in the wagon? *A*. No, sir.

*Q*. How did you know you could see it two hundred feet? *A*. When I fell off from the wagon, when I got up from the road I walked right back.

*Q*. Then you went back to see how far you could see that light? *A*. Yes, sir. 10

*Q*. Then you had an idea that maybe that happened because they couldn't see the light, didn't you?

*A*. You can see the light all right, two hundred feet you can see it.

*Q*. Was that a white light? *A*. White light, yes, sir.

*Q*. How old a lantern was that—how long had you had that lantern? *A*. About a month.

*Q*. Did you clean it up every day? *A*. Not every day, when I go to Rahway, just on the same day. 20

*Q*. How long before the accident had you lighted that light? *A*. I don't understand.

The Court: How long before the accident had you lit that light?

The Witness: I light him up to Rahway, over half hour to nine o'clock I light it.

*Q*. Where did you light it in Rahway? *A*. The last house I was done, I don't know the name of the street. 30

*Q*. Who was there? *A*. Mrs. Hymarshi.

*Q*. Then Mrs. Hymarshi was looking at you light that? She was out from the house, didn't come out to look to the lamp.

*Q*. How long was it before the horse got well again?

*A*. I don't understand.

*Q*. The horse is all right now? *A*. I ain't got that horse after he ran away.

*Q.* Who has got him? *A.* The horse is in another stable.

*Q.* In another stable? *A.* I don't know about the horse after that.

*Q.* How long had they had that wagon? *A.* About one year; I don't know exactly about that.

*Q.* Whom did he buy it from? *A.* I don't know where the boss buys; I don't ask him.

*Q.* How long had they had the horse? *A.* Pretty
10 near a year.

*Q.* Where did they get him? *A.* I don't know; the boss buy him; I don't know where he buy him.

*Q.* What's the boss' name? *A.* Joe Klein,—Kopper and Klein.

*Q.* Who bought the wagon? *A.* Mr. Klein.

Mr. Strong: That is all.

*Re-Direct Examination, by Mr. Brown.*

20 *Q.* This woman where you stopped when you lighted the light— *A.* She was in the house; she didn't come out; I bring in the groceries to the back and she didn't come out.

*Q.* And when you came out you lighted the light? *A.* I light the light—maybe something is left on the wagon—I light the light and look and then start to come home.

*Q.* Did you see the wagon when the horse was running away? *A.* No, I just see the horse.

30 *Q.* Why didn't you see the wagon? *A.* I hurt myself; my head going around and I could see stars.

*Re-Cross Examination, by Mr. Strong.*

*Q.* How fast was the horse going at the time you could see these stars? *A.* I don't know how is the horse going. After that when I fall off I don't know anything about it.

*Lawrence Campion,* a witness produced on behalf of the plaintiffs, being duly sworn, testified as follows:

*Direct Examination, by Mr. Brown.*

*Q.* Mr. Campion, where do you live? *A.* Woodbridge.

*Q.* What is your business? *A.* Blacksmith and horseshoer.

*Q.* Do you remember the ninth day of May, this year? *A.* Yes, sir. 10

*Q.* Do you remember a wagon of Kopper and Klein's brought to your place? *A.* Yes, sir.

*Q.* When? *A.* Next morning.

*Q.* Who brought it there? *A.* I don't know; my man told me it was the wagon the horse ran away with.

*Q.* Was there any marks on the wagon? *A.* One hind wheel was broke.

*Q.* I mean any lettering or wording? *A.* Yes, Kopper and Klein's name on the wagon. 20

*Q.* What kind of wagon? *A.* Painted green, top grocery wagon.

*Q.* What was the condition of the wagon?

*A.* Simply busted all to pieces, one hind wheel, broken springs, shafts and axel bent.

*Q.* What else? *A.* Body split in half.

*Q.* Where?

*A.* In the centre, the frame work was split in the centre, and the tail board was hanging down. The tailboard swings down and that looked as if the tail board was smashed hanging down. 30

*Q.* Was there any back part of it? *A.* Yes, a curtain, but that was rolled up.

*Q.* Did you see the light on the wagon? *A.* I saw it at noon time.

*Q.* Did you ever see the wagon before? *A.* I saw their wagon every day; their place of business is right

up the street from mine. I got to pass by there every day.

*Q*. What was the condition of the wagon the day before when you saw it? *A*. First class condition.

*Q*. Did you make repairs to the wagon? *A*. No repairs done to the wagon yet. It is right in front of my place in Woodbridge.

*Q*. Have you estimated the cost of repairing it?

*A*. About ninety dollars.

10 *Q*. How do you make that out? *A*. A new body, nothing else would do.

*Q*. How much would that cost? *A*. Not under seventy dollars, and that don't include painting.

*Q*. What else besides body and painting? *A*. The rest for repairing shafts and straightening axel and springs.

*Q*. That doesn't include painting? *A*. I don't do painting; it costs eighteen dollars to paint it.

20 Mr. Strong: I object.
The court: Objection sustained.

*Q*. How long have you been in business? *A*. Four years.

*Q*. Have you had wagons painted in that time?

*A*. About four wagons, a man don't usually have them painted.

*Q*. Do you know the market cost of having a wagon painted?

30 Mr. Strong: I object.
The Court: Objection sustained.

*Q*. How long have you been in the business before the four years? *A*. Working at the trade? Since I was thirteen years old.

*Q*. The wagons that have been built and the cost of painting—have you been acquainted all that time with the market cost of painting? *A*. Not before I was in business.

*Q.* Is it a uniform price usually? *A.* I don't know.

Mr. Strong: I object, he didn't qualify.

The Court: Only what he knows he can say.

*Q.* These wagons of that kind, the covered top wagons you speak of— *A.* You mean the price to me or direct to him?

*Q.* To you. *A.* I would have to pay eighteen or twenty dollars.

10

Mr. Strong: I object.

The Court: That may stand.

Mr. Strong: I pray an exception.

Exception allowed.

*Q.* Did you see anything else that was broken?

*A.* That's all.

*Q.* Where were the shafts broken? *A.* The cross-bar was broke out of them; the cross-bar goes between the shafts.

20

*Cross Examination, by Mr. Strong.*

*Q.* Your place is near them? *A.* Yes, between Kopper and Klein's and the feed store.

*Q.* Do you do considerable work for them? *A.* All their work.

*Q.* What day was the wagon brought to your place?

*A.* The day after it was hit.

*Q.* What day was that? *A.* The tenth of May.

*Q.* Do you know when the curtain was rolled up?

*A.* No, only the curtain was rolled up when it was brought to my place; I didn't see the accident. 30

*Q.* The wagon itself wasn't worth much more than the repairs? *A.* The wagon is worth a hundred and twenty-five dollars, that is to the man when he has to get a new one.

*Q.* He couldn't have sold it for a hundred and twenty-five?

*A.* He couldn't sell it, but he would have to pay

that for a new one. He couldn't get fifty dollars for it if he wanted to after the accident.

*Q.* How much could he have got before the accident?

*A.* You could get more than fifty dollars, according to who he was selling it to; you might get fifty, seventy-five or a hundred; you can't tell about that.

*Q.* The day before it was injured, was it worth sixty dollars? *A.* Yes, sir.

*Q.* Sixty-five?.

10 *A.* Yes, sir, or more in the open market; I don't suppose it would bring more than seventy-five dollars in the open market.

Mr. Strong: That is all.

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*Seth Lockwood,* a witness produced on behalf of the plaintiffs, being duly sworn, testified as follows:

*Direct Examination, by Mr. Brown.*

20 *Q.* Doctor, you are a veterinary, are you not?

*A.* Yes, sir.

*Q.* And have been practicing your profession how long? *A.* Over forty years.

*Q.* In the township of Woodbridge? *A.* Yes, sir.

*Q.* Did you live there on the ninth of May last?

*A.* Yes, sir.

*Q.* And you knew Messrs. Kopper and Klein?

*A.* Yes, sir.

*Q.* And you called to administer to a horse of theirs

30 that was injured? *A.* The next day after the accident.

*Q.* Were you acquainted with that horse? *A.* Yes, sir.

*Q.* How long had you known that horse? *A.* He has had a number of new ones—three or four months.

*Q.* What kind of a horse was he? *A.* A good, young horse.

*Q.* How old? *A.* About seven years old.

*Q.* And when did you see him before the accident?

*A.* I saw him almost every day going along; took no notice.

*Q.* Did you have any occasion to treat the horse before the accident? *A.* Not since he first got him.

*Q.* Did you have any occasion to examine him at any time? *A.* Nothing the matter with him that I know of.

*Q.* How many times had you seen the horse before the accident?

*A.* When he first got him he was sick, like all these sale horses here and after that I didn't do anything for him. 10

*Q.* You saw him after that? *A.* Just going up the road every day by my place.

*Q.* You say you saw him after the accident; anything the matter with him?

*A.* Strained one hind leg and had a little skin off his belly; I think he must have been down to get that.

*Q.* The skin was off where? *A.* On the side of his belly. 20

*Q.* Which side? *A.* I don't remember which side it was now; it was some time ago. I haven't seen the horse in some time.

*Q.* Were the injuries very serious?

Mr. Strong: I object to that as leading.

The Court: Yes; ask him the character of the injuries.

*Q.* What was the extent of the injury? *A.* The cord was swollen so that the horse went knuckled. 30

The Court: What is that?

The Witness: The ankle don't come back and the horse stands up like that (indicating).

*Q.* Will that last forever?

A. More than likely where the horse works all the

time. It doesn't interfere with his working. It is a detriment, of course.

*Q.* Simply that the horse cannot stand straight on his leg? *A.* Yes.

*Q.* That will last as long as he lives? *A.* More than likely.

*Q.* What about the skin? *A.* That was only an abrasion of the skin; that didn't amount to much.

*Q.* What would you say was the value of the horse
10 before the accident? *A.* Two and a quarter or two and a half.

*Q.* After the accident?

*A.* That is hard to say. For ordinary work he will do his work. If he wants to sell him, that's an eyesore; nobody would want to buy a horse that is up on the ankle.

*Q.* What would be the difference in the value?

Mr. Strong: I object; he has not qualified.

The Court: I think he is qualified; forty years
20 a veterinary.

Mr. Strong: I ask an exception.

Exception Allowed.

*Q.* What would you say, Doctor? *A.* I presume it would take fifty dollars off the horse's value.

*Q.* How many times did you treat the horse after the accident? *A.* Three or four times.

*Q.* What were the charges each time? *A.* One dollar a visit; it was right near my place.

30 *Cross Examination, by Mr. Strong.*

*Q.* What institution were you a graduate of? *A.* I went to Columbia College, New York.

*Q.* How long? *A.* One year.

*Q.* Graduate there? *A.* I didn't graduate there.

*Q.* When was that?

*A.* Eighty-two. I didn't graduate; the Columbia busted up; they got into a fight with the parties there

and I went into the Third Avenue Stables and went to work there.

*Q.* Ever do much work for Kopper and Klein?

*A.* The work they have there.

*Q.* When did they first buy this horse? *A.* I don't remember.

*Q.* How many times did you attend him then?

*A.* Three or four times when he was new he had that sickness.

*Q.* Sickly? *A.* Like all of them are sickly. 10

*Q.* Every horse that is bought is sick? *A.* Majority are when they come from the west.

*Q.* Did you know he came from the west? *A.* He came from the sales stables; I didn't know; I suppose he did.

*Q.* There is great difference between the majority of horses and all of them being sick? *A.* Every sales stable—

*Q.* You don't know he came from the sales stables?

*A.* It is very likely he bought it there. 20

*Q.* You never asked him? *A.* No, I never asked him.

*Q.* Having attended Columbia College you mean to say you couldn't cure that strain?

*A.* Never make them as good as they were before. The horse is working.

*Q.* You only attended four times? *A.* Only three or four times; I could tell you if I had my book here.

*Q.* Why didn't you go oftener? *A.* I didn't have to go every day as long as they had a man to attend 30 to him.

*Q.* How long since you attended? *A.* Over a month.

*Q.* What treatment did you give? *A.* First to get the swelling out of the tendon.

*Q.* What did you use? *A.* Used hot water first.

*Q.* After that? *A.* A treatment to relax the tendon.

*Q.* What was that? *A.* A liquid, a lotion.

*Q.* Composed of what?

*A.* Sugar of lead, ammonia, citric acid, iodine and water. Would you like to know the proportions to make it? Six ounces of the first, eight of the second, pint of citric acid and one half pint of iodine.

*Q.* That injury or strain could have happened in a runaway, couldn't it? *A.* Yes, sir, a great many ways, and horses can strain themselves.

10 Mr. Strong: That is all. Just one more question, please.

*Q.* You spoke about that strain having a tendency to make the horse go knuckled. Had he been knuckled before?

*A.* I didn't know the horse was ever sore. The next morning when I saw the horse he was knuckled then.

*Re-Direct Examination, by Mr. Brown.*

*Q.* Has he been knuckled ever since? *A.* He was
20 the last time I saw him.

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*Henry Neider,* a witness produced on behalf of the plaintiffs, being duly sworn, testified as follows:

*Direct Examination, by Mr. Brown.*

*Q.* What is your name? *A.* Neider.

*Q.* Where do you live? *A.* Woodbridge.

*Q.* Do you remember the ninth of May? *A.* I do.

*Q.* Where were you on the ninth of May?

30 *A.* Three of us walking to Rahway.

*Q.* Right in front of the school house at Avanal what did you see?

*A.* On the right hand side of the road from Rahway Mr. Klein's wagon, on the opposite side, therefore must be on the right from Woodbridge, we were, one wheel in the gutter and other on the roadside.

*Q.* On the macadam? *A.* Between the macadam and the ditch.

*Q*. One side wheel on the macadam and the other on the soft dirt?

*A*. Exactly. I seen the light inside the wagon and an automobile coming along, approximately one hundred feet in front of us; soon as it got within ten feet I knew it was going to hit.

*Q*. Why?

*A*. Because it was going right towards him. We got excited and soon we heard the crash; the horse ran away and we jumped in the ditch. One of his head 10 lights broke off and we said what was the matter and he said "huh," and I picked up the light that was lying in the road and I handed it to him and he asked where we got it. I told him on the road. He asked us to get a brick and put it under the wheel and we didn't do it. We saw Kopper and Klein's driver coming up and he was all dirty.

*Q*. Do you know where the bend is in the road?

*A*. I believe there is a hill right there. It was dark and couldn't see that far. 20

*Q*. You know where the bend is? *A*. I believe there is a bend there, yes.

*Q*. Just this side of the bridge? *A*. Yes.

*Q*. Was it on the straight road or on the bend where this was? *A*. Straight.

*Q*. How far could you see at the point where this happened? *A*. I could see both of them and they were every bit of a hundred feet from me.

*Q*. How near the wagon were you when the collision took place? *A*. About a hundred feet. 30

*Q*. Right in front? *A*. Right in front, on the opposite side.

*Q*. When you say one hundred feet, was that as long as this room? *A*. Might have been a little bit longer than this room.

*Q*. Hundred feet measurement is on the angle you were on, or-- *A*. Right on the angle.

*Q.* What part of the wagon was struck by the machine? *A.* As far as I know in the rear.

*Q.* What part?

*A.* That I am unable to say, it happened so quick. We jumped aside, especially I did. I was first. I thought the horse was coming towards us. Soon as he hit the wagon it shoved the wagon against the horse and scared him and we jumped to the right side and the horse galloped up the road like a streak of lightning.

10 *Q.* Could you see the light? *A.* Yes.

*Q.* In the wagon? *A.* Yes.

*Q.* How far could you see that light? *A.* I could see that at lease two or three hundred feet in front of me.

*Cross Examination, by Mr. Strong.*

*Q.* The wagon was going toward you? *A.* Toward Woodbridge and I was walking towards Rahway.

*Q.* You were with Mr. Kenna? *A.* Yes, and

20 another fellow, Roger Sullivan.

*Q.* You are under oath to tell the truth, aren't you?

*A.* Yes, sir.

*Q.* You say that horse went down that road like lightning? *A.* I never saw a horse run away so fast in my life.

*Q.* How many have you seen? *A.* A good many.

*Q.* That was the fastest you ever saw? *A.* Yes, sir.

*Q.* As fast as lightning? *A.* I wouldn't say like

30 lightning; as fast as any ordinary horse could run.

*Q.* How long have you known these Kopper and Klein people? *A.* As long as I have been in Woodbridge.

*Q.* How long have you been in Woodbridge? *A.* At the Wheeler Works three years; I am working six years in the machinist business.

*Q.* Where did you work when you went to the

Wheeler Co.? *A.* As soon as I left school I went to Wheeler's.

*Q.* You are how old? *A.* Twenty-two.

*Q.* You saw the light two hundred feet away from you; did you measure that? *A.* No.

*Q.* About the same way that horse was going like lightning, eh?

(No answer)

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*Joseph Klein,* a plaintiff, being duly sworn, testified as follows: 10

*Direct Examination, by Mr. Brown.*

*Q.* You are one of the plaintiffs in this cause?

*A.* Yes, sir.

*Q.* Who is the other plaintiff? *A.* Herman Kopper.

*Q.* You are partners and were on the ninth day of May last? *A.* Yes, sir.

*Q.* Engaged in business at Woodbridge? *A.* Yes, sir. 20

*Q.* Grocery business? *A.* Yes, sir.

*Q.* Was this gentleman here, Mr. Lengyel, in your employ at that time? *A.* Yes, sir.

*Q.* Where was he on the evening of May 9th?

*A.* He left in the afternoon to go to Rahway to deliver orders as usual. It must have been around ten o'clock somebody rapped at the door and somebody said "here is your horse." He brought the horse in and the horse was all tangled up and pieces of line hanging off him, that's the harness. He was all excited and I could hardly handle him. He was bruised— 30

*Q.* Where?

*A.* On the side and the legs. I took my machine and tried to find the wagon. I went up St. George's avenue and I could not find the wagon. I looked with a search light. I knew the habit he had to avoid machines to take a side road where he could. I went

up a road, the first road when you go into Woodbridge. The curve is what we call Dead Man's Curve.

*Q.* It is a side road into Woodbridge proper; is it the road that goes past the school house?

*A.* No, that's not the road; it's the first street before Green street.

*Q.* Describe where it was when you passed the railroad tracks.

*A.* It is the first road to your left coming towards
10 Woodbridge. I went down that road and come up another side street and there I found the top of the wagon and there was a light there then; it was lit. It was alongside the wagon. Somebody must have taken it out. It was lighted and the string was on it, the same string, it was tied onto the wheel; somebody perhaps put it there for protection, somebody living around there. The fellow that brought up the horse he untangled the harness from the shafts.

*Q.* What was the condition of the wagon?

20 *A.* Demolished, broken. When it left home it was in good, perfect condition.

*Q.* What about the top? *A.* The top is broken, the top isn't any good; it's the sides that counts.

*Q.* The front part?

*A.* There is no front part. The wheels is there, the axle is bent; there is only two half shafts, that's all there is.

*Q.* How old is the wagon? *A.* Just about one year old.

30 *Q.* How much did you pay for it? *A.* I paid one hundred and twenty-five dollars, and I had it painted.

*Q.* How much did lettering cost you? *A.* Eighteen dollars.

*Q.* Painted and lettered for eighteen dollars?

*A.* Yes, sir.

*Q.* What was its condition at the time just before it was damaged? *A.* Good condition. I always keep my wagons in good condition.

*Q.* How old is the horse? *A.* About five, possibly six, you can't tell exactly.

*Q.* You have been buying horses how long?

*A.* I been in business twelve or thirteen years and I always buy my own horses.

*Q.* When did you buy this horse?

*A.* This horse I bought last year.

*Q.* What time? *A.* Mr. Kopper keeps a record of it.

*Q.* What month? *A.* I can't tell you.

*Q.* Summer or winter. *A.* Around summer time. 10

*Q.* What did you pay for it? *A.* Two and a half or two hundred and twenty-five maybe.

*Q.* Have you had the horse in the stable; did you do anything with him after that? *A.* We gave him first aid until the next morning. It was quite late.

*Q.* Then what did you do?

*A.* Called veterinary next day in the morning.

*Q.* Have you used him ever since?

*A.* He was laid up two weeks. Now he is nervous ever since. Can't use him in the grocery business. 20

*Q.* What business do you use him in.

*A.* We got a feed business. He is too nervous and all excited. Been ever since; you can't use him in the grocery business.

*Q.* What is the the result of this accident?

*A.* He is knuckled.

*Q.* What do you mean? *A.* The ankle is bigger than the other leg; that's the only way I know he is knuckled.

*Q.* Was he knuckled before this accident?

*A.* No, sir. 30

*Q.* How long had you been using that light in the wagon? *A.* Well, I tell you, they use it, sometimes they have three or four lamps in service. They keep them in the barn and generally leave one at home so if one is not clean enough they take a clean one instead because they have three or four in service.

*Q.* How far can you see that light.

*A.* I can see it further than an automobile light because it don't glare.

*Q.* How far, I am asking you? *A.* Two hundred yards or three hundred, I can't tell you.

*Q.* Indicate the distance. *A.* From here to the corner, where that street is blocked off.

Mr. Brown: Will you agree that that is three hundred yards to where it says "Street Closed" down there?

10 Mr. Strong: I am inclined to think it is about that.

*Cross-Examination by Mr. Strong.*

*Q.* Did you pay for that horse by check?

*A.* Yes, sir.

*Q.* Whom did you make the check payable to?

*A.* To the Perth Amboy Sale and Exchange Stables.

*Q.* When? *A.* Last year.

20 *Q.* Got the check here? *A.* My own check, the firm's check, rather.

*Q.* Firm's or your own? *A.* Kopper and Klein.

*Q.* This horse belong to the firm? *A.* Yes, sir.

*Q.* Whom did you hand the check to?

*A.* I mailed it to them.

*Q.* Two hundred and thirty-five dollars for a single horse? *A.* Two hundred and twenty-five dollars, I beg your pardon.

*Q.* For a single horse? Does that guarantee against

30 sickness? *A.* Not as I know of. Most every horse has a distemper when you first buy it.

*Q.* Doctor says it was sick.

*A.* That is not sickness; that you would call distemper from the change of climate.

*Q.* Whom did you pay that hundred and twenty-five dollars for the wagon? *A.* Same people.

*Q.* By check? *A.* Yes, sir.

*Q.* Firm's check? *A.* Yes, sir.

*Q.* Can you produce those checks? *A.* Not here.

*Q.* Why? *A.* I haven't got them with me.

*Q.* Why, didn't you have them? *A.* I didn't think it was necessary.

*Q.* You didn't think it necessary to prove what you paid for that wagon and that animal? *A.* I didn't.

*Q.* This was a firm check for the wagon also you say? *A.* Yes, sir.

*Q.* What kind of a lamp was this you had?

*A.* A lantern it is. 10

*Q.* Lantern? *A.* Yes, sir.

Mr. Strong: That's all.

By Mr. Brown: That is our case, if your Honor please.

Mr. Strong: If your Honor please, I move to non-suit the plaintiffs on the ground, first, that no negligence on the part of the defendant has been shown, and in the second place, that the plaintiff has been shown to have been guilty of contributory negligence by his own testimony, that is to say, this driver was negligent and the negligence of their driver is the plaintiffs'. 20

The Court: In what way?

Mr. Strong: For these reasons, that he hadn't in or on his wagon the sort of light that the statute requires that all vehicles shall carry at night, and it was not hanging in the position in which vehicles are required to carry lanterns at night. That being so, the wagon on the highway was in fact a public nuisance. So, I move for a judgment of non-suit. 30

The Court: Non-suit denied.

Mr. Strong: Also, if the court please, on the ground that damages as claimed have not been established by legal testimony in proof of damages properly before the court.

The Court: Motion denied, Senator.

Mr. Strong: Your Honor denies the motion?
The Court: Yes, sir.
Mr. Strong: May I take an exception?
The Court: Exception allowed.

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## DEFENDANT'S CASE.

*Sebastian Polgar,* a witness produced in behalf of the defendant, being duly sworn, testified as follows:

10

*Direct Examination by Mr. Strong.*

*Q.* You drove this automobile at the time it ran into the wagon of Kopper and Klein? *A.* Yes, I drove the automobile.

*Q.* Tell us how it happened.

*A.* Well, I am right side the road; I come to hill; the road is turn like that; I hit right there; I don't see wagon that time.

20 *Q.* Why? *A.* I didn't see any light on there.

*Q.* If there had been a light on there would you have seen it? *A.* If I see a light I wouldn't hit it.

*Q.* Were you going fast or slow?

*A.* Going slow, six miles an hour, pretty slow. One automobile going down hill it take my eye out, and I wouldn't go very fast that way; I am go very slow.

*Q.* What was the first you knew about hitting it?

*A.* I don't know about that.

*Q.* What happened when you hit the wagon; what
30 did the wagon do when you hit it? *A.* My light was all broke down when I stopped there.

*Q.* Before you hit the wagon did you have lights?

*A.* I got four lights on my truck.

*Q.* Good lights? *A.* Yes.

*Q.* With the lights you had you could easily see?

*A.* Three or four hundred feet I could see.

*Q.* Could you see the road in front of you with these lights? *A.* Sure.

*Q.* What is three hundred feet? *A.* That corner (indicating).

*Q.* Where they have the street closed? *A.* More than that.

*Q.* And if you had seen that wagon three or four hundred feet away from you could you have stopped?

*A.* Well, I wouldn't hit it; I would pass on the side.

*Q.* Was there anybody there when this happened?

*A.* Later, about five minutes three or four fellows come there. 10

*Q.* They came up afterwards? *A.* Yes, sir.

*Q.* They said you wouldn't talk to them.

*A.* They said, "what's the trouble," I didn't know anything about it; I hit something but I didn't see what I hit.

*Q.* The wagon and horse were not there?

*A.* He was away that time.

*Q.* He ran away? *A.* I didn't see whether he ran away or what he did.

*Q.* Did the driver of the wagon come back? 20

*A.* About ten or eleven minutes later.

*Q.* What did he say? *A.* He said you hit me. I say I don't know. He take name and I said all right. I start and he said he want to go home and I said sit here and I take you home. He stayed until it was the corner and I leave him, and I started and he walk home and I come home, see?

*Q.* How did you hit that wagon? *A.* I couldn't hit it hard, just light, that's all. Couldn't hit it hard. The light is just broke down, that's all; it cut him, what you call that to go to the light, rubber pipe? 30

*Q.* Hose? *A.* Yes; it's broke, won't light no more; got to have two lights to light that car.

*Q.* One man says he handed you a light, what about that? *A.* I stopped the machine, I can stop it very fast, and I hold the truck like that with my hand, and I stuck to the machine, and the fellows come and pick up the light and give it to me.

*Q.* What light? *A.* Big light in front of machine.

*Q.* The light that you say was knocked off the machine? *A.* Yes.

*Q.* What part of the light? *A.* The whole big light up front.

*Q.* Were you looking out in front of you and driving the machine? *A.* All the time in front; I don't look on the side; I might drive in the ditch and kill myself; I look all the time straight.

10 *Q.* If that wagon had a light where it could be seen you would have seen it? *A.* If it had a light I could see it.

*Q.* If it had a white light? *A.* Yes, if he had a white light, I see him.

*Cross Examination by Mr. Brown.*

*Q.* This was a straight road, wasn't it?

*A.* I don't see whether this road is straight or not, I don't know, I went down in the morning.

20 *Q.* What time did you start in the morning?

*A.* About four o'clock I came to the house.

*Q.* You went to work at four o'clock that morning?

*A.* And I went to Brooklyn with load.

*Q.* Anybody with you? *A.* The people came with me to pay the fare and everything.

*Q.* This light was fastened with little iron rods?

*A.* Yes.

*Q.* Wasn't that braced with another rod?

*A.* Oh, no; just like that (describes letter "u") and

30 then it hang on.

*Q.* The spring goes like that (indicating)?

*A.* No.

*Q.* How far does the spring extend in the front of the car? *A.* In front about like that (indicating).

*Q.* Two feet? *A.* One foot and a half.

*Q.* You have no trouble seeing with that light; you can see three or four hundred feet, can you? *A.* Sure.

*Q.* Is it a big headlight? *A.* Big headlight on the front.

*Q.* Then you have the gas to feed the lights, the gas you turn on with a key? *A.* Yes.

*Q.* You didn't have any light after you struck the wagon? *A.* It's no good after.

*Q.* And all the gas had gone? *A.* I shut it down, the gas; I heard it go (witness makes buzzing noise), and I shut him off. I had two lights up front, little oil lamps. 10

*Q.* When did you put that tank in there? *A.* I don't know; the boss put it up.

*Q.* The tank before it goes out altogether, goes down low for five or six hours; were your lights going down?

*A.* It goes down all the time.

*Q.* When did you first notice that? *A.* I learned that; I worked in a garage.

*Q.* When you first get the tank and put it on, it is bright? *A.* Yes.

*Q.* Then as you use the light the pressure goes off, 20 do you know what pressure is? *A.* Yes.

*Q.* And then it goes down low and the lights go out, and then you get a new tank? *A.* Yes.

*Q.* How long were these lights going down; could you see them going down? *A.* About an hour I could see it.

*Q.* At what place did you notice it, Newark?

*A.* The other side.

*Q.* The other side of Newark. Then you noticed the lights going down? *A.* I see it every morning, the 30 boss told me, I put it a couple of weeks, and that's first time I use that tank, that's a full tank.

*Q.* You didn't have any lights after the accident?

*A.* Two lights.

*Q.* Where? *A.* In front. Just the same as the big lights.

*Q.* Isn't is a fact that you didn't have any big lights?

*A.* One fellow give me a match in Newark. I come

to cigar store and I say, please give me a match I want to light my truck and a smoke.

*Q.* These little lights, you didn't light them?

*A.* Yes, I light the little and big too.

*Q.* Oil lights? *A.* Yes.

*Q.* These big lights; you could see three or four hundred feet; they were a very bright light?

*A.* I put soap on one half glass, didn't have too big shine.

10 *Q.* You can see a man walking three hundred feet away? *A.* Yes, easy two hundred and fifty.

*Q.* How far can you see a wagon? *A.* Two or three hundred feet; that's easy, but my light is turned this way (indicating to side) and the road is going up hill, and my lights turned this way, that's when it hit.

*Q.* That wasn't a sharp turn there? *A.* No, not big turn.

*Q.* Just a round turn? *A.* A round turn.

*Q.* You had passed that turn? *A.* I don't think I
20 was.

*Q.* You had just passed the turn? *A.* I was about the middle.

*Q.* Just at the turn? *A.* Yes, sir.

*Q.* Was this wagon on the right side?

*A.* Yes, and I was on the right side too.

*Q.* I suppose you were looking straight up the road?

*A.* I sit in the automobile, I got my foot on the clutch all the time and the brake; I sit that way down in my seat; I don't sit this way (craning his neck for-
30 ward).

*Q.* How is it that you couldn't see this wagon? If you could see good and this wagon was going in front, even it it had no light, you could see it?

*A.* Yes, sir; sure.

*Q.* Why didn't you see this wagon then?

*A.* Because the road is turned.

*Q.* When you go around a curve don't you watch?

*A.* Sure, and I go slow; the other automobile coming down take my eye out, and I can't see.

*Q.* How fast were you going? *A.* Six miles an hour.

*Q.* How fast can you go? *A.* Sixty miles an hour, but I don't want to go that fast.

*Q.* What kind of a machine is it? *A.* A truck.

*Q.* How fast do you drive? *A.* I drive slow; about twenty miles is fastest I go any time.

*Q.* You don't look at your lights, you look in the dark, when you go around a curve? *A.* My lights go 10 into field and I look this way a little because I must go on the road.

*Q.* Don't you know that going six miles an hour you could see an object in front of you without a light?

*A.* I could see him easy.

*Re-Direct Examination by Mr. Strong.*

*Q.* You mean with a light? *A.* Yes, he didn't have a light, and I couldn't see at all.

*Q.* Where did you go? *A.* Brooklyn. 20

*Q.* Over on the boat to Brooklyn and drove in Brooklyn? *A.* Yes, on the boat.

*Q.* Across New York? *A.* Yes, just a little bit.

*Q.* Did you get any sleep, did you have any rest, did you go to bed or lie down? *A.* I went to sleep at night; I was going early in the morning and the boss told me to go early for the people and load up the truck.

*Q.* What time did you go to bed? *A.* About ten o'clock, I guess.

*Q.* And got up at four? *A.* Yes. 30

*Q.* And when was it you got sleep after that?

*A.* I didn't sleep after that.

*Q.* And where did you say your lights started to go low?

The Court: I don't think he said that at all. I don't think he understood that at all. You might ask him.

*Q.* Were your lights all right at the time you hit this wagon? *A.* Sure. Got all the lights I got. I got four lights.

*Q.* Were they burning all right? *A.* Burning very good.

*Q.* Burning very good? *A.* Sure.

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*John F. Bernhardt,* the defendant, being duly sworn, testified as follows:

10

*Direct Examination by Mr. Strong.*

*Q.* Mr. Bernhardt, when did you first hear of this accident? *A.* That same night that it occurred.

*Q.* How did you hear? *A.* Heard it from the driver.

*Q.* Your driver? *A.* Yes, sir.

*Q.* Then what did you do? *A.* What did I do? Why, I let the matter go for the night.

*Q.* The next morning what did you do?

20 *A.* The next morning I received a telephone from Mr. Klein here.

*Q.* Then what? *A.* I agreed to him that I would come down and look the situation over which I did.

*Q.* What did you find? *A.* I went to his place at three o'clock and waited until eight. At eight he took me out to look the thing over.

*Q.* Waited from three until eight? *A.* Yes. He showed me the wagon which was broke in two places, the front wheels in one place and the body and hind

30 wheels in another place. I inquired as to where the automobile hit the wagon and he showed me a mark on the tailboard and said it must have hit there. I said all right and I asked him where the light was. He said he didn't know where it was, and that there was always a light in the wagon. He said he didn't know where it was; he said somebody carried it away.

*Q.* Was there any sign of a light, any bracket or place to carry a light? *A.* Not that I saw.

*Q.* Did you see the horse? *A.* I saw the horse.

*Q.* Have you in your business bought and sold many horses? *A.* I have never done anything else but work with horses.

*Q.* How old are you? *A.* Thirty-eight.

*Q.* Have you bought and sold them? *A.* Yes, sir.

*Q.* What sort of a horse did that look to you to be?

Mr. Brown: I object unless he qualifies.

The Court: He has qualified him.

10

*By Mr. Brown.*

*Q.* How many horses have you bought in your life?

*A.* Anywhere from one to a hundred or two hundred.

*Q.* In thirty-eight years; how many in the last five years? *A.* I imagine about twenty-five.

*Q.* Did you buy any horses during 1915 and 1916?

*A.* Yes.

*Q.* How many? *A.* This year I bought one, that is, 1916; last year I bought three.

20

*Q.* Your own use? *A.* My own private use.

*Q.* You don't deal in horses to buy and sell?

*A.* Not as a business.

*Q.* The only experience you have had is buying horses for your own use, and that is how many years?

*A.* Twenty-one years now.

*Q.* That you have been using horses? *A.* Yes, sir.

Mr. Brown: I don't think the man is qualified.

*Mr. Strong* (continuing direct examination).

30

*Q.* You are a contractor, Mr. Brown; how many horses do you own at the present time?

*A.* Seven.

*Q.* What in your judgment was the value of that horse if he wasn't injured at that time? *A.* I imagine about a hundred and fifty dollars.

*Q.* What was his appearance as to lameness or injury? *A.* He appeared to be a little lame in one hind leg.

*Q.* Was it or not lameness from which he would apparently recover? *A.* From what I saw of the horse I imagined that it was something from which he might not recover, but something that had been going on for some time. It looked to me like an overgrowth.

*Q.* What would have been the value of that wagon if it hadn't been broken at that time?

Mr. Brown: He hadn't seen it before the accident.

10

The Court: I will let him answer. Go ahead.

*A.* Value differs. I bought a two horse truck for fifteen dollars.

The Court: Did you know this wagon of Kopper and Klein's.

The Witness: Not any more than I saw it there.

*Q.* What was your judgment of a wagon used as much as that had been until the time of the injury?

20

Mr. Brown: That is very speculative and not evidential.

*A.* I have seen grocery wagons sold at a sale for thirty dollars.

*Q.* In your judgment, what was a wagon like that worth in the open market just before it was broken?

*A.* About twenty-five or thirty dollars.

*Q.* What makes you think that it wasn't worth more?

*A.* The wagon didn't show up good in paint, the

30

wheels showed a sign of wear and that's the foundation of a wagon, the wheels.

*Q.* They showed wear where? *A.* In the tires.

*Q.* How old a horse did he seem to be? *A.* About nine years old.

*Cross Examination by Mr. Brown.*

*Q.* Of course, you don't know exactly how old he was? *A.* Don't know exactly, no, sir.

*Q.* He may have been seven year of age?

*A.* Well, my opinion is that he was nine.

*Q.* He may have been seven; you may have made a mistake? *A.* That could happen.

*Q.* When you say that you imagine that the horse was worth a hundred and fifty dollars, why do you say imagine? *A.* That's my opinion that I formed at the time I looked at him. 10

*Q.* Of course, you can't tell what he was worth before he was damaged, can you?

*A.* Sure you can.

*Q.* You say that if you see a horse that has been in a collision and you see him in a stable alarmed and excited bearing earmarks of having been in a runaway, you can tell the value before that happened?

*A.* He had a few marks on him. 20

*Q.* And he was excited? *A.* A little, yes, sir.

*Q.* You saw him at night? *A.* Between three and four o'clock in the afternoon.

*Q.* Standing in the stable? You didn't take the horse out to see how he stepped? *A.* The man who works across the way took him out.

*Q.* He was lame, quite lame? *A.* Slightly lame.

*Q.* The horse may have cost two hundred and twenty-five dollars and may have been valued at that?

*A.* I have nothing to say as to what the horse cost. 30

*Q.* He may have been worth that but you imagined he was worth one hundred and fifty as far as your experience goes? *A.* Yes, sir.

*Q.* You don't know the cost of the wagon?

*A.* No.

*Q.* And you have never bought grocery wagons in your business? *A.* I generally buy anything that's a bargain or that I think is.

*Q.* You never bought a new grocery wagon?

*A.* I bought a new milk wagon once.

The Court: What's the use of continuing that thing any longer.

Mr. Strong: That's our case.

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## REBUTTAL.

10 *Joseph Klein,* recalled.

*Direct Examination by Mr. Brown.*

*Q.* Did Mr. Bernhardt in conversation with you say anything about this being an old ailment of the horse, this lameness? *A.* He didn't say anything. He said all right I will go down and I took him out to the fast line for him to get a car and he said he was going to keep this matter out of court, and I waited and waited, but he never came down.

20 *Q.* Did he make any claim to you for the damage to his machine? *A.* No, sir.

*Q.* The harness that was on the horse, what was the matter with that? *A.* I showed it to Mr. Bernhardt.

Mr. Strong: This is not rebuttal.

The Court: This is not rebuttal at all.

Mr. Brown: I omitted this on direct.

Mr. Strong: I will withdraw the objection if I can rebut; I don't want to interfere.

30 *Q.* Is the harness there? *A.* There torn apart; the only thing left is the bridle that goes on the horse.

*Q.* How much did that harness cost you?

*A.* I don't exactly remember the price.

*Q.* What is the price of harness of that kind?

*A.* From thirty-two to thirty-five dollars.

Mr. Strong: When it is new?

The Witness: Yes, sir.

*Q.* How old is this harness? *A.* One and a half years old.

*Q.* Have you bought wagons same as the one damaged? *A.* Yes, sir.

*Q.* Did you buy another wagon? *A.* A lighter wagon.

*Q.* How much did that cost you? *A.* A hundred and twenty dollars.

*Q.* And you bought it in place of this one?

*A.* Yes, sir. 10

*Q.* Have you the bill with you?

Mr. Strong: I object.

The Court: We are through with that.

*Cross Examination by Mr. Strong.*

*Q.* Did you say Mr. Bernhardt never came to see you? *A.* Never came after that.

*Q.* Did you find out how much it cost to repair that harness? *A.* No, sir. 20

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*John F. Bernhardt,* recalled.

*Direct Examination by Mr. Strong.*

*Q.* State whether or not you said anything to Mr. Klein about the nature of the horse's injury?

*A.* I said to him that that might have been coming on for some time. He said he didn't know, he would have the doctor examine him.

*Q.* What sort of harness was it? *A.* Ordinary business harness, as we call it. 30

*Cross Examination by Mr. Brown.*

*Q.* What would it cost to repair the damage?

*A.* To the harness?

*Q.* Yes. *A.* I can't say.

*Q.* Fifteen dollars? *A.* No, no, it wouldn't cost that.

The Court: Five dollars?

The Witness: Probably five.

*Q.* What was broken? *A.* The traces were broken and the breeches and the lines; I think that's what he showed me.

*Q.* What about the saddle? *A.* I don't remember the saddle being broke.

*Q.* The saddle that holds the shafts up? *A.* I know what the saddle is, but that wasn't broken.

10 *Q.* It wasn't broken or you don't remember?

*A.* I don't remember seeing anything broken on the saddle.

*Q.* Don't you think it would take at least ten dollars to repair that? *A.* All the repairs is stitches; it don't cost a lot for that.

*Q.* You would repair the saddle with stitches?

*A.* He had the saddle in his hands and it wasn't in two pieces, if that is what he means.

*Q.* What made you say "two pieces"?

20 *A.* When he said the saddle was broke, I don't remember seeing the saddle broke.

*Q.* Wasn't it because Mr. Klein did show you the saddle, and it was broken in two pieces? *A.* It wasn't broken at all in two pieces.

*Re-Direct Examination by Mr. Strong.*

*Q.* Would it cost as much as five dollars to repair the harness? *A.* I imagine it would cost five dollars.

*Q.* How much was your automobile injured?

30 *A.* Nothing but one headlight.

*Q.* How much to repair that? *A.* In the neighborhood of three dollars, I believe.

*Re-Cross Examination by Mr. Brown.*

*Q.* You didn't have that repaired? *A.* No, sir; I have it just as it is.

*Q.* You don't use it? *A.* No, not that same lamp.

*Joseph Klein,* recalled.

*Direct Examination by Mr. Brown.*

*Q.* Did you show Mr. Bernhardt the saddle?

*A.* Yes.

*Q.* What is the matter with it? *A.* Broke right in two.

*Q.* You showed him that? *A.* Picked it right up in my hand.

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MR. STRONG SUMS UP TO THE COURT.

Mr. Strong: If your Honor please, here is practically how this accident happened: Here is a driver that starts in the morning and goes to Brooklyn. He reaches Brooklyn by going through New York. He drives through those great cities with their traffic in perfect safety, and he comes back the same way and into New Jersey, and he drives safely along the highway until he comes to Rahway Bridge near Woodbridge. After all that traveling he is driving along without accident or the thought of any until he runs into this wagon, with only such force as does three dollars' worth of damage to his lamp. There is no pretense that the impact of that automobile against this wagon caused this damage.

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The Court: It was caused by the horse running away.

Mr. Strong: Yes, and men that drive horses get up early in the morning and they are up to ten o'clock at night and they get tired and if they have finished their work they drop to sleep and let the horse make his way along. That couldn't be done for five seconds with an automobile. He has got to be on the job or he will go in the gutter. When that wagon was struck the driver was startled and jumped out of the wagon instead of taking care of the horse. Even if the runaway was

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caused by the impact of the automobile against the wagon, still there was in this case no negligence for the reason that this man was going cautiously along the road with his lights lighted and he was making this turn at a reduced speed because his eyes had been dazzled by an automobile going along without dimmers, and the testimony of the plaintiffs doesn't say he was going fast, this man who had been going through all kinds of traffic conditions all day. It wasn't as if this
10 wagon was on the straightaway road, but he was on this turn.

The Court: There is no turn that is at all sharp; there is a bend in the road.

Mr. Strong: Some sort of bend. I mean to say there is a bend here. Both sides spoke of it. He was going around there slowly and he didn't see the wagon. Now, he was going around that bend he says he had to keep his eyes open because he would have gone into the ditch, and he says if there had been a lantern he
20 would have seen it. He means if there had been one displayed. What's that testimony that the lantern had been hung from the top and the side?

The Court: From the roof and tied to the side to keep it there, and from swinging laterally.

Mr. Strong: Is that the way that a wagon should be protected? It is a most unprecedented contention of my friend for such rules of law as that. Now, if that light was a little to the side or in the centre, in making the turn it would be pretty obscure to the one coming
30 around the turn in back, and he says positively that there was no light displayed. Now, the statute provides he must have a light. Furthermore this was a white light.

The Court: I don't remember what the statute is about that. Does the statute say they must carry a red light?

Mr. Strong: It must be conspicuously displayed.

The Court: The ordinary lantern is the method used by farmers.

Mr. Strong: A good many will get by without any light and get away with it.

The Court: As I recall the horse drawn vehicle must display a light.

Mr. Strong: It was seen by the man in front which would indicate that it was pretty near the front.

The Court: They also said they saw it after.

Mr. Strong: The wagon was going zig zag from side to side when they claim they saw the light. 10

The Court: How do you account for the fact that this automobile with four headlights—two oil and two gas lamps—in good condition and going slowly, didn't see this wagon, light or no light.

Mr. Strong: Because it was making this curve. That is the testimony. His lights went over in the field on the curve. Your Honor may have in mind some other part of the road.

The Court: Suppose I reserve decision in this case and we could go out and look at the place. 20

Mr. Brown: There is only one curve in the road.

The Court: Suppose we go out there?

(Here follows Mr. Strong's Requests to Find and Colloquy with the Court.)

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MR. BROWN ADDRESSES THE COURT. 30

Mr. Brown: There are three defences, one is the light, the next the curve, the next that the automobile glare interferred with or obstructed this man's view. There is no corroboration—

The Court: The glare; there has been very little said about that. Kenna said before they came along there was an automobile passing—I took it some minutes before.

Mr. Brown: The driver of the truck says it also. The automobile passed before he passed the curve. The disinterested witnesses have testified to what happened, but they can't testify to what this man saw. The man said he didn't get there until five minutes after.

The Court: It is very evident he was right there. From their testimony they were there when it happened because when they were talking to the driver he didn't know what he struck.

10 Mr. Brown: There is no doubt about this man driving carefully on the right hand side of the road.

The Court: No question of both going slowly on the proper side of the road.

Mr. Brown: I don't know whether Mr. Strong can suggest a more conspicuous place for the light. I suppose if it was a fancy equipped one it would be up near the driver's seat.

Mr. Strong: Fancy people do all kinds of things.

Mr. Brown: I submit, according to the testimony of 20 this case, that the light was there, and even if it wasn't there, while that might be an element of negligence, the court must so find.

The Court: I think there was a light there.

Mr. Brown: Suppose there wasn't a light there—your Honor is familiar with that curve?

The Court: Is there a curve?

Mr. Brown: There is a bend in the road; you don't have to slacken speed, but it isn't dead straight.

The Court: Is it thirty degrees?

30 Mr. Brown: No, it isn't thirty degrees: just as the driver described it; he curved around in a sort of circle, a bend in the road, a little turn. It is such a turn, if the Court please, that the man doesn't have to slacken his speed. The witnesses all testified, that is, for the plaintiffs, that it didn't happen at the curve, but suppose it did happen at the curve as he says he should exercise more care in going around the curve and he is

called upon to exercise more care. Even if he didn't have any light he could have stopped his car in time, if he was looking. If the Court please, he is not a competent driver at least. My opponent has said his skill was tried in his running in traffic all day. Yes, but after going in traffic all day he might have relaxed and gone along those miles, and perhaps he didn't watch where he was going. Many men accustomed to automobile driving can from second sight and the involuntary motion of the muscles guide their cars. 10

The Court: There is no evidence of that.

Mr. Brown: It is merely inferential. I submit there is no negligence on our part. The defendant's driver says he doesn't know how it happened. Now, the lights follow in the same way the machine is going, that is, in a straight line in front of the machine. I submit, if the Court please, we are entitled to damages. Mr. Campion is a mere disinterested man. Mr. Klein says the wagon cost one hundred and twenty-five and eighteen dollars to paint it. Dr. Lockwood is a reputable 20 veterinary, and Mr. Bernhardt, I think he saw the wagon and the horse. He doesn't say the wagon or the horse is injured to the extent that Doctor Lockwood said it was. And then there is a damage of three or four dollars for doctor's bills.

(Here follows Mr. Strong's Further Requests.)

(Court and counsel then agree to view the road in dispute.)

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THE DISTRICT COURT OF THE CITY OF PERTH AMBOY.

HERMAN KOPPER and JOSEPH KLEIN, partners trading as Kopper & Klein,
*Plaintiffs,*
v
10 JOHN F. BERNHARDT,
*Defendant.*

Transcript of shorthand notes of Defendant's Requests to Find in the above entitled cause, heard by Hon. Charles C. Hommann, Judge, on Wednesday, the twenty-sixth day of July, A. D. 1916.

Mr. Strong: There are certain requests to find I would like to make at the conclusion of Mr. Brown's argument.

20 The Court: Give them to me now.

Mr. Strong: By the way, I want to say as to the damages here that the case of Smith v. Smith—and I am not joking when I say that—it is held in that case that merely because a thing is sworn to puts no obligation upon the court to accept it as the truth, and as to the horse here there is no damage shown to the plaintiffs; they are still using him.

The Court: The testimony as to damage that I think most of here is the testimony of the witnesses not 30 concerned in the thing at all. Campion says the wagon was worth seventy-five dollars on the open market before it was destroyed, and Lockwood says it took fifty dollars from the value of the horse. That is the measure of damage, I think, of that.

Mr. Strong: These people depend upon the plaintiffs for business favors.

The Court: There is no testimony of that.

Mr. Strong: Each testified he had been working for these plaintiffs.

The Court: They work for everybody. I don't think you can claim it interests them hardly.

Mr. Strong: The testimony is that this horse was laid up only two weeks and they have not parted with him.

The Court: Doctor Lockwood tells us the horse has an injury that is more or less permanent.

Mr. Strong: He is not even sure as to that. 10

The Court: He is the only one, I think, who gives a definite idea.

Mr. Strong: I respectfully request your Honor to find: first, no negligence on the part of the defendant has been proved; second, that contributory negligence on the part of the plaintiffs has been proved; third, that if the accident resulted from the glare of the lights of another automobile in the eyes of defendant's driver, the plaintiffs can not recover; fourth, no damage to the plaintiffs by reason of the injury to the horse has been 20 shown; fifth, that the accident was caused by the failure of the plaintiffs to have a light on their wagon as required by law; sixth, that they cannot recover as the damage was caused by a runaway, and that was due to the plaintiffs' driver jumping from the wagon, and that he should have remained in the wagon; and I would further request your Honor to find that no damage has been shown or proved to their horse, wagon and harness, or any property for which damage is claimed; and last I ask your Honor to give judgment in favor of the 30 defendant.

(Then follows the argument of Mr. Brown, for the plaintiffs.)

Mr. Strong: I have two additional requests to find, if your Honor will allow me.

The Court: All right.

Mr. Strong: The Court is respectfully requested to

find that the plaintiffs' wagon was not equipped with such a light as the law requires; and the Court is requested to find that the plaintiffs' wagon did not display a light according to law.

If your Honor should find adversely, could I now be considered as taking a general exception to your Honor's failure to find as specifically requested to find?

The Court: Yes, sir.

Whereupon the defendant, by his counsel, filed a bill
10 of exceptions, which is hereby allowed and sealed accordingly.

Judge

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DISTRICT COURT OF THE CITY OF PERTH AMBOY.

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|---|---|
| HERMAN KOPPER and JOSEPH KLEIN, partners trading as Kopper & Klein, *Plaintiffs,* v JOHN F. BERNHARDT, *Defendant.* | In Tort. Exceptions. |

Attorney for defendant prays an exception in each instance to the failure of the Court to find each of de-
30 fendant's first, second, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth requests to find severally, as requested, which exceptions are allowed, signed and sealed accordingly.

C. C. HOMMANN, [L.S.]
Judge.

# NEW JERSEY SUPREME COURT.

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|---|---|
| HERMAN KOPPER and JOSEPH KLEIN, partners trading as Kopper & Klein, *Plaintiffs. Appellees.* vs. JOHN F. BERNHARDT, *Defendant. Appellant.* | On Appeal. Reasons for Reversal. |

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The following is a specification of the determinations and directions of the District Court of the City of Perth Amboy with respect to which the appellant is dissatisfied in point of law.

1. The District Court of the City of Perth Amboy refused the motion made on behalf of the defendant at the conclusion of the plaintiffs' testimony to order a judgment of non-suit.

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2. Said court refused the motion made on behalf of the defendant upon the conclusion of the evidence on both sides to give judgment in favor of the defendant.

3. Said court refused to strike out the following answer of the witness Lawrence Campion: "I would have to pay eighteen or twenty dollars."

4. Said court permitted the following question to be asked of the witness Seth Lockwood: "What would be the difference in the value?"

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5. Said court refused to find that there was no negligence on the part of the defendant proved.

6. Said court refused to find that contributory negligence on the part of the plaintiffs had been proved.

7. Said court refused to find that if the accident resulted from the glare of the lights of another automo-

bile in the eyes of the defendant's driver, the plaintiffs could not recover.

8. Said court refused to find that no damage to plaintiffs had been proved by reason of the injury to the horse.

9. Said court refused to find that the accident was caused by the failure of the plaintiffs to have a light on their wagon as required by law.

10. Said court refused to find that the damage was
10 caused by a runaway due to the negligence of plaintiffs' driver in jumping from the wagon when it was his duty to have remained thereon.

11. Said court refused to find that no damage had been proved to the horse, wagon and harness or to any of the property claimed to have been damaged.

12. Said court refused to find that the plaintiffs' wagon was not equipped with such a light as the law requires.

13. Said court refused to find that the plaintiffs'
20 wagon did not display a light according to law.

14. Said court gave judgment for plaintiffs when it should have given judgment for the defendant.

THEODORE STRONG,
Attorney for Appellant.

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NEW JERSEY SUPREME COURT.

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|---|---|
| HERMAN KOPPER and JOSEPH KLEIN, partners trading as Kopper & Klein, *Plaintiffs, Appellees,* v. JOHN F. BERNHARDT, *Defendant, Appellant.* | On Appeal. |

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ADDITIONAL REASONS FOR REVERSAL.

The following reasons for reversal are by consent of plaintiff's attorney, added to those already on file, and submitted for the consideration of this Court as though filed within time, viz:

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15. Said Court gave judgment for plaintiffs for a larger amount of damages than was legally proved.

16. Said Court gave judgment for plaintiffs for a larger amount for damages to the wagon than was legally proved.

17. Said Court gave judgment for plaintiffs for a larger amount for damage to the horse than was legally proved.

18. Said Court gave judgment for plaintiffs for a larger amount for damage to the harness than was legally proved.

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19. Said Court failed to make any finding in response to defendant's request to find that no negligence on the part of the defendant had been proved.

20. Said Court failed to make any finding in response to defendant's request to find that contributory negligence on the part of the plaintiffs had been proved.

21. Said Court failed to make any finding in response to defendant's request to find that if the accident resulted from the glare of the lights of another automobile in the eyes of defendant's driver, the plaintiffs could not recover.

22. Said Court failed to make any finding in response to defendant's request to find that no damage to the plaintiffs by reason of the injury to the horse had been shown.

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23. Said Court failed to make any finding in response to defendant's request to find that the accident was caused by the failure of the plaintiffs to have a light on their wagon as required by law.

24. Said Court failed to make any finding in response to defendant's request to find that plaintiffs could not recover as the damage was caused by a runaway and that was due to the plaintiffs' driver jumping from the wagon, and that he should have remained in the wagon.

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25. Said Court failed to make any finding in response to defendant's request to find that no damage had been shown or proved to their horse, wagon and harness, or any property for which damage was claimed.

26. Said Court failed to make any finding in response to defendant's request to find that the plaintiffs' wagon was not equipped with such a light as the law required.

27. Said Court failed to make any finding in response to defendant's request to find that plaintiffs' wagon did not display a light according to law.

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THEODORE STRONG,
Attorney for Defendant.

I consent to the filing of these Additional Reasons as of the time the original reasons were filed

11/3/16.

THOMAS BROWN,
Atty. of Plaintiffs.

*Exceptions.*

DISTRICT COURT OF THE CITY OF PERTH AMBOY.

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|---|---|
| HERMAN KOPPER and JOSEPH KLEIN, partners trading as Kopper & Klein, *Plaintiffs,* v. JOHN F. BERNHARDT, *Defendant,* | In Tort. Exceptions. |

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Attorney for defendant prays an exception in each instance to the failure of the Court to make any finding severally in response to each of the defendant's first, second, third, fourth, fifth, sixth, seventh, ninth and tenth requests which exceptions are allowed, signed and sealed accordingly.

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C. C. HOMMANN, (L. S.)
Judge.

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# NEW JERSEY SUPREME COURT.

November Term, 1916.

HERMAN KOPPER, et al,
*Appellees,*
vs.
JOHN F. BERNHARDT,
10 *Appellant.*

Submitted December 15, 1916. Decided March 7, 1917.

On Appeal.

Before Justices Garrison, Parker and Bergen.

For the Appellant, Theodore Strong, Esq.
For the Appellees, Thomas Brown, Esq.

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## OPINION OF SUPREME COURT.

PER CURIAM:

This action for damages grew out of a rear end collision between an automobile truck of the defendant and a horse and wagon of the plaintiff.

The District Court sitting without a jury gave judgment for the plaintiff, from which the defendant appealed. The questions argued by the appellant were raised in the court below by motions or requests to find.

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The first contention is that the driver of appellee's team was negligent in not having such a light as is required by the statute. The judgment rendered by the Court was in legal effect a finding against this contention, and there was testimony to support such a finding.

The next contention is that the defendant was not negligent. There was a clear conflict of testimony upon

this question, and the decision by the Court below is therefore not subject to review. The same observation applies to the contention that the damages were excessive.

The last contention is that the Court did not make a specific finding as to each request presented by the appellant. The judgment was the Court's answer, and the benefit that arises from the making of the request is the right it gives to review the Court's action upon points that are subject to review upon appeal.

Finding no error as to any matter of law, the judgment of the Perth Amboy District Court is affirmed.

# NEW JERSEY SUPREME COURT.

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|---|---|
| HERMAN KOPPER AND JOSEPH KLEIN, partners trading as Kopper & Klein, *Plaintiffs-Appellees,* vs. 10 JOHN F. BERNHARDT, *Defendant-Appellant.* | On Appeal from District Court |

## RULE AFFIRMING JUDGMENT.

This cause having been argued at the November term of this court by Theodore Strong, counsel for the defendant-appellant, and Thomas Brown, counsel for the plaintiffs-appellees, and the Court having considered the same, and being of the opinion that the judgment 20 for the plaintiffs entered in the District Court of the City of Perth Amboy should be affirmed;

It is thereupon ordered and adjudged, that the judgment of the District Court of the City of Perth Amboy, from which an appeal was taken in this cause, be affirmed with costs, and that the record be remitted to the District Court of the City of Perth Amboy, to be proceeded with in accordance with this judgment, and practice of said Court.

30 Entered March 9, 1917,

On motion of

THOMAS BROWN,

Attorney of Plaintiffs-Appellees.

A true copy.

WM. C. GEBHARDT, Clerk.

# NEW JERSEY SUPREME COURT.

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|---|---|
| HERMAN KOPPER AND JOSEPH KLEIN, partners trading as Kopper & Klein, *Plaintiffs-Appellees,* vs. JOHN F. BERNHARDT, *Defendant-Appellant.* | On Appeal |

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## NOTICE OF APPEAL.

*To Thomas Brown, Esq., Attorney for Plaintiff:*

Take notice that the defendant appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in this cause, upon the following grounds:

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1. The District Court of the City of Perth Amboy refused the motion made on behalf of the defendant at the conclusion of the plaintiff's testimony to order a judgment of non-suit.

2. Said Court refused the motion made on behalf of the defendant upon the conclusion of the evidence on both sides to give judgment in favor of the defendant.

3. Said Court refused to strike out the following answer of the witness Lawrence Campion: "I would have to pay eighteen or twenty dollars."

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4. Said Court permitted the following question to be asked of the witness Seth Lockwood: "What would be the difference in value?"

5. Said Court refused to find that there was no negligence on the part of the defendant proved.

6. Said Court refused to find that contributory negligence on the part of the plaintiffs had been proved.

7. Said Court refused to find that if the accident resulted from the glare of the lights of another automobile in the eyes of the defendant's driver, the plaintiffs could not recover.

8. Said Court refused to find that no damage to plaintiffs had been proved by reason of the injury to the horse.

9. Said Court refused to find that the accident was caused by the failure of the plaintiffs to have a light on their wagon as required by law.

10. Said Court refused to find that the damage was caused by a runaway due to the negligence of the plaintiffs' driver in jumping from the wagon when it was his duty to have remained thereon.

11. Said Court refused to find that no damage had been proved to the horse, wagon and harness, or to any of the property claimed to have been damaged.

12. Said Court refused to find that the plaintiffs' wagon was not equipped with such a light as the law requires.

13. Said Court refused to find that the plaintiffs' wagon did not display a light according to law.

14. Said Court gave judgment for plaintiffs for a larger amount of damages than was legally proved.

15. Said Court gave judgment for plaintiffs for a larger amount for damages to the wagon than was legally proved.

16. Said Court gave judgment for plaintiffs for a larger amount for damages to the horse than was legally proved.

17. Said Court gave judgment for plaintiffs for a larger amount for damage to the harness than was legally proved.

18. Said Court failed to make any finding in response to defendant's request to find that no negligence on the part of the defendant had been proved.

19. Said Court failed to make any finding in response to defendant's request to find that contributory negligence on the part of the plaintiffs had been proved.

20. Said Court failed to make any finding in response to defendant's request to find that if the accident resulted from the glare of the lights of another automobile in the eyes of defendant's driver, the plaintiffs could not recover.

21. Said Court failed to make any finding in response to defendant's request to find that no damage to the plaintiffs by reason of the injury to the horse had been shown. 10

22. Said Court failed to make any finding in response to defendant's request to find that the accident was caused by the failure of the plaintiffs to have a light on their wagon as required by law.

23. Said Court failed to make any finding in response to defendant's request to find that plaintiffs could not recover, as the damage was caused by a runaway, and that was due to plaintiffs' driver jumping from the wagon, and that he should have remained in the wagon. 20

24. Said Court failed to make any finding in response to defendant's request to find that no damage had been shown or proved to their horse, wagon and harness, or any property for which damage was claimed.

25. Said Court failed to make any finding in response to defendant's request to find that the plaintiffs' wagon was not equipped with such a light as the law required.

26. Said Court failed to make any finding in response to defendant's request to find that the plaintiffs' wagon did not display a light according to law. 30

27. Because the Supreme Court affirmed the judgment of the Perth Amboy District Court, whereas said Court should have rendered judgment reversing the judgment of the said District Court.

THEODORE STRONG,
Attorney for Appellant.