

INDEX

	Page
Summons	1
Complaint	2
Answer	14
Reply to Answer of Defendant George Spencer	18
Postea	20
Notice of Appeal	21
Grounds of Appeal	22
Testimony	23
Motion to Non-Suit	68
Charge of the Court	81

WITNESSES FOR PLAINTIFFS.

John H. Sprouls:	
Direct	24
Cross	36
Recalled—Direct	70
Andrew J. Bruder:	
Direct	44
Cross	48
Redirect	48
Recross	48
Charles Alston:	
Direct	49
Cross	55
Redirect	59
Recross	60
George Spencer:	
Direct	63
Cross	63
Redirect	64
Virginia Sprouls:	
Direct	66

WITNESSES FOR DEFENDANTS.

	Page
John H. Sprouls:	
Direct	72
Cross	73
Michael J. Helmstetter:	
Direct	73
Cross	75
Joseph Spencer:	
Direct	76
Cross	77
Recross	78
Morris Bernstein:	
Direct	79

Summons.

10

Filed August 19, 1929.

State of New Jersey: To JAMES J. QUARTIER, trading as M. & Q. AUTO WRECKERS, CHARLES AUSTIN and GEORGE SPENCER:

(L.S.)

You are summoned to answer the annexed complaint of John M. Sprouls and Virginia Sprouls, in an action at law in the New Jersey

20

Supreme Court, Hudson Circuit.

And Take Notice, that unless you file your answer to said complaint with the Clerk of the New Jersey Supreme Court, at Trenton, New Jersey, within twenty days after service upon you of this writ and the annexed complaint, the plaintiffs may proceed in the suit and judgment may be entered against you.

Witness, WILLIAM S. GUMMERE, Chief Justice 30
of the New Jersey Supreme Court, at Trenton,
New Jersey, on the 23rd day of July, 1929.

FRED L. BLOODGOOD,
Clerk.

KINKEAD & KLAUSNER,
Attorneys of Plaintiffs.

40

Complaint.

NEW JERSEY SUPREME COURT

HUDSON CIRCUIT.

10	JOHN M. SPROULS and VIRGINIA SPROULS, Plaintiffs, vs. JAMES J. QUARTIER, trading as M. & Q. AUTO WRECKERS, CHARLES AUSTIN and GEORGE SPENCER, Defendants.	}	Action at Law. Complaint.
----	---	---	------------------------------

20

FIRST COUNT.

The plaintiff, John M. Sprouls residing in the City of Jersey City, County of Hudson and State of New Jersey, says that:

1. On or about February 24, 1929, the plaintiff was the owner of a certain automobile hereinafter referred.

30 2. On or about said date defendant, James J. Quartier, trading as M. & Q. Auto Wreckers was the owner of a certain automobile hereinafter referred to, bearing 1929 license number D-1364-5 New Jersey.

3. At all times hereinafter mentioned the defendant, George Spencer was the owner of a certain automobile hereinafter referred to bearing 1929 license number E-98075 New Jersey.

40 4. On or about said date the said automobile of the defendant, James J. Quartier, trading as

Complaint.

M. & Q. Auto Wreckers, was being driven by his agent and servant, Charles Austin.

5. On or about said date, the said automobile of the defendant James J. Quartier trading as M. & Q. Auto Wreckers was being driven by the said Charles Austin as the agent and servant of the said James J. Quartier, trading as M. & Q. Auto Wreckers in an easterly direction along Passaic Avenue, a public highway in the City of Newark and County of Essex and State of New Jersey, at or near the intersection of said Passaic Avenue and Brill Street in said city. 10

6. At said time and place the said automobile of the defendant, George Spencer was being driven in a westerly direction along the said Passaic Avenue in the said City of Newark, at or near the intersection of said Passaic Avenue and Brill Street in said city. 20

7. At said time and place, plaintiff was proceeding in his said automobile in front of the said automobile of the defendant, James J. Quartier, trading as M. & Q. Auto Wreckers, and driven by the said Charles Austin, when the said defendants then and there suddenly, carelessly and negligently collided with the automobile of the plaintiff, and because of the negligence of the defendant, George Spencer and the negligence of the defendants, James J. Quartier, trading as M. & Q. Auto Wreckers and Charles Austin, the automobile of the defendant, George Spencer collided with automobile of the plaintiff thereby seriously injuring him. 30

8. The negligence of the defendants, Charles Austin and James J. Quartier, trading as M. & Q. Auto Wreckers consisted in this: 40

Complaint.

(a) The defendant James J. Quartier, trading as M. & Q. Auto Wreckers did not use reasonable care in the selection of a proper agent and servant.

(b) Defendants drove said automobile at an unlawful and careless rate of speed.

10 (c) Defendants failed to use due and proper care in the operation of said automobile and control of the same was lost.

(d) Defendants did not keep a proper lookout for other automobiles upon the said highway, and did not control the motion thereof so as to avoid striking other automobiles upon said highway.

20 (e) Defendants failed to equip said automobile with proper brakes and other proper safeguards for the protection of other automobiles lawfully upon the highway.

(f) Defendants drove said automobile on the wrong side of the said public highway.

(g) Defendants did not operate their automobile at a reasonably safe distance from the automobile of the plaintiff.

30 (h) Defendants attempted to pass the automobile of the plaintiff without regard for the safety of the plaintiff and other automobiles lawfully upon said highway.

(i) Defendants did not equip their said automobile with proper safeguards for protection in inclement weather.

40 (j) Defendants operated said automobile in violation of the rules and regulations of the road, and laws of the State of New Jersey.

Complaint.

9. By reason of the careless and negligent acts of the defendants, James J. Quartier, trading as M. & Q. Auto Wreckers and Charles Austin, the plaintiff sustained severe injuries, and was hurt, cut, wounded, bruised and injured, internally and externally, in and about his body, face, head and limbs, he sustained a fracture of the nose, and lacerated wounds of his face and forehead, which scars and injuries are of a permanent and lasting nature, and he has suffered from the results of said injuries ever since that time. 10

10. By reason of the said injuries, the plaintiff suffered and will continue to suffer and undergo great pain and torment, his nervous system has been shocked and injured, he has been made and will continue to be made sick, sore, lame and disordered; he still suffers and will continue to suffer great loss by reason of his reduced earning capacity, he has lost and will continue to lose further losses by reason of his absence from his daily occupation, he has been forced and obliged, and will continue to be forced to pay out large sums of money for medicines and doctor's bills and other large sums in efforts to recover from his said injuries. 20

Plaintiff, John M. Sprouls demands against the defendants, James J. Quartier, trading as M. & Q. Auto Wreckers and Charles Austin the sum of Twenty Thousand (\$20,000) Dollars damages. 30

SECOND COUNT.

Plaintiff, John M. Sprouls residing in the City of Jersey City, County of Hudson and State of New Jersey, says that: 40

Complaint.

1. Plaintiff repeats the allegations of paragraphs 1 to 6 inclusive of the first count and makes them a part hereof.

2. By reason of the negligent, careless and unskillful manner in which the automobile of the defendant, James J. Quartier, trading as M. & Q. Auto Wreckers by his agent, Charles Austin, and the automobile of the defendant, George Spencer were then and there being operated and controlled, the same struck and ran into the automobile owned and driven by the plaintiff, and caused the said automobile of the plaintiff to be greatly damaged, and injuring the plaintiff.

3. Plaintiff repeats the allegations of paragraph 8 of the first count and makes them a part hereof.

4. By reason of the above premises the said automobile of the plaintiff was so damaged and incapacitated from its ordinary use and service that the plaintiff has been and will be forced to pay out and expend large sums of money for the repair and reconstruction of the same. As a further result, plaintiff, John M. Sprouls, has been deprived of the use of the same for a long space of time. As a further result the value of the said automobile of the plaintiff has been greatly depreciated by reason of the damages thereto. As a further result the plaintiff has been and will be compelled to pay out large sums of money in obtaining another vehicle to use in his ordinary business during the time the said automobile is being repaired.

Plaintiff John M. Sprouls demands against the defendants James J. Quartier, trading as M. &

Complaint.

Q. Auto Wreckers and Charles Austin, the sum of Five Thousand (\$5,000) Dollars damages.

THIRD COUNT.

Plaintiff, Virginia Sprouls, residing in the City of Jersey City, County of Hudson and State of New Jersey, says that: 10

1. Plaintiff repeats the allegations of paragraphs 1-2-3-4-5 and 6 of the first count and makes them a part hereof.

2. On or about the said date, the plaintiff, Virginia Sprouls became a passenger of the said automobile of the plaintiff, John M. Sprouls, at the invitation and request of the said John M. Sprouls, which automobile was proceeding in an easterly direction along Passaic Avenue in the City of Newark, County of Essex and State of New Jersey, at or near the point where said Passaic Street intersects Brill Street in said city. 20

3. By reason of the negligent, careless and unskillful manner in which the said automobiles of the defendants, James J. Quartier, trading as M. & Q. Auto Wreckers and the automobile of the defendant, George Spencer were then and there being operated and controlled, the same struck and ran into the said automobile owned and driven by the plaintiff, John M. Sprouls, and thereby seriously injuring the plaintiff, Virginia Sprouls. 30

4. Plaintiff, Virginia Sprouls, repeats the allegations of paragraph 8 of the first count and makes them a part hereof.

5. By reason of the careless and negligent acts of the defendants, James J. Quartier, trading as 40

Complaint.

10 M. & Q. Auto Wreckers and Charles Austin, the plaintiff sustained severe injuries, and was hurt, cut, wounded, bruised and injured, externally and internally, in and about her skull and left knee, she sustained lacerated wounds of the scalp and left knee, which scars and injuries are of a permanent and lasting nature, and she has suffered from the results of said injuries ever since that time.

20 6. By reason of the said injuries, the plaintiff has suffered and undergone great pain, her nervous system has been shocked and injured, she has been made sick, sore, lame and disordered, and so continues, she still suffers and will continue to suffer in the future, great pain and torment, she has been forced and obliged to pay out a large sum of money for medicine and doctor's bills, and has further expended and will continue to expend large sums of money in efforts to recover from her said injuries.

30 Plaintiff, Virginia Sprouls, demands against the defendants, James J. Quartier, trading as M. & Q. Auto Wreckers and Charles Austin, the sum of Five Thousand (\$5000) Dollars damages.

FOURTH COUNT.

Plaintiff, John M. Sprouls, residing in the City of Jersey City, County of Hudson and State of New Jersey, says that:

1. On February 24, 1929, the plaintiff, John M. Sprouls was and still is the husband of Virginia Sprouls.
- 40 2. Plaintiff repeats the allegations of the third count and makes them a part hereof.

Complaint.

3. By reason of the said premises the said plaintiff lost the society, companionship, comfort and assistance of his wife, and will hereafter continue to lose the same, he was obliged to and did expend and will in the hereafter be obliged to expend large sums of money in effecting a cure of the injuries suffered by his said wife. 10

Plaintiff demands against the defendants, James J. Quartier, trading as M. & Q. Auto Wreckers and Charles Austin, the sum of Five Thousand (\$5,000) Dollars.

FIFTH COUNT.

Plaintiff, John M. Sprouls, residing in the City of Jersey City, County of Hudson and State of New Jersey, says that: 20

1. Plaintiff repeats the allegations of paragraphs 1-2-3-4-5 and 6 of the first count and makes them a part hereof.

2. By reason of the negligent, careless and unskillful manner in which the said automobile of the defendant, George Spencer was then and there being operated and controlled, the same struck and ran into the said automobile owned and driven by the plaintiff, John M. Sprouls, and because of the negligent acts of the defendant, George Spencer and the defendants, James J. Quartier trading as M. & Q. Auto Wreckers and Charles Austin, the automobiles of the said defendants struck and ran into the said automobile owned by the plaintiff, thereby seriously injuring the plaintiff, John M. Sprouls. 30

3. The negligence of the defendant, George Spencer consisted in this: 40

Complaint.

(a) Defendant drove the said automobile at an unlawful and careless rate of speed.

(b) Defendant failed to equip his automobile with proper brakes and other proper safeguards for protection to other automobiles lawfully upon the said highway.

10 (c) Defendant failed to use due and proper care in the operation of the said automobile and control of the same was lost.

(d) Defendant drove the said automobile on the wrong side of the road.

20 (e) Defendant in driving the said automobile did not keep a proper lookout for other automobiles lawfully upon the said highway, and did not control the motion thereof so as to avoid striking other automobiles lawfully upon the said highway.

(f) Defendant operated said automobile in violation of the rules of the road and the laws of the State of New Jersey.

30 4. By reason of the careless and negligent acts of the defendant, George Spencer, the plaintiff sustained severe injuries, and was hurt, cut, wounded, bruised and injured, internally and externally, in and about his body, face, head and limbs, he sustained a fracture of the nose, and lacerated wounds of his face and forehead, which scars and injuries are of a permanent and lasting nature, and he has suffered from the results of said injuries ever since that time.

40 5. By reason of the said injuries, the plaintiff suffered and will continue to suffer and undergo great pain and torment, his nervous system has

Complaint.

been shocked and injured, he has been made and will continue to be made sick, sore, lame and disordered; he still suffers and will continue to suffer great loss by reason of his reduced earning capacity, he has lost and will continue to lose further losses by reason of his absence from his daily occupation, he has been forced and obliged, and will continue to be forced to pay out large sums of money for medicine and doctor's bills and other large sums in efforts to recover from his said injuries. 10

Plaintiff demands against the defendant, George Spencer the sum of Twenty Thousand (\$20,000) Dollars damages.

SIXTH COUNT. 20

Plaintiff, John M. Sprouls, residing in the City of Jersey City, County of Hudson and State of New Jersey, says that:

1. Plaintiff repeats the allegations of paragraphs 1 to 6 inclusive of the first count and makes them a part hereof.

2. By reason of the careless and negligent manner in which the said automobile of the defendant, George Spencer was then and there being operated and controlled, and by reason of the careless and unskillful manner in which the automobile of the defendant, James J. Quartier, trading as M. & Q. Auto Wreckers was being operated and controlled, the same struck and ran into the said automobile owned and driven by the plaintiff, John M. Sprouls, thereby injuring the plaintiff, John M. Sprouls and causing serious damage to the automobile of the said John M. Sprouls. 30 40

Complaint.

3. Plaintiff repeats the allegations of paragraph 3 of the fifth count and makes them a part hereof.

10 4. By reason of the above premises the said automobile of the plaintiff was so damaged and incapacitated from its ordinary use and service that the plaintiff has been and will be forced to pay out and expend large sums of money for the repair and reconstruction of the same. As a further result the value of the said automobile of the plaintiff has been greatly depreciated by reason of the damages thereto. As a further result the plaintiff has been and will be compelled to pay out large sums of money in obtaining another vehicle to use in his ordinary business during the
20 time the said automobile is being repaired.

Plaintiff, John M. Sprouls, demands against the defendant, George Spencer the sum of Five Thousand (\$5,000) Dollars damages.

SEVENTH COUNT.

Plaintiff, Virginia Sprouls, residing in the City of Jersey City, County of Hudson and State of New Jersey, says that:

30 1. Plaintiff repeats the allegations of paragraphs 1 and 2 of the third count and makes them a part hereof.

2. Plaintiff repeats the allegations of paragraph 3 of the fifth count and makes them a part hereof.

40 3. By reason of the negligent, careless and unskillful manner in which the said automobile of the defendant, George Spencer, and the automo-

Complaint.

biles of the defendants, James J. Quartier, trading as M. & Q. Auto Wreckers were then and there being operated and controlled, the same struck and ran into the said automobile owned and driven by the plaintiff, John M. Sprouls, and thereby seriously injuring the plaintiff Virginia Sprouls.

4. By reason of the careless and negligent acts of the defendant, George Spencer, the plaintiff sustained severe injuries, and was hurt, cut, wounded, bruised and injured, externally and internally, in and about her skull and left knee, she sustained lacerated wounds of the scalp, and left knee, which scars and injuries are of a permanent and lasting nature, and she has suffered from the results of said injuries ever since that time. 10

Plaintiff Virginia Sprouls demands against the defendant, George Spencer the sum of Five Thousand and (\$5,000) Dollars damages. 20

EIGHTH COUNT.

Plaintiff, John M. Sprouls, residing in the City of Jersey City, County of Hudson and State of New Jersey, says that:

1. Plaintiff repeats the allegations of paragraph 1 of the fourth count and makes them a part hereof. 30

2. Plaintiff repeats the allegations of the seventh count and makes them a part hereof.

3. By reason of the said premises the said plaintiff lost the society, companionship, comfort and assistance of his wife, and will hereafter continue to lose the same, he was obliged to and did expend and will in the hereafter be obliged to ex- 40

Complaint.

pend large sums of money in effecting a cure of the injuries suffered by his said wife.

Plaintiff demands the sum of Five Thousand (\$5,000) Dollars from the defendant, George Spencer.

10

KINKEAD & KLAUSNER,
Attorneys of Plaintiffs.

Answer.

Filed September 17, 1929.

NEW JERSEY SUPREME COURT

HUDSON CIRCUIT.

20

JOHN M. SPROULS and VIRGINIA
SPROULS,
Plaintiffs,

vs.

JAMES J. QUARTIER, trading as
M. & Q. AUTO WRECKERS,
CHARLES AUSTIN and GEORGE
SPENCER,

Defendants.

Action at Law.
Answer.

30

The defendant, George Spencer, by way of answer to the complaint of the plaintiffs herein says that:

FIFTH COUNT.

1. He admits the allegations of paragraphs 1, 2, 3, 4, 5, and 6 of the first count.
2. He admits that the defendant James A. Quartier, by his servant or agent the defendant,

40

Answer.

Charles Austin was negligent and careless in the operation of his said automobile, but denies the remainder of the allegations of this paragraph.

3, 4, 5. He denies the allegations of paragraphs 3, 4 and 5.

SIXTH COUNT.

10

1, 2 and 3. The defendant, George Spencer, repeats his answers to the allegations of paragraphs 1, 2 and 3 of the fifth count.

4. He denies the allegations of this paragraph.

FIRST SEPARATE DEFENSE TO FIFTH AND SIXTH COUNTS.

The defendant says that the plaintiff, John M. Sprouls was guilty of contributory negligence, in that he operated his car at a high and excessive rate of speed, on the wrong side of the highway, in violation of the traffic laws of the State of New Jersey, without maintaining the same under proper and careful control, and in other divers respects he was guilty of carelessness and negligence. 20

SECOND SEPARATE DEFENSE TO FIFTH AND SIXTH COUNTS. 30

This defendant says that the alleged accident was caused by the carelessness and negligence of the defendant, James J. Quartier by his servant or agent the defendant, Charles Austin in the operation of his said automobile.

SEVENTH COUNT.

1. The defendant repeats the allegations of his answer to paragraphs, 1, 2, 3, 4, 5 and 6 of the 40

Answer.

first counts as stated in his answer to paragraph 1 of the fifth count, and he denies the allegations of paragraph 2 of the third count.

2. He denies the allegations of paragraph 2.

10 3. He admits that the defendant, James J. Quartier by his agent or servant the defendant, Charles Austin was negligent and careless in the operation of his said automobile but denies the remainder of the allegations of this paragraph.

4. He denies the allegations of this paragraph.

EIGHTH COUNT.

20 1. He had no knowledge or information sufficient to form a belief as to the truth of the allegations of this paragraph and, therefore, leaves the plaintiff to his proof thereof.

2. He repeats the allegations of his answer to the 7th count.

3. He denies the allegations of this paragraph.

FIRST SEPARATE DEFENSE TO SEVENTH AND EIGHTH COUNTS.

30 This defendant says that the plaintiff, Virginia Sprouls was guilty of contributory negligence.

SECOND SEPARATE DEFENSE TO SEVENTH AND EIGHTH COUNTS.

40 This defendant says that the plaintiff, Virginia Sprouls was engaged in a common enterprise with the driver of the automobile in which she was riding at the time of the alleged accident, and as such assumed the risk of the alleged accident.

Answer.

THIRD SEPARATE DEFENSE TO SEVENTH
AND EIGHTH COUNTS.

This defendant says that the plaintiff, Virginia Sprouls was a mere licensee in the automobile in which she was riding at the time of the alleged accident, and as such assumed the risk of the alleged accident.

10

FOURTH SEPARATE DEFENSE TO
SEVENTH AND EIGHTH COUNTS.

This defendant says that the alleged accident was caused by the carelessness and negligence of the plaintiff, John M. Sprouls in the operation of his said automobile.

FIFTH SEPARATE DEFENSE TO SEVENTH 20
AND EIGHTH COUNTS.

This defendant says that the alleged accident was caused by the carelessness and negligence of the defendants James J. Quartier and Charles Austin in the operation of their said automobile.

HEINE & LAIRD,
Attorneys for Defendant,
George Spencer.

30

40

*Reply.*REPLY TO FIRST, SECOND, THIRD AND
FOURTH SEPARATE DEFENSES TO SEV-
ENTH AND EIGHTH COUNTS.

Plaintiffs deny each and every allegation contained in the first, second, third and fourth separate defenses to seventh and eighth counts.

10

REPLY TO FIFTH SEPARATE DEFENSE TO
SEVENTH AND EIGHTH COUNTS.

Plaintiffs deny that the alleged accident was caused only by the carelessness and negligence of the defendants, James J. Quartier and Charles Austin in the operation of their automobile, but allege that said accident was caused as set forth in the complaint.

KINKEAD & KLAUSNER, 20
Attorneys of Plaintiffs.

30

40

Postea.

NEW JERSEY SUPREME COURT

HUDSON CIRCUIT.

10	JOHN M. SPROULS and VIRGINIA SPROULS, Plaintiffs, vs. JAMES J. QUARTIER, trading as M. & Q. AUTO WRECKERS, CHARLES ALSTON, impleaded as CHARLES AUSTIN, and GEORGE SPENCER, Defendants.	}	Action at Law. Postea.
----	--	---	---------------------------

20

This case was tried before Judge Henry E. Ackerson, Jr., with a jury at the Hudson Circuit on June 22, 1931 and June 23, 1931.

30 The jury rendered a general verdict against the defendants, Charles Alston, impleaded as Charles Austin, and George Spencer, and in favor of the plaintiff, John M. Sprouls, in the sum of Twelve Hundred and Fifty (\$1250) Dollars, and also a general verdict against the defendants, Charles Alston, impleaded as Charles Austin, and George Spencer, and in favor of the plaintiff, Virginia Sprouls, in the sum of Two Hundred and Fifty (\$250) Dollars.

HENRY E. ACKERSON, JR.,
 Judge.

40

Notice of Appeal.

Filed July 7, 1931.

NEW JERSEY SUPREME COURT

HUDSON CIRCUIT.

 JOHN M. SPROULS and VIRGINIA
 SPROULS,

Plaintiffs,

vs.

 JAMES J. QUARTIER, trading as
 M. & Q. AUTO WRECKERS,
 CHARLES AUSTIN and GEORGE
 SPENCER,

Defendants.

10

Action at Law.

Notice of
Appeal.

 To: KINKEAD & KLAUSNER, ESQS.,
 586 Newark Avenue,
 Jersey City, New Jersey.
 Attorneys for Plaintiffs.

20

Please Take Notice, that the defendant, George Spencer, hereby appeals from the judgment entered in the above-entitled cause to the New Jersey Court of Errors and Appeals, the court of last resort in all causes.

Respectfully yours,

30

 HEINE & LAIRD,
 Attorneys for defendant,
 George Spencer.

40

Grounds of Appeal.

Filed July 7, 1931.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	<p>JOHN M. SPROULS and VIRGINIA SPROULS, Plaintiffs, vs. JAMES J. QUARTIER, trading as M. & Q. AUTO WRECKERS, CHARLES AUSTIN and GEORGE SPENCER, Defendants.</p>	<p>} On Appeal } from New } Jersey } Supreme } Court, } Hudson } Circuit. } Grounds of } Appeal.</p>
----	---	---

20 To: KINKEAD & KLAUSNER, ESQS.,
586 Newark Avenue,
Jersey City, New Jersey.
Attorneys for Plaintiffs.

Please Take Notice, that the following is the ground of appeal which the defendant-appellant, George Spencer, hereby assigns upon which it will rely:

30 1. That the trial court erroneously refused to grant the defendant's motion for a non-suit.

HEINE & LAIRD,
Attorneys for Defendant-
Appellant, George Spencer.

Testimony.

NEW JERSEY SUPREME COURT

HUDSON CIRCUIT.

JOHN M. SPROULS and VIRGINIA
SPROULS,

Plaintiffs,

vs.

JAMES J. QUARTIER, trading as
M. & Q. AUTO WRECKERS,
CHARLES AUSTIN and GEORGE
SPENCER,

Defendants.

10

Before—HON. HENRY E. ACKERSON, Judge,
and a Jury.

20

Jersey City, N. J.,
June 22, 1931.

APPEARANCES:

KINKEAD & KLAUSNER, ESQS., for the
Plaintiffs, by DAVID KLAUSNER, ESQ.

HEINE & LAIRD, ESQS., for the defendant
George Spencer, by MARK TOWNSEND,
ESQ. and CHARLES MOLLOY, ESQ.

30

CHARLES ALSTON, appearing *per se*.

(Opening to the Jury by counsel).

(Recess until 2 o'clock p. m.)

40

John H. Sprouls—Direct.

(After Recess. 2 o'clock p. m.)

JOHN H. SPROULS, called as a witness on behalf of the plaintiffs, being sworn, was examined and testified as follows:

Direct-examination by Mr. Klausner:

10 Q. Mr. Sprouls, where do you live? A. 9 Apollo Street, Jersey City.

Q. On February 24, 1929, where did you live? A. 326 Van Nostrand Avenue, Jersey City.

Q. On that day were you driving along Passaic Avenue from Newark to Jersey City? A. Yes, sir.

Q. About what time of the day did this accident happen? A. About five-thirty.

20 Q. What kind of a day was it? A. It was a clear, mild day in February. It was a day following some heavy snows during the week previous, three or four days heavy snow, and that day was a mild day.

Q. That is, three or four days before the day of the accident there had been heavy snow? A. Yes, sir.

30 Q. And at the time of this accident, what was the condition of the roadway? A. This roadway condition was slippery. There was a snow bank on each side where presumably the city plowers had pushed it into the side and banked it up and the traffic, of course, had the whole street practically wet.

Q. Now, just prior to this accident in what direction were you traveling? A. East on Passaic Street.

Q. That is in Newark, isn't it? A. That is in Newark, yes.

40 Q. And you were coming from where? A. I had come from East Orange.

John H. Sprouls—Direct.

Q. You were on the way from Newark toward Jersey City? A. Yes, into Jersey City.

Q. Now, just tell the court and jury what happened at that time to you. Before you do that, who was in the car with you? A. My wife was riding alongside of me, and my little baby nine months old was in one of these car swings. 10

Q. Your what? A. Baby nine months old was in a car swing that hung from the roof of the car right in back of us.

Q. What kind of a car were you driving? A. An Essex Coach.

Q. Just tell the court and jury what happened. A. As I was approaching the intersection of Brill Street about 50 feet west of it my attention was attracted toward a car approaching rapidly from the rear, and as I looked in my mirror I saw him, I saw that he was coming at a very rapid rate of speed and it looked very much like he was going to run right into me as he apparently was not pulling out to pass me. At the next instant—the whole accident only took a matter of possibly less than a couple of seconds—as he came close to me he did then swing out sharply, and as he swung out he hit me in the left rear. He started to skid me around in the direction of the northeast corner of Brill Street and Passaic Street—rather, the southeast corner of Brill and Passaic Street. Then, as he swung out sharply, as I say, he started to skid me around after hitting me, and another car coming in the opposite direction, which was out in the middle of the road, crashed into him, at least, there was another deafening crash and his car and this other car which I found out after the accident was this Spencer's— 20 30 40

John H. Sprouls—Direct.

Mr. Molloy: I object to what was found out after the accident.

The Witness: The two cars that were smashed up must have been the cars which crashed, that is the point.

Mr. Molloy: I object.

10

Q. You found out the name of the driver of the car, didn't you, that came from your rear? What was his name? A. His name was Alston.

Q. What was the name of the driver of the car who was coming in the opposite direction to you, that is, coming from Jersey City? What was his name? A. Spencer.

20

Q. Will you proceed? First, you say, that Alston's car came from your rear, hit the left rear of your car. Then what happened? A. Then I started to skid around heading toward the south-east corner of Passaic Avenue and Brill Street and after this other crash I got another blow in the back of my car in the same left rear of the car which swung me around further and gave me increased speed, and finally drove me up against a telephone pole which was on the same corner.

30

Q. Whose car hit you the second time? A. The second car—the second time was the car which had been coming in the opposite direction.

Q. Was that Spencer's? A. Spencer's car.

Q. So that the first time you were hit by Alston's car, and the second time you were hit by Spencer's car? A. Yes.

Q. And Alston's car being the car that was behind you? A. Yes.

40

Q. And Spencer being the car coming west on Passaic Avenue in the opposite direction to which you were going? A. Yes.

John H. Sprouls—Direct.

The Court: What was the name of these two men, the first name of these two men, Alston and Spencer?

The Witness: Charles Alston and James Spencer.

The Court: James?

Mr. Klausner: It is admitted, your Honor, George Spencer was the name of the man driving the car. 10

The Witness: George, that is right, I had forgotten for the moment.

Mr. Klausner: That is admitted, isn't it, Mr. Townsend?

Mr. Townsend: Yes.

The Court: All right, let it appear on the record.

Q. You say George Spencer was coming west? 20

A. Yes, sir.

Q. Whereabouts on the roadway was he before the accident? A. He was out in the middle of the road. If anything, he was a little over on my right.

The Court: On his left then?

The Witness: My right hand side.

Q. Part of his car was over on the side of the road in which you were traveling? A. Yes. I would say part of his car was over on my side of the road. 30

Q. Now, when you were driving along on the road there, about how fast were you driving your car? A. Between 15 and 20 miles an hour.

Q. And where were you driving your car before you were first hit? A. As near to this snow bank as it was practical without riding through the snow. The fairways of the road was cut down considerably by the snow bank on each side. 40

John H. Sprouls—Direct.

Q. Where was that snow bank? On what side of the road? A. On both sides.

Q. On what side of the road were you driving? A. On my right hand side.

10 Q. About how fast would you say that you saw this car coming from the rear? A. Well, I would judge that he was coming at least two or three times the speed I was traveling because when I saw him he was possibly 150 feet in back of me before I had traveled approximately 50 feet he had hit me and I had started to skid.

Q. As a result of the blow? A. Yes, as a result of the blow.

20 Q. How fast was the car coming from the opposite direction? A. I had no time to get a fair judgment of his car coming. I know there was a car coming along in the opposite direction which was coming fairly rapidly, but the minute I spotted this car in the rear I had to give my whole attention to what was going to happen from that direction. I did not have a moment to consider—to take in a general survey of what was going on all around. I know there were no cars directly in front of me, so that I did not need to worry about hitting somebody directly in front of me. There
30 possibly was not a car traveling in the same direction as I was for maybe a block or two ahead of me.

Q. Now, if you had gone straight ahead in this easterly direction, would your car have come in contact at all with Spencer's car, if it had come in a straight westerly direction?

Mr. Townsend: I object to that as an entirely hypothetical question.

The Court: Sustain the objection.

40

Mr. Klausner: Withdraw the question.

John H. Sprouls—Direct.

Q. Now, as a result of this second blow by Spencer's car, where did your car go?

Mr. Townsend: I object. First there is two questions rolled into one and it calls for a conclusion.

Mr. Klausner: I withdraw it.

10

Q. What happened to your car after you were hit the second time by Spencer's car? A. My car acquired increased speed and skidded further around in the direction of the southeast corner of Passaic Avenue and Brill Street and crashed into a pole located right on that corner.

Q. What side of your car crashed into the pole? A. The left hand side.

Q. Now, what part of your car was first hit by Alston's car? A. The left rear part. 20

Q. What part of your car was second hit by Spencer's car? A. The left rear part, the same part.

Q. I show you a photograph and ask you what that photograph denotes. A. That is a photograph of the lower left rear corner of my car and shows that the tire carrier is bent out of place and that the bumper in the back is bent inwardly showing that it had been hit, and that the left rear spring instead of it having its natural shape, what they call the spring shackle, which ordinarily hangs down from the body member is turned in and up and the leaves of the spring are all separated due to the top leaf being brought up so far out of its natural position. 30

Q. What was the condition of your car before the accident? A. It was in perfect shape.

Q. Is that a true photograph of the left rear of your car immediately after the accident? A. 40

John H. Sprouls—Direct.

Yes. The only exception to that is that the license plate has been removed. The bracket you can see it there and the license plate has been removed.

Mr. Klausner: I offer it in evidence.

Mr. Molloy: I have no objection.

(Received and marked in evidence Exhibit P-1.)

10

Q. I show you another photograph and ask you what that is a picture of? A. That is a picture of the left side of my car in the vicinity of the front door. Being a coach, of course, there was only one door in front on each side. It shows the door bent in the shape almost of a semi-circle due to crashing into the pole and the shape of the pole being practically left in the door of the car. It shows the speed of the crash in what is called the splash pan is all bent in and the front of the top of the car is all sheared off just above the windshield. The windshield is bent over at an angle and the steering wheel is broken away. The picture shows one of the spokes and what looks like the end of one of the other spokes. It shows the brackets under the seat broken away and hanging down. While it does not show it here, the chassis of the car is also bent. The photograph will be—it is hard to show that on the photograph, but that was also bent, and the glass in that door is also gone—that was smashed out.

20

30

Q. Is that a true photograph of the left side of your car? A. Yes.

Q. As a result of this accident? A. Yes.

Q. The whole car was in good condition prior to the accident? A. Yes.

40

John H. Sprouls—Direct.

Mr. Klausner: I offer it in evidence.

(Received and marked in evidence Exhibit P-2.)

Q. What in your opinion was the value of the car before the accident?

Mr. Molloy: I object to that until he specifies the mileage and various other items necessary. 10

The Court: What was this, a new car? Did you buy the car new?

The Witness: Yes, sir; it was two years old at that time.

The Court: What did you pay for it?

The Witness: \$899 total price at the time it was bought.

The Court: How many miles had it been run? 20

The Witness: Nineteen thousand some odd miles.

The Court: Was it in good condition at the time of the accident?

The Witness: Yes, sir.

The Court: All right, go ahead.

Q. What do you think the car was worth immediately before the accident? A. I would estimate it at about \$500. 30

Q. What was it worth after the accident? A. Well, it was not worth anything in sale value. It was a total wreck.

Q. Now, Mr. Sprouls, what was the condition of your health before this accident? A. Very good.

Q. Now, as a result of this accident what injuries did you receive? A. I received a fracture of the nose and lacerated wounds of the forehead 40

John H. Sprouls—Direct.

and nose and also shock, and pain and suffering, of course.

Q. Now, Mr. Sprouls, have you still got any marks on your face as a result of that accident?

A. Yes, my nose is out of shape somewhat. I have got a scar on the side of my nose quite visible.

10 Q. On which side? A. Left side, and also a scar on my forehead where the forehead had been cut open.

Q. Was your nose fractured, did you say, as a result? A. Fracture, yes.

Q. Will you just come down here a moment. I just want you to stand straight and face the jury, with your face straight. Now, is this mark on the left side of your forehead, is that the result of this accident? A. Yes.

20 Q. Aside from the crookedness of your nose, is that mark on the left side of your nose a result of this accident? A. Yes.

Q. Now, how was the breathing in your nose before the accident? A. I had no trouble whatever. Never noticed any restriction in breathing.

30 Q. And since the accident how has your breathing been? A. Since I have noticed it is restricted in that left nostril quite a bit, sometimes more than others.

Q. What happened to you and your wife after the accident? Were you taken anywhere? A. Yes, we were taken up to Newark General Hospital and given emergency treatment there.

Q. And then from there where did you go? A. From there we were taken home.

40 Q. How did you get to the hospital? A. In the police patrol from the precinct in Newark came down to the accident a few minutes after it happened and took us up to the hospital in the patrol.

John H. Sprouls—Direct.

At the hospital my wife's brother came out with her mother's car and drove us home in that car.

Q. What did they do to you at the hospital? A. They took four or five stitches in my forehead and bandaged it up and also bandaged up my nose.

Q. And then what did they do to your wife? A. They took two or three stitches in her head. She had a cut in her head. They bandaged that up and bandaged up the cut on her left knee. 10

Q. Aside from the stitches in your head and the fracture of the nose and the mark on the left side of the nose, is there anything on the left side of the face from the glass? A. Yes. The glass when it shattered, when my car struck the pole, my head also struck the glass on the inside the instant the pole struck it on the outside. I was sitting right at that point in the car where the pole struck, and when the car hit the pole, the pole, of course, smashed the window on the outside and my head crashed it on the inside, and my whole forehead in that vicinity—my nose and that side of my face was all imbedded with chips of glass. 20

Q. You had chips of glass in that side of your face? A. Yes, sir.

Q. When were they taken out? A. They took out as much as they could at the hospital. I believe my own doctor took out a few chips and some of them worked out as late as two or three months after the accident, small tiny chips. 30

Q. When you got home did you call your doctor? A. I called him. I do not recall now whether he was in or not. I know I did not get him that night. I do not think he was in, but I called him again the next morning the first thing and he visited me that day.

Q. What is his name? A. Dr. Bruder. 40

John H. Sprouls—Direct.

Q. B-r-u-d-e-r? A. Yes.

Q. Of Jersey City? A. Of Jersey City.

Q. And he came there and did he treat you? A. Yes, he treated me and told me the nose had been fractured. At the hospital they had not informed me that it was fractured. He told me it was fractured and it was out of place and he set it back into place at that visit and he looked over the other injuries and rebandaged them and told me I would have to be confined to my home for two weeks.

Q. Now, were you confined to your bed at all? A. Yes, I just got up and got dressed in order to receive the doctor, that is all, and went back to bed again after he left.

Q. How long did you have to stay in bed? A. Well, just for about two days was all I stood in bed other than that I would ordinarily.

Q. How long did you have to stay home as a result of the accident? A. Two weeks.

Q. By whom were you employed at that time? A. By the Colgate Palmolive Peet Company.

Q. In Jersey City? A. In Jersey City.

Q. As what? A. Mechanical draftsman.

Q. Are you still in their employ? A. Yes.

Q. How long did you have to stay away from work? A. Two weeks.

Q. What did you lose as your earnings as a result of that? A. I lost the two weeks' salary, which was \$50 a week, a total of \$100.

Q. How many times did the doctor treat you at the house? A. Four times to my knowledge.

Q. Did you go to his office? A. Yes, I went to his office about four times after I got out. After that two weeks was up.

Q. How many times did Dr. Bruder treat your

John H. Sprouls—Direct.

wife? A. The time that he came to the house during that two weeks and once or twice immediately after that two weeks and then about a period of two or three weeks after that. She had a reaction, or a nervous breakdown somewhat and he had to come and treat her then two or three times.

Q. What was the doctor's bill? 10

Mr. Molloy: I object unless it is connected up.

Mr. Klausner: We will connect it up, your Honor.

Q. Do you recall what Dr. Bruder's bill was?

Mr. Klausner: We expect to have Dr. Bruder in court.

The Witness: He is in court now. 20

Q. Do you recall what Dr. Bruder's bill was?

A. His first bill I think—I thought we were finished up with him—was \$20, which was for the whole treatment of both of us. I would say that was half for me and half for my wife, and the further treatment of my wife later on amounted to \$7.

Q. A total of about \$27? A. \$27, yes, sir. In connection with that there had to be some medicine bought for my wife. 30

Q. About how much did you have to spend for medicine for you and your wife? A. I think it was in the neighborhood of \$3 or \$3.50, something like that.

Q. Was your clothing damaged? A. Yes, due to the bleeding in my head and nose before we got to the hospital, my overcoat was all stained with blood all down the front and my collar and tie and shirt and gloves and everything was practic- 40

John H. Sprouls—Direct.

ally stained with blood. I bled very profusely from it.

10 Q. Were you bleeding as a result of this accident? A. Yes, and the overcoat was destroyed practically. I could not get it cleaned or back in shape to wear any more. It was impossible. It had been stained so badly, so that that was a total loss and my other inside coat I got that cleaned up and that was a blue suit and that did not show the stains so bad.

Q. You had that cleaned? A. I had that cleaned and it was wearable.

Q. Now, Mr. Sprouls, did you have any pain as a result of this accident? A. Yes, considerable pain.

20 Q. For how long? A. That night after we got home why it was almost impossible to get any sleep and the pain and ache in my head was so severe that when I went to bed I practically had to hold my head and lay it down gently on the pillow in order to try to relieve the pain a little bit.

30 Q. How long did that pain continue? A. That severe pain wore off in about a day or two, but, of course, the pain from the nose and the cut itself stood there for several days afterwards. In fact, my whole body was shaken up, muscular disturbance there. I felt that for a couple of days after along with the pains in my head, just as you would if you got shook up severely in any way at all.

Mr. Klausner: I think that is all.

Cross-examination by Mr. Townsend:

40 Q. Mr. Sprouls, have you ever bought or sold any automobiles other than this one? A. Other than

John H. Sprouls—Cross.

this one, I had a car previous to buying this one which I had for about five years, and then after this accident, about a month afterward, I bought another car.

Q. Did they allow you anything for this? A. The automobile man allowed me a credit of fifty dollars on the car. He said it was not worth that to him, but due to making the sale of another car he did that as a matter of policy. 10

Q. Here is a car you had paid \$899 for, had driven it for three years, had gone 5,000—or 19,000 miles, you say its depreciation was only \$399, is that correct? A. That is correct.

Q. Where do you get your sense of value of a car three years old only depreciating \$399? A. As a matter of fact the car was not three years old. It was approximately two years and seven months. 20

Q. All right. Qualify it that way. Say two years and seven months. A. In my estimation the car being used by me and being my property, has a value to me. I thought it was worth \$500.

Q. That is not the test of value. What is the value on the open market? A. Well, the question was not put to me that way. On the open market—as to value on the open market I do not know how you could come to any figure on that because I did not place it in the open market for sale. 30

Q. You would not know anything about what its value would be on the open market? A. I would know a little bit about it. I would not claim to be able to render an expert opinion on it.

Q. Do you know what its value was on the open market? A. No. That is what I say. I do not claim to be able to render an expert opinion on it, but that is the value I would place on it. 40

John H. Sprouls—Cross.

Q. Now, Mr. Sprouls, as I understand it, your car was hit twice in the back, was it not? A. Yes.

Q. (Illustrating with toy automobiles) Assuming this is your car and this is the Alston car, they were both going in a westerly direction? A. Easterly.

10 Q. Easterly, I beg your pardon. You were first hit in the back, then a few seconds after that you were hit in the back again, that is correct, is it? A. That is correct.

Q. Were you looking in the back the second time you were hit? A. No, my attention was centered on the front to see where I was going to wind up and do whatever occurred to save my own life.

20 Q. As a matter of fact, isn't it a fact you were fearful of the Alston car, the car driven by Mr. Alston? You saw him coming toward you at a high rate of speed, did you not? A. Yes, sir.

Q. You were sure there was going to be an accident and he was going to hit you? A. Yes.

Q. Thereupon, is it not a fact, you started to turn your car to the right? A. No, because—

30 Q. To get out of his way? A. There was no time to do that. The thing happened so fast I would say it was almost impossible for me to attempt to get out of his way.

Q. Then when he hit you he hit you on your left rear, is that the fact? A. Yes.

Q. That turned you towards your right? A. Yes, sir.

Q. Then you heard a collision afterwards of some kind and you were hit again in the back? A. Yes.

40 Q. As a matter of fact you do not know who hit you in the back the second time, do you? A. I only know from deduction as to what could possibly have taken place in the back.

John H. Sprouls—Cross.

Q. So, what you have testified to on your direct examination as to being hit the second time by this Spencer car, is based entirely upon your deduction as to what could have happened in the back, is that not the fact? A. Yes, that is correct.

Q. And to that extent you qualify your testimony on your direct examination, do you not? A. 10
Yes, if such was the opinion of the testimony.

Q. Now, you testified as a witness in the District Court for the first Judicial District of Essex County, December 17, 1930, in a suit that Charles Alston brought against Mr. Spencer, did you not? A. Yes, sir.

Q. You testified there on behalf of the defendant George Spencer, did you not? A. Under subpoena I testified there, yes, sir. 20

Q. Now, do you remember this question being asked and these answers given by you on the witness stand that day: "Q. Will you tell the court everything you remember about this accident? A. I was coming east on Passaic Avenue approaching about 50 feet or 100 feet of Brill Street. My attention was attracted by the noise of a car approaching very rapidly from my rear. On looking up I saw the Alston car approaching so fast I felt sure it was going to hit me unless I was very quick. There 30
was little that I could do. There was a snow bank on my side of the street and it made the street very slippery. As his car approached me from the rear he finally swung out and hit my left rear corner, the back bumper the tire carrier, and I started to skid around, headed towards the curb. Immediately after that I heard a deafening crash which could not be anything else but the Spencer car and his car colliding. Immediately after that crash my car got a terrific impact from the back, I presume from 40

John H. Sprouls—Cross.

the Spencer car." That is what you testified to, isn't it? A. Yes, sir.

Q. Was that the truth? A. That is the truth as I know it.

10 Q. And anything you may have testified here differently today on your direct examination you now withdraw, do you not, as qualified by this statement here? A. My testimony today has been practically the same as that, as far as I could repeat it.

Q. Well, if there is any difference, do you wish to qualify it or do you wish this answer to stand?

Mr. Klausner: I object. That is calling for a conclusion.

The Court: Sustain the objection.

20 Q. (Quoting) "Immediately after the accident Alston and his Cadillac disappeared? A. Yes." Was that the fact? A. I do not think that was the exact. I do not recall that as being the exact testimony. It may be. I am not going to contradict that, but I cannot remember that that was the same word for word. However, my recollection of the testimony on that point is—

30 Q. I am asking you whether in fact he did disappear right after the accident or not? A. He was not at the scene of the accident when I—at the time I had time to look for him after I had taken care of my wife and baby and looked around.

Q. On cross examination by Mr. Moser who represented Austin in that suit, was not this question asked and this answer given: "Q. So that the Spencer car must have been on its left hand side of Passaic Avenue at some time? A. Not necessarily.

40 Q. If it hit your car and your car was on the

John H. Sprouls—Cross.

right hand side? A. It was partly on my side of the road, but that road was cut down to a clear roadway of 20 or 25 feet on that day due to the snow banks on each side of the ditch." Do you remember that question being asked and that answer given? A. I would like to have you repeat the first part of that. That is not quite clear to me. 10

Q. Cross examination by Mr. Moser who was Mr. Alston's attorney: "Q. So that the Spencer car must have been on its left hand side of Passaic Avenue at some time? A. Not necessarily." A. I do not recall that now.

Q. Will you swear you did not so testify?

Mr. Klausner: I object to that.

Mr. Townsend: It is proper cross examination. 20

The Court: Surely. Did you so testify or didn't you?

The Witness: I do not recall testifying to that. At this time I do not recall. I do not recall the exact words and answers.

Q. Well, if you did so testify was it true? A. To answer that yes or no I do not see how it covers it. You say the question there is "Was the Spencer car on the left hand side of the road." 30

Q. Let me repeat the question, Mr. Sprouls. I want to be perfectly fair to you. I do not want to have any misunderstanding. I have before me a transcript of the testimony taken by the stenographer. A. I understand that.

Q. "So that the Spencer car must have been on its left hand side of Passaic Avenue at some time?" Your answer was "Not necessarily." A. That would infer the Spencer car was on the left hand— 40

John H. Sprouls—Cross.

The Court: No, no. Did you or did you not testify that way? That is all this amounts to.

The Witness: That refers to his left hand side of the road?

The Court: Yes.

10

Q. Yes, Spencer's left hand side. A. I do not think I testified "not necessarily," in my recollection of the case .

Q. If you did testify was it true, if you did testify? A. It was true that he was not necessarily on the left hand side of the road.

20

Q. If you did so testify that he was not necessarily on his left hand side of the road was it true or not? A. It could not possibly be the truth to cover the question whether he was on the left hand side of the road or not, because my recollection now is that he was out in the middle of the road and if anything a little over to his left.

Q. I am not asking what your recollection is now. I am asking what you testified to under oath in the court on December 17, 1930. A. It could not be the truth then and something else the truth now. You are asking for the truth.

30

Q. I realize that. That is what I am asking you, whether it was the truth then or not if you so testified.

Mr. Klausner: The rest of that answer, if your Honor will recall here was that part—the Spencer car was a little bit over on the left side. I may be mistaken—

40

Mr. Townsend: I have read the whole questions to him I am asking whether he so testified or not, because I propose to call the stenographer.

John H. Sprouls—Cross.

The Court: We cannot waste so much time on this trivial point. Did you or didn't you?

The Witness: I do not think I did.

Q. Now, do you remember these questions being asked by the court, Judge Dillon, "Q. What happened first, the hitting of your car or the crash of the other two cars? A. The hitting of my car by Alston's car." 10

"The Court: You say that you heard such a noise that you realized there was going to be an accident before it happened? A. I heard the Alston car approaching at a very fair rate of speed. Q. As a result of listening to that you turned off? A. That attracted my attention, then when I saw him, I saw him coming fast and he would likely hit me. In other words he waited so long to pass me that he hit me in turning out." Did you so testify? A. Yes. 20

Q. That was the truth, of course? A. Yes, that is the truth.

Q. Now, it is also a fact, is it not, that the Spencer car was not moved between the time of the collision and the time the police officer arrived? A. Well, that is the fact. 30

Q. It was not moved? A. It was not moved. From the time I saw it until the time the police arrived it was only a moment.

Q. And when you saw it it was on the right hand side of the road, was it not? A. On his own right hand side, yes.

(Witness excused.)

40

Andrew J. Bruder—Direct.

ANDREW J. BRUDER, called as a witness on behalf of the plaintiffs, being sworn, was examined and testified as follows:

Direct-examination by Mr. Klausner:

10 The Court: Can it be agreed as to whether the place where this accident happened was in a residential district or a business district?

Mr. Molloy: Your Honor, there is nothing but the river on one side, as far as I can recall, and I believe factories on the other side.

The Court: I do not care what there was there. What I want to know is what district it was in.

20 Mr. Alston: I have a picture of the location if you want to see it.

The Court: All right, go ahead.

Mr. Klausner: It is agreed it is a factory neighborhood on one side and the river is on the other.

Q. Dr. Bruder, where is your office? A. 344 Fairmount Avenue, Jersey City.

30 Q. What is your business or profession, rather? A. I am a physician and surgeon.

Q. Licensed to practice in the State of New Jersey? A. Yes, sir.

Q. How long have you been practicing? A. 1910.

Q. Twenty-one years? A. Twenty-one years.

Q. What school are you a graduate of? A. Georgetown University.

40 The Court: His qualifications are satisfactory to the court.

Andrew J. Bruder—Direct.

Q. Did you have occasion to treat Mr. and Mrs. Sprouls, the plaintiffs in this action? A. I did.

Q. In February, 1929? A. I do not remember the exact date, but I know I treated them.

Q. When you treated them, where did you first find them? A. I treated them at their home.

Q. Do you remember what time of the day? A. 10
I think it was in the morning of the day following the accident.

Q. Describe in detail, if you will, doctor, what you found the condition of Mr. Sprouls to be that morning? A. Well, he had a number of lacerations of the face and scalp and the most important injury was the fracture of the nose and no attempt had been made to replace it in position.

Q. There had been no attempt made to replace it? A. There had been no attempt made, no. It 20
may have been overlooked as far as that is concerned, but it was a fracture of the nose.

Q. And what did you do? A. I did the best I could to replace the nasal bones in a normal position. That is not always possible. He had been sewed up and the stitches had to be removed later on.

Q. When you examined him that morning he had already been sewed up? A. Oh, yes. 30

Q. Where? A. In the scalp.

Q. And on the side of the nose? A. The nose? I do not remember, no. I think it was just the scalp.

Q. How many times did you—withdraw that. Now, what did you find the condition of Mrs. Sprouls to be that morning? A. Well, she was very nervous and had considerable laceration over the knee. I think she had a few stitches put in her scalp where she had lacerations of the scalp. 40

Andrew J. Bruder—Direct.

Q. About how long did you treat them? A. I saw them at the house I think four times, then they came to my office. After that then I saw Mrs. Sprouls later on at home and she was very nervous, sort of nervous reaction.

Q. Mrs. Sprouls had quite a nervous reaction as a result of this accident? A. I think so.

10 Q. How long did that nervousness continue after the accident? A. I think this was about three or four weeks after the accident.

Q. Now, do you recall what your bill was for services rendered to Mr. Sprouls and Mrs. Sprouls? A. No, I do not, but I imagine it was under \$30, around \$30.

Q. They say it was \$27. A. I imagine that is about right.

20 Q. Was that a reasonable charge for your services?

Mr. Townsend: We agree it was.

Q. Now, Dr. Bruder, as a result of the injuries sustained by Mr. and Mrs. Sprouls, would you say that Mr. Sprouls would endure pain? A. You mean now?

30 Q. No, no, at that time? A. No question about it. You can't have a fracture of the nose without pain.

Q. Would you say Mrs. Sprouls would be suffering from pain as a result of the injuries from that accident? A. Certainly.

Q. Was it necessary in your opinion for Mr. Sprouls to be away from his work for two weeks as a result of this accident? A. Ordinarily people do not attend to their work with fractures of the nose that quick.

40 Q. You think he went back too soon? A. No, but I think he went back early, though.

Andrew J. Bruder—Direct.

Q. How long was Mrs. Sprouls laid up? A. I say there was a reaction there for about a month before she was herself again.

Q. Now, would this fractured nose have any effect upon the breathing of Mr. Sprouls? A. Well, a fractured nose always has some effect upon the breathing for the simple reason the septum is always deviated slightly because of the fracture. 10

Q. Has Mr. Sprouls a deviated septum as the result of this accident? A. Yes, but it was a slight one.

Q. Even down to the present time? A. He will always have it.

Q. Is that a permanent injury? A. All fractures are permanent to a certain extent.

Q. Will his breathing be restricted permanently for the rest of his life as a result of this accident? 20
A. Unless he has the septum removed.

Q. Unless he has an operation? A. Yes, sir.

Q. Is that a serious operation? A. Well, specialists do not consider it so. I do not do them myself.

Q. How long would it take for him to be operated on? A. These things take about three weeks to heal.

Q. What would be the cost of such an operation? 30
A. It all depends on who you would go to.

Q. Well, a good man? A. A good man might charge him a couple of hundred dollars.

Q. Then it is always questionable whether it would be successful, I suppose?

Mr. Molloy: I object to that as conjecture.

Mr. Klausner: All right. I will withdraw it. 40

Andrew J. Bruder—Cross.
Andrew J. Bruder—Redirect.

Cross-examination by Mr. Townsend:

Q. Removal of the septum, they do it under a local anaesthetic, don't they? A. What is that?

10 Q. Removal of the septum, they do it under a local anaesthetic, don't they? A. Yes.

Q. Just cut it out so it cannot go back in that position, isn't that true? A. That is a cartilage that has to be removed.

Q. It is not bone, it is cartilage. They cut it out and you are out walking tomorrow in most cases? A. I suppose you could be, but it would not be a wise thing to do, I think.

20 Q. Isn't it a fact you are never laid up? A. No. I do not think that is true. I had mine removed and I am not right yet, about ten years ago.

Q. I had mine removed and I was out the next day. A. So was I.

Q. Weren't you out the next day after your operation? A. I passed the Navy examination the next day.

Mr. Townsend: That is all.

Redirect-examination by Mr. Klausner:

30 Q. And yours is not better yet? A. I say that it is a question of opinion as far as the septum is concerned. Mine is not right yet.

Q. How long ago did you have yours—

The Court: We are not passing on him.

Recross-examination by Mr. Townsend:

40 Q. Did you break your nose or what happened to it? A. Football.

(Witness excused.)

Charles Alston—Direct.

CHARLES ALSTON, called as a witness on behalf of the plaintiffs, being sworn, was examined and testified as follows:

Direct-examination by Mr. Klausner:

Mr. Townsend: I think in view of the fact that this man is a defendant and Mr. Klausner is calling him he ought to apprise him of his rights. 10

Mr. Klausner: I intend to call their own client immediately after he gets through. I want the jury to hear everything.

Mr. Townsend: You are calling him as a witness as against himself.

The Court: It makes no difference. All we want him to do is to tell the truth. 20

Q. Is it Austin? A. Alston.

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. You were the driver of the car that was coming from behind the plaintiff's car, Mr. Sproul, at the time of the happening of the accident? A. Yes.

Q. Please tell the court and jury what happened.

A. Well, I was coming to Jersey City from Newark. Of course Mr. Sproul's car was in front of me coming to Jersey City. One more friend of mine and my brother was going in my car, of course, coming along to Jersey City, so, of course, at the time coming to Jersey City it was kind of wet, it was kind of wet and foggy and a little skiddy, too. Of course, I seen this little Dodge, the Spencer car that was coming from Jersey City towards Newark, and this car in front of me, Mr. Sproul's car. He kind of swagged off—hit around on the right until he swagged off right upon the side. 30 40

Charles Alston—Direct.

walk. I have pictures to show if the court will let me show the facts of the things.

The Court: We will come to that.

10 The Witness: He got frightened at seeing the other car coming towards him. He thought he would meet him and he turned out to try to turn out to avoid the accident. That threw me behind him. I was behind him. I stopped kind of a triangle. His car was off the curb to the left, like that (indicating). My car was right behind him this way (indicating), going on to Jersey. I stopped and swung to the left and he was to the right. Well, as I swung to the left that way the other car came up and caught me right in the center of the door on my car and carried me clean across. My car was across the road like that. Of course it was stopped after the accident. My car was sitting right in the center of the road across the road like that. I have a diagram of the road how it is laid out and the place where the accident occurred. That is the way it ended up.

20

30 Q. Spencer's car, as it came toward Sproul's car and toward your car— A. (Interrupting) He was coming toward Newark.

Q. As Spencer's car was coming toward Sproul's car and toward your car, what part of the roadway was Spencer's car in? A. Well, it was three cars abreast coming towards Newark. He was the outside car on the left side going toward Newark. It was three cars abreast.

40 Q. Was he over the center line?

Charles Alston—Direct.

Mr. Townsend: I object to counsel leading this witness.

The Court: Overrule the objection. Go ahead.

The Witness: Well, this was three cars over on the road. You can tell with three cars abreast how far the third car would be over on the left hand side. It was three cars coming up abreast. 10

The Court: What you are asked is whether or not Mr. Spencer's car was on his right side or in the middle or on his left side of the center line.

The Witness: He was over on the left side.

The Court: On his left side?

The Witness: Yes, on the left side. 20

Q. Did Spencer's car at any time hit Sproul's car? A. Well, I would not say what hit. Of course, when I got hit in the side myself I could not tell about that, because when he hit me he carried me right straight across the road. I would not say who hit him or anything like that. I would not say nothing about the collision with him. I know he hit me.

The Court: Did your car hit the car ahead? 30

The Witness: My car did not hit him. There was no way for me to hit him. I was not close enough to hit him. I was ten feet within the car when I was hit, that is, back of his car. The whole back of his car afterward, there was not a scratch on the back anywhere but where this pole struck in the side, the whole side was damaged. There 40

Charles Alston—Direct.

was not a blemish on the back of the car. I tried to have a photo made of the car and I would be glad to show a picture in court of his car if it was damaged by me, but it was not even touched by mine.

10 Q. You say your car did not touch Sprouls' car at all times? A. Did not touch his car.

Q. It did not touch the plaintiff Sprouls' car at any time that day? A. Any time at all did not touch it. Even the front of my car was not damaged.

20 Q. You say you have some kind of pictures. A. I have the whole picture of everything, showing this diagram. Here is the pictures of the place where the accident occurred. That is a picture of the way it was on the street and the place.

Q. Just a minute. Will you with a pencil make a mark where Brill Street is? A. This is Brill Street right here. This is here is—

Q. Which way were you coming? A. I was coming up this way.

Q. You were going towards Jersey City? A. Yes, coming towards Jersey City.

30 Q. Looking that way, is that toward Newark? A. No, that is towards Jersey City, like that. This way is going to Newark. I was going that way.

Q. Will you make a mark with this lead pencil on which side of the street Sprouls' car was? A. I have it right here. I have a picture of it. I do not have to mark it.

Q. Please do it on this one. A. I have it drawed out.

40 The Court: I appreciate you like to have your own way, but do as he says.

Charles Alston—Direct.

Q. I will come to that. Just give me a chance. Will you please first do it on this one, on what side—just where Sprouls' car was before the accident. A. Right here. Sprouls' was just before you got to the corner there. He was going this way and I was right back here coming behind him.

Q. Were you on this side like this? A. Yes, I was on that side. 10

Mr. Klausner: I offer it in evidence.

(Received and marked Exhibit P-3 in evidence.)

Q. This lead pencil mark on Exhibit P-3 shows the right hand side of the road going towards Jersey City. On what side is the river? A. The river is on this side. This here is going towards Jersey City. The river is on the left hand side. That would be the river on the left. 20

Q. You had some other picture you wanted to show us. A. This picture shows how the cars were lined up when they were traveling towards Jersey City. This is not the cars, but this is the way they were lined up to show where the cars was situated at the time before the accident occurred.

Q. You have marked number 2 as Sprouls' car? A. Yes, Sprouls' car. 30

Q. The third is Alston's car? A. The Alston car.

Q. And number one is Spencer's car? A. Number one is Spencer's car.

Q. Does that give the general direction? A. The general direction of how the cars was traveling at the time before the accident occurred.

Q. But this is not the actual scene? A. That don't show when the accident occurred. It is when 40

Charles Alston—Direct.

the cars was moving, all of them moving together. That is the way they was lined up when they was traveling.

Mr. Klausner: I would like to offer them subject to that limitation, your Honor.

10 Mr. Molloy: I certainly object to this picture.

The Court: Sustained.

Mr. Klausner: Will you admit it for any purpose?

Mr. Molloy: No, I won't admit it for any purpose.

20 Q. What other pictures have you got? A. This is a picture—this is not exactly like the accident, but this is where the car was struck and this is the position of the Sprouls car after the accident and this is where my car was struck in the side. Of course, there is a picture of the car where he was struck. This is really the back of the car after the accident. This is only showing how the car was struck.

Mr. Molloy: I object to that for the same reason.

Mr. Klausner: For no purpose?

30 The Witness: This here is a picture of the real accident of the condition the car was struck and where the car was struck at, this is the condition the car was.

The Court: That is your car? That is just the way it was after the accident?

The Witness: That is just the way the car was.

40 (Received and marked in evidence Exhibit P-4.)

Charles Alston—Direct.

Q. Now, I have exhibit P-4, which shows the right side of your car all smashed up? A. Yes.

Q. Who hit the right side of your car? A. That is where Spencer's car landed. He headed right into the right side of me.

Q. Spencer's car hit the right side of your car?
A. The right side, the whole radiator. Headed right into it. The rear of his car lay back into the side there. One thing that I must tell the court, of course the car ran to Jersey City after the accident like it was. It ran on to Jersey City because my face was bust open. I had the doctors give me nine stitches on this gash up here. I had nine stitches on the jaw, beside this gash here. That is what condition I was in after the accident. They had to bring me on back right away.

Q. You say your car did not hit Sprouls, the plaintiff's car at all? A. Not at all.

Q. And if there was any hitting at all it was Spencer's car did the hitting?

Mr. Townsend: I object.

The Court: Sustain the objection.

Cross-examination by Mr. Townsend:

Q. What happened to you after the accident? Did you disappear after the accident? A. Well, I was there about five or ten minutes. I do not know. It might have been longer. I told my brother to drive me to a doctor because I was bleeding so bad.

Q. You were bleeding bad after the accident? You were bleeding pretty badly? A. The only thing I was protecting myself. They were protecting themselves. I was looking for my own advan-

Charles Alston—Cross.

tage. I was not going to stand there and bleed to death because the rest of them bled to death.

Q. The fact of the matter is you disappeared after the accident? A. I did not disappear.

Q. Where did you go after the accident? A. Right straight to a doctor.

10 Q. How did you go to the doctor? A. My brother drove the car on in.

Q. Pardon me? A. My brother drove the car in.

Q. Where was the doctor? A. In Jersey City.

Q. What is the doctor's name? A. Dr. Cohen.

Q. Where was his office? A. Jersey Avenue and Mercer Street.

Q. Right after the accident your brother drove you and the other party in the car to your doctor's in Jersey City in the car? A. Yes.

20 Q. Where had you been that evening? A. We was out to Newark.

Q. Where in Newark? A. At some friends of ours in Newark.

Q. What was the friend's name? A. Well, one of the names was Gregory, one of the friends we was calling on, Mrs. Gregory.

30 Q. What time of the day did this accident happen? A. It was night for that matter, in that time of the year. Of course, it was around, I say, between six and seven to my estimation. Of course, it was dark anyway.

Q. What day of the week was it? A. On a Sunday afternoon.

Q. What was your business at that time? A. My business?

Q. Yes. A. Oh well, I have been in the automobile business most of my life.

40 Q. What time had you left Jersey City that day? A. I could not exactly recall the time I left there that day.

Charles Alston—Cross.

Q. About when? A. I say in the afternoon between three or four o'clock. I do not know exactly the right hour what time it was.

Q. In calling on these people, these friends, did you have anything to drink? A. Drink?

Q. Yes. A. I don't figure we had a drink. I do not go out to drink. I do not care for it so much myself. I do not bother with it. 10

Q. Did you or didn't you have anything to drink that afternoon? A. Not as I remember I did not have anything to drink.

Q. But you are not sure? A. I did not have anything as far as I know, so I am almost sure. If a fellow hasn't had anything he hasn't had it.

Q. As I understand your story— A. No, that is the truth I am telling. I could not tell a story. I am telling the truth. 20

Q. You were going along on your right hand side? A. Yes, sir.

Q. In a straight line parallel with the curb? A. I was coming this way.

Q. All right. Parallel with the curb? A. Yes.

Q. And this other car came all the way across? A. No, it did not come across.

Q. How did it hit you on the right hand side? A. This car was coming down like this. Of course Sprouls, he was coming— 30

Q. I am speaking of your car. A. My car was coming this way.

Q. How did he hit you on the right hand side? A. When my car stopped that is the way it was. I stopped like that.

Q. When you saw him coming? A. Sprouls' car had landed up here. If you had three of them I would line them up. 40

Charles Alston—Cross.

Q. I want to know did you stop your car— A. Of course I stopped.

Q. Before the accident. A. Before the accident I stopped.

Q. You had stopped and you had turned to your left? A. Well, I just—I was on a triangle, of course, at the time.

10 Q. You were facing in a northeasterly direction? Are you familiar with the directions there? A. I am familiar with northeast and west.

Q. Would that be about a northeasterly direction? A. Well, of course, it would not be exactly northeasterly. Well, of course, it was not this way. You could not put it facing that way and be right like that.

20 Q. Wasn't it facing in a generally northeasterly direction? A. Well, it is facing the opposite side of the road. It was not facing the right side of the road.

Q. You were going east so that you turned to your left and you were facing more towards the north? A. The face of our car was facing in this direction. Of course it was facing this right side—it was facing the left side. It was facing the left. I had to face left.

30 Q. Facing your left side? A. Yes.

Q. That is how this Spencer car came down and hit you in the right hand side? A. That is how it got hit on the right side.

Q. That is how you got hit? A. Yes, sir.

Q. You were completely stopped? A. I was standing at the time when the car got hit. I was standing at a stop.

40 Q. Did you have anything to do with driving the car to Jersey City? A. No. I could not drive it. I was holding a handkerchief up to my face to try to stop the blood. I was bloody from my head to

Charles Alston—Redirect.

my feet when we got in town.

Q. Were you stopped by the police at all here in Jersey City? A. Not a soul did not stop us—, nobody.

Q. (Indicating) This is the condition you drove your car to Jersey City? A. That is just the way she ran to Jersey City. I do not know how it looked until afterwards, but that is the way it came into Jersey City. 10

Redirect-examination by Mr. Klausner:

Q. Now, Mr. Townsend has made some notes what way your car was facing, to your left side, as you came down towards Jersey City. Now, just show us how the two cars were with these two automobiles, (indicating with toy automobiles). A. Which two? 20

Q. Say this is Spencer's car, the blue one, and the yellow one is yours. Is that the way your car was facing (indicating)? A. Well, if this is the straight road like that, it would not be that far across. It would be facing like that, but I was nearer to the side of the road. I was not off in the center of the road, I was near on the right side of the road. Of course, they are on the road—of course, I had the car on a triangle like that. That is the way I stopped. When I stopped, of course, at the time, that is the way the car was standing. 30

Q. You were on your right hand side of the road?
A. I was on my right hand side of the road.

Mr. Townsend: I object to counsel leading his witness.

Q. All right. What side of the road were you on?
A. I was on the right side of the road coming to Jersey City. 40

Charles Alston—Redirect.

Q. And Spencer's car came from Jersey City? A. And Spencer's car came from Jersey City.

Q. Show us how he was coming. A. Just like—just caught the car right in the side like that. That is the way the car hit.

10 Q. Caught your car like that? A. Yes, right in the side.

Q. So that Spencer's car was all the way over on his left side? A. He was over on the left side.

Q. Of his left side? A. Yes, sir.

Q. What happened to the two cars right after the accident? A. My car was struck and drove clean across the street like that. It drove it clean across right in the center of the street.

Q. With his car? A. With his car. His car drove me clean across in the center.

20 Q. And where did his car go with yours? A. Of course, I could not remember. My brother he got in the car and backed it up.

Q. He went along with you? A. He carried me with him.

30 Q. And when you finished up were you both over on his right hand side? A. I was in the center of the road myself. The car was standing right in the center of the road where it struck. It landed right across the road. It was not in the center, but right straight across the road. It was stopped right straight across the road.

Q. His car is as you have it (indicating with toy automobiles)? A. His car was sitting right up in the side of it, laying right up in the side.

Recross-examination by Mr. Townsend:

40 Q. I do not think it appears in the record. Your car was a Cadillac Sedan, wasn't it? A. Cadillac coupe, four passenger coupe.

Charles Alston—Recross.

Q. Weighing about 4500 to 5000 pounds? A. Well, I could not testify the weight, but anyone in here knows what a Cadillac weighs.

Q. You know what a Cadillac weighs, don't you?

A. I never weighed them. It is a heavy car, of course. If it was not a heavy car I would not have been here to tell the story today, that is one thing sure. 10

Q. You were in the second hand car business for eight years before this accident? A. Yes.

Q. You had sold Cadillac cars and had driven Cadillac cars before. Do you mean to tell the court and jury that you do not know approximately what a Cadillac sedan weighs? A. Well, I have never had the opportunity to weigh one. I did not sell them by weight.

Q. Have you heard what they weighed? A. I did, several times. 20

Q. You have heard a Cadillac coupe weighs between 4500 pounds and 4600 pounds? A. Not necessarily so.

Q. Would you say it weighs 4500? A. I could not say what it weighs because I say I was not interested in the weight of it.

Q. Do you know the weight of a Dodge? A. Weight? 30

Q. A Dodge roadster? A. It was not altogether the weight of the Dodge, but the speed of the Dodge.

Q. I am asking you if you know the weight of a Dodge roadster? A. I do not know. I could not say what the weight of it is.

Q. Can you give the jury any idea, with your eight years in the automobile business? A. The weight of it? 40

Charles Alston—Recross.

Q. Yes. A. I could not specify the weight. I do not say.

Q. Does it weigh 2000 pounds? A. The Dodge is not as heavy a car as a Cadillac. I have sense enough for that.

10 Q. You have heard? A. I can say it is not as heavy.

Q. Isn't it a fact after this accident was over the Spencer car was over on its right hand side of the road? A. Well, I will tell you the facts. I do not know where the car was, only in the middle of the road where I was, I know that. The car was standing right across the road, right in the middle.

20 Q. Your car was run to Jersey City and they could not run that one? A. My car being a heavy car that is the only reason. Of course, if I had a car like the Dodge, another light car, I would not have run to Jersey City. Here is a car came in on three wheels. There is no other car can come in on three wheels. That car only got three wheels on it.

By Mr. Klausner:

30 Q. How fast was the Spencer car going before the accident? A. From the way the car looked to me I could say the car was going at least 35 to 40 miles, from the rate of speed it looked like it was coming to me. You could see the way the lights came so fast. I saw the lights coming. Of course if I had met him I would have saved myself, that is why I tried to stop, to save from meeting him. If I had met him I would not have been afraid of this accident. I could have hit on into him because I knew I had the heavier car to save myself, but I did not hit into him. By stopping I got the worst of it.

40 (Witness excused.)

George Spencer—Direct.

GEORGE SPENCER, called as a witness on behalf of the plaintiffs, being sworn, was examined and testified as follows:

Direct-examination by Mr. Klausner:

Q. Mr. Spencer, you are the other defendant in this case, aren't you? A. Yes, sir. 10

Q. You were driving the car from Jersey City toward Newark? A. Yes, sir.

Q. Tell the court and jury what happened at the time of the accident. A. This happened about five o'clock Sunday afternoon. I was going west on Passaic Avenue and coming east there was an Essex Coach, behind him there was a Cadillac sedan. I was coming west on Passaic Street, and coming east there was an Essex Coach, behind him there was this Cadillac and the Cadillac struck him in the rear, knocked him to his right, when he hit the Essex his wheels got caught and he came right in front of me on my right, and we both stopped on my right curb. I struck his right front wheel and then he backed out about five minutes later and goes on his way to Jersey City. 20

Q. What kind of a day was it? A. It was a clear day.

Q. Had been snowing, hadn't it? A. A few days before that. 30

Q. And the street did have ice and sleet on it? A. In places it did, yes.

Cross-examination by Mr. Molloy:

Q. Mr. Spencer, after the accident, what side of the road was your car on? A. On the right.

Q. How far was it from the right hand curb? A. Oh, it was right on the curb. 40

George Spencer—Cross.

The Court: How fast was your car going?

The Witness: My car was going about 25.

The Court: Was there any signal blown from any of these cars?

The Witness: There was no signals.

10 Q. Is this a picture of the scene of the accident (exhibit P-3)? A. It does not look like it.

Q. You say this is not the scene of the accident. After the Alston car hit the Essex coach in which Sprouls was riding towards Jersey City, where did the Sprouls' car go? A. Sprouls went to his right.

Q. How far over to his right did he go? A. he went to the curb.

20 Q. Had your car at any time ever come in contact with the Sprouls' car at all? A. No, it did not.

Q. As you came along Passaic Avenue what part of the road were you riding on? A. I was riding on my right.

Q. Were there three cars abreast there at any time? A. There was no cars abreast.

Q. Do you remember if there were any other cars on the road at all? A. No, I did not notice if there was any.

30 Q. Did you cross the road and hit Alston's car on the right hand side? A. No, I did not.

Redirect-examination by Mr. Klausner:

40 Q. I show you Exhibit P-3 and ask you again whether you do not recognize that picture as a scene of the accident? I believe you told your lawyer it was not. A. No, it was not. There is a vacant lot here about 30 feet back and there is a small factory.

George Spencer—Redirect.

Q. Don't you remember the factory on the right hand side of the road? A. Which way is this road going?

Q. This is a picture showing the road leading towards Jersey City, showing east, looking east, and you are coming from this direction. A. I do not remember that.

10

Q. You do not remember this place of the accident at all? You are just about as sure about all your testimony as you are about this?

Mr. Townsend: I object. That is manifestly unfair.

The Court: Sustained.

Q. But you are positive this is not the scene of the accident? A. Yes.

20

Mr. Townsend: He says he does not remember it from that photograph, that is what he said.

Q. Look at it again.

Mr. Townsend: Please put the right construction on his language. Do not put your own on it.

Q. I will let you bring it out. I ask you again whether Exhibit P-3 brought here by one of the defendants, Alston, and stated by him to be a picture of the scene of the accident, and ask you again whether that is a picture of Brill Street at the intersection of Passaic Avenue or Passaic Street? A. I cannot say it is, no.

30

Q. It might be? A. I cannot say it is.

Q. Just what do you mean by you cannot say it is? Is it or is it not, or don't you know? A. I don't know.

40

George Spencer—Redirect.

Q. So that it might be? A. It might be.

Mr. Townsend: If you say that is a picture of Brill Street and Passaic Avenue I will stipulate it is.

Mr. Klausner: All I know is what they say. I assume that it is.

10

(Witness excused.)

VIRGINIA SPROULS, called as a witness on behalf of the plaintiffs, being sworn, was examined and testified as follows:

Direct-examination by Mr. Klausner:

20 Q. Mrs. Sprouls, you are one of the plaintiffs in this action? A. Yes, sir.

Q. And the wife of Mr. Sprouls who was on the stand a little while ago? A. Yes, sir.

Q. Were you in the car driven by your husband at the time of the accident? A. Yes, sir.

Q. And your husband was driving? A. Yes, sir.

Q. Where were you sitting? A. Right beside him in the front seat.

30 Q. Was anyone else in the car? A. Yes, the baby was in the swing. I was holding the swing in the car.

Q. The swing in the back of the car? A. Right in the back.

Q. It was an Essex Coach? A. Yes, sir.

Q. I understand you did not actually see the happening of the accident? A. No.

Q. But do you remember how many times, if at all, your car was hit before it went into the pole?

40 A. Yes, twice.

Virginia Sprouls—Direct.

Q. And where was your car hit before it went into the pole on the sidewalk where it stopped?

A. Well, we were coming along the road and then we got hit which drove us skidding—

Q. Which what? A. Drove us skidding, and then the second time we were hit we were driven into the electric pole.

10

Q. The second time you were hit you were driven into the electric pole? A. Yes, sir.

Q. And you landed at the electric pole? A. Yes, sir.

Q. Where was the car hit following the impact? What part of the car in which you were riding was hit? A. The back of the car twice.

Q. What happened to you as a result of the accident? A. I had three stitches put in my head.

Q. Where was that? A. On the right hand side and a laceration on the left knee.

20

Q. After the accident where were you taken? A. To City Hospital in Newark.

Q. From the hospital where were you taken? A. Well, from the hospital, right after we left the hospital we were taken back to the station house in Newark and from there I was taken home in my brother's car.

Q. Did the doctor treat you that night? A. The following day the doctor came to the house.

30

Q. How long were you in bed as a result of the accident? A. Well, I was in bed the next day before I was up and down—

Q. How long were you in and out of bed? A. Well, fully the whole two weeks.

Q. You were laid up two weeks? A. I was laid up two weeks in the house that I did not go out at all.

40

Motion to Non-Suit.

Q. Were you nervous as a result of the accident?

A. Yes, sir.

Q. How long did that nervousness last? A. A whole month.

Q. Are you at all nervous today? A. I have been nervous ever since the accident. I was never nervous before.

10

Q. Were you ever nervous before the accident?

A. No.

Q. What was the condition of your health before the accident? A. Perfect condition.

Q. And after the accident did you have any pain as a result of the accident? A. Yes, a severe pain in the head and on the left knee.

Q. For how long? A. For three or four days.

20

Q. Then after that did you have pain? A. Off and on, yes.

Q. For how long? A. Really for a couple of months.

Mr. Klausner: That is all.

Mr. Molloy: No questions.

30

Mr. Townsend: I move for a non-suit on behalf of the defendant Spencer on the ground there is no proof of negligence on the part of the defendant, no proof of contact between his car and the car of the plaintiff. On the contrary the proof is that the plaintiff was first hit in the rear by the defendant Alston's car and the next thing he knows he was hit again in the back by another car. He does not know who hit him.

40

Now, the defendant Alston produced by the plaintiff says he never came in contact with the plaintiff's car and he did not see any contact between the Spencer car and

Motion to Non-Suit.

the plaintiff, and again, Spencer, called as his witness, denied there was any contact. I submit there is no proof of any contact between the cars and no proof of any negligence. The proof is negligence, if any, was the defendant Alston's in hitting the Sprouls car.

10

The Court: I cannot shut my eyes to Sprouls' testimony. He said Spencer's car hit him the second time. Sprouls testified he was struck first by one defendant and then by the second.

Mr. Townsend: That is very true, and as a matter of fact I overlooked it at the time. I should have moved to have stricken out the first part of his testimony on his examination. He states that he did not see the Spencer car hit him, and he said merely from figuring out what had happened from the rear. He did not see anything and it was his conclusion figured out by the possibility, I think he said, that the Spencer car hit him from the back. His testimony which he admitted having testified to in the other court was that immediately after that—

20

30

The Court: That is all the other court. I am talking about what I heard here, that he was struck by the Spencer car.

Mr. Townsend: May I move now, if the court does not consider it too late, to strike out his testimony in that respect?

The Court: It is too late. It is not efficacious in the second place.

Mr. Townsend: It is entirely a conclusion on his part which he admits on exam-

40

John H. Sprouls—Recalled—Direct.

ination he did not see it, but has figured out the possibility of what might have happened hitting him from the rear.

The Court: Call him back.

10 JOHN H. SPROULS, recalled by the Court.

Examination by the Court:

Q. You were hit the second time. You say you were hit by a car in the rear the second time. How were you hit? A. I was hit by a car in the rear, and when Alston's car hit me he was in the act of turning out to pass me. While his car was heading for his left hand side of the street, making it a human impossibility for him—

20 Q. Never mind what it would make impossible. Where did the second blow come from? A. Then that second crash came immediately. After the second crash I got another blow in the back in the same part of the car.

By Mr. Townsend:

Q. You say you were hit twice or three times? A. Twice.

30 Q. And you were hit in the back both times? A. Yes.

Q. You do not know who hit or came in contact the second time, do you? A. No, I could not swear who it was.

Q. You did not see it? A. I could not actually swear who it was. It was impossible for me to see it.

40 Q. And your statement on your direct examina-

John H. Sprouls—Recalled—Direct.

tion it was Spencer's car was merely a deduction, a conclusion of yours? A. Yes.

Mr. Townsend: May I move at this time to strike out that part of the direct examination where he says it was Spencer's car on the ground it now appears it was merely a conclusion or deduction on his part?

10

The Court: It is too late for that now.
(Witness excused.)

(Recess until 10 A. M., June 23, 1931.)

(After Recess.)

The Court: I might say there was a motion made to strike out that part of Mr. Sprouls' testimony where he said he was struck by the George Spencer car after he had been hit in the rear of his car first. At that time I did not recall such testimony, but I am advised that he did so testify and that part of his testimony will be stricken out where he directly said the Spencer car was the car that struck him the second time.

20

Mr. Klausner: That it was a mere matter of deduction on his part?

The Court: Yes, that it was a mere matter of deduction on his part.

30

And so far as the motion to non-suit is concerned, of course, that will be denied.

40

John H. Sprouls—Recalled—Direct.

DEFENDANT'S CASE

JOHN H. SPROULS, recalled for the defendant.

Direct-examination by Mr. Molloy:

10 Q. The last time you looked forward before the accident happened, how many cars were there on the road? A. I do not recall how many cars was on the road. There was nobody directly in front of me traveling in the same direction as I was, as I said before, except possibly a block or two ahead in the other direction coming toward me there was some traffic, not heavy. I know there was one other car approaching and I had no general interest otherwise to take particular note.

20 The Court: Well, were there any other cars in your immediate vicinity within striking distance of you, or within the immediate vicinity of you at the time of the collision except the George Spencer car and the Alston car?

The Witness: Not that I noted.

30 Q. After the accident, after you finally came to a stop, what side of the road were you on? A. I was on my right hand side of the road, which on the diagram would be on the southeast corner of Passaic Avenue and Brill Street, with the front of the car facing into Brill Street.

Q. You were on your right hand side facing toward Brill Street? A. Well, the side of the car was towards Jersey City.

40 Q. And Spencer's car was on its right side of the road pointing towards Newark? A. His car was on his right side of the road pointing north.

John H. Sprouls—Recalled—Cross.

He was headed straight into the curb. His front wheels were touching the curb.

Cross-examination by Mr. Klausner:

Q. I show you exhibit P-3 and ask you if that is the scene of the accident? A. That is the scene of the accident, the picture being taken looking east, looking in the direction in which I was traveling. 10

Q. And is this the automobile repair bill giving you an estimate for the repairs to the automobile by Mr. Bernstein of the Berwax Motor Sales? A. Yes, that is true.

Q. That is the estimate? A. That is the estimate, yes.

Q. I think you subpoenaed Mr. Bernstein in this case? A. Yes, I handed him a subpoena about two weeks ago. 20

Mr. Klausner: I will offer this in evidence.

Mr. Townsend: I object.

The Court: Sustain the objection.

Mr. Klausner: No further questions.

(Witness excused.) 30

MICHAEL J. HELMSTETTER, called as a witness on behalf of the defendants, being sworn, was examined and testified as follows:

Direct-examination by Mr. Townsend:

Q. Officer, you are a member of the Newark Police Department? A. I am. 40

Michael J. Helmstetter—Direct.

Q. About how long after the accident happened did you get there, approximately? A. About three minutes.

10 Q. When you got there what did you see in the road? A. Two automobiles. One on the southeast corner and one on the side of the river, pointing west, I mean to Newark, up against the curb.

Q. Now, do you know what kind of automobile was on the curb, the right hand curb going towards Newark? A. Coming to Newark?

Q. Yes. A. It was a Dodge Roadster.

Q. What kind of a car was on the right hand side pointing toward Jersey City generally? A. It was not pointing towards Jersey City, but it was on the Jersey City side, Essex coach.

20 Q. What part of the road was that Essex Coach? A. The Essex coach?

Q. Yes. A. Coming—may I go to the board?

Q. Yes. A. (Witness goes to blackboard) This is Passaic Avenue, this is Brill Street. About five foot in here is a pole. That is the way the Essex coach was pointing.

Q. Where was the Dodge Roadster? A. He was right here.

30 Q. Was there any other cars there at all? A. Well, after the accident.

Q. How many were there? A. Three or four cars.

Q. Was there any car there owned by Charles Alston? A. No.

Q. Do you know who were in these cars, that Dodge car and the Essex? A. Yes, in the Essex car was Mr. Sprouls and Mrs. Virginia Sprouls. In the Dodge George Spencer and Joseph Spencer.

40 Q. Who was in the other car? A. Mr. and Mrs. John Sprouls, Mrs. Virginia Sprouls, and a baby.

Michael J. Helmstetter—Cross.

Q. What did you do with them? A. Took the five of them to the hospital.

Cross-examination by Mr. Klausner:

Q. How do you know it was three minutes after the accident when you got there? A. Well, we left the precinct at 6:15. 10

Q. Somebody telephoned you? A. The telephone came to the precinct about an accident at Passaic Avenue and Brill Street.

Q. You got some telephone call? A. Oh, yes, it was an accident at Brill Street and Passaic Avenue, that was at 6:15.

Q. Did you get the phone message? A. The lieutenant did. He called for two men and the wagon.

Q. And they called for the wagon? A. They just telephoned there was an accident. 20

Q. So you are not sure whether it was three minutes or two minutes or five minutes? A. From where we are situated to that neighborhood with the wagon it takes about three minutes.

Q. It takes about three minutes? A. Yes, it is a short distance.

Q. It takes an automobile three minutes to go there? A. Yes, about three minutes. 30

Q. And then when you came there you only saw these two automobiles? A. That is all.

Q. The Cadillac coupe was not there? A. No.

(Witness excused.)

Joseph Spencer—Direct.

JOSEPH SPENCER, called as a witness on behalf of the defendants, being sworn, was examined and testified as follows:

Direct-examination by Mr. Townsend:

10 Q. What is your business, Mr. Spencer? A. Plumber's helper.

Q. What relation are you to George Spencer? A. Brother.

Q. Where had you been on the afternoon when this accident happened? A. We was over to Newark Airport.

Q. Where were you going? A. We was started on our way home.

20 Q. Will you tell the Judge and jury in your own way exactly what happened? A. Well, we was coming back towards—from Jersey City into Newark and we got within the corner and we were coming along on the right side. There was two cars coming up on their right side. They was coming along pretty lively, then there was a car behind them, and he hit this one fellow and drove him right up against the pole and he shot across the street and ran right into us, and stopped quick, knocks against the curb, and he backed up and went right out again.

30 Q. What happened to you? A. Well, I got a cut on the head, one above the eye and a bruise on the leg.

Q. What happened to your brother, do you know? A. He had a couple of cuts on the face and on the head.

40 Q. Now, do you know who was driving this car that cut out and ran into the other car? A. It was the colored fellow, Alston.

Joseph Spencer—Cross.

Q. Is that the man there? A. That is the fellow.

Q. Is this the man his car ran into? A. Yes, that is him, with the Essex.

Cross-examination by Mr. Alston:

Q. I just want to ask this: if you could see me doing all that cutting out, why didn't you have time to stop? A. What? 10

Q. I say, after you seen me doing all that cutting out and hitting another car, why didn't you have time to stop? A. You just banged this fellow up and cut right out. No man could stop. You swung right out.

The Court: Why didn't you stop? 20

The Witness: We stopped as much as we could and he swung right out and hit us and brought us to a dead stop right on the side of the curb.

Cross-examination by Mr. Klausner:

Q. Your story is Alston hit Sprouls' car and Sprouls' car was shoved against the pole? A. That is right. 30

Q. You do remember the left side of Sprouls' car being against the pole? A. Yes.

Q. You are sure of that? His left side was against the pole? Then, the front of his car was facing into Brill Street? A. That is right, swung him right away.

Q. So Sprouls is correct when he says the front of his car was facing into Brill Street and the left side of his car was against the pole? A. That is right. 40

Joseph Spencer—Cross.

Q. Is that right? A. That is right.

Q. (Illustrating) If this was the pole Sprouls' car would be like that? A. Similar, like that. Immediately pointing toward Brill Street, more this way.

10 Q. This being the front of the car, this being Brill Street? A. That is right.

Q. You say your car did not touch Sprouls'? A. No, sir, it did not.

Q. It was Alston's car that touched him? A. Yes, sir.

The Court: Were you endeavoring to pass another car going in the same direction as yours?

The Witness: No, sir. There was no other cars coming our way.

20 The Court: Were there three cars abreast as you came down that road?

The Witness: No, sir, we were the only car at the time.

Recross-examination by Mr. Alston:

Q. You say we struck your car. Where was your car struck at? A. Right at the front.

30 Q. I mean what part of your car was struck? A. Front. The bumper knocked right in.

Q. What else? A. Bumper and radiator.

Q. Where was mine struck at? A. Right on the front too.

Q. No. I say where was my car struck at? You see the car. Where was my car struck at?

The Court: What part of his car was struck?

40 The Witness: Your side, as you cut out, like that.

Joseph Spencer—Recross

Q. I did not say how. I said what part of my car was struck. A. The side front.

The Court: Right side, left side front.

The Witness: Left side.

Q. The left side? A. The left side.

Recross-examination by Mr. Klausner:

10

Q. You say the left side was struck? A. The left front of his, yes.

(Witness excused.)

(The Defendant Spencer rests.)

MORRIS BERNSTEIN, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

20

Direct-examination by Mr. Klausner:

Q. How long have you been in the automobile business? A. 24 years.

Q. Do you operate under the name of the Berwax Motor Sales, 3014 Boulevard, Jersey City?

A. That is right.

30

Q. Did you have occasion to examine an Essex Coach owned by Mr. Sprouls? A. Yes, sir.

Q. In the latter part of February, 1929? A. That is right.

Q. I show you Exhibit P-4 and ask you if that is a photograph of the condition of the left side of the car at that time? A. Yes, sir.

Q. I show you Exhibit P-1 and ask you if that is a photograph of the rear left of Sprouls' car at that time? A. Yes.

40

Morris Bernstein—Direct.

Q. Will you please tell us just wherein this rear left was damaged? A. The left rear, the cross member was damaged, the left rear spring was damaged and the left part of the body was pushed up.

10 Q. I mean the left rear. A. The left rear, the spring was damaged, the cross member on the left side and the body on the left side.

Q. As though it were pushed in? A. Yes, sir.

Q. Is this an estimate of your repairs to that automobile? A. Yes, sir.

Q. Will you just tell us what repairs had to be made to that car? A. This is exactly the repairs.

The Court: I understand there were no repairs made.

20 Mr. Klausner: I did not say there were. I said what repairs were necessary. We do not claim any repairs were made, your Honor.

The Court: All right, go ahead.

30 Q. What damages were there to the car. Please enumerate it. A. Left door, roof of the automobile, repair tire, replace three glasses, two door and windshield glasses, replace right front spring, replace one left rear spring, replace one left running board splash pan, remove body, replace body back on chassis.

Q. What was your estimate that it would cost to repair that car? A. \$322.25.

Q. Was the car repaired? A. No, sir.

Q. What was the value of the car at the time that you saw it?

40 Mr. Townsend: I object. This man is not

Morris Bernstein—Direct.

qualified as an appraiser. He is qualified as a mechanic.

The Court: You have that value in any how.

Q. Did you get the car? A. Yes, sir.

Q. What did you do with it? A. Sold it for junk. 10

Mr. Townsend: I object to that.

The Court: Sustain the objection, strike out the answer.

Q. You did give Mr. Sprouls credit for another car, didn't you? A. Yes, sir.

Q. How much credit did you give him for the new car? 20

Mr. Townsend: I object.

The Court: What difference does it make?

Mr. Klausner: That is all.

(Witness excused.)

(Testimony closed.)

(Summation by counsel.)

30

CHARGE OF THE COURT

The Court thereupon charged the jury as follows:

The Court: Gentlemen of the Jury, this action is brought by John M. Sprouls and Virginia Sprouls, his wife, as plaintiffs, against James J. Quartier, trading as M & Q Auto Wreckers, Charles Alston, and George Spencer, to recover for damages which it is claimed these two plain- 40

Charge of the Court.

10 tiffs sustained in an automobile accident in which it is claimed the automobiles of the M & Q Auto Wreckers and George Spencer were involved, Mr. Charles Alston being the driver, as I understand it, of the M & Q Auto Wreckers, but the M & Q Auto Wreckers in this case have not appeared, and inasmuch as the case is not in shape for you to award any damages against them, even if there was any liability, they are out of the case. So, the only two defendants that are now before you are Charles Alston and George Spencer, the drivers of the two automobiles which it is claimed were involved in a collision with Mr. Sprouls' automobile.

20 Now, the mere fact that there was an accident at Passaic Avenue and Brill Street, a public highway, standing alone by itself would not be sufficient to justify you, leaving out any consideration of the question of fault here, in bringing in a verdict in favor of these plaintiffs and against these defendants, or either of them. The plaintiffs must first satisfy you by a fair preponderance of the evidence in this case that these defendants, Alston and Spencer, or one of them, in order to recover against one or both, were or was negligent on this occasion and that such negligence was a proximate cause of this accident and the injuries and the damages which it is claimed followed.

30

So, the case is based upon a charge of negligence, and negligence presupposes a violation of or the failure to perform some duty which one person owes to another.

40 Now, you will necessarily want to know accurately what duty the driver of an automobile on a public highway owes to other drivers and passengers in cars upon the same highway. Well, gentlemen, such a driver is required to so man-

Charge of the Court.

age, control, and operate his car, to make such observations for other vehicles on the highway, and to exercise such judgment to avoid collisions as a reasonably prudent person should have exercised under the same circumstances. Now, it is not what you individually believe you would have done or would not have done if you had been in the driver's seat in one or the other of these automobiles, because you may be an exceptionally careful person, or on the other hand you may be an exceptionally careless one. The law does not permit you to use either one of these extremes, but requires that you use as a standard when you come to judge the conduct of these drivers what would have been expected from the average, ordinarily, every-day person whom we recognize as possessing reasonable care, caution and prudence, and exercising the same on all occasions.

Now, with this standard before you, judge of the conduct of these drivers, and when I say "these" drivers, I am referring also, of course, to Mr. Sprouls, because the defendants here charge him with contributory negligence as a defense, and to establish that defense they have to satisfy you that Sprouls was negligent, and that his negligence contributed to the happening of this accident, by a fair preponderance of the evidence in this case.

So, gentlemen, after all the first thing you have to do when you go to the jury room is to determine the exact circumstances under which the accident happened, because you cannot begin to apply the rules of law to the facts until you determine what the facts are, and you have here, certainly, a great conflict in the evidence of how this thing happened.

Now, Mr. Sprouls says that the Alston car

Charge of the Court.

struck him in the rear and caused him to swerve, and at the same time the Spencer car was coming in the opposite direction and that the Spencer car was in a line of three cars and was on the wrong side of the road. On the other hand, Mr. Alston said that at no time was he endeavoring to pass any car going in the same direction as himself and that he did not strike and was not responsible for any damage done to Sprouls' car. So, you see, gentlemen, there is a great conflict in testimony here. Mr. Spencer takes an entirely different view of this situation than either Alston or Sprouls, so you have got to determine what the truth is. In deciding whether or not these defendants, or either one of them, was negligent, you must take into consideration certain so-called traffic rules as existed at the time of this accident back in February, 1929.

Now, at that time rates of speed were prescribed in certain locations. For example, in a business district the rate of speed where the traffic was not controlled by a light or by a policeman was fifteen miles an hour, and in a residential district twenty miles an hour. In all other districts forty miles an hour. A business district is defined as the territory contiguous to a highway where fifty per centum or more of the frontage thereon for a distance of 300 feet or more is occupied by buildings in use for business, and a residential district is defined as the territory contiguous to a highway not comprising a business district when the frontage on such highway for a distance of 300 feet or more is mainly occupied by dwellings or dwellings and buildings in use for business. Then, of course, there is the old rule that an automobile must be equipped with a signalling device and the operator of it shall give reasonable warning whenever nec-

Charge of the Court.

essary to insure the safety of other users of the highway or when approaching a street intersection where the view is obscured, or on overtaking another vehicle using any part of the highway, other, of course, than the sidewalk. But, there, you have a qualification the signal shall not be given unnecessarily.

10

Then, gentlemen, there was also in existence a rule an automobile shall keep to the right of the center line of the street, except, of course, when passing a vehicle ahead, and the rule is specifically: "the driver of a vehicle shall not drive to the left side of the center line of a highway in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and is free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be made in safety."

20

The mere violation, however, of a traffic rule standing alone by itself is not of itself alone negligence. It is evidence, of course, which you must consider, but only in connection with all of the other evidence in this case in order that you may say after you have considered everything and have a complete picture of how this accident happened, whether or not the driver whose conduct you are for the moment investigating exercised reasonable care under all the circumstances of the case.

30

Now, you see, these drivers were not held to the duty of an insurer to insure the safety on this highway of other users. They were only required to exercise reasonable care, caution and prudence.

Now, if these defendants Alston and Spencer were not negligent, or if one of them was not negligent, then, insofar as you find that there was

40

Charge of the Court.

no negligence, either respecting both or one, there would be a verdict of no cause of action in favor of the one or both, if you find no negligence. If you find that these drivers, or one of these drivers was or were negligent, then you will have to determine the next step in the chain necessary to fasten liability upon such defendant or defendants, and that is whether or not such negligence, if there was any, was the proximate cause of this accident. In other words, was it the moving efficient cause of the accident without which the accident would not have happened?

10 Well, if one of these drivers or both of them should be found to have been negligent, but such negligence was not a proximate cause of the accident, then again such defendant or defendants would be entitled to a verdict of no cause of action as against these plaintiffs.

20 But, if you find that these defendants or one of them is or are to be held as negligent, and that such negligence was a proximate cause of the accident, then you have got to determine, before the question of liability could be determined, whether or not the plaintiff John M. Sprouls, was himself guilty of contributory negligence, or whether Virginia Sprouls was guilty of contributory negligence.

30 I want you to keep this principle in mind, gentlemen, so far as Virginia Sprouls is concerned. She was a passenger in her husband's automobile and there has been no evidence produced here to show she had any control over the management or operation of that machine and therefore any negligence on the part of Mr. Sprouls could not be imputed to her merely because she was a passenger in that car, if she herself was free from contrib-

40

Charge of the Court.

utory negligence so far as her own conduct is concerned.

Therefore, take up the case of Mr. Sprouls first and see whether or not he was guilty of contributory negligence and the defendants must establish contributory negligence to your satisfaction by a fair preponderance of the evidence to have the benefit of it as a defense. 10

Now, Sprouls was the operator of another car and he too was required to exercise reasonable care in the management, control and operation of it, and such of the traffic rules as fit his situation would have to be considered in determining whether or not he was negligent, that is, Sprouls. If he was negligent, gentlemen, and he contributed thereby in any degree to the happening of this accident, it would make no difference whether these defendants or one of them was or were negligent, gentlemen, or whether such defendant or defendants turned out to be more negligent than Mr. Sprouls was, he could not have a verdict against them, and you would have to find for the defendant and against Mr. Sprouls, as far as John M. Sprouls is concerned, a verdict of no cause of action. 20

Now, take up Virginia Sprouls. Although she was a passenger in her husband's automobile, it did not absolve her from all duty in the matter. She was required to exercise reasonable care for her own safety, such care as a reasonably prudent person would have exercised if placed there where she was. Now, there is not much testimony to show what she did or did not do, but from the evidence that has been produced here it is for you to say whether she exercised reasonable care for her own safety under the circumstances. If she did not and she contributed thereby in any degree to 30 40

Charge of the Court.

the happening of this accident, it would bar a recovery by her and you would have to find for the defendants and against her a verdict of no cause of action.

- 10 If, however, you find Mr. Sprouls is entitled to a verdict against the defendants or one of the defendants, then, gentlemen, he is entitled to be compensated for the injuries he personally sustained as the natural and proximate result of this accident. He claims he had a fracture of the nose and a laceration of the forehead and a laceration also of the nose. He said he had pain and he was shocked and that the nose was put out of shape, that is, there was a deviated septum and there were four stitches taken in the forehead in the hospital. Now, for such of those things as are true
- 20 he is entitled to be compensated, for the pain and suffering, if there was any, for any incapacity to which he was subjected, if he was so subjected because of this accident, and also for any scars that may have remained on his body because of this accident, and for any permanent injury. He is entitled to be compensated for those things or such of them as are true. He is entitled to be compensated for any loss of earnings due to this accident.
- 30 He says he was away from work for about two weeks and he was making about \$50 a week, a total loss, as he says, of \$100. If he did have that loss as a result of this accident, then, he is entitled to be compensated for it. He would also be entitled to be compensated for any medical bills reasonably and necessarily incurred in an endeavor to cure himself or his wife of their injuries. The doctor bill was about \$27, and the medicines cost three or three dollars and fifty cents. Now, he is
- 40 also entitled to be compensated for the damage

Charge of the Court.

done to his automobile if he is entitled to a verdict. You will determine that in a simple manner. Simply subtract from what this car was worth before the accident what it was worth right after the accident in its damaged condition, but as a substitute for that measure the courts allow you to consider what it would reasonably cost to repair the car provided it did not make the car more valuable than it was before the accident. Now, the testimony was that it cost new \$899, it was two years old, had been driven about 19,000 miles. Mr. Sprouls says his car was worth just before the accident about \$500 and that it had no value afterward. He produced an expert who testified that the reasonable cost of repairing the damage done in this accident would be \$322.25.

Now, so far as Virginia Sprouls is concerned, that is, the woman plaintiff, if she is entitled to your verdict, she is entitled to be compensated for the injuries which she personally sustained because of this accident. She says she had three stitches in her head due to a cut thereon, she was in a hospital a short time and was taken home and was in bed, and she was up and down in the house for about two weeks, she was nervous for the best part of the month, in fact, she says she is nervous still. She had a cut on her knee. She is entitled to be compensated for her pain and suffering, for the incapacity she sustained because of this accident and for the inconvenience to which she was put because of this accident.

Now, gentlemen, a word about the form of your verdict, and before I go into that I might say this: in order to entitle the plaintiff to a verdict in this case, the plaintiff does not have to satisfy you by the greater weight of the evidence that both of

Charge of the Court.

these defendants were negligent, and that their negligence was a proximate cause of the accident because it would be sufficient if one of them was negligent and such negligence was a proximate cause of this accident if these plaintiffs were not guilty of contributory negligence.

10 You see, gentlemen, if two persons through their negligence concurring together bring about an accident through the negligence of each one of them, the plaintiff has the right to sue both or either one of them, and if the plaintiff satisfies the jury by the greater weight of the evidence that one of them is negligent, and that such negligence was a proximate cause of the accident, and further proves that there was no contributory negligence, there should
20 be a recovery even if the other defendant who is sued may have been found to be negligent.

Now, these plaintiffs in this case say they are entitled to a verdict against both of these defendants and if not they are at least entitled to a verdict against one. On the other hand, the defendants say that neither one of them are negligent, and there should not be a verdict against either one of them.

30 Now, about the form of your verdict. If you find for these plaintiffs, you will have to separate your verdict. You will say, "We find for John M. Sprouls and against the defendants, or one of the defendants, as the case may be."—if you find for Mr. Sprouls—"a verdict of so much money," in which will be included in one lump sum all the items of damages he has established to your satisfaction as having resulted from this accident.

40 Take up Virginia Sprouls. If she is entitled to your verdict you will say, "We find in favor of

Charge of the Court.

Virginia Sprouls and against the defendant or defendants, as the case may be, a verdict of so much money in one lump sum."

On the other hand, if you find these defendants, or one of these defendants is or are entitled to a verdict against the plaintiffs, you will say "we find a verdict in favor of the defendants and against the plaintiffs a verdict of no cause of action," or "we find a verdict in favor of one of these defendants"—whichever it may be—"and against the plaintiffs or plaintiff a verdict of no cause of action." 10

And with respect to the other defendant, if you find that defendant is to be held liable, you will say "We find a verdict for the plaintiff Mr. Sprouls, and against such defendant a verdict of so much money" and a verdict in favor of Mrs. Sprouls and against the defendant a verdict of so much money," naming each amount in one lump sum. 20

An officer may be sworn and you may now retire.

(The jury retired.)

30

40

CHAPTER IV

The first part of the book is devoted to a general introduction to the subject of the history of the world. It is divided into two main parts, the first of which is devoted to the history of the world from the beginning of time to the present day. The second part is devoted to the history of the world from the present day to the future. The first part is divided into three main sections, the first of which is devoted to the history of the world from the beginning of time to the present day. The second part is devoted to the history of the world from the present day to the future. The first part is divided into three main sections, the first of which is devoted to the history of the world from the beginning of time to the present day. The second part is devoted to the history of the world from the present day to the future.

30

40

62 FEB.T.1932
167

New Jersey Court of Errors and Appeals

JOHN M. SPROULS and VIRGINIA
SPROULS,
Plaintiffs-Appellees,

vs.

JAMES J. QUARTIER, trading as
M. & Q. AUTO WRECKERS,
CHARLES AUSTIN and GEORGE
SPENCER,
Defendants-Appellants.

Action at Law.

On Appeal

from ~~Hudson~~

~~County Cir-~~

~~Cuit Court.~~

NEW JERSEY
SUPREME COURT
HUDSON CIRCUIT

BRIEF OF DEFENDANT-APPELLANT GEORGE SPENCER.

Statement and Facts.

This is an appeal from the refusal of the trial court to grant a non-suit in favor of the defendant, George Spencer. The action was brought by the plaintiffs to recover damages for injuries alleged to have been suffered in an automobile accident and the facts are briefly as follows: On February 24, 1929 at about 5:30 P. M. the plaintiff, John M. Sprouls, accompanied by his wife the plaintiff, Virginia Sprouls, was driving his automobile east on Passaic Avenue, Newark, N. J. and was approaching the intersection of Brill Street. At this point the defendant, Charles Austin, (also spelled Alston) was proceeding in the same direction as the Sprouls' car and in attempting to pass same struck the Sprouls' car on the left rear propelling same to the right. Both John M. Sprouls and Virginia Sprouls testified that with their cars in this

Served & a
copy of this
brief is acknowledged
this 22nd day
of September, 1932
Luskhead & Lawrence
attys of the app.

position they felt a second bump on the same part of the car as the first bump and that their car then struck a telegraph pole located in the vicinity of the southeast corner of Brill Street and Passaic Avenue. Shortly before the accident the automobile owned and operated by George Spencer was approaching in a westerly direction on Passaic Avenue, and according to the testimony of John M. Sprouls and Charles Austin, on the wrong side of the street. John M. Sprouls testified that the second bump his car received was caused by the Spencer car but this testimony was later stricken out by the court and a motion for non-suit made on the ground that no evidence was produced to show that defendant, George Spencer, had in any way been a contributing cause of the injuries suffered by the plaintiffs. This motion was denied and an exception was taken. The jury returned a verdict against the defendant, Charles Austin (also spelled Alston) and against George Spencer.

ARGUMENT.

Refusal of the trial court to grant a non-suit in favor of the defendant, George Spencer, constitutes reversible error.

No testimony was produced by the plaintiffs to show that the defendant, George Spencer, was a contributing factor or cause of the injuries suffered by the plaintiffs and for this reason a non-suit should have been granted on behalf of George Spencer.

The plaintiff, John M. Sprouls, after testifying that he was proceeding east on Passaic Avenue, Newark, N. J., on February 24, 1929 about 5:30

P. M. gave the following as his version of the accident (S. of C., p. 25, ll. 16-40) :

“Q. Just tell the court and jury what happened. A. As I was approaching the intersection of Brill Street about 50 feet west of it my attention was attracted towards a car approaching rapidly from the rear, and as I looked in my mirror I saw him. I saw that he was coming at a very rapid rate of speed and it looked very much like he was going to run right into me as he apparently was not pulling out to pass me. At the next instant—the whole accident only took a matter of possibly less than a couple of seconds—as he came close to me he did then swing out sharply, and as he swung out he hit me in the left rear. He started to skid me around in the direction of the northeast corner of Brill and Passaic Street—rather, the southeast corner of Brill and Passaic Street. Then, as he swung out sharply, as I say, he started to skid me around after hitting me, and another car coming in the opposite direction, which was out in the middle of the road, crashed into him, at least, there was another deafening crash and his car and this other car which I found out after the accident was this Spencer’s * * *”

The car that first struck the Sprouls’ car was identified by plaintiff, John M. Sprouls, as the Austin car, his testimony on this point being as follows (S. of C., p. 26, ll. 11-13) :

“Q. You found out the name of the driver of the car, didn’t you, that came from your rear? What was his name? A. His name was Alston.”

Plaintiff, John M. Sprouls, then attempted to connect up the Spencer car with the second bump (State of Case, p. 26, ll. 18-41) :

“Q. Will you proceed? First, you say,

that Alston's car came from your rear, hit the left rear of your car. Then what happened? A. Then I started to skid around heading toward the southeast corner of Passaic Avenue and Brill Street and after this other crash I got another blow in the back of my car in the same left rear of the car which swung me around further and gave me increased speed, and finally drove me up against a telephone pole which was on the same corner.

Q. Whose car hit you the second time? A. The second car—the second time was the car which had been coming in the opposite direction.

Q. Was that Spencer's? A. Spencer's car.

Q. So that the first time you were hit by Alston's car, and the second time you were hit by Spencer's car? A. Yes.

Q. And Alston's car being the car that was behind you? A. Yes.

Q. And Spencer being the car coming west on Passaic Avenue in the opposite direction to which you were going? A. Yes."

However, on cross-examination plaintiff John M. Sprouls admitted that he did not know who hit him the second time and further stated expressly that it was impossible for him to see what caused the second bump and that his previous testimony that the second bump was caused by the Spencer car was merely a deduction. This testimony was as follows (S. of C., p. 70, l. 14 to p. 71, l. 2) :

"Q. You were hit the second time. You say you were hit by a car in the rear the second time. How were you hit? A. I was hit by a car in the rear, and when Alston's car hit me he was in the act of turning out to pass me. While his car was heading for his left hand side of the street, making it a human impossibility for him—

Q. Never mind what it would make impos-

sible. Where did the second blow come from? A. Then the second crash came immediately. After the second crash I got another blow in the back in the same part of the car.

By Mr. Townsend:

Q. You say you were hit twice or three times? A. Twice.

Q. And you were hit in the back both times? A. Yes.

Q. You do not know who hit or came in contact the second time, do you? A. No, I could not swear who it was.

Q. You did not see it? A. I could not actually swear who it was. It was impossible for me to see it.

Q. And your statement on your direct-examination it was Spencer's car was merely a deduction, a conclusion of yours? A. Yes."

The court thereupon struck out the testimony of plaintiff, John M. Sprouls, that he was struck by George Spencer's car but at the same time denied the motion to non-suit the plaintiffs as far as the defendant, George Spencer, was concerned. The court's words on this were as follows (S. of C., p. 71, l. 17 to 33):

"The Court: I might say there was a motion made to strike out that part of Mr. Sprouls' testimony where he said he was struck by the George Spencer car after he had been hit in the rear of his car first. At that time I did not recall such testimony, but I am advised that he did so testify and that part of his testimony will be stricken out where he directly said the Spencer car was the car that struck him the second time.

Mr. Klausner: That it was a mere matter of deduction on his part.

The Court: Yes, that it was a mere matter of deduction on his part.

And so far as the motion to non-suit is concerned, of course, that will be denied."

The other plaintiff, Virginia Sprouls, did not actually see the accident but confined her testimony to a statement that the car in which she was riding was struck twice. Her testimony was as follows (S. of C., p. 66, l. 36; p. 67, l. 12) :

“Q. I understand you did not actually see the happening of the accident? A. No.

Q. But do you remember how many times, if at all, your car was hit before it went into the pole? A. Yes, twice.

Q. And where was your car hit before it went into the pole on the sidewalk where it stopped? A. Well, we were coming along the road and then we got hit which drove us skidding—

Q. Which what? A. Drove us skidding, and then the second time we were hit we were driven into the electric pole.

Q. The second time you were hit you were driven into the electric pole? A. Yes, sir.

Q. And you landed at the electric pole? A. Yes, sir.”

9

The only other witness for the plaintiffs was Charles Austin who claimed that his car was run into by the Spencer car but that he did not know whether or not the Spencer car had struck the Sprouls car. His testimony was as follows (S. of C., p. 51, ll. 21 to 29) :

“Q. Did Spencer’s car at any time hit Sprouls’ car? A. Well, I would not say what hit. Of course, when I got hit in the side myself I could not tell about that, because when he hit me he carried me right straight across the road. I would not say who hit him or anything like that. I would not say nothing about the collision with him. I know he hit me.”

The testimony of George Spencer was to the effect that the Alston car in attempting to pass the Sprouls’ car struck the latter car in the rear and

then came over on the wrong side of the street and struck his car. His version (S. of C., p. 63, ll. 13-27) is as follows:

“Q. Tell the court and jury what happened at the time of the accident. A. This happened about five o'clock Sunday afternoon. I was going west on Passaic Avenue and coming east there was an Essex Coach, behind him there was a Cadillac sedan. I was coming west on Passaic Street, and coming east there was an Essex Coach, behind him there was this Cadillac and the Cadillac struck him in the rear, knocked him to his right, when he hit the Essex his wheels got caught and he came right in front of me on my right, and we both stopped on my right curb. I struck his right front wheel and then he backed out about five minutes later and goes on his way to Jersey City.”

He expressly denied having come in contact with the Sprouls' car at all in the following words (S. of C., p. 64, ll. 18-20):

“Q. Had your car at any time ever come in contact with the Sprouls' car at all? A. No, it did not.”

The witness, Joseph Spencer, a passenger in the car driven by the defendant, George Spencer, gave testimony to practically the same effect which testimony was as follows (S. of C., p. 76, ll. 18-20):

“Q. Will you tell the Judge and jury in your own way exactly what happened? A. Well, we was coming back towards—from Jersey City into Newark and we got within the corner and we were coming along on the right side. There was two cars coming up on their right side. They was coming along pretty lively, then there was a car behind them, and he hit this one fellow and drove him right up against the pole and he shot across the street and ran right into us, and

stopped quick, knocks against the curb, and he backed up and went right out again."

There was no legal evidence in the case, therefore, that George Spencer had been a contributing cause to the injuries suffered by the plaintiffs even admitting that he was driving a trifle on the wrong side of the road as claimed by the plaintiff, John M. Sprouls, (S. of C., p. 27, ll. 22-24) or that he was driving from thirty-five to forty miles an hour as claimed by defendant, Charles Austin (S. of C., p. 62, ll. 26-31).

It is submitted that the facts in this case put it clearly within the well-settled doctrine that damages to be recoverable must be the proximate consequence of the wrongful act. Taking the case against Spencer at its worst it is only to the effect that he was driving on the street in the proximity of the Austin and Sproul's cars on the wrong side and in excess of the speed limit but there is no evidence whatsoever as to what caused the second bump that the Sprouls' car received.

CONCLUSION.

It is, therefore, respectfully submitted that the motion to non-suit the plaintiffs made on behalf of the defendant, George Spencer, was erroneously denied and that the verdict returned against the defendant, George Spencer, should be set aside.

Respectfully submitted,

HEINE & LAIRD,
Attorneys for Defendant,
George Spencer.

CHARLES J. MOLLOY,
Of Counsel.

M. & Q. Auto Wreckers, and the negligent operation by the defendant, George Spencer, of the automobile owned by him. The plaintiffs, however, at the trial did not proceed against the defendant, James J. Quartier, trading as M. & Q. Auto Wreckers.

The accident happened on February 24, 1929 at about 5:30 P. M. on Passaic Avenue near Brill Street, Newark, N. J. It was a clear day, but the road was slippery and there were snowbanks on both sides of the road as a result of a snow storm a few days prior thereto. The plaintiff, John M. Sprouls, was driving his automobile east on Passaic Avenue. His wife, Virginia, the other plaintiff, was sitting in the front seat to the right beside him, and their baby was lying in a swing in the rear of the car. The defendant, Charles Alston was also proceeding east on Passaic Avenue to the rear of Sproul's car. Alston was driving his car at a very fast rate of speed, and in attempting to pass Sproul's car struck Sproul's car on the left rear, pushing it toward the right in towards Brill Street. The defendant, George Spencer, was approaching Brill Street westerly on Passaic Avenue in the opposite direction at a fast rate of speed, and on his wrong side of the road, that is, on his left side of the road. After Alston hit Sprouls' car in the left rear, and Alston's car was facing at an angle toward his left, the front of Spencer's car hit the right side of Alston's car, and after this crash, Sprouls' car was hit a second time in the left rear, as a result of which, Sprouls' car was swung around still further with increased speed and forced up against an electric pole on the southeast corner of Brill Street and Passaic Avenue.

The defendant, George Spencer, moved for a nonsuit on the ground that there was no proof of neg-

ligence on his part. The trial court denied this motion, but no exception, whatsoever, was taken to this ruling of the trial court. The jury rendered a verdict for both of the plaintiffs against both of the defendants, Charles Alston and George Spencer.

The only ground of appeal is the refusal of the trial court to grant this motion for a non-suit made by the defendant, George Spencer. The defendant, Charles Alston, has not been made a party to this appeal.

ARGUMENT.

POINT I.

Refusal of trial court to grant a non-suit in favor of defendant, George Spencer, does not constitute reversible error because no exception was taken to said ruling of the trial court.

The only ground of appeal assigned for error by the defendant-appellant, George Spencer, (State of Case, p. 22) and argued by the defendant-appellant, George Spencer, in his brief, (Brief of appellant, p. 2) is the refusal of the trial court to grant his motion for a non-suit. The denial of this motion by the trial court is at page 71, li. 32-33 of the State of Case. No exception was taken or objection made to this ruling of the trial court. It is well settled that in this situation there is nothing for this court, an appellate tribunal, to decide.

It has been definitely settled in this State that an objection must be made to the denial of any motion in the trial court to make such denial a ground of appeal, and that this court will not con-

sider alleged judicial errors occurring during a trial or in the charge to the jury to which no exception was taken.

Pasquale vs. Aronson, 106 N. J. L., 249, Court of Errors & Appeals, 1930;

Punk vs. Botany Worsted Mills, 105 N. J. L., 647, Court of Errors and Appeals, 1929;

Joseph M. Byrne Co. vs. Snead & Co., 98 N. J. L., 256, Court of Errors & Appeals, 1922;

Kargman vs. Carlo, 85 N. J. L., 632, Court of Errors & Appeals, 1914.

For this reason alone, we respectfully submit the judgments under review herein should be affirmed. However, even if an exception had been taken, we further respectfully contend that the trial court did not commit any error in denying this motion for a non-suit in favor of the appellant.

POINT II.

The question whether or not the defendant, George Spencer, was negligent was a question of fact to be decided by the jury.

In considering this question, the defendant-appellant has failed to bear in mind certain well settled rules which govern the trial court in passing upon such a motion for non-suit. In dealing with a motion for a non-suit, or to direct a verdict for the defendant, all the evidence against the party making the motion must be taken as true, and the adverse party must be given the benefit of

all legitimate inferences reasonably deducible therefrom.

In *Andre vs. Mertens*, 88 N. J. L., 626-627, this Court, speaking through Trenchard, *J.*, said:

“Of course, in passing upon motions to non-suit and for the direction of a verdict, the Court cannot weigh the evidence, but must take as true all evidence which supports the view of the party against whom the motions are made, and must give him the benefit of all legitimate inferences which are to be drawn therefrom in his favor.”

Another well settled rule is that where fair-minded men might honestly differ as to the conclusions to be drawn from the facts whether controverted or uncontroverted, the question at issue must go to the jury. The trial judge is only justified in non-suiting the plaintiff or directing a verdict for the defendant upon a court question arising from the admitted or uncontroverted facts of a case.

Nolan vs. Bridgeton & Millville Traction Co., 74 N. J. L. 196;

Dickinson vs. Erie Railroad Co., 85 N. J. L., 586.

In the instant case, the plaintiff, John M. Sprouls, gave his version of the accident as follows (State of Case, p. 25, l. 16, to p. 26, l. 41):

“Q. Just tell the court and jury what happened. A. As I was approaching the intersection of Brill Street about 50 feet west of it my attention was attracted toward a car approaching rapidly from the rear, and as I looked in my mirror I saw him, I saw that he was coming at a very rapid rate of speed and it looked very much like he was going to run right into me as he apparently was not

pulling out to pass me. At the next instant—the whole accident only took a matter of possibly less than a couple of seconds—as he came close to me he did then swing out sharply, and as he swung out he hit me in the left rear. He started to skid me around in the direction of the northeast corner of Brill Street and Passaic Street—rather, the southeast corner of Brill and Passaic Street. Then as he swung out sharply, as I say, he started to skid me around after hitting me, and another car coming in the opposite direction, which was out in the middle of the road, crashed into him, at least, there was another deafening crash and his car and this other car which I found out after the accident was this Spencer's—

Mr. Molloy: I object to what was found out after the accident.

The Witness: The two cars that were smashed up must have been the cars which crashed, that is the point.

Mr. Molloy: I object.

Q. You found out the name of the driver of the car, didn't you, that came from your rear? What was his name? A. His name was Alston.

Q. What was the name of the driver of the car who was coming in the opposite direction to you, that is, coming from Jersey City? What was his name? A. Spencer.

Q. Will you proceed? First, you say, that Alston's car came from your rear, hit the left rear of your car. Then what happened? A. Then I started to skid around heading toward the southeast corner of Passaic Avenue and Brill Street and after this other crash I got another blow in the back of my car in the same left rear of the car which swung me around further and gave me increased speed, and finally drove me up against a telephone pole which was on the same corner.

Q. Whose car hit you the second time? A. The second car—the second time was the car which had been coming in the opposite direction.

Q. Was that Spencer's? A. Spencer's car.

Q. So that the first time you were hit by Alston's car, and the second time you were hit by Spencer's car? A. Yes.

Q. And Alston's car being the car that was behind you? A. Yes.

Q. And Spencer being the car coming west on Passaic Avenue in the opposite direction to which you were going? A. Yes."

A number of times during the case the plaintiff, John M. Sprouls, testified that the left rear of his car was hit twice. (in addition to the above testimony, see State of case, p. 29, ll. 10-24; p. 38, ll. 1-2; p. 70, ll. 12-25). The plaintiff, Virginia Sprouls, also testified that the back of their car on the left was hit twice before the left side of their car was driven into the electric pole (State of Case, p. 66, l. 38, to p. 67, l. 17). A photograph of the back of Sprouls' car showed the damage resulting from these two blows (Exhibit P-1, State of Case, p. 29, l. 40-p. 31, l. 6; p. 79, l. 38 to p. 80, l. 12).

However, the defendant, Alston, denied that he ever came in contact with Sprouls' car, (State of Case, p. 51, ll. 31-33) and the defendant-appellant, Spencer, denied that he ever hit Sprouls' car (State of Case, p. 64, ll. 18-20). Alston further says that just as he was attempting to pass the rear of Sprouls' car and started to turn left, Spencer's car struck him on the right side of his car, (State of Case, p. 50, ll. 18-26) and that just before that collision, Spencer was driving his car on the wrong side, that is, the left side of the road, (State of Case, p. 51, ll. 12-20) traveling between

thirty-five and forty miles an hour (State of Case, p. 62, ll. 25-30). Even counsel for the defendant-appellant admit this on page 8 in their brief where they say: "Taking the case against Spencer at its worst, it is only to the effect that he was driving on the street in the proximity of the Austin and Sprouls' cars on the wrong side and in excess of the speed limit." Counsel for the appellant further argue that there is no evidence, whatsoever, as to what caused the second bump that the Sprouls' car received. In this, they are entirely mistaken, for although Sprouls' statement that the second bump was from Spencer's car was only a deduction on Sprouls' part, nevertheless, the jury had the right to also draw that inference from the evidence produced in this case.

It is clear that after the first blow, the defendant, Alston's, car was clear of Sprouls' car, and after the crash between Spencer's car and Alston's car, Spencer's car was between that of Alston and Sprouls. There were no cars other than that of Spencer and Alston in the immediate vicinity within striking distance of Sprouls' car. This was the testimony of the plaintiff, Sprouls (State of Case, p. 72, ll. 20-28).

"The Court: Well, were there any other cars in your immediate vicinity within striking distance of you, or within the immediate vicinity of you at the time of the collision except the George Spencer car and the Alston car?"

The Witness: Not that I noted."

Joseph Spencer, a witness produced by the defendant, also testified to that effect (State of Case, p. 78, ll. 18-24). Even the appellant, Spencer, testified that there were no other cars on the road at

the time of the accident (State of Case, p. 64, ll. 26-29).

“Q. Do you remember if there were any other cars on the road at all? A. No, I did not notice if there was any.”

Under these circumstances, the jury could properly infer that Spencer's car collided with the rear of Sprouls' car at the time of the second bump; for the rule is settled that where the evidence of negligence is circumstantial, and where probability may be all that is attainable, all that is required is that the circumstances should be so strong that a jury might properly, on grounds of probability rather than of certainty, exclude the inference favorable to the defendant.

Hannon vs. D. L. & W. R. R. Co., 98 N. J. L., 191-193;

Austin vs. Pennsylvania R. R. Co., 82 N. J. L., 416-417;

Goodman vs. Lehigh Valley Railroad Co., 78 N. J. L., 317;

Suburban Electric Co. vs. Nugent, 58 N. J. L., 659.

Moreover, we respectfully urge that even if the second bump to Sprouls' car was not by Spencer's car but rather by Alston's car, Spencer's negligence could be considered a contributing cause of this accident. The second blow to Sprouls' car came after the crash between the cars driven by Alston and Spencer. It is manifest that the negligence of the appellant, Spencer, contributed to the happening of this crash, and counsel for the appellant, at no time, argue to the contrary. It surely follows, therefore, that, if as a result of that crash, Sprouls' car was hit a second time, then the negligence of the appellant, Spencer, which contributed to this

crash must be considered as also contributing to the second blow received by Sprouls' car.

It is therefore respectfully contended that the motion to non-suit the plaintiffs made on behalf of the defendant, George Spencer, was properly denied.

CONCLUSION.

For the reasons above stated, it is respectfully submitted that the judgments in favor of the plaintiffs should be affirmed with costs.

KINKEAD & KLAUSNER,
Attorneys for and of Counsel
with Plaintiffs-Appellees.

INDEX

1920	
Notice of Appeal to Court of Errors and Appeals and Grounds of Appeal	2
Opinion—Supreme Court	3
Judgment at Affirmance	3
Notice of Appeal	3
Specifications of Error	3
Summons	3
State of Demand	4
Amended State of Demand	5
Agreed Statement of Facts	5
Transcript of Record of Judgment	15
Clerk's Certificate	17
Order Extending Time to Agree Upon State of Case	18
State of Case on Appeal (Agreed Upon by Counsel)	19
Exhibit P-1—Bill of Lading	20
Exhibit P-2—Notice of Railroad Company to Shipper	21
Exhibit P-3—Notice of Storage Company to Shipper	22
Exhibit P-4—Delivery Receipt	23
Exhibit P-5—Correspondence	24
Exhibit P-6—Correspondence	25
Exhibit P-7—Correspondence	26
Exhibit P-8—Correspondence	27

crash must be considered as also contributing to the second blow received by Spraul's ear.

It is therefore respectfully conceded that the motion to amend the plaintiffs made on behalf of the defendant, George Spencer, was properly denied.

CONCLUSION.

For the reasons above stated, it is respectfully submitted that the judgments in favor of the plaintiffs should be affirmed with costs.

KINKEAD & KEAUSNER,
Attorneys for and of Counsel
with Plaintiffs-Appellees.