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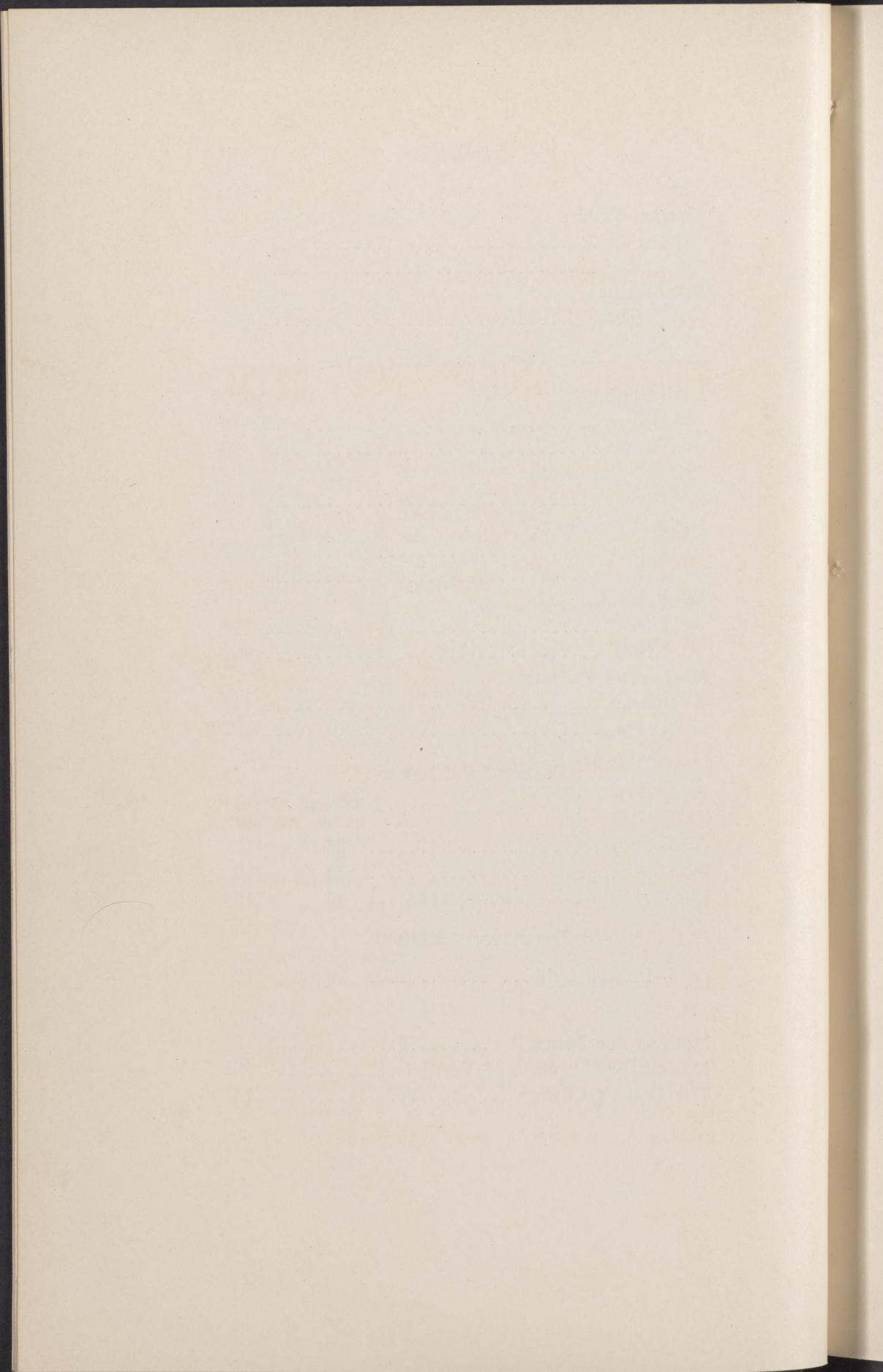
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PLEADINGS IN CASE NUMBER ONE.

(No. 149, October, 1929, Term List.)

MIDDLESEX COUNTY CIRCUIT COURT

10

CHARLES SKIBA, infant, by JOHN SKIBA and MARY SKIBA, his next friends, and JOHN SKIBA, MARY SKIBA and ANNA SKIBA, individually,

Plaintiffs,

Action at Law.

v.

20

EDWARD HMIELESKI and LILLIAN HMIELESKI,

Defendants.

Petition to Prosecute Action.

To HIS HONOR, PETER F. DALY, Judge of our said Circuit Court of the County of Middlesex:

30

The petition of Charles Skiba, the plaintiff in the above stated cause of action, humbly shows unto your Honor, that he is an infant under the age of twenty-one years, to wit: nineteen years of age, and that he is advised that he has a good and just cause of action against the said Edward Hmieleski and Lillian Hmieleski for injuries sustained in an automobile accident due to the negligence of the said Edward Hmieleski and Lillian Hmieleski, through their agent or servants and that your petitioner is about to prosecute an action

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Petition to Prosecute Action.

against the said Edward Hmieleski and Lillian Hmieleski, in the above stated court for the same.

Your petitioner therefore humbly prays your Honor to admit him to prosecute the said action by his Father and Mother as next friends.

10

And your petitioner will ever pray, etc.

CHARLES SKIBA,
Petitioner.

We hereby consent and agree that the above-named Charles Skiba shall be at liberty to prosecute this action by us, as his next friends, according to the prayer of the above petition.

20

Dated May 2nd, 1928.

JOHN SKIBA,
MERI SKIBA.

State of New Jersey, }
County of Middlesex, } ss.:

HELEN M. JURICK, of full age, being duly sworn, on her oath says, that she was present and saw Charles Skiba, the plaintiff named in the foregoing stated cause of action, sign the foregoing petition, and also that she was present and saw John Skiba and Mary Skiba, the persons mentioned in the foregoing petition sign the consent thereunder written; and that they were signed on the 2nd day of May, 1928.

30

HELEN M. JURICK.

Sworn and subscribed to before me }
this 7th day of May, 1928. }

40

SIDNEY J. BROWN,
Notary Public of New Jersey.

Rule for Appointment of Next Friend.

(Filed May 28, 1928.)

MIDDLESEX COUNTY CIRCUIT COURT.

CHARLES SKIBA, infant, by JOHN SKIBA and MARY SKIBA, his next friends, and JOHN SKIBA, MARY SKIBA and ANNA SKIBA, individually,

Plaintiffs,

v.

EDWARD HMIELESKI and LILLIAN HMIELESKI,

Defendants.

Action at Law.

10

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It appearing upon reading the petition of Charles Skiba, and the consent of John Skiba and Mary Skiba, thereunder written and the affidavit of Helen M. Jurick thereto attached, that the said Charles Skiba has a good cause of action against the said Edward Hmieleski and Lillian Hmieleski, and is an infant under the age of twenty-one years.

It is ordered that John Skiba and Mary Skiba be admitted to prosecute the said action for the said Charles Skiba in the above said court, against the said Edward Hmieleski and Lillian Hmieleski as the next friends of the said Charles Skiba.

30

PETER F. DALY,
Judge.

40

Complaint.

(Filed June 13, 1928.)

MIDDLESEX COUNTY CIRCUIT COURT.

CHARLES SKIBA, infant, by JOHN SKIBA and MARY SKIBA, his next friends, and JOHN SKIBA, MARY SKIBA and ANNA SKIBA, individually,

Plaintiffs,

Action at Law.

v.

EDWARD HMIELESKI and LILLIAN HMIELESKI,
Defendants.

10

20

COUNT ONE.

The plaintiffs residing in the Borough of Carteret, the County of Middlesex and State of New Jersey, complaining of the defendants, says:

1. That the plaintiff, John Skiba, was and is the owner of a certain Willys-Knight automobile which was then and there being operated by his agent or servant, Charles Skiba, along a certain street or highway more commonly known as Rahway Avenue, Avenel, New Jersey, in the Township of Woodbridge, County of Middlesex and State of New Jersey, in a northerly direction and towards the City of Rahway.

30

2. That at the time and place aforesaid, the defendant, through his agent or servant, was operating his said automobile truck of Mack construction in a southerly direction along said street or high-

40

Complaint.

way and that the defendants, through their agent or servant, did negligently and carelessly run into and collide with the automobile of the said plaintiff.

10 3. That the negligence of the said defendants, through their agent or servant, consisted in this: that he failed to keep a proper lookout for objects in his path; that he proceeded at a careless and negligent rate of speed; that he operated his said Mack truck on the left-hand side of said road or highway and ran into and collided with the automobile of the said plaintiff, which was being operated in a careful and lawful manner along the right-hand side of the said road.

20 4. That because of the negligence of the said defendants, through their agent or servant, the plaintiff's automobile was badly injured and damaged whereby the plaintiff will be forced to expend a large sum of money for the repair of same. That he will be unable to make use of said automobile during the repair thereof and will be forced to expend a large sum of money for the use of an automobile. That because of the said accident and negligence of the said defendants, through
30 their agent or servant, the automobile of the said plaintiff has greatly depreciated in value to his damage.

The plaintiff, John Skiba, demands on this count the sum of twenty-five hundred dollars (\$2500).

COUNT TWO.

40 The plaintiff, Anna Skiba, residing in the Borough of Carteret, the County of Middlesex and State of New Jersey, complaining of the defendants, says that:

Complaint.

1. That she was a passenger in the automobile of her father, John Skiba, at the time of said accident.

2. That she repeats all of paragraphs one, two and three of Count One.

10

As a direct and proximate result of the negligence of the defendant, the plaintiff became unconscious, sustaining severe and serious injuries about the face, head and body and legs, and did especially suffer a severe bruise under her chin causing pains and suffering to her head; and did also especially suffer grievous injuries to her back, chest and finger.

4. That the plaintiff at present is confined to her bed and will be confined to her bed for a long period of time and that she suffered great pain and anguish, both of body and mind and will in the future suffer great pain and anguish both of body and mind; and was obliged to and did expend a large sum of money for doctor's treatment, nurse's treatment and medicine; and that she is unable to attend to her usual occupation and will in the future be unable to attend to her usual occupation to her damage in the sum of twenty-five hundred dollars (\$2500).

20

30

COUNT THREE.

The plaintiff, Charles Skiba, an infant, through his next friends, John Skiba and Mary Skiba, complaining of the defendant, says that:

1. That he was the driver of the automobile of his father, John Skiba, mentioned in paragraph one of the first count.

40

Complaint.

2. That he repeats all of paragraphs one, two and three of count one.

10 3. That as a direct and proximate result of the negligence of the defendants aforesaid, the plaintiff, Charles Skiba, sustained many and severe injuries about the face, head, body and legs and did especially suffer many and numerous cuts, bruises and contusions about the forehead and eyes; and did especially suffer bruises and cuts of the hands and knees.

20 4. That because of the said accident the plaintiff herein became unconscious and was taken to the Rahway Hospital where he was confined for a long period of time and is at the present time unable and will be unable to attend to his usual occupation and work for a long time.

Damages will be claimed by the plaintiff on this count for the sum of Forty-five hundred (\$4500) dollars.

COUNT FOUR.

The plaintiffs, John Skiba and Mary Skiba, complaining of the defendants, say:

30 1. That they repeat all of paragraphs one, two and three of count one.

2. That by reason of the negligence of the said defendants, they have expended a large sum of money for medical services, hospital bills, medicines and appliances in order to cure their said son of his injuries and that they will in the future be forced to expend a large sum of money for medical services, hospital bills, medicines and appliances for their said son.

40

3. That the plaintiffs herein have lost the earn-

Answer.

ings of the infant plaintiff, Charles Skiba, and will in the future lose the earnings of their said infant child by reason of the negligence of the defendants, through their servant or agent aforesaid.

Damages will be claimed on this count in the sum of Five hundred dollars (\$500). 10

ELMER E. BROWN,
Attorney for Plaintiff.

Answer.

(Filed July 3, 1928.)

MIDDLESEX COUNTY CIRCUIT COURT.

CHARLES SKIBA, infant, by JOHN SKIBA and MARY SKIBA, his next friends, and JOHN SKIBA, MARY SKIBA and ANNA SKIBA, individually,

Plaintiffs.

Action at Law.

v.

EDWARD HMIELESKI and LILLIAN HMIELESKI,

Defendants.

20

30

Edward Hmieleski and Lillian Hmieleski, residing in Perth Amboy, New Jersey, say:

IN ANSWER TO COUNT ONE.

1. They admit paragraph "1" of Count One of plaintiffs' complaint.

2. They deny paragraphs "2," "3" and "4" of Count One of plaintiffs' complaint. 40

Answer.

SEPARATE DEFENSE.

10 And for a further and separate defense the defendants say that the plaintiffs by their own negligence contributed to the happening of the accident alleged in the complaint, and without such negligence on the part of the plaintiffs the accident would not have occurred.

IN ANSWER TO COUNT TWO.

1. The defendants leave to the plaintiff to prove or make proof of the allegations contained in paragraph "1" of Count Two of plaintiffs' complaint.

20 2. For answer to paragraph "2" of Count Two of plaintiffs' complaint defendants admit paragraph "1" and deny paragraphs "2" and "3" of Count One of plaintiffs' complaint.

3. The defendants deny paragraphs "3" and "4" of Count Two of plaintiffs' complaint.

SEPARATE DEFENSE.

30 And for a further and separate defense the defendants say that the plaintiffs by their own negligence contributed to the happening of the accident alleged in the complaint, and without such negligence on the part of the plaintiffs the accident would not have occurred.

IN ANSWER TO COUNT THREE.

40 1. The defendants leave to the plaintiff to prove or make proof of the allegations contained in paragraph "1" of Count Three of plaintiffs' complaint.

Answer.

2. For answer to paragraph "2" of Count Three of plaintiffs' complaint the defendants admit paragraph "1" and deny paragraphs "2" and "3" of Count One of plaintiff's complaint.

3. The defendants deny paragraphs "3" and "4" of Count Three of plaintiffs' complaint. 10

SEPARATE DEFENSE.

And for a further and separate defense the defendants say that the plaintiffs by their own negligence contributed to the happening of the accident alleged in the complaint, and without such negligence on the part of the plaintiffs the accident would not have occurred. 20

IN ANSWER TO COUNT FOUR.

1. For answer to paragraph "1" of Count Four of plaintiffs' complaint the defendants admit paragraph "1" and deny paragraphs "2" and "3" of Count One of plaintiffs' complaint.

2. The defendants deny paragraphs "2" and "3" of Count Four of plaintiffs' complaint.

SEPARATE DEFENSE. 30

And for a further and separate defense the defendants say that the plaintiffs by their own negligence contributed to the happening of the accident alleged in the complaint, and without such negligence on the part of the plaintiffs the accident would not have occurred.

JOHN L. RIDLEY,
Attorney for Defendant,
Office and P. O. Address, 40
1 Exchange Place,
Jersey City, New Jersey.

Reply.

(Filed July 9, 1928.)

MIDDLESEX COUNTY CIRCUIT COURT.

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CHARLES SKIBA, infant, by JOHN SKIBA and MARY SKIBA, his next friends, and JOHN SKIBA, MARY SKIBA and ANNA SKIBA, individually,

Plaintiffs,

Action at Law.

v.

EDWARD HMIELESKI and LILLIAN HMIELESKI,

Defendants.

20

Plaintiffs by way of reply to the answer of the defendants say that:

30

1. They join issue on paragraphs one and two in the answer to Count One.

2. They deny first separate defense to Count One and join issue.

3. They join issue on paragraph one in answer to Count Two.

4. They join issue on paragraphs two and three of answer to Count Two.

5. They deny the first separate defense in answer to Count Two.

6. They join issue on the allegations alleged in paragraphs one and two of answer in Count Three.

40

7. They deny first separate defense of Count Three and join issue.

Order.

8. They join issue on the allegations alleged in paragraphs one and two of answer in Count Four.

9. They deny first separate defense to Count Four and join issue.

ELMER E. BROWN,
Attorney for Plaintiff.

10

Order.

(Filed May 7, 1929.)

MIDDLESEX COUNTY CIRCUIT COURT.

CHARLES SKIBA, infant, by JOHN SKIBA and MARY SKIBA, his next friends, and JOHN SKIBA, MARY SKIBA and ANNA SKIBA, individually,

Plaintiffs.

Action at Law.

20

v.

EDWARD HMIELESKI and LILLIAN HMIELESKI,

Defendants.

30

This matter coming on before the court on the return of a rule to show cause heretofore allowed why the judgments entered in the above-entitled cause should not be set aside and a new trial granted and the court having heard the argument of said rule;

It is on this 26th day of April, 1929, ORDERED, that the rule to show cause heretofore allowed in the matter of Charles Skiba, infant, by John Skiba and Mary Skiba, his next friends, be and it hereby is made absolute unless the plaintiff with-

40

Postea.

in ten days of the date of this order signifies his intention in writing to accept two thousand (\$2,000.00) dollars as and for his damages.

10 That the rule to show cause heretofore allowed in favor of Anna Skiba, be and it hereby is made absolute unless the plaintiff within ten days of the date of this order signifies her intention in writing to accept twelve hundred (\$1200.00) dollars.

That the rule to show cause heretofore allowed in the case of Mary Skiba and John Skiba, individually, be and it is hereby discharged.

PETER F. DALY,
Judge.

20

Postea.

(Filed April 16, 1929.)

MIDDLESEX COUNTY CIRCUIT COURT.

CHARLES SKIBA, infant, by JOHN SKIBA and MARY SKIBA, his next friends, and JOHN SKIBA, MARY SKIBA and ANNA SKIBA, individually,

30

Plaintiffs,

Action at Law.

v.

EDMUND HMIELESKI and LILLIAN
HMIELESKI,

Defendants.

40

The above cause was tried before Judge Peter F. Daly, with a jury, at the Middlesex County Circuit Court on April 15th, 1929.

The jury rendered a general verdict against the defendants and in favor of the plaintiff Charles

Remittance of Damages.

Skiba, by his next friends John Skiba and Mary Skiba, for the sum of two thousand and five hundred (\$2,500) dollars.

The jury rendered a general verdict against the defendants and in favor of the plaintiff, Anna Skiba, for the sum of one thousand and five hundred (\$1,500) dollars. 10

The jury rendered a general verdict against the defendants and in favor of the plaintiff, John Skiba, for the sum of one thousand and seventy-five (\$1,075) dollars.

Dated April 16th, 1929.

PETER F. DALY,
Judge.

20

Remittance of Damages.

(Filed September 9, 1929.)

MIDDLESEX COUNTY CIRCUIT COURT.

JOHN SKIBA, ANNA SKIBA, and
CHARLES SKIBA, by his next
friends JOHN SKIBA and MARY
SKIBA, and JOHN SKIBA and
MARY SKIBA, individually,

Plaintiffs,

Action at Law.

30

v.

EDMUND HMIELESKI and LILLIAN
HMIELESKI,

Defendants.

THAT WHEREAS, by an order of Peter F. Daly,
Judge of the Middlesex County Circuit Court, after
Rule to Show Cause, the judgment of the Jury in 40

Remittance of Damages.

favor of Charles Skiba was reduced from twenty-five hundred (\$2500.00) dollars to two thousand (\$2,000.00) dollars, and the judgment of Anna Skiba was reduced from fifteen hundred (\$1500.00) dollars to twelve hundred (\$1200.00) dollars,

10

Now, THEREFORE, in pursuance of said order the said Charles Skiba, for himself, and through his next friends John Skiba and Mary Skiba hereby consents to the reduction of said judgment from twenty-five hundred (\$2500.00) to two thousand (\$2,000.00) dollars, and the said Anna Skiba hereby consents to the reduction of said judgment of fifteen hundred (\$1500.00) to twelve hundred (\$1200.00) dollars.

20

JOHN SKIBA,
MERI SKIBA,
CHARLES SKIBA,
ANNA SKIBA.

30

40

Notice of Appeal.

(Filed June 5, 1929.)

MIDDLESEX COUNTY CIRCUIT COURT.

CHARLES SKIBA, infant, by JOHN
SKIBA and MARY SKIBA, his next
friends, and JOHN SKIBA, MARY
SKIBA and ANNA SKIBA, indi-
vidually,

*Plaintiffs,**v.*

EDWARD HMIELESKI and LILLIAN
HMIELESKI,

Defendants.

10

Action at Law.

20

TO ELMER E. BROWN,
Attorney for Plaintiffs,
576 Roosevelt Av.,
Carteret, N. J.

SIR:

Take notice that the defendant appeals from the
whole of the judgment entered in the above-
entitled cause to the Court of Errors and Appeals.

Respectfully,

30

CAREY & LANE,
Attorneys for Defendants.

Dated May 31, 1929.

40

PLEADINGS IN CASE NUMBER TWO.

(No. 150, October, 1929, Term List.)

Petition to Prosecute Action.

MIDDLESEX COUNTY CIRCUIT COURT.

HELEN PUHA, infant, by MIKE
CHEREPANAH, her next friend,
and MIKE CHEREPANAH, individ-
ually,

*Plaintiffs,**v.*

EDWARD HMIELESKI and LILLIAN
HMIELESKI,

Defendants.

10

Action at Law.

20

To HIS HONOR, PETER F. DALY, Judge of our said
Circuit Court of the County of Middlesex:

The petition of Helen Puha, the plaintiff in the
above stated cause of action, humbly shows unto
your Honor, that she is an infant under the age of
twenty-one years, to wit: sixteen years of age, and
that she is advised that she has a good and just
cause of action against the said Edward Hmieleski
and Lillian Hmieleski for injuries sustained in an
automobile accident due to the negligence of the
said Edward Hmieleski and Lillian Hmieleski,
through their agent or servants and that your peti-
tioner is about to prosecute an action against the
said Edward Hmieleski and Lillian Hmieleski, in
the above stated court for the same.

30

Your petitioner therefore humbly prays your
Honor to admit her to prosecute the action by her

40

Petition to Prosecute Action.

grandfather, as her next friend, as her mother and father are deceased.

And your petitioner will ever pray, etc.

HELEN PUHA,
Petitioner.

10

I hereby consent and agree that the above-named Helen Puha shall be at liberty to prosecute this action by me, as her next friend, according to the prayer of the above petition.

Dated May 5th, 1928.

MIKE CHEREPANAH.

20

State of New Jersey, }
County of Middlesex, } ss.:

HELEN M. JURICK, of full age, being duly sworn, on her oath says, that she was present and saw Helen Puha, the plaintiff named in the foregoing stated cause of action, sign the foregoing petition, and also that she was present and saw Mike Cherepanah, the person mentioned in the foregoing petition, sign the consent thereunder written; and that they were signed on the 7th day of May, 1928.

30

HELEN M. JURICK.

Sworn and subscribed to before me }
this 7th day of May, 1928. }

SIDNEY J. BROWN,
Notary Public of New Jersey.

40

Rule for Appointment of Next Friend.

(Filed May 28, 1928.)

MIDDLESEX COUNTY CIRCUIT COURT.

HELEN PUHA, infant, by MIKE
CHEREPANAH, her next friend,
and MIKE CHEREPANAH, individ-
ually,

Plaintiffs,

v.

EDWARD HMIELESKI and LILLIAN
HMIELESKI,

Defendants.

Action at Law.

10

20

It appearing upon reading the petition of Helen Puha and the consent of Mike Cherepanah, thereunder written, and the affidavit of Helen M. Jurick, thereto attached, that the said Helen Puha has a good cause of action against the said Edward Hmieleski and Lillian Hmieleski, and is an infant under the age of twenty-one years,

It is ordered that Mike Cherepanah be admitted to prosecute the said action for the said Helen Puha in the abovesaid court, against the said Edward Hmieleski and Lillian Hmieleski, as the next friends of the said Helen Puha.

30

PETER DALY,
Judge.

40

Summons.

STATE OF NEW JERSEY:

To EDWARD HMIELESKI and LILLIAN HMIELESKI:

10 You are summoned to answer the annexed complaint of Helen Puha, infant, by Mike Cherepanah, her next friend and (L.S.) Mike Cherepanah, individually, in an action at law in the Middlesex County Circuit Court, and TAKE NOTICE, that unless you file your answer to the said complaint within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

20 WITNESS, SAMUEL KALISCH, Judge of said Circuit Court, at New Brunswick, New Jersey, this 26th day of May, nineteen hundred and twenty-eight.

F. WM. HILKER,
Clerk.

ELMER E. BROWN,
Attorney.

30

40

Complaint.

(Filed June 13, 1928.)

MIDDLESEX COUNTY CIRCUIT COURT.

HELEN PUHA, infant, by MIKE
CHEREPANAH, her next friend,
and MIKE CHEREPANAH, individ-
ually,

*Plaintiffs,**v.*

EDWARD HMIELESKI and LILLIAN
HMIELESKI,
Defendants.

Action at Law.

10

20

COUNT ONE.

The plaintiff, Helen Puha, residing in the Borough of Carteret, the County of Middlesex, and State of New Jersey, complaining of the defendants, says:

1. That the plaintiff was a passenger in a certain Willys-Knights automobile belonging to John Skiba, which was then and there being operated by his agent or servant, Charles Skiba, along a certain street or highway more commonly known as Rahway Avenue, Avenel, in the Township of Woodbridge, Middlesex County, New Jersey, in a northerly direction and towards the City of Rahway.

30

2. That at the time and place aforesaid, the defendants, through their agent or servant, were operating their said automobile truck of Mack construction in a southerly direction along said street or highway and that the defendants, through

40

Complaint.

their agent or servant, did negligently and carelessly run into and collide with the automobile of the said John Skiba, in which the said plaintiff was a passenger.

10 3. That the negligence of the said defendants, through their agent or servant, consisted in this: That he failed to keep a proper lookout for objects in his path; that he proceeded at a careless and negligent rate of speed; that he operated his said Mack truck on the left hand side of the road or highway and ran into and collided with the automobile of the said John Skiba, which was being operated in a careful and lawful manner along the right hand side of the said road.

20 4. That as a direct and proximate result of the negligence of the defendants, the plaintiff sustained severe and serious injuries about the face, head, body and legs and did especially suffer a severe bruise on her back and the loss of two teeth.

30 5. That the plaintiff was confined to her bed for a long period of time and that she suffered great pain and anguish both of body and mind, and will in the future suffer great pain and anguish both of body and mind; and was obliged to and did spend a large sum of money for doctors' treatment, nurses' treatment and medicine; and that she is unable to attend to her usual occupation and will in the future be unable to attend to her usual occupation to her damage in the sum of one thousand dollars (\$1,000).

COUNT TWO.

40 The plaintiff, Mike Cherepanah, complaining of the defendant, says:

Answer.

1. That he repeats all of paragraphs one, two and three of Count One.

2. That by reason of the negligence of the said defendants they have expended a large sum of money for medical services, hospital bills, medicines and appliances in order to cure the said plaintiff Helen Puha of her injuries, and that he will in the future be forced to expend a large sum of money for medical services, hospital bills, medicines and appliances for the said plaintiff Helen Puha. 10

Plaintiff, Mike Cherepanah, demands as damages on this count the sum of five hundred dollars (\$500).

ELMER E. BROWN, 20
Attorney for Plaintiff.

Answer.

(Filed July 3, 1928.)

MIDDLESEX COUNTY CIRCUIT COURT.

HELEN PUHA, infant, by MIKE
CHEREPANAH, her next friend,
and MIKE CHEREPANAH, individ-
ually,

Plaintiffs,

v.

EDWARD HMIELESKI and LILLIAN
HMIELESKI,

Defendants.

Action at Law. 30

Edward Hmieleski and Lillian Hmieleski, resid- 40
ing in Perth Amboy, New Jersey, say:

Answer.

IN ANSWER TO COUNT ONE.

1. They admit paragraph "1" of Count One of plaintiff's complaint.

10 2. They deny paragraphs "2," "3," "4" and "5" of Count One of Plaintiff's complaint.

SEPARATE DEFENSE.

And for a further and separate defense the defendants says that the plaintiffs by their own negligence contributed to the happening of the accident alleged in the complaint, and without such negligence on the part of the plaintiffs the accident would not have occurred.

20

IN ANSWER TO COUNT TWO.

1. For answer to paragraph "1" of Count Two of plaintiff's complaint defendants admit paragraph "1" and deny paragraphs "2" and "3" of Count One of plaintiff's complaint.

2. They deny paragraph "2" of Count Two of plaintiff's complaint.

SEPARATE DEFENSE.

30

And for a further and separate defense the defendants say that the plaintiffs by their own negligence contributed to the happening of the accident alleged in the complaint, and without such negligence on the part of the plaintiffs the accident would not have occurred.

JOHN L. RIDLEY,
Attorney for Defendants,
Office and P. O. Address,
1 Exchange Place,
Jersey City, N. J.

40

Reply.

MIDDLESEX COUNTY CIRCUIT COURT.

HELEN PUHA, infant, by MIKE
CHEREPANAH, her next friend,
and MIKE CHEREPANAH, individ-
ually,

Plaintiffs,

v.

EDWARD HMIELESKI and LILLIAN
HMIELESKI,

Defendants.

10

Action at Law.

Plaintiffs by way of reply to the answer of the
defendants say that:

20

1. They join issue on allegations alleged in
paragraphs one (1) and two (2) of answer in Count
One.

2. They deny first separate defense of Count
One and join issue.

3. They join issue on allegations alleged in
paragraphs one and two of answer in Count Two.

4. They deny first separate defense in answer
of Count Two and join issue.

30

ELMER E. BROWN,
Attorney for Plaintiff.

40

Postea.

(Filed April 16th, 1929.)

MIDDLESEX COUNTY CIRCUIT COURT.

10	HELEN PUHA, infant, by MIKE CHEREPANAH, her next friend, and MIKE CHEREPANAH, individ- ually, <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;"><i>v.</i></p> EDWARD HMIELESKI and LILLIAN HMIELESKI, <p style="text-align: right;"><i>Defendants.</i></p>	} Action at Law.
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20 The above cause was tried before Judge Peter F. Daly, with a jury, at the Middlesex County Circuit Court on April 15th, 1929.

The jury rendered a general verdict against the defendants and in favor of the plaintiff Helen Puha, by her next friend, Mike Cherepanah, for the sum of one thousand (\$1,000) dollars.

30 The jury rendered a general verdict against the defendants and in favor of the plaintiff Mike Cherepanah, individually, for the sum of one hundred (\$100) dollars.

PETER F. DALY,
Judge.

Dated April 16th, 1929.

Order.

(Filed May 7, 1929.)

MIDDLESEX COUNTY CIRCUIT COURT.

<p>HELEN PUHA, infant, by MIKE CHEREPANAH, her next friend, and MIKE CHEREPANAH, individ- ually,</p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;"><i>v.</i></p> <p>EDWARD HMIELESKI and LILLIAN HMIELESKI,</p> <p style="text-align: right;"><i>Defendants.</i></p>	<p>} Action at Law.</p>	<p>10</p>
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This matter, coming on before the court on the return of a rule to show cause heretofore allowed why the judgments entered in the above-entitled cause should not be set aside and a new trial granted, and the court having heard the argument of said rule,

20

It is on this 26th day of April, 1929, ORDERED that the rule to show cause heretofore allowed, be and it hereby is discharged.

30

PETER F. DALY,
Judge.

Notice of Appeal.

(Filed June 5, 1929.)

MIDDLESEX COUNTY CIRCUIT COURT.

10

HELEN PUHA, infant, by MIKE
CHEREPANAH, her next friend,
and MIKE CHEREPANAH, individ-
ually,

*Plaintiffs.**v.*

EDWARD HMIELESKI and LILLIAN
HMIELESKI,

Defendants.

Action at Law.

20

To ELMER E. BROWN,
Attorney for Plaintiffs,
576 Roosevelt Avenue,
Carteret, N. J.

SIR:

TAKE NOTICE that the defendant appeals from
the whole of the judgment entered in the above
entitled cause to the Court of Errors and Appeals.

30

Respectfully,

CAREY & LANE,
Attorneys for Defendants.

Dated May 31, 1929.

40

Grounds of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

HELEN PUHA, infant, by MIKE
CHEREPANAH, her next friend,
and MIKE CHEREPANAH, individ-
ually,

Plaintiffs-Appellee,

v.

EDWARD HMIELESKI and LILLIAN
HMIELESKI,

Defendants-Appellant.

10

} On Appeal.

The defendants-appellant write down the fol-
lowing grounds of appeal:

20

1. The Court erroneously refused to grant the motion for a non-suit made by the attorney for defendants at the close of the plaintiffs' case.

2. The Court erroneously refused to grant defendants' motion for a direction of verdict made at the close of the entire case.

Respectfully,

30

CAREY & LANE,
Attorneys for and of Counsel with
Defendants-Appellant.

40

Trial of Both Cases—Tried Together.

MIDDLESEX COUNTY CIRCUIT COURT,

APRIL TERM—1929.

10 HELEN PUHA, by MIKE CHERE-
PANOH, and MIKE CHEREPANOH

v.

EDWARD HMIELESKI and LILLIAN
HMIELESKI.

20 CHARLES SKIBA, by JOHN SKIBA
and MARY SKIBA, and JOHN
SKIBA and MARY SKIBA, individ-
ually,

v.

EDWARD HMIELESKI and LILLIAN
HMIELESKI.

30 Transcript of stenographer's notes of evidence
in the above entitled causes, taken before Hon.
Peter F. Daly, Circuit Court Judge, and a Jury, at
the Middlesex County Court House, in the City of
New Brunswick, New Jersey, on the twelfth day
of April, A. D. 1929, at 11:45 A. M.

APPEARANCES :

ELMER E. BROWN, Esq., Attorney for the
Plaintiffs.

JOHN L. RIDLEY, Esq., ROBERT CAREY, Esq.,
GEORGE P. MOSER, Esq. (Present), Attor-
neys for the Defendants.

40 (A jury being empaneled and found satisfac-
tory, they were sworn.)

Barnet Hoagland, direct.

(Mr. Brown opens the case for the Plaintiffs.)

(Mr. Moser opens the case for the Defendants.)

Mr. Brown: Defendants' counsel has agreed to let me call Dr. Hoagland and Dr. Strandbury out of turn.

10

The Court: All right.

BARNET HOAGLAND, a witness produced on behalf of the plaintiffs, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Brown:

Q. Doctor, you reside at Woodbridge, New Jersey? A. Yes, sir.

Q. And you have practiced medicine how long? A. Forty-two years.

20

Q. You examined Charles Skiba, one of the plaintiffs in this cause of action? A. Yes.

Q. Will you tell us the nature of his injuries and the date of your examination? A. I examined him on the second of April, 1928, at 7:40 p. m. at the Rahway Hospital. He had a cut on the left temple that took two stitches, a wound—a glass cut on the left forehead, a two-inch cut at the root of the nose, a one-inch cut on the right forehead. His left hand was scraped as with sandpaper, what we call a brush burn, and both knees were scraped, and he had a contusion of the left hip.

30

Q. How long did you treat him? A. I think about fifteen days.

Q. How much of that time was spent at the hospital, do you know? A. I would say about eight.

Q. You treated him where, at his home? A. He came to my office afterward.

Q. How much was your bill in the matter, Doctor? A. I think it was \$36.

40

Barnet Hoagland, cross-redirect.

Q. Was there any permanency outside of the marks on his face? A. No. The marks on the face are a permanent deformity.

Mr. Brown: That is all.

10 *Cross examination by Mr. Moser:*

Q. Doctor, are the scars really movable there?
A. I don't know. I have not seen them. I have not seen him after the fifteenth day. The boy is probably here and the scars could be looked at and told.

Q. After fifteen days he was entirely cured of any hurts that he had as the result of this accident with the exception of the scars, is that correct? A. I think so.

20 Q. How many of the cuts did you put stitches in, did I understand, Doctor? A. I only have a record here of putting them in one.

Q. And that was the cut that you put two stitches in, you put two stitches in that? A. In the left temple.

Q. Do you feel that as time goes on the scars will disappear? A. They won't. They will get less, but they won't disappear. They are permanent.

30

Redirect examination by Mr. Brown:

Q. It might have been that you put more than two stitches in this man's face? A. It might have been, but I have a record here of two.

Q. Would you know if you saw it now, Doctor?
A. I might.

Mr. Brown: Charley, step right up and show the Doctor.

40

A. Well, here are the marks of two stitches on

Herbert Strandburg, direct.

the right forehead (indicating), and the record says, "I had a stitch here in the left temple." I probably put more than that in, because I can see at least four there, and there is probably more than that.

Mr. Brown: That is all.

10

Mr. Moser: That is all.

HERBERT STRANDBURG, a witness produced on behalf of the plaintiffs, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Brown:

Q. You practice medicine at Carteret, Doctor?
A. I do.

20

Q. You have practiced medicine how long? A. Thirteen years.

Q. You treated Helen Puha and Anna Skiba for injuries they received. Will you give us a record of what you treated them for and what the date was? A. I did. Anna Skiba, I saw her on April 3. She presented two hematoma of the scalp in the back part of the head. She had a laceration of her skin in which one suture was taken. Contusions of the body, including the back, chest, both arms and both legs. A swelling at the second joint of the right second finger. I saw her on various occasions from April 3 to April 30.

30

Q. What was the amount of your bill in the treatment of Anna Skiba? A. Twenty dollars.

Q. Will you tell us what you did to Helen Puha?
A. She had the half of the first right upper molar was missing. The enamel of the first right lower molar was cracked. She complained of pain in her chest and a constant ringing in both ears. The

40

Herbert Strandburg, cross.

tip of her tongue was cut through on the right side, probably due to having been bitten through. She also presented a small abscess on the inner side of the right cheek which developed some time after the accident.

10 Q. Doctor, about the tongue—is that a permanent condition? A. The laceration is permanent.

Q. Can that condition be remedied, Doctor? A. There is a small loose piece on the right side of the tongue. It could be removed by incising it and then suturing it back in proper position.

Q. Is that much of an operation? A. Well, it would be considered a minor operation.

Q. Was there any permanency which Helen Puhā sustained? A. Her teeth.

20 Q. Other than that, anything else? A. I would not say anything else.

Q. What was the amount of her bill, Doctor? A. Fifteen dollars.

Q. Going back to Anna Skiba, what have you to say with regard to the permanency of the swelling of the finger? A. That joint will probably remain swollen permanently. That will be a permanent swelling.

30 Q. How long did you treat Helen Puhā? A. Until the twenty-fourth, I saw her on the twenty-fourth of April the last.

Q. What was the nature of the treatment you gave to Anna Skiba other than first aid? A. I had her come to my office on three occasions at which she received electrical massage in an endeavor to reduce the swelling of the finger.

Cross examination by Mr. Moser:

40 Q. Doctor, the finger is really movable and there

Fred Simons, direct.

is no loss of motion, is there? A. As I recall, there wasn't any loss of motion.

Q. I didn't hear how long Anna Skiba was under your treatment? A. Until April 30.

Q. The tongue condition that you speak of, Doctor, that does not really affect Miss Puha at the present time, does it? A. Other than the inconvenience of having a little loose tab on the tongue. 10

Redirect examination by Mr. Brown:

Q. I want you to look at the girl's hand, Doctor, and tell us whether or not there is a loss of motion. A. I would say there is twenty-five per cent. loss of motion.

Q. Twenty-five per cent. loss of motion in one finger? A. In the second finger on the right hand. 20

FRED SIMONS, a witness produced on behalf of the plaintiffs, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Brown:

Q. You made this map, Mr. Simons? A. Yes, sir.

Q. This shows the true physical condition of that road at Omar avenue? A. Yes, it does. 30

Q. The scale of that map is what? A. One inch equals ten feet.

Q. Will you explain that map to the jury, showing every physical point on it? A. Here is a concrete road on the pavement of the road going from Woodbridge to Rahway. This is where the road is intersected by Omar Avenue. This is the pavement line here, twenty feet between them, and here is the trolley track here; here is a pole shows here, and a pole shows here (indicating). 40

Fred Simons, cross.

Q. What is the distance between the end of the pavement and the ties, Mr. Simons? A. Four feet.

Q. What is the distance on the other side and describe the roadbed on the other side? A. There is a narrow shoulder on the other side there about
10 five feet wide. At this point here it is four feet from the edge of the pavement to the edge of the pole.

Q. What is the nature of the shoulder? A. Well, it is—

Q. On the other side of the road. A. Why, it is common dirt shoulder, sort of a ditch along in there.

Cross examination by Mr. Moser:

20 Q. Are there any lights attached to those poles, Mr. Simons? A. Yes, sir.

Q. In other words, on all of the poles you have marked "poles" there are electric lights? A. Well, some of them are electric light poles.

Q. Will you just indicate to me which ones have lights on, Mr. Simons? A. Here is a pole here with a light on it (indicating).

Q. Is that the only one? A. That is not a light pole (indicating).

30 Q. That is the only one? A. Yes.

Q. Will you just make a mark there, please, for me, just put an "L" over it?

(Witness marks map.)

Mr. Moser: That is all.

The Court: Is the map offered?

Mr. Brown: Yes.

The Court: There being no objection, it is admitted.

40 (Map entered in evidence and marked Exhibit P-1.)

Philip Jaffe, direct-cross.

PHILIP JAFFE, a witness produced on behalf of the plaintiffs, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Brown:

Q. What is your business, Mr. Jaffe? A. Photographer. 10

Q. Did you take a picture of the road shown on that map? A. Yes, sir.

Q. Did you take a picture of the automobile of John Skiba? A. Yes, sir.

Q. I show you those pictures and ask you what day you took them? A. They were taken the day after the accident, I believe, I took them on April 3, as I marked on the back.

Q. Do those pictures show a true physical condition of the road? A. Exactly. 20

Q. And show the condition of the automobile? A. Yes, sir. There was no changes or nothing made.

Mr. Brown: I offer the pictures.

Cross examination by Mr. Moser:

Q. Who told you that that was the part to take, that part of the road? A. Mr. Skiba, I think the gentleman sitting there, the old man, took me down to the place. 30

Mr. Moser: All right.

Mr. Brown: We offer the photographs in evidence.

Mr. Moser: No objection to the photographs.

(Photograph entered in evidence and marked "Exhibit P-2.")

Harry Romeo, direct.

(Photograph entered in evidence and marked "Exhibit P-3.")

(Photograph entered in evidence and marked "Exhibit P-4.")

10 (Photograph entered in evidence and marked "Exhibit P-5.")

HARRY ROMEO, a witness produced on behalf of the plaintiffs, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Brown:

Q. Where do you live? A. 359 Bordentown Avenue, South Amboy.

20 Q. Were you on this road on April 2, 1928? A. I was.

Q. Where were you going to? A. I was coming—I turned around at the reformatory and was coming back towards Woodbridge.

Q. Will you show us just exactly where you were on that road on that map? Just take a look at it first.

30 Mr. Moser: Do you understand the map, that that is the street here, and this is Omar Avenue, and that is a light pole, and this is a telegraph pole?

Mr. Brown: And this is the ragged edge of the pavement.

A. Is this the edge here (indicating)?

40 Q. Yes. That represents the pavement, and that represents the pavement, and that is going south and that is going north, that is to Woodbridge, and that is to Rahway (indicating). A. Well, I was about three feet off on this side here on my right coming towards Woodbridge.

Harry Romeo, direct.

Q. When you say you were there what do you mean by that, you were parked there with an automobile? A. Yes, sir.

Q. Tell us what you were doing there. A. Well, I had an appointment to meet a friend of mine in Woodbridge, and he is a barber in the Progressive Barber Shop in Woodbridge and he does not quit until eight o'clock in the evening, and it was twenty-five minutes to eight. 10

Adjourned until 1:45 P. M.

AFTERNOON SESSION—1:45 P. M.

Q. You were telling us what you were doing at this point on that night. Will you tell us now? 20

A. Yes, sir. I had gone to Woodbridge to meet a young friend of mine in the Progressive Barber Shop in Woodbridge, and I got there just about twenty-five minutes before it was time for him to quit his work; he quits at eight o'clock; so I told him I would be back in about twenty minutes, and I took a little ride out as far as the reformatory there at Rahway, and there is a little cross-road there, and I turned around and was starting back, and there is a car track, and this is a car track or train track just before you hit this little road, so I came back, I passed this track and went down about five or six hundred feet from the track and stopped, I thought I had a flat tire or something, I looked at it, all the tires, and they were all okay; I got in the car again and had my car in first speed, about to start off when this truck come roaring down the road behind me. I saw the car coming down ahead of me with his lights on. 30

Q. That is the Skiba car? A. Yes, sir. It was 40

Harry Romeo, direct.

a roadster car. At that time I just stopped, I didn't start off at all, I saw the accident was going to happen, and the truck was about three-quarters in front of me, that is, about up to my radiator when they came together. The truck swerved away
10 out and his left wheel was off the other side of the road out near the car track, that is, off on the left-hand side of the road when the impact came.

Q. What did you notice, if anything, in regard to the Skiba car? A. It had two lights on it and he tried to avoid it, but it was too late at that time.

Q. Where was the Skiba car after the accident with regard to the paving? A. It was off the pavement, the right wheel was off the pavement.
20

Q. About how far? A. I should judge about two or three feet off the pavement.

Q. You have the pictures there, Mr. Romeo. I want you to look at the pictures and with the aid of the pictures mark on the map where your car was parked. A. It is right about in here (indicating); right down in there (indicating); my right wheel was about three feet on this sand.

Q. Just mark it with an "R" so we may know marked it. (Witness marks map.)
30

Q. When was the first time you observed the truck and where was it when you first observed it? Mark on the map? A. The truck, I believe, was about twenty feet behind me. I don't know how far that is on the map.

Q. The scale of that map is one inch equals ten feet; the road is twenty feet wide. A. The truck was about here when I heard it coming down (indicating).

Q. Just show us the route of the truck from the time you observed it until the time of the accident.
40 A. Do you mean when I first noticed the truck?

Harry Romeo, direct.

Q. Yes, until the time of the accident? A. Why, I heard the truck coming down behind me, and I looked around, and I saw it was a truck before it came right on top of the car.

Q. Show us the route it took. A. It was coming down on the right side and when he got about seven or eight feet behind me, right close to my car, he swerved right out like that (indicating). 10

Q. Show us the point where it struck the Skiba car on that map. A. Right across the right, in here, I believe (indicating). His wheels were out in here, his right wheels, Skiba's car was out in here about three feet. Right near the tracks of the car. Off of the pavement.

Q. Did you notice the speed of the Skiba car? A. Well, I should judge it was going about twenty-five miles an hour. 20

Q. What would you say with regard to the speed of the truck, if you know? A. The truck was going about eighteen miles an hour.

Q. Now, Mr. Romeo, immediately after the accident what did you do? A. I got out of the car and assisted the two girls to the doctor's office in Woodbridge and I reported the accident to the police headquarters in Woodbridge. 30

Q. What happened, if anything, to the Skiba car? A. It stayed there at the time I was there.

Q. What was the position of both automobiles, the truck and the car, when you saw the accident?

A. Well, the Skiba car was right up against the bumper of the truck.

Q. Did you notice anything in the rear of the Skiba car, what happened there? A. What do you mean?

Q. With regard to the rumble seat? A. The rumble seat was down and I looked in the front of 40

Harry Romeo, cross.

the car, the gentleman was driving the car, his head was laying out of the side all full of blood, out of the side where the steering wheel is, and the truck driver got out of his truck, and he said, "What am I going to do, what am I going to do?"

10 I said, "Well, let us try and help them out of here." He was all excited and I was excited too. So we got him out and he held him up. I told him to hold the man up and I walked around the other side and I saw a man laying there across the seat and I started—I was listening there and I could hear somebody moaning and I looked around and I couldn't see anyone. In the meantime other people came around there and we looked under the compartment inside of the back part, where

20 you put your back against, that was right out. It was all one compartment, the rumble seat and the part in the back was right down, and we looked under there, and we could see the two girls, so we pulled the two girls out and I put them in the car and took them to Dr. Klein's in Woodbridge.

Q. Did you notify the police? A. Yes, sir.

Q. Did you go back to the scene of the accident?

A. No, sir. I sent the ambulance out.

30 *Cross examination by Mr. Moser:*

Q. Now, you had parked your car, as I understand it, on the right-hand side of the road, is that correct? A. Yes, sir.

Q. And you say the right wheels were just off the paved portion of the road? A. They were about three feet off the pavement, the right wheel was.

40 Q. So that the greater portion of your car was up on the paved portion of the concrete road, is that correct? A. Well, the rest of the car was.

Harry Romeo, cross.

Q. When you say the rest of the car you mean the greater portion of your car? A. Well, I don't know how wide the car is. It was three feet off the pavement, and the other part, that is three more feet, or what, I don't know, it was on the pavement.

10

Q. What kind of a car did you have? A. Paige.

Q. The balance of it was out on the pavement?

A. Yes, sir.

Q. When you heard this truck approaching from the rear, in what direction were you looking? A. I was looking towards Woodbridge, I think that is south.

Q. Towards Woodbridge? A. Yes.

Q. And you were getting ready to start off your car? A. Yes, sir.

20

Q. Hadn't moved it, had you? A. No.

Q. Where was the truck when you turned around? A. The truck was right behind my car, because I saw the truck coming down, I heard him coming down first, and I saw the car coming down and right away I could see that the accident was going to happen, when I heard this truck pull on out and throw his brakes on.

Q. How far behind your car was the truck when you first saw it? A. About twelve feet, I should judge.

30

Q. And before that you had seen the Skiba car?

A. Yes, I saw the Skiba car coming down.

Q. And where was that with reference to the front of your car? A. Well, it might have been about, I should judge, about seventy feet or seventy-five, something like that.

Q. About seventy or seventy-five feet in front of your car when the truck was twelve feet behind your car? A. Around ten or twelve feet.

40

Harry Romeo, cross.

Q. Now, you hadn't given any indication that you were going to move your car, had you? A. No, sir.

10 Q. For some time before your car was just stationed there with a light on the rear and lights on it, is that right? A. Yes, sir.

Q. This truck came along in back and turned out to pass your car, is that right? A. Yes.

Q. What kind of a truck was it? A. A Mack, a big Mack, six wheels on it.

Q. That was a truck and trailer, is that correct? A. Yes, with a load of sugar on it.

Q. Had a big wide van body? A. Yes. Trailer body does.

20 Q. That is a big van body, a closed-in body, was it? A. A rack body.

Q. And as he came along in back of your car he pulled out, did he not? A. I don't think he saw them. I don't think he saw my car at the time he pulled out, because he pulled out—he didn't exactly pull out like you naturally would pull out and stay close to the car, he just swerved right out and before he came to a stop he was away on the other side of the road. There was plenty of room for him if he stayed on the road.

30 Q. You mean he pulled across the road as if to go into the meadow there? A. Yes, his left wheel was off the road when he hit this car. He hit him right in the front.

Q. What part of the Skiba car came in contact with the truck? A. Well, it was right near the left side of the car in the front, front left.

Q. Came in contact with what part of the truck? A. The front of the truck.

40 Q. Well, what part of the front of the truck, the left or right? A. Right near the center.

Q. Right near the center? A. Yes.

Harry Romeo, cross.

Q. And how far were the right wheels of the Skiba car off the concrete? A. The front wheel must have been three or four feet and the back one wasn't as much, because the car was more of an angle off the pavement.

Q. So that the middle of the Skiba car, you want to tell us, was at about the left front wheel of the truck, is that right? A. The middle of the car? 10

Q. Yes. A. The middle of the front you mean, or what?

Q. The middle of the front of the Skiba car was at about the left front wheel of the truck? A. No. The left part of the Skiba car was hit.

Q. By what part of the truck? A. The bumper. The front part of the truck.

Q. Well, on the left side or the right side? A. Of the truck? Right near the center. Crashed right into him. 20

Q. You are sure that the wheels of the Skiba car were only three feet off the pavement? A. Well, that was my judgment of the thing.

Q. Now, isn't it a fact that the entire truck was on the concrete? A. No.

Q. Sure about that? A. Yes.

Q. Which direction was the truck facing after the accident? A. It was facing south. 30

Q. Facing directly south, was it? A. Towards Woodbridge. Well, that was a little bit off on an angle too, because he hadn't straightened his wheels out again to come straight.

Q. An angle to what, to the right side of the road or to the left side? A. He was heading to the left side of the road.

Q. Now, the truck had gotten three-quarters past your car, had it not? A. Right in front, right by the radiator, that was when it happened. 40

Harry Romeo, cross.

Q. Right by the radiator? A. His front, yes.

Q. In other words, you mean the radiator of the truck? A. That is it.

Q. Was right next to the radiator of your car when this accident happened? A. Yes, sir.

10 Q. So that the truck had travelled the twelve feet from in back of your car and the length of your car when the accident happened, is that right? A. Yes, sir.

Q. And the other car had traveled a distance of seventy feet? A. About seventy feet. I don't know.

Q. How fast did you say the Skiba car was going? A. Probably twenty-five miles an hour.

20 Q. How long were you looking at the Skiba car? A. Oh, I couldn't say. I don't know how long I was looking at it.

Q. Well, any appreciable length of time? A. Well, it might have been a minute or so.

Q. Well, what fixes in your mind the fact that the Skiba car was going twenty-five miles an hour?

A. Well, the way I judge you can walk about four miles an hour.

Q. Yes. A. And that is what I get the judgment from.

30 Q. Then you say that the Skiba car was going— A. About six times as fast as a walk.

Q. Is there a little grade there from Rahway toward Woodbridge? A. I don't think there is. I think it is a level road.

Q. After this accident happened what was the condition of the Willys-Knight car? A. Pretty well smashed.

40 Q. Well, was it, in any way, entangled with the truck, hooked into the truck, or was it away from it any distance? A. No. He was right under the truck.

Harry Romeo, cross.

Q. In other words, the front end of the Willys-Knight had been forced under the bumper of the truck, isn't that right, and was caught there? A. Well, you see, I didn't stay there long enough, stand there and watch just how it was. I was more interested in getting the people to the doctor and I didn't go back after that. 10

Q. Where do you live, Mr. Romeo? A. In South Amboy.

Q. Do you know Mr. Skiba? A. No, sir; never saw the man before. I asked him when he was in court here.

Q. Did your friend in Carteret, the barber, know Mr. Skiba? A. Friend in Carteret, a barber?

Q. The barber. A. The barber is in Woodbridge. He don't know that man at all; no, sir. He is from Allentown, Pennsylvania, and he has been here only—he has only been here a couple of years, maybe a year and a half or so. 20

Q. He has been here a year and a half or two years? A. Yes.

Q. What was the distance between your car and the Skiba truck as it was passing your car? A. I don't know how many feet that road is or anything like that. I know it was away over there.

Q. You don't have to know how wide the road is to tell us what the distance was between your car and the truck as it passed your car, do you? A. I don't know how many feet. It might have been about fifteen feet or so. I don't know. 30

Q. About fifteen feet? A. It might have been. I couldn't say that very well.

Q. You were sitting on the left-hand side, were you not, behind the driver's seat? A. Yes.

Q. Which side of the truck was fifteen feet from 40

Harry Romeo, cross.

the side of your car? A. Oh, I think about the right-hand side of it must have been about fifteen.

Q. Right-hand side of the truck? A. Yes.

Q. Was fifteen feet from the— A. Fifteen or sixteen. I don't know exactly. Because I wasn't very
10 well interested anyway at that time, see.

Q. And then the width of the truck came, is that right? A. Yes.

Q. And then the Willys-Knight owned by Skiba, which was in front of the truck, and the right wheel of the Skiba car was only three feet off the pavement, to the best of your judgment, is that right? A. About three feet. I couldn't say.

Q. How wide do you think that Mack truck is? A. Oh, I don't know. It must be nine or ten feet,
20 I guess. I don't know. I haven't any judgment of those things because I weren't interested in that.

Q. You are not a very good judge of the distance between the side of your car and the side of the truck, are you? A. Probably not. I wasn't interested in that.

Q. As a matter of fact, didn't that truck pass your car in the ordinary way, and pulled out from behind it and continued on down the road? A. No, he didn't.
30

Q. What did he do that wasn't in the ordinary method of passing a truck? A. Pulled over the road too far, the way I could see it.

Q. Well, how far did he pull over? A. I don't know. It must have been all of fifteen feet.

Q. Was that a turn right across the road? A. Yes, he was pretty close on behind my car, see. That is why he had to turn right out quick. I don't think he saw my car.

Q. Did the trailer or any part of the truck come in contact with your car? A. No.
40

Harry Romeo, cross.

Q. Was there any change in the distance between the car and the trailer as it passed? Did it come any nearer to you than twelve feet? A. Well, I tell you, the trailer wasn't straight with the truck. The trailer, the rear part of the trailer was closer to my car than the truck itself. It hadn't all made the full swing yet. He was swinging back with the truck, but the trailer was going to follow him around. 10

Q. In other words, this man was pulling out around your car and had gotten up all the way to the radiator? A. Yes.

Q. When this accident happened? A. Yes.

Q. Is that right? A. Yes, sir.

Q. Did you see any skid marks on the highway there which would give you any indication that Skiba attempted to put on brakes? A. That night? 20

Q. Yes. A. No, I didn't see anything. I didn't look for it.

Q. Did you hear any screeching of brakes as if brakes were applied by either truck— A. Yes, I heard the truck's brakes applied and I heard the other fellow's a little bit squeal.

Q. How far was Skiba from the front of your car when you heard the brakes squeal on his car? A. He must have been about ten feet, I guess, ten or twelve feet, something like that. 30

Q. About ten feet away from the front of your car when you heard it? A. About that.

Q. Then he continued on that distance of ten feet and the contact took place? A. Yes. He didn't see the truck pull out there.

Q. After the contact where did the truck go? A. It pushed the car back a little bit from where it stopped. 40

Q. Well, how far? A. Oh, I guess about four feet, three or four feet.

Morris Hertz, direct.

Q. About four feet and then came to a dead stop, is that right? A. Yes.

10 MORRIS HERTZ, a witness produced on behalf of the plaintiffs, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Brown:

Q. You live at Carteret, Mr. Hertz? A. Yes, sir.

Q. And you were at the point of this accident that night? A. Yes, sir.

20 Q. Tell us what you observed when you came there. A. We arrived on the scene about in the vicinity of eight o'clock and we noticed that two cars, that is, a car and a truck were in a position that appeared about immediately after a collision with the Mack truck.

30 Q. Just tell us what you observed, Mr. Hertz, with relation to the truck and the car, the car's position on the road? A. Well, there was a Mack truck there, one of these big Macks, loaded down with vegetables, over on the left side of the road, and immediately in front of that was a small Willys-Knight roadster, but the Mack truck, the front of the Mack truck telescoped over the front of the roadster. The roadster had the right front and rear wheel about three feet off the pavement, and the front was entirely all smashed up. Broken glass lying about there and there was water on the ground and blood around there and we saw a crowd of people there and, of course, we deducted there was an accident.

40 Q. I want you to take a look at that map, Mr. Hertz, and show us the position of the truck and the roadster with regard to the pavement. A. Which one represents the pavement here? This here (indicating)?

Morris Hertz, cross.

Q. Yes. The straight line represents the pavement on the east side and this represents the pavement on the west side. A. Well, now, the truck was in an oblique position with the rear wheels of the truck more towards the center, about three feet off the edge of the pavement, and the front right up against the edge of the pavement. The roadster was for the most part on the road, on the gravel part of the road. 10

Mr. Brown: That is all I have.

Cross examination by Mr. Moser:

Q. You got there what time? A. It was in the vicinity of eight o'clock.

Q. You didn't see the accident happen? A. No, sir. 20

Q. Just describe for the jury, if you will, just what kind of a truck that was. A. It was one of these large Mack trucks, I imagine about seven-ton affair, trailer type, having four wheels on the truck and two wheels on the trailer, with the front of the trailer rising on sort of a swivel on the rear end of the truck, and if I remember correctly it was loaded down with crates and barrels of vegetables.

Q. It had a full load on it? A. Yes, sir. 30

Q. You say that was on an angle so that the rear left wheel of the truck was three feet from the edge of the pavement? A. Yes, sir.

Q. How much of the front of the truck was on the dirt shoulder? A. That I don't recall very clearly. I do know that the—it was in an oblique position.

Q. But you don't recall whether any of the truck was on the dirt shoulder, that is, any of the front of the truck, do you? A. No, I don't. I didn't pay much attention to that particular end of it. 40

Morris Hertz, redirect.

Q. So that your best recollection at the present time is that the rear wheels were three feet from the shoulder? A. From the edge of the concrete.

10 Q. Now, what is your best recollection as to the front wheels, were they on the concrete? A. It seems to me that the rear wheels of the truck itself were on the concrete and the front wheels was off the concrete.

Q. Now, when you speak of the truck itself you mean the four wheels with the tractor? A. Right.

Q. You say that the front wheels were off and the rear wheels of the truck were on? A. Yes, sir.

20 Q. In what sort of an angle was the truck, to the east or to the west? A. It was at an angle towards the left side of the road.

Q. Towards the left side of the road? A. Yes.

Q. The front end of the truck was about opposite the front end of the other car, speaking of the car that was parked there? A. I didn't notice anything about a car parked there.

Q. The car that was parked there had been moved by the time you got there? A. I don't know anything about any car parked there.

30 Mr. Moser: That is all.

Redirect examination by Mr. Brown:

Q. Whom were you with on that night? A. I was with Judge Jacoby of Carteret.

Nathaniel Jacoby, direct.

NATHANIEL JACOBY, a witness produced on behalf of the plaintiffs, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Brown:

Q. You are a practicing attorney in the Borough of Carteret? A. Yes, sir. 10

Q. And you were with Mr. Hertz on this evening? A. I was.

Q. Tell us what you observed when you got up to the scene. A. I was driving the car and Mr. Hertz was riding with me. We were on the Edgar Road, the road that runs between Woodbridge and Rahway. When we got to about, oh, I should judge, nine hundred to one thousand feet this side, or south of the reformatory, why, I was compelled to stop my car because of an obstruction in the road. I stopped about two hundred feet from the obstruction and both Mr. Hertz and I walked towards the scene and we noticed that there had been an accident. A big Mack truck had collided with a Willys-Knight roadster. The position of the cars when we got there was the Mack truck was on its left side of the road, the rear wheel was about three feet from the shoulder, the front wheel, I am sure, was about—was not on the dirt part, it was about six inches from the shoulder of the road, from six to nine inches. The Willys-Knight was the greater part with the right front wheel and the right rear wheel were about three feet on the shoulder, very close to the car tracks. There was a distance of about a foot from the car rail and the Willys-Knight. It seemed there was more of the left front of the Willys-Knight that was jambed under the hood of the truck. 20 30

Q. You mean the Mack truck? A. The Mack 40

Nathaniel Jacoby, cross.

truck. The head of the Mack truck telescoped over the Willys-Knight. The truck was in sort of a diagonal position facing its left edge of the road.

Cross examination by Mr. Moser:

10 Q. Judge, which direction were you going, towards Woodbridge or towards Rahway? A. We were driving north towards Rahway.

Q. Were there any other cars around there at the time that you stopped? A. Yes, there was a car parked on the other side of the road; if I recall rightly there were a few cars parked.

Q. How long did you stay there? A. We stayed about from twelve to fifteen minutes.

20 Q. Then did you proceed on? A. We proceeded on.

Q. The Willys-Knight, as I understand it, was wedged underneath the bottom of the truck, is that correct? A. The left front of the Willys-Knight.

Q. The left front of the Willys-Knight was under the— A. It was jambed.

Q. (Continuing)—the left side of the bumper of the truck, is that correct? A. That is right.

30 Q. What can you tell us as to the distance between the westerly side of the concrete and the right side of the rear of the truck, that is, speaking of the rear part of the truck? A. The westerly side?

Q. The westerly side which is the right side of the road going toward Woodbridge. A. Yes.

Q. What can you tell us about the distance between that side of the concrete and the right side of the truck? A. I don't think I made that observation at the time. I didn't go around the rear of the truck.

40 Q. You didn't? A. I was on the side where the

George M. Leonard, direct.

accident occurred, I had a better view. People were standing on the other side of the truck.

Q. Can you give us any idea as to the width of the truck? A. Yes. I judge the truck was about eight foot wide.

Q. It was a large rack body loaded at the time? 10

A. One of the large type Mack trucks.

Mr. Moser: That is all.

GEORGE M. LEONARD, a witness produced on behalf of the plaintiffs, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Brown:

Q. Officer, you are a police officer in the Township of Woodbridge? A. Yes, sir. 20

Q. Did you go to the scene of this accident on this night? A. Yes, sir.

Q. Was there any other officer around there when you arrived? A. Officer Simonson.

Q. What did you observe with relation to the position of the truck and the car at this time? A. Well, the truck was a big Mack truck with a trailer on an angle about forty-five degrees across the road, and the Skiba car was on the left of the truck away off to the—well, mostly to the car track. I should judge it was about three feet over. It was wedged in underneath the bumper of the truck. 30

Q. How far would you say the left-hand front wheel of the truck was with relation to the pavement, over the pavement or on the pavement? A. The left wheel of the truck was over at least a foot and a half over the concrete.

Q. On the dirt shoulder? A. Yes, sir. 40

George M. Leonard, cross.

Cross examination by Mr. Moser:

Q. When did you get there, Officer? A. About eight o'clock.

Q. You didn't see the accident happen? A. No, sir.

10 Q. Did you see the car that was parked on the side of the road there? A. No, sir.

Q. You are sure that the Willys-Knight was wedged underneath the bumper of the truck, is that correct? A. Absolutely; yes, sir.

Q. And the truck was on an angle of forty-five degrees? A. Forty-five degrees to the right across the road. About the angle of that book.

20 Q. Can you tell us what the distance was between the right side of the road as you proceeded towards Woodbridge and the rear of the truck, speaking of the right side of the truck? A. I should judge about eight or ten feet off the right of the road.

Q. In other words, the rear of the truck was about eight or ten feet? A. About eight feet over, yes, sir.

Q. Over the right side? A. Over the right; yes, sir.

30 Q. Of the concrete? A. Yes. The left wheel was right over close to the trolley track, about a foot and a half off the concrete on the shoulder.

Q. But the right rear wheel of the trailer was about eight or ten feet from the right-hand edge of the concrete road? A. It was on an angle; yes, sir.

The Court: That is not what he said.

Q. Where was the right wheel of the trailer?

40 The Court: He said it was eight or ten feet away from the center of the road.

George M. Leonard, cross.

Mr. Moser: I did not understand the witness to say that.

A. Yes, sir.

Q. Where was the right rear wheel of the trailer?

A. Do you mean number of feet?

10

Q. From the right-hand side, the extreme right side of the road. A. I should judge about eight to ten feet. eight feet.

By the Court.

Q. From what? A. From the right of the road.

Q. Do you mean from the center line? A. No, sir. I mean from the right coming over this way, over towards the left.

The Court: That does not mean anything.

20

By Mr. Moser:

Q. As you proceeded toward Woodbridge? A. Yes.

Q. Keeping the extreme right-hand side of the concrete, what was the distance from that to the right rear wheel of the trailer? A. You mean from the right of the road over towards the center? Eight feet.

30

Q. Eight feet? A. Yes, sir. It was on an angle of forty-five degrees.

Q. And the truck was then on an angle coming out towards the center of the road facing in a southerly direction? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Mr. Moser: That is all.

Mr. Brown: That is all.

40

Andrew Simonson, direct.

ANDREW SIMONSON, a witness produced on behalf of the plaintiffs, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Brown:

10 Q. You are a policeman in the township of Woodbridge? A. I am.

Q. You were detailed to the scene of the accident on this night? A. I was.

Q. Tell us, Officer, what was the position of the truck and the car when you got there. A. The truck was facing in a southerly direction towards Woodridge, and the Willys-Knight was headed in a northerly direction towards Rahway. They were wedged together, and the left front wheel of the Bull Dog Mack was about a foot off the concrete on the left. The rear wheels were headed towards the center, about the center line, and the right of the Willys-Knight was about two or three feet off the right of the road.

20

Mr. Brown: That is all.

Cross examination by Mr. Moser:

30 Q. Officer, you were at the police station when Mr. Romeo came in, is that correct? A. Yes, sir.

Q. You were detailed up there to handle this accident? A. Yes, sir.

Q. Did you make any notation of any skid marks on the pavement? A. On the police blotter?

Q. For your own record or for the police record. A. Well, we don't make those records.

40 Q. Well, from your own recollection do you recall whether or not there were any skid marks on the pavement? A. There were about a couple feet, I guess.

Andrew Simonson, cross.

Q. Where were those skid marks? A. On the right side of the road.

Q. On the right side of the road coming in what direction? A. Towards Rahway, northerly direction.

Q. What distance did those skid marks cover? 10
A. About a couple of feet.

Q. Were there two there or one? A. Two.

Q. What was the distance from the actual scene of the accident? A. The skid marks?

Q. Yes. A. Oh, about five foot, I guess, five or six foot.

Q. Now, do I understand you to say that those skid marks were five feet?

Mr. Brown: No, he did not say that. 20

Q. Back of the place where the radiators came together or in back of the rear end of the truck?
A. Before the accident happened.

Q. Beg pardon? A. Just before the accident happened. He must have thrown his brakes on.

Q. Was there any space between the skid marks and the car? A. Well, about three or four feet, I imagine.

Q. In other words, you saw these skid marks about four— A. Feet before the impact. 30

Q. What was the length of the skid marks? A. Couple of feet.

Q. You saw those skid marks a couple of feet and then there was a break of four feet? A. About two or three or four feet.

Q. And then the rear end of the Willys-Knight car? A. Yes.

Q. The Willys-Knight car was underneath the bumper of the truck, is that right? A. Yes, it was wedged in against the Mack. 40

Andrew Simonson, cross.

Q. Was there any appreciable portion of the car wedged in under there? A. Oh, yes, it was wedged in against the front of the Mack.

Q. They were absolutely locked together, were they not? A. Yes.

10 Q. Did you superintend the extracting of the Willys-Knight from the Mack? A. I did. I ordered a wrecker to take it away, that is all.

Q. The photographs practically present the condition of the Willys-Knight as it came out of there? A. Yes.

Q. The rear wheels of the truck were where did you say? A. A little from the right. Near the center of the road.

20 Q. To the left or to the right of it as you proceeded towards Woodridge? A. The right rear wheel of the Mack truck was just a little bit in on the right of the road.

Q. Just a little from the center line? A. Yes, sir.

Q. And on an angle? A. On an angle heading toward the trolley track. It was not quite forty-five degrees.

30 Q. Was there any appreciable angle between the trailer and the truck, or was the entire truck and trailer on an angle? A. The entire truck and trailer was on an angle.

Q. That is on a line coming from the right-hand side of the road around on an angle and facing south? A. Yes.

Mr. Moser: That is all.

Mr. Brown: That is all.

Nathan Gross, direct.

NATHAN GROSS, a witness produced on behalf of the plaintiffs, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Brown:

Q. Where do you live, Mr. Gross? A. Perth Amboy. 10

Q. What is your business? A. Automobile business.

Q. What automobiles do you deal in? A. Willys-Knight.

Q. Did you sell this automobile to Mr. Skiba? A. Yes, sir.

Q. Sold it to John Skiba, Sr.? A. Yes.

Q. What was the purchase price of that automobile? A. \$2,025. 20

Q. When did he buy it? A. Seventh of October, 1926.

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

Q. During this time have you bought and sold automobiles of the same nature? A. Yes, sir.

Q. How often do you do that? A. Every day.

Q. You saw this automobile before April 2, 1928, did you not, Mr. Gross? A. Yes, sir. 30

Q. Where did you see it? A. I see it down the road, or see it down in the office, come down to make the payments.

Q. Did you make any special observations with regard to its market value at that time? A. Well, I saw the car, I was right up alongside of it, I saw the condition of it.

Q. There wasn't anything the matter with the car at that time? A. No, not anything.

Q. What have you to say with regard to the market value of that automobile before April 2, 40

Nathan Gross, cross.

1928? A. At that time of the year it would bring around \$1,400.

Q. You saw that automobile at my request after this accident? A. Yes.

10 Q. How much have you to say that automobile is worth today? A. It is not worth anything.

Q. Has it a salvage value? A. Yes.

Q. How much? A. About twenty-five dollars.

Cross examination by Mr. Moser:

Q. What do you say is the depreciation on an automobile the first year? A. Well, you can't go to any percentage. It all depends upon the condition of the automobile and the season of the year it is taken in.

20 Q. Isn't it a fact that an automobile after it is one year old, and the new model is out, depreciates about forty per cent.? A. Not always.

Q. As a probability, isn't that so? A. No.

Q. And the second year what is the depreciation? A. Well, you don't go by any percentage. It all depends upon the sale on the market of that particular car.

30 Q. Depends upon the blue book value when you take in a used car? A. Not always.

Q. You use it as a guide, do you not? A. Most cars are taken in above the blue book around this section.

Q. And traded? A. Yes.

Q. We are not talking about trade-in value, Mr. Gross; we are talking about actual sale value. A. Sale value.

40 Q. What is the blue book value of this car? A. I don't know just what it is today, I couldn't tell you what it is today without looking at the book.

Adolph Greenwald, direct.

Q. How many miles was this car driven, do you know? A. No, I couldn't tell you.

Q. It was a roadster type? A. Yes.

Q. And repairs made on it at all? A. I think it was in the shop once for some transmission trouble, just minor trouble.

10

Q. Had it been repainted since 1926 when it was purchased? A. I don't think so.

Q. Original tires on it? A. Yes.

Q. You say now that car depreciated from October 2, 1926, to April 2, 1928, \$400? What did you say the cost was, \$2,025? A. \$2,025.

Q. Do you say the depreciation was just \$400? A. \$600.

Q. You would allow \$1,400 on that car? A. Yes, I would. You are right in the spring of the year, the time there was a call for that particular type of car.

20

ADOLPH GREENEWALD, a witness produced on behalf of the plaintiffs, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Brown:

Q. You are a practicing dentist in the Borough of Carteret, Doctor? A. Yes, sir.

30

Q. How long have you practiced there? A. There?

Q. Yes. A. Three years.

Q. You did, at my request, examine Helen Puha, one of the plaintiffs in this action? A. I did.

Q. What did you find as a result of that examination? A. I found the upper right first bicuspid in a very badly broken condition, and the lower left lateral, which is the second tooth in the center of the lower jaw, broken down.

40

Adolph Greenwald, cross.

Q. What will you have to do to fix that tooth in its original position? A. Both teeth will have to be jacketed, by that I mean a porcelain crown must be put over each of these teeth to make it look as it was in the original position.

10 Q. What do you estimate the cost of that will be? A. Approximately seventy-five dollars.

Mr. Brown: That is all.

Cross examination by Mr. Moser:

Q. That is the right bicuspid and what was the second tooth? A. The lower right lateral.

Q. In other words, you won't take these teeth out, you will just put a porcelain cap over the top to bring back the regular appearance of the teeth? A. That is right.

Q. Do I understand that the enamel is cracked? A. Very badly.

Q. It is just those two teeth, none of the other teeth have been harmed? A. The two teeth adjoining the lower tooth have been injured here also, slightly injured, not the anatomical structure, that is the tooth itself, but the root of these teeth are injured, but they can be treated and cured.

30 Q. When did you make this examination, Doctor? A. About May 1.

Q. You have not made any correction or attempted to do any work on these teeth as yet? A. No, I did not.

Q. And the request for examination was for the purpose of testifying and not for the purpose of treating, is that correct? A. I believe so.

Q. Beg pardon? A. I think so.

40 Mr. Moser: That is all.

Mr. Brown: That is all.

Anna Skiba, direct.

ANNA SKIBA, one of the plaintiffs, being duly sworn according to law, on her oath, saith:

Direct examination by Mr. Brown:

Q. Anna, you were in the automobile this night of the accident? A. Yes. 10

Q. Where were you sitting in the automobile?
A. In the rumble seat.

Q. On what side, left-hand side or the right-hand side? A. Right-hand side.

Q. When you got to the point of this accident what did you observe, if anything? Did you see anything? A. Well, I just seen a truck when it was, you know, right on top of the car, just about before we hit.

Q. Where was this truck? A. On the left-hand side. 20

Q. And where was your automobile? A. On the right-hand side.

Q. Where was the right-hand wheel of your automobile with relation to the paved road? A. It was off the concrete.

Q. About how far? A. Well, about one foot away.

Q. What happened to you in the accident? A. I was knocked unconscious. 30

Q. Where did you wake up? A. When they took me to doctor's office.

Q. What part of you was hurt? A. Well, I was hurt in my head and my chest. I was bruised up all over and my hand, and I was cut under the chin.

Q. Well, do you still have any marks on your body? A. Well, no.

Q. Well, is there any swelling on the head? A. Yes, I have. I have got a bump on my head. 40

Anna Skiba, direct.

Q. Is there any mark on your cheek? A. No, I didn't get hurt.

Q. I mean on your chin. A. Chin, yes, I got a cut.

10 Q. Just step down before the jury and see if they can see the mark. A. Well, just a little bit.

Q. Is there anything else the matter with you? Where is the bump? A. Right on top of my head.

Q. How long were you home as the result of this accident, Anna? A. Two weeks.

Q. Where did you work? A. I worked in the shirt factory.

Q. Worked in the shirt factory? A. Yes.

Q. How much did you make a week? A. Twenty dollars.

20 Q. Who was the doctor that treated you? A. Well, at that time, while I was home, Dr. Strandburg.

Q. Do you know how long he treated you? A. Well, I don't exactly remember.

Q. How many days? A. About two weeks or so. I don't know.

30 Q. What did he treat you for? A. Well, he treated me for my—I was all bruised up and he treated my finger. Electric treatment. But that was after I got all better I was going up to the doctor's office to take that.

Q. Do you know how much your doctor bill was? A. No, I don't know.

Q. Now I want to take you back to the accident again. You have ridden in automobiles a lot of times, haven't you? A. Yes.

40 Q. How fast would you say your brother was going in this automobile at the time of the accident? A. Well, I would say about twenty.

Anna Skiba, cross.

Q. Twenty what, twenty miles an hour do you mean? A. Yes.

Q. Who was with you in the automobile? A. My brother was driving and we were taking my uncle home to South Plainfield.

Q. What time did this accident happen? A. 10
About between eight and eight-thirty.

Mr. Brown: That is all. Take the witness.

Cross examination by Mr. Moser:

Q. Where do you live? A. I live in Carteret.

Q. And you lived with your brother? A. I live with my mother and father.

Q. And your brother? A. Yes.

Q. Your father owns the car and your brother was driving it on this night, is that right? A. 20
Yes.

Q. Was your uncle visiting with your mother and father? A. Well, he stayed up at our house, see, he worked in Carteret.

Q. He stayed there all the time? A. No, he didn't. He just stayed there and we were taking the car to bring his pay.

Q. Did your uncle ask your brother to take him 30
back to Plainfield? A. Yes, sir.

Q. Did you ask your brother if you could go along with them? A. Well, my uncle said we should come down there and see my aunt and then he was coming right back with us, see.

Q. In other words, your uncle was going back to Plainfield to home? A. Yes.

Q. With his pay and then was coming right back to your house? A. Yes.

Q. And he asked your brother if you would 40

Anna Skiba, cross.

drive him over and drive him back, is that correct? A. Yes.

Q. Now, as you were going along this road, Edgar Road, is it? A. Yes.

10 Q. Where was your car when you first saw the truck? A. We were away on our right side.

Q. No. I mean, how far were you away from the truck when you first saw it? A. Well, when I first saw it the truck was right, you know, right head-on, right in front of us.

Q. Well, can you give us any idea of the distance between your car and the truck when you first saw it? A. No. They were almost smashed just then.

20 Q. Almost smashed? A. Yes. Well, they were right head-on right in front and I just about took a glance through the windshield.

Q. In other words, when you first saw the truck the truck was alongside of the automobile that was parked on the side of the road there? A. Automobile?

Q. Yes. A. I didn't see the automobile.

Q. Didn't you see the car that Mr. Romeo was in? A. No, sir, I didn't see it.

30 Q. Well, how long a time elapsed between the time that you first saw the truck and the crash, was it almost instantly or did you travel some number of feet? A. No. Instantly.

Q. Did you see the truck as it was traveling along? A. No, I didn't see the truck.

Q. What side of the rumble seat were you sitting on? A. I was sitting on the right-hand side.

Q. That is the side— A. Right-hand side by the track.

40 Q. Now, when did your brother pull off the road onto the shoulder, if he did at all? A. Well, just as soon as we hit.

Anna Skiba, cross.

Q. As soon as you hit? A. Well, you know, we were riding right along on the right-hand side, but just then I noticed, you know, a quick pull, and I looked out the back window, I was sitting in the back seat and the window was in front of me. Well, I just about took a glance and I seen the truck. 10

Q. In other words, you were riding along there on the right-hand side of the road? A. Yes.

Q. And the first thing you knew about it you felt a quick pull to what direction, the right? A. Right.

Q. That was off the road and then the crash at about the same time? A. Yes, sir.

Q. And then you were practically unconscious and taken to the doctor's office? A. Yes, to the doctor's office. 20

Q. Now, after you were treated by the doctor were you taken home or to the hospital? A. Well, they took us home.

Q. They took you home with Miss Puha? A. Yes.

Q. She went to her house and you went to your house? A. Well, she went home.

Q. She was taken home and you were taken home? A. Yes, both of us were taken home. 30

Q. Two weeks after that you went back to work? A. Well, I was feeling bad but at the same time I went.

Q. Two weeks afterward you went back to work? A. Yes.

Q. And you worked steadily from that time on? A. Yes.

Q. At the same place? A. Yes.

Q. And getting the same wages? A. Yes.

Q. From that time on down to the present time? 40

Anna Skiba, cross.

Are you still employed by the shirt factory? A. No, I don't work there now.

Q. You work some place else? A. Yes.

Q. But as far as the speed of the truck is concerned you don't know anything about that? A.

10 About what?

Q. The speed of the truck. A. No, I don't.

Q. How many times have you ridden in the rumble seat of this particular car, many times?

A. Well, a lot of times.

Q. Was anything said about the speed of the car? A. No.

Q. That you were going slow or fast or anything? A. No.

20 Q. Were your brother, your uncle, and your friend, and yourself talking as you were riding along there, or what were you doing? A. Well, we were talking, two of us were talking in the back.

Q. You had this glass in front of you, did you not? A. Yes.

Q. You could not see what your uncle and your brother were doing? A. Well, I seen the truck, you know, just about happened to take a glance through the window and there I seen the truck right head-on.

30

Q. There is an electric light pole right near this accident? A. Well, the electric light pole is about five feet away, I think.

Q. You could see that light, could you not, fairly well? A. It was an electric light.

Q. And you could see some distance ahead of you? A. Well, I don't know about that.

Mr. Moser: That is all.

40

Mr. Brown: That is all.

Anna Skiba, cross.

By the Court:

Q. Is there anything the matter with your finger? A. Yes.

Q. You have not said anything about that. A. Well, I have treatments for it. I was taking treatments for it but it don't seem to go down. 10

Q. How long have you been taking treatments for that finger? A. Well, I was going down there, I think, twice a week and I think I was taking about for a month. I am not exactly sure, but for about a month anyhow I was taking them.

Q. You don't take them any more? A. No.

Q. Didn't do you any good? A. No, didn't do me any good. Because it is broke.

Q. Go down and show the jury that finger. (Witness exhibits finger to the jury.) 20

Q. What are you working at now? A. Working in a shirt factory.

Q. Does it interfere with your work any? A. Well, I took up a hair dressing course.

Q. I mean, at the shirt factory does it interfere with your work any? A. No.

The Court: That is all.

By Mr. Brown:

Q. Does it bother you at all? A. What, the finger? 30

Q. Yes. A. No, not exactly, but once in a while it pains me. Certain times.

By the Court:

Q. Change of weather, you mean? A. I don't know what it is. But certain times it pains me.

Q. Very much? A. Well, not very much. 40

The Court: That is all.

Helen Puha, direct.

A. My bump usually bothers me though. That does bother me.

Q. When? A. When I went to wash my head. When I bend my head down, I don't know, it gets me like dizzy.

10

Mr. Brown: That is all.

HELEN PUHA, one of the plaintiffs, being duly sworn according to law, on her oath, saith:

Direct examination by Mr. Brown:

Q. Helen, you were in this automobile the night of this accident? A. Yes.

20

Q. You were sitting in the rumble seat with Anna? A. Rumble seat.

Q. What were you doing at the time of the accident? A. Why, we were talking.

Q. Did you see the truck at all? A. No, I didn't see it at all. It was kind of cold. I was slouched down so I didn't see anything.

30

Q. When was the first that you knew you were in an accident, Helen? A. Well, we were riding along and all of a sudden I heard a crash and then I didn't see anything else.

Q. Where did you wake up? A. Well, I found myself in Dr. Collin's office in Woodbridge.

Q. What was the matter with you? A. I couldn't move my neck at first. I was all bruised up.

Q. How long were you home? A. About five weeks.

Q. Who was treating you? A. Dr. Strandburg.

40

Q. You didn't work at this time, did you? A. No, I was going to school.

Q. You didn't go to school for five weeks? A. No.

Helen Puha, cross.

Mr. Moser: I object to that as leading.

Mr. Brown: She said she was home for five weeks.

Mr. Moser: I didn't get that.

By Mr. Brown:

10

Q. I just want you to step down here and show the jury your teeth and your tongue. (Witness exhibits injuries to the jury.)

Q. You live with your grandfather? A. Yes.

Q. Your grandfather is suing for you? A. Yes.

Q. That is, you are under twenty-one years? A. Yes.

Q. What else bothered you besides your teeth and tongue? A. Well, my neck, I couldn't move it for about five weeks.

20

Q. Did you have any marks other than that? A. Why, my chest was all bruised up and my chin. I was all bruised up.

Q. How did you happen to get hit on the chin, do you know that? A. Why, the rumble seat closed on us and I hit this way (indicating), hit my chin.

Q. How long did you suffer pain? A. Well, I suffered about five weeks.

30

Mr. Brown: That is all.

Cross examination by Mr. Moser:

Q. How fast was the car in which you were riding proceeding along? A. Why, we were going about twenty or twenty-five.

Q. Twenty to twenty-five miles an hour? A. Miles an hour.

Q. Did you feel the sudden jerk to the left of the car made by the car?

40

Mr. Brown: I object.

Helen Puha, cross.

By Mr. Moser:

Q. Did you feel a sudden jerk of the car to the left? A. I don't remember.

10 Q. The only think that you know is that you were found— A. I heard a crash.

Q. You fell underneath the rumble seat when it fell down? A. Yes.

Q. After you returned to school you continued on to school in the regular way? A. Well, my neck still bothered me.

Q. Does it bother you now? A. Well, it don't bother me now, but sometimes when I twist it it hurts.

20 Q. You haven't got any trouble with your neck now, have you, or for some time? A. Well, sure.

Q. You are working now? A. I do housework now, yes.

Q. Are you married? A. No.

Q. What kind of housework do you do? A. Well, I do just light housework.

Q. You work by the day or by the week or month? A. Month.

Q. Do you live at the place where you do housework? A. Yes.

30 Q. How long have you had that position? A. Well, I just began about a month ago.

Q. What were you doing before you took that position? A. Well, I stayed home.

Q. With your grandfather? A. Yes.

Q. You can move your neck now all right, can you not? A. Well, I can move it now.

40 Q. None of your other injuries that you had interfere with your moving about and doing your usual work, do they? A. No. Just my tongue bothers me.

Mr. Moser: That is all.

Charles Skiba, direct.

CHARLES SKIBA, one of the plaintiffs, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Brown:

Q. Charley, you were driving this automobile on this night? A. Yes, sir. 10

Q. This was your father's automobile? A. Yes, sir.

Q. Where were you going and who were you taking? A. We was going towards Rahway to South Plainfield. I was taking my uncle home.

Q. You got to a point on Rahway Avenue near Omar Avenue and tell us just exactly what happened. A. Well, I was going towards Rahway. I seen a car parking on the left side facing towards Woodbridge, and I was going down there and of a sudden I seen a Mack truck about ten or eight feet ahead of me. I made a swing to the right but I couldn't avoid it. All I know I was taken from there to the hospital. 20

Q. What did you do when you saw this truck? A. I made a right swing but I maybe only got out about two or three feet off the road.

Q. How did the Mack pull across that road? A. I don't know. I haven't seen it. All I seen it was right in front of me. I didn't see which way he come or anything. 30

Q. How fast were you going? A. About twenty or twenty-five miles an hour.

Q. And you had your lights lit? A. Yes, sir.

Q. What were you doing at that time? A. What do you mean?

Q. Well, were you observing the road all the time? A. Yes, I was looking at the road all the time, straight ahead. 40

Q. Did you observe any lights on the truck? A. No, sir.

Charles Skiba, cross.

Q. That is, you didn't see any? A. I have not seen any lights.

Q. What happened to you, Charley? A. Well, I got cut up around the forehead and my knees were bruised and this finger was scratched up. I
10 can feel it now when I work with it, do hard work, and I can feel the joint right here.

Q. I want you to step down and show the jury where you were sewed up. (Witness exhibits injury to the jury.) A. My knee was hurt, and this finger was all swollen up. When I do hard work I can feel the joint.

Q. What were you doing at the time of this accident, that is, were you working? A. Yes, sir.

Q. Where were you working? A. Wheeler Con-
20 denser & Engineering Company.

Q. How much did you make? A. \$24.50 a week.

Q. What kind of work do you do? A. Machin-
ist.

Q. How long were you laid up, that is to say, where did they take you immediately after the accident? A. Up to the Rahway Hospital.

Q. How long were you there? A. Eight days.

Q. And then from there where did you go? A. I
30 went home and I stayed five weeks altogether with eight days in the hospital.

Q. You didn't work for five weeks? A. Five weeks.

Q. Who treated you? A. Dr. Hoagland.

Cross examination by Mr. Moser:

Q. You were driving along Rahway Avenue at what speed? A. Twenty and twenty-five.

Q. Between twenty and twenty-five miles an
40 hour? A. Yes, sir.

Q. How far were you from the car that was

Charles Skiba, cross.

parked on the opposite side of the road when you first saw it? A. I should judge about quarter of a mile before I noticed that car parked. Then I didn't pay any attention to it.

Q. How far were you from the parked car when you first saw the car? A. Well, that is what I say. 10

Q. Quarter of a mile? A. Yes. But I didn't pay any attention after I noticed that car, see.

Q. You saw this car parked at the road when you were quarter of a mile from it? A. Yes, sir.

Q. You kept on going? A. I kept on going.

Q. Did you see the truck as it was coming up the road? A. I haven't seen the truck until I was right on top of it, about eight or ten foot away.

Q. Did you, at any time, cast your eyes toward the car that was parked at the road there? A. I wasn't looking at the car; I was just looking straight ahead. 20

Q. Well, did your looking straight ahead bring you beyond the car that was parked on the road? A. Yes.

Q. How far behind the car could you see? A. Well, I don't know.

Q. Well, could you see for any distance behind that car? A. Yes, certainly. 30

Q. Could you see another quarter of a mile in back of the car? A. Yes.

Q. Did you look beyond the car and attempt to see that quarter of a mile beyond? A. Well, when I was coming down I noticed that car. I didn't bother looking at the car any more. I just noticed there and I kept on going ahead.

Q. You saw that car on the extreme left side of the road as you were going along, is that right? A. Yes, sir. 40

Charles Skiba, cross.

Q. You knew it was parked there, did you not?

A. Yes.

Q. That is all you did, you saw that car and then kept right on going? A. I kept on going.

10 Q. Where were you with reference to that parked car when you first saw the truck? A. I don't know how close I was to that car or anything.

Q. How far away from the front of the truck were you when you first saw the truck? A. About eight or ten foot away.

Q. And where was the truck with reference to the parked car passing it? A. I don't know.

Q. Well, you know where the parked car was. A. It was on his right and on my left.

20 Q. And you know where the accident happened? A. Yes, sir.

Q. That was right next to the parked car, was it not? A. Well, I don't know that, see.

Q. Did you attempt to stop your car when you saw this truck? A. I tried to make a right swing.

Q. Did you put on your brake? A. I don't believe I applied the brake, it was too sudden.

Q. You don't know how fast the truck was coming, do you? A. No, sir.

30 Q. What distance did your car travel from the time you saw the truck until you hit it? A. Well, I kept the same speed up.

Q. Didn't try to stop your car at all? A. I didn't get a chance. That truck come up all of a sudden.

Q. The road is straight there? A. Straight road.

Q. You could have seen quarter of a mile beyond the parked car, is that right? A. Well—

40 Q. I mean, it was a clear night. A. Yes, it was a clear night.

Q. Wasn't raining? A. No, sir.

Charles Skiba, cross.

Q. Clear? A. Yes.

Q. You could have seen? A. Yes, sir.

Q. Did you actually look beyond the parked car?

A. Certainly I did look but I have not seen it—I haven't noticed the truck coming up.

Q. You knew that a good portion of that car parked on the other side of the road was on the concrete pavement, was it not? A. I don't know. 10

Q. Well, do you remember whether it was or whether it was not? A. Well, when I got in the car, or after it was smashed, I was taken right to the hospital.

Q. No. Before the accident as you saw the car parked on the other side of the highway could you tell that a good portion of it was on the concrete? A. I can't. I didn't look at the wheels. I only noticed the car parking there and then I didn't bother looking at it, who was inside, or anything. 20

Q. In other words, as you were driving your car along this highway you saw the parked car, didn't pay any more attention to whether there were any other cars on the road, or anything, but just drove right along, is that right? A. Well, I was looking straight ahead. 30

Q. You knew when the truck was in front of you, it was straight ahead in front of you, wasn't it? A. Yes. All the ways on his left side.

Q. On its left-hand side of the road? A. Yes, sir.

Q. And you were right in front of it? A. Right in front of it.

Q. Did you see it start over on your side of the road? A. What?

Q. Did you see it when it started over on your side of the road? A. No, sir. 40

Q. Was there any part of the truck on the right-

Charles Skiba, cross.

hand side of the road? A. I don't know. I just noticed the front part. I don't know whether it had a trailer on or anything. I didn't bother looking around after I got out of the smashed car. I was taken right to the hospital.

10 Q. No. But before you had the collision you looked around, didn't you? A. Well, I can't see in the back of the truck from the front at night.

Q. Were you talking to your uncle as you rode along there? A. What was that?

Q. Were you talking to your uncle? A. No, sir.

Q. Just driving paying attention to where you were going and looking straight ahead? A. Yes, sir.

20 Q. Although you were looking straight ahead nevertheless you didn't see the truck? A. I haven't noticed the truck.

Q. That was in front of you, until you were right up eight feet from it? A. Yes, sir.

Q. You were eight days in the hospital? A. Yes, sir.

Q. What other injuries, if any, did you have besides the cuts on your face? A. I had my knees bruised.

30 Q. Well, were there any stitches taken in your knees? A. No, sir.

Q. They are all right now? A. They are all right.

Q. Did you go back to work after the accident? A. Five weeks after the accident.

Q. Five weeks after the accident? A. Yes, sir.

Q. And at the same job? A. Same job.

Q. What is that work? A. Machine work. Milling machine.

40 Q. Just tell us what you do. A. Cut keyways in shafts, cutting gears and all that work.

John Skiba, direct.

Q. Is that handling iron and steel and like of that? A. Yes, sir.

Q. You can do that now just the same as you did before the accident? A. Yes, sir.

Q. In other words, your injuries did not interfere any with your ability to do your work? A. Well, after five weeks I was able to use this hand a little bit. 10

Q. You can use it now? A. Yes, sir.

Q. And you could use it after the five weeks when you went back to work? A. Yes, sir.

Q. When you went back to work you worked just the same? A. Just as well.

Q. And in the same capacity as you did before the accident? A. Yes, sir.

Mr. Moser: That is all. 20

Mr. Brown: That is all.

JOHN SKIBA, one of the plaintiffs, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Brown:

Q. You are the owner of this automobile, John? A. Yes. 30

Q. Where did you buy it? A. I buy, Gross.

Q. How much did you pay for it? A. \$2,275.

Q. That is how much altogether you paid? A. Altogether I paid.

Q. Did you pay anything to the hospital for your boy? A. Yes, sir.

Q. How much? A. \$28.

Q. Have you the check for that? A. Yes.

Q. Let me see the check.

Mr. Moser: I do not dispute the payment. 40

Motion for Nonsuit.

Q. Did you pay Dr. Hoagland anything for your boy? A. Yes.

Q. How much did you pay him? A. \$36.

Q. Did you pay anybody else for your boy? A. I paid for garage man what take the car \$26, and this man what take the picture \$14.

Mr. Moser: I object to that.

A. And medicine I think \$5.45.

Q. Where is that car now, John? A. Right in home.

Q. You have never used it since the accident?

A. No, can't use it.

Q. What is the matter with it? A. All smashed.

Mr. Brown: Take the witness.

Mr. Moser: No questions.

Mr. Brown: That is all.

(Plaintiff Rests.)

I might say that Mr. Moser agrees that the defendants named own the automobile truck. There is not any proof of that.

MOTION FOR NONSUIT.

Mr. Moser: I move for a nonsuit on the ground that at the present stage of the case there is no evidence in the case of any negligence on the part of the driver of this truck.

The evidence clearly indicates there was a car parked at the roadway; he, in endeavoring to go around that car, pulled over on the left side of the road. The Traffic Act says that a person in overtaking an automobile must pass to the left.

Further evidence in the plaintiff's case is

Motion for Nonsuit.

to the effect, as given by Harry Romeo, that the truck when it started to pull out on the left-hand side of the road passed his car that was parked there, was twelve feet behind his car; that at that particular time he turned around facing in the opposite direction to see the automobile owned by the plaintiff and that was seventy feet away. 10

That clearly indicates that if the plaintiff had been operating his automobile in a careful, prudent manner that he should have stopped it until the defendant's truck had gotten around it.

Further the testimony of the plaintiff John Skiba, or Charles Skiba, the driver of the plaintiff's car, is to the effect that he could see a quarter of a mile ahead and actually did see the parked car when he was a quarter of a mile from it, and could see a quarter of a mile beyond the parked car. 20

Nevertheless, while he was so occupying that proper locality he did not see the truck which was going in the opposite direction which conclusively—which the court must find conclusively establishes that either he did not look to see the truck or that if he did look he looked ineffectively. 30

And therefore the accident was wholly and solely the result of the negligent operation of the automobile by Charles Skiba, which is the plaintiffs' automobile, and is in no wise a result of the negligence of the defendant's agent.

The Court: Motion denied.

Mr. Moser: May I have an exception?

The Court: Yes, certainly. 40

Motion for Nonsuit.

10 Mr. Moser: The driver of our car, who is not in the employ of these people any more, last night was bringing a load of goods from Jamaica, New York, to Dunellen. We have been in touch with his employer. He was to leave there this morning to come immediately to court. He was not subject to subpoena last night. His employer, Eichler Trucking Company in Bound Brook, have been attempting all morning to get in touch with him; they have even gone as far as to send an automobile of their own from Bound Brook to trace the route of the truck to see if it was laid up along the highway. Therefore I respectfully urge
20 that your Honor continue the matter until Monday morning.

The Court: When did you find out about this?

Mr. Moser: The man was on the way—left Jamaica this morning. They told us he would certainly be here and they would dispatch him here. We telephoned when we were adjourned for recess and they said they had not heard from him and they
30 would immediately—we told them the urgency of the matter.

The Court: When did you subpoena him?

Mr. Moser: He was not subpoenaed. He was not subject to subpoena. He was in Jamaica, New York. Yesterday was the first day the case was in call.

40 The Court: That doesn't make any difference.

Fred Simons, direct-cross.

Mr. Moser: We could not possibly subpoena the witness before that.

The Court: Do you wait until the case is in the call?

Mr. Moser: Yes, sir. We have his address. 10

Adjourned until Monday, April 15, 1929, at 10:00 A. M.

Mr. Brown: I desire to recall Mr. Simons for the purpose of correcting part of his testimony.

FRED SIMONS, recalled on behalf of the plaintiff. 20

Direct examination by Mr. Brown:

Q. You desire to correct part of your testimony, Mr. Simons, with regard to the light. Will you do it now? A. There is a light on the pole at the corner of Omar Avenue and Rahway Avenue. Do you want a mark there?

Q. Yes. Is there a light on the westerly side of the road? A. No, sir.

Q. Will you erase that then, Mr. Simons? A. 30
(The witness erased something from the map.)

Mr. Brown: Is that all right?

Mr. Moser: Yes.

Cross examination by Mr. Moser:

Q. How far is that light, Mr. Simons, from the intersection of Omar Avenue? A. That is about ten feet, from the border light.

Q. Is that the only light along there within a distance of two hundred feet in each direction? A. 40
The poles are two hundred feet apart.

John Bonien, direct.

Q. Indicate where the next light is south of the one that is at the intersection of Omar Avenue. A. It would be away down here at the edge of the map, about two hundred feet.

Q. Two hundred feet away from the other light?
10 A. Yes.

Q. And they are both on the east side of the avenue? A. Yes, sir.

Mr. Moser: Thank you. That is all.

JOHN BONIEN, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath, saith:

20 *Direct examination by Mr. Moser:*

Q. Where do you live? A. Perth Amboy.

Q. By whom are you employed at the present time? A. Now?

Q. Where do you work? A. Bound Brook.

Q. Just speak up loud. A. Bound Brook.

Q. Bound Brook? A. Yes.

Q. On April 2, 1928, whom were you working for? A. For Edward Hmieleski.

30 Q. On that day were you operating an automobile truck for him? A. Yes.

Q. And where had you been on that day, April 2? A. I was in New York.

Q. New York? A. Yes.

Q. What did you get, if anything, in New York City? A. I got a load of milk, eggs, and meat.

Q. What did that load weigh? A. Thirteen tons.

Q. What kind of truck were you driving on that day? A. A trailer, a Mack tractor.

40 Q. A Mack tractor? A. Yes, six-wheel trailer.

Q. Which road did you take down from New York? That is, which road did you take just be-

John Bonien, direct.

fore you got into Woodbridge? A. Rahway Avenue.

Q. How long had you been driving this Mack truck before the accident? A. Well, three years.

Q. Was the truck in good condition? A. Yes.

Q. Is there anything about the truck that you can tell us with reference to its maximum speed? A. Twelve miles. 10

Q. What is there about the truck, if you know, that fixes that speed? A. A governor.

Q. Was the governor on the truck on the day of this accident? A. Yes, it has got a seal on it.

Q. What kind of seal is that? A. Wire. Something like you see on the railroad car. You are not allowed to touch it.

Q. Was that seal on the governor in place? Was the governor sealed up? A. Yes, the governor was sealed up. 20

Q. Now, as you were driving along Rahway Avenue there, did you see anything on the highway just before this accident happened? A. Yes, I seen a car parked.

Q. Where was that car? A. The car was parked on the right-hand side.

Q. On the right-hand side of the road? A. Yes.

Q. And before you reached that car, what side of the road were you traveling on? A. I was traveling in the center of the road. 30

Q. As you got to the parked car what did you do? A. Why, I looked out. I looked ahead, and I seen headlights.

Q. Where were those headlights with reference to your position? A. About 250 feet from me.

Q. And where were you with reference to the parked car when you saw those headlights? A. I was most past already. The parked car was cutting in for the light. 40

John Bonien, direct.

Q. Where, with reference to the parked car, was your truck when this contact took place? A. The front of his radiator.

Q. That is, the front of your truck was at the front of the other car? A. Yes.

10 Q. What part of the automobile that came in contact with your truck hit your truck? What part of it hit it, the front, the side, the rear, or what? A. He hit it right in the center, and he swiped on the front left wheel.

Q. Is this a photograph of your truck as it was after the accident? A. That is the way it was after the accident.

20 Q. This photograph was taken, not at the scene of the accident, but some place else. A. The truck was pulled off the road.

Q. This chain that was on the front here, that was used for towing you? A. Yes.

Q. That was not on the truck before? A. No.

(The picture referred to was received in evidence and marked "Defendant's Exhibit 1.")

Q. As you were driving down Rahway Avenue, did you have any light on your truck? A. Yes.

30 Q. What lights did you have on your truck? A. Presto and kerosene lights.

Q. Where was the kerosene lamps? A. On the side.

Q. On the side in back of the motor? A. Yes.

Q. Where was the Presto lights? A. In the front of the motor.

Q. Did you have all those lights on as you were driving along? A. Yes, I had them on.

40 Q. After this accident happened what lights were burning on your truck? A. The two kero-

John Bonien, direct.

sene lights and one Presto. One Presto was not out, so I put it out.

Q. After this accident what did you do with reference to the Presto lamp that was burning? A. I put the Presto out and had the kerosene lights. They were still burning.

10

Q. You turned the key on the Presto tank and turned the lamp off? A. Yes.

Q. What happened to the lamp that was on the left-hand side of your truck before this accident happened? A. When I had that accident, he broke that off.

Q. That was knocked off? A. Sure.

Q. How many wheels did the truck have? A. Six.

Q. Six wheels? A. Yes.

20

Q. And what was it, a tractor type of Mack, a trailer? A. It is a Mack tractor.

Q. And trailer. A. Yes.

Q. Two-wheel trailer? A. Two wheels on the trailer.

Q. How long was that truck and trailer? A. About thirty feet.

Q. How wide was the truck? A. Eight.

Q. I ask you about how fast were you going along the road as you were driving your truck. A. Twelve miles.

30

Q. About twelve? A. Yes.

Q. Now, what is the capacity of this truck, the full load? Did you have a full load on? A. Sure, thirteen tons.

Q. That is as much as the truck can carry. A. That is how large with her load.

Q. Yes. As you saw this oncoming car, can you give us any estimate of the speed of that car? A. He came in full speed. A big noise he made.

40

John Bonien, cross.

Q. Were the cars separated or apart or together after the accident? A. They was together, right under my axle in the front, right in the center.

Q. The other car was under your axle right in the center? A. Yes.

10 Q. Was there anything on the front of your truck broken? A. Both the springs there, and the crankcase, where you start your truck. The crankcase—right in the center, and he broke that off. He broke the crankcase.

Q. Is that the part of the truck right under the license plate? A. Yes, that is where the crank handle goes.

Q. That was knocked right off? A. Yes, and the steering rod.

20 Q. So that the hole in the front there underneath the license plate was not there before the accident? There was a crank handle. A. There was a crank handle. It was all closed.

Mr. Moser: That is all.

Cross examination by Mr. Brown:

Q. How often did you go to New York, Mr. Bonien? A. Every day for him.

30 Q. You went every time from his place of business in Perth Amboy? A. Well, sometimes I came out early and sometimes I came out late.

Q. On this particular day, April 2, what time did you leave the place? A. In the morning.

Q. About what time? A. Oh, about five o'clock in the morning.

Q. About five o'clock in the morning? A. Yes.

40 Q. When you left at five o'clock in the morning what time did you usually get back? A. That is when I get my stuff. I can't say. Sometimes I get it five o'clock, sometimes later.

John Bonien, cross.

Q. Did you make one trip to New York or two trips? A. I just take a load in and pick up a load.

Q. What time did you get your stuff in New York on this day? A. Around the afternoon.

Q. About what time? A. About two o'clock. 10

Q. About two o'clock in the afternoon? A. Yes.

Q. And you started for home? A. Yes.

Q. It takes you how long to get from Perth Amboy to New York? A. Well, it is according to what kind of load. It takes me about four hours.

Q. So you should have been home at six o'clock on this day? A. I didn't leave at two o'clock.

Q. What time did you leave? A. I can't remember that. I ain't looking at the time.

Q. Did you leave four o'clock? A. It is no use of my saying four o'clock. I don't remember. 20

Q. Where did you light the light on this truck? At which place? Do you remember that, Mr. Bonien? A. Yes.

Q. Where? A. At Jersey City.

Q. You lit the four lights on the truck? A. Yes.

Q. Now, Mr. Bonien, you weren't in court on Friday, but there were four people who testified that the truck, after the accident, was two or three feet off on the left shoulder of that road. Is that true or isn't it true? 30

Mr. Moser: I object to that.

The Court: Objection sustained.

By Mr. Brown:

Q. Where was the truck after the accident with regard to the left pavement of the road? A. He slid me over.

Q. Tell us where it was. A. I was going to the right. 40

John Bonien, cross.

Q. Your truck was going to the right? Then, it was to the left. A. Yes.

Q. What was the position of your truck on the road? Was it straight down the road? A. No, it wasn't straight. The wheel was crooked this way
10 (indicating), facing to the left.

Q. Your whole truck was crooked? A. No, not the whole truck, just the wheel.

Q. Now, you testified just a moment ago that when you saw this automobile, it was 250 feet away, is that right? A. Sure.

Q. And your truck was alongside the parked car when you saw it? A. Yes.

Q. And you were going twelve miles per hour when you saw it? That is right, isn't it? A. Yes.
20

Q. And at the point where the accident took place the radiator of your truck was even with the radiator of the parked car? A. Yes.

Q. How long was this parked car? A. I don't know.

Q. How long is the ordinary touring car? A. I don't know.

Q. Would you say it was twelve feet? A. I was going into the right already. I was most past with the halfway of the truck of mine past.
30

Q. Do you want us to believe that you were beyond the car or not? What is your testimony now?

Mr. Moser: I don't think he understands the question.

Mr. Brown: He understands the question, because he said his car was beyond the parked car. Before he said it was not. I want to know what his testimony is now.

Mr. Moser: If your Honor please, may we have it reframed?
40

The Court: Yes

John Bonien, cross.

By Mr. Brown:

Q. Where was the radiator of your car with regard to the radiator of the parked car at the time of the accident? A. At the time of the accident?

Q. Yes. A. That car went away when that accident happened. He started right off. 10

Q. I know, but it didn't go away until the accident happened. Tell me this: Did you see the man in the car after the accident? A. The man that was parked?

Q. Yes. A. I seen him come out and jump in and go away.

Q. Did you see him take the two cars away? A. No.

Q. Now, what I want to get at is: You saw the Skiba car 250 feet away, while you travelled one hundred feet to the point of the accident? A. When I seen the car about 250 feet away. 20

Q. That is right, and you say you were even with the parked car. A. Yes.

Q. Now, how many feet did you go before the point of the accident took place? A. I couldn't tell you that.

Q. Do you want to answer that or do you just leave it go that you can't tell me? A. I can't tell you. 30

Q. Take a look at that picture that was introduced in evidence. What does that represent? Take a look at it. A. The road was not that wide, never.

Q. The road is the same road? A. It is not that wide.

Q. It isn't as wide as that now? A. I don't think so.

Q. Are you sure about that? A. I don't think so. 40

Q. You have traveled that road every day.

John Bonien, cross.

The Court: The road is the same. That is admitted. It may be that the picture makes it look larger. Don't take up time with that.

10 *By Mr. Brown:*

Q. You show me where your wheel of the truck was with regard to that pavement after the accident. A. I can't show you on that picture.

Q. You can't? A. No.

Q. Can you show me on the map? A. I can show you on this here (indicating), right here.

Q. You can't show me on this because this doesn't show the road. Show me on the map. There is the map up there. Take a look at it.

20

By Mr. Moser:

Q. This is Woodbridge down here (indicating), and this is the highway. That is the way you were driving—toward Woodbridge. That is one side of the concrete road; that is the other, and then there is a line down the middle of the concrete, right through here is the center line of the road, right down here. Do you understand it? A. I can't tell on the map.

30

By Mr. Brown:

Q. How long after the accident did you stay there, Mr. Bonien? A. Until I took the man down to the hospital.

Q. And you were there when the policeman came? A. I called up for the policeman.

Q. And the truck was not moved nor the car moved until the policeman came? A. No, it was not moved.

40

Mr. Brown: That is all.

Mr. Moser: That is all.

Andrew Simonson, direct.

ANDREW SIMONSON, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Moser:

Q. Officer, you testified here on Friday? A. I did. 10

Q. When you came up to the scene of the accident did you take particular notice whether or not there were any lights on these respective automobiles? First, take the Mack truck that was involved in the accident. Was there any lights on it? A. Yes, there was two oil lamps there when I got there.

Q. Will you take this photograph marked D-1, and indicate for us which of those lamps was burning? A. These two up here (indicating). This one and that. 20

Q. Those are the two lamps back on the cab? A. Yes.

Q. Was the head lamp on the left side burning when you got there? A. No, it was not.

Mr. Moser: That is all.

Mr. Brown: That is all.

30

MICHAEL SANDOR, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Moser:

Q. Mr. Sandor, where do you live? A. Chestnut Street, Avenel.

Q. Where is that with reference to the scene of

40

Michael Sandor, direct.

an accident that happened on April 2, 1928? A. It is about five hundred feet from my house.

Q. On the evening of April 2 was your attention called to some commotion outside of your house?

A. I did.

10 Q. What did you do then? A. I seen cars gathered together. I knew there was an accident and I ran up there to see what happened, and, well, I seen that there was a man still crumpled up in there and nobody would seem to want to help him. Everybody was looking at him. I grabbed him out of the car, and the first car I put him in and took him to the hospital.

Q. So you arrived shortly after the accident happened. A. I did.

20 Q. Did you take note of the position of the cars as you saw them? A. I did.

Q. What was the position of the Willys-Knight automobile or the roadster, with reference to the Mack truck? A. Well, the Willys-Knight was underneath the—almost the front end of it was almost underneath the front end of the truck. The top was all down and the front of it was completely smashed.

30 Q. Where was the Mack truck? A. The Mack truck was on the left-hand side of the road facing toward Perth Amboy, and it was about a foot and a half away from the edge of the concrete. The truck itself was straight. The trailer was partly—looked like it started going over on the left-hand side.

40 Q. Did you take any notice of whether or not there were any lights on the respective automobiles? A. I did, two kerosene lights and a head light was burning.

Q. On what? A. On the truck.

Michael Sandor, cross.

Q. Was any part of the Mack truck over or any part of the Mack truck off the concrete? A. No, sir.

Mr. Moser: That is all.

Cross examination by Mr. Brown:

10

Q. Where was the Skiba car, Mr. Sandor? A. It was halfway underneath the truck.

Q. I mean with regard to the pavement, halfway on? A. It was on the pavement about the same way that the Mack truck was.

By the Court:

Q. What do you mean, "the same way the truck was"? A. On the left side of the road. It was on the left side of the road and the Mack truck was on the left-hand side, but it was in line with the Mack truck.

20

Q. What do you mean in the line with the Mack truck? A. Now, I can't explain any better. It was straight ahead on in the line.

Q. Was the Mack truck straight head on? A. With the Willys-Knight.

Q. Then the Mack truck itself was parallel with the concrete? A. The Mack truck itself. Her trailer wasn't, but the Mack truck was. The front end of the truck.

30

Q. What about the rear end? A. The rear end was partly in the middle of the road, two wheels of it.

Q. How far was the front end of the Mack truck from the edge of the concrete? A. About a foot and a half.

Q. How far was the rear of the Mack truck from the edge of the concrete? A. It was about ten feet away from the edge of the concrete.

40

Anna Sandor, direct.

Q. How far was the front end of the Willys-Knight away from the edge of the concrete? A. About a foot and a half.

10 Q. How far was the rear end of the Willys-Knight away from the edge of the concrete? A. About a foot and a half.

Q. Well, then, it wasn't in the same line, was it? A. The front and the front truck itself was.

The Court: Go on.

By Mr. Brown:

Q. Are you sure that the front end of the Mack truck was on the left-hand side of the road? A. Yes.

20 Mr. Brown: That is all.

ANNA SANDOR, a witness produced on behalf of the defendant, being duly sworn according to law, on her oath, saith:

Direct examination by Mr. Moser:

Q. You are the wife of the last witness on the stand? A. Yes.

30 Q. Did you live in the same place with him? A. Yes.

Q. You did in April, 1928? A. Yes.

Q. Did you leave your home to go to the scene of this accident right after your husband? A. Yes, a little while after.

Q. When you got there did you notice the position of the respective automobiles and the condition of them? A. Yes.

40 Q. Did you take notice of whether or not there were any lights on the car or the truck? A. On

Margaret Herman, direct.

the truck there were two oil lamps, and the right-hand side of the headlight was burning.

Q. Did you take notice of the left-hand headlight? A. That was smashed.

Q. Was there any part of the Mack truck off the concrete, that you remember? A. There was not any part off, no. 10

Mr. Moser: That is all.

Cross examination by Mr. Brown:

Q. But where was this Mack truck with regard to the right or left-hand side of the road? A. It was toward the left-hand side about a foot and a half from the edge.

Q. Do you know how wide this road is? A. Well, I don't know the exact width but I live near it. I didn't measure it. 20

Q. So that the entire truck was more to this side of the road, that is, the left-hand side of the road than it was on the right-hand side? A. No, I couldn't say that. The trailer was sort of sideways and the truck was straight.

Mr. Brown: That is all.

Mr. Moser: That is all. 30

MARGARET HERMAN, a witness produced on behalf of the defendant, being duly sworn according to law, on her oath, saith:

Direct examination by Mr. Moser:

Q. On April 2, 1928, were you with the last two witnesses at their home? A. Yes, sir.

Q. In the evening? A. Yes.

Q. When you heard this commotion and they 40

Margaret Herman, cross.

left the house did you go out with them? A. Yes, I went out with my sister, Mrs. Sandor.

Q. Did you see the position of the cars as they were in the highway? A. Yes.

10 Q. With reference to the Mack truck were there any lights on that truck? A. Yes, there were.

Q. When you got there? A. Yes.

Q. What lights were there? A. Two kerosene lamps and the one front light.

Q. Did you notice of the left head lamp? A. Yes, I saw it was smashed and I saw the rim of the lamp on the floor—on the concrete.

Q. On the ground, is that right? A. Yes.

20 Q. Now, where you saw the rim of that headlamp was that concrete or dirt? A. Why, it was concrete. It was more to the right side. It was knocked there. I don't know whether it was kicked over but I remember seeing it on the concrete.

Q. But that rim of the headlamp was still on the concrete? A. Yes.

Mr. Moser: That is all.

Cross examination by Mr. Brown:

Q. You weren't in court on Friday? A. No.

30 Q. When were you subpoenaed in this case? A. When?

Q. Yes. A. Last Saturday night.

Mr. Brown: That is all.

Mr. Moser: The defendant rests.

40 May I renew my motion, if your Honor please? I now move for a direction of a verdict on the ground that the evidence which has been adduced here discloses that there was no negligence upon the part of the driver of the defendants' truck, and it further establishes that the plaintiffs' driver was guilty of contributory negligence. The other

Case.

party was not. The other plaintiffs in this suit were not invitees but merely licensees, and therefore his contributory negligence is attributed to them and they cannot recover.

The Court: Denied.

Mr. Moser: May I have an exception? 10

(Mr. Moser made a closing address to the jury, during the course of which the following took place:)

Mr. Moser: I say, if the plaintiffs are guilty of contributory negligence, why, they are not entitled to recover.

The Court: Which plaintiffs?

Mr. Moser: I submit, in this case, all of the plaintiffs.

The Court: Where is your authority for that? 20

Mr. Moser: Well, here we have in this case, if your Honor please, the fact that the uncle of the driver of this car brought forth the invitation. He asked the girls to go with him and asked Charles Skiba to drive him over to Plainfield. Therefore, there was no invitation extended by the driver of this car or the owner of the car.

The Court: Well, I don't agree with that, but assuming that is true, how does that bind them outside of Skiba? 30

Mr. Moser: Outside of Skiba? I say that they were there in a common joint enterprise; that they were going there on this road together. There was no invitation as far as the driver of the car is concerned. They were licensees.

The Court: Even if they were, how does his negligence bar them from recovering against the driver of the defendants' car if he was guilty of contributory negligence? 40

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Mr. Moser: They had the one destination. They were engaged in a joint—

The Court: Even so. I am talking now about the law. Couldn't those passengers have sued both?

10 Mr. Moser: Certainly they could.

The Court: Suppose the jury found that Skiba was guilty of negligence and the driver of the defendants' car was guilty of negligence also, would that bar them from a recovery against the driver of Skiba's car?

Mr. Moser: No, certainly not, against the driver of Skiba's car, but we have not gone into that. That is not a point in issue.

The Court: Why isn't it a joint in issue?

20 Mr. Moser: Certainly not. Mr. Skiba is not a defendant here.

The Court: No, but you agree that if Skiba was guilty it would be perfectly proper for them to have made him a defendant together with the present defendant.

Mr. Moser: Yes, that would have been quite true, but—

30 The Court: I want to know where your authority is that if the jury believe that Skiba himself was guilty of contributory negligence, that that would bar the passengers in his car from recovery in case the jury found that the defendants' driver's conduct was also the proximate cause of the accident?

Mr. Moser: My authority is that under the evidence in the case—

40 The Court: I am not asking you about the evidence in the case. I am asking you where you get any such legal proposition as you state to the jury and you suggest in these requests that you put up

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before me. I don't want you to say to the jury what is not, in my opinion, the law. If a man, for example, is a mere licensee in a car—which I don't say is this case—and the man who is driving that car is guilty of negligence and runs into another car, but the driver of the other car was also guilty of negligence, that does not bar the man who is a mere licensee in the car of a man who is guilty of contributory negligence from recovering against the driver of the other car if the conduct of the driver of the other car was the proximate cause of the accident. 10

I don't want to bar you from your argument to the jury. I just simply want you and I to have the same legal proposition whether you agree with it or not. 20

Mr. Moser: That I understand, your Honor. If I go over something I have mentioned before, I hope you will pardon me.

(Mr. Moser continued and completed his address to the jury.)

(Mr. Brown made a closing address to the jury on behalf of the plaintiffs.)

The Court: There are so many of these plaintiffs that the jury are likely to get mixed about them unless there is some clarification, especially from the fact that this case was carried over from Friday. 30

Mr. Brown: Do you want me to explain to the jury?

The Court: I want to know what is your claim. In the one claim there is Charles Skiba, the driver. He is under age. 40

Case.

Mr. Brown: He is suing through his father.

The Court: Through his father and mother?

Mr. Brown: Yes. And Anna Skiba—

The Court: One minute. What claim do you make for Charles Skiba? Loss of wages?

10 Mr. Brown: Yes, doctors' bills and hospital bills.

The Court: What do you mean doctors' bills and hospital bills? He is under age.

Mr. Brown: You mean for himself?

The Court: Yes.

Mr. Brown: The permanency of the marks and the scars on his face, and the loss of wages for five weeks.

The Court: Anna Skiba?

20 Mr. Brown: She is over age. She sues for herself.

The Court: What do you claim for her? Loss of wages?

Mr. Brown: Two weeks, twenty dollars, and a twenty dollar doctor bill.

The Court: Do you make any claim for permanent injury in her case?

30 Mr. Brown: Twenty-five per cent. loss of motion. The doctor testified to that. That finger of her hand (indicating) and the swelling on top of her hand.

The Court: What claim do you make for the parents?

Mr. Brown: There is a doctor's bill for Charles Skiba of \$36, a hospital bill of \$28, and I don't remember what he testified was the amount of the drug bill. I think it was \$5.25 or \$5.75. I don't recall. For John Skiba himself, the loss of the automobile.

40 The Court: Helen Puha?

The Court's Charge.

Mr. Brown: Doctor's bill fifteen dollars.

The Court: She is under age?

Mr. Brown: Yes—for her grandfather.

The Court: Who paid the doctor's bill?

Mr. Brown: It has not been paid yet.

The Court: What do you claim are the injuries to Helen Puha? 10

Mr. Brown: She bit her tongue straight through and it leaves a ragged edge. Dr. Strandburg says it will require a minor operation to correct it.

The Court: Never mind what the doctor says. Just give me what that claim is.

Mr. Brown: It broke the upper right molar and also the right first molar, contusion of the head, ringing in the ears, and contusion of the chest. She stayed home five weeks with a stiff neck and still complains about it. 20

The Court: You don't sue for wages in Puha's case, do you?

Mr. Brown: No, the parents are entitled to—

The Court: There are no parents.

Mr. Brown: Not in Puha's case. She didn't lose any wages, she was going to school.

The Court's Charge. 30

Charge to the jury by Honorable PETER F. DALY, Circuit Court Judge, as follows:

Members of the Jury: I have been asking these questions simply to refresh our memories as to the claims made by these plaintiffs with relation to the character of the injuries which they asserted they suffered as the result of this accident, and not for the reason that I have concluded that they are entitled to verdicts; but so as to make it clearer 40

The Court's Charge.

and more positive to you in case you reach the conclusion that they are entitled to verdicts. Whether or not they are entitled to verdicts is entirely up to you.

10 There is the provision in the Traffic Act which provides:

20 "A vehicle overtaking another shall pass on the left side of the overtaken vehicle, and the vehicle overtaken shall bear to the right, and the vehicle overtaking the vehicle ahead and in passing to the left shall not, unless compelled to by the width of the road, pass to the left side of such road, but shall, as far as possible, keep to the right when passing the vehicle overtaken."

I have also been requested to charge:

"The negligence of the defendant cannot be presumed. It must be proved by the plaintiffs by a preponderance of the evidence, and, in fact, there is a presumption against negligence."

That is true.

30 The same thing applies to contributory negligence, about which you have heard considerable.

The contributory negligence of the plaintiff Skiba, the driver of the car, cannot be presumed. It must be proved by the defendant by a preponderance of the evidence, and, in fact, there is a presumption against contributory negligence.

40 "The plaintiffs have the burden of proof, and it matters not whether they have the greater number of witnesses or the defendants have the greater number of witnesses—it is the quality of the testimony; and if the

The Court's Charge.

plaintiffs' witnesses bear out the defendants' contention, the defendants are entitled to the benefit of that testimony as if they presented the witnesses."

That is true.

10

It is also true that the defendants have the burden of proof as to contributory negligence, and it matters not whether they have the greater number of witnesses or the plaintiffs have the greater number of witnesses—it is the quality of the testimony; and if the defendants' witnesses bear out the plaintiffs' contention the plaintiffs are entitled to the benefit of that testimony as if they presented the witnesses.

The same thing applies to contributory negligence that applies to negligence, as to the burden of proof, it is the quality of the testimony that determines.

20

"If the operation of the automobile by the defendants' servant violated the Traffic Act in any way, that in itself may not constitute negligence, but the plaintiffs must prove that the defendants' agent did something that a reasonable man acting under the same circumstances would not have done."

30

That is true.

In this case if you find that the plaintiffs are entitled to verdicts, then such plaintiffs as are entitled to verdicts are entitled to such an amount as will fairly compensate them for the physical injuries which they sustained, and for the pain and suffering which accompanied those physical injuries, and for any permanent or continuing injury which you find from the preponderance of

40

The Court's Charge.

the evidence has flowed solely and exclusively from this physical happening; but you cannot compensate for permanent or continuing injury unless you believe that there is permanent or continuing injury flowing solely and exclusively from the accident, and believe to a point of reasonable certainty that that is so.

Charles Skiba, who was the driver of the car, has to sue by his next friends, his father and mother. He has to sue that way because he is under age.

He sues for the physical injuries which he claims he sustained and for the pain and suffering which accompanied them. He also sues for a permanent or continuing injury which he claims exists in the nature of scars. You have looked at those scars. You have seen for yourselves how far they affect him so far as his livelihood and future life are concerned, and you are to pass on whether or not there was any substantial injury to this young man as a result of these scars.

Anna Skiba, his sister, who was in the car at the time, is over age, and she is suing for herself. She sues for reimbursement for the loss of wages which she claims that she was subjected to because of physical incapacity flowing from the accident. She also sues for her physical injuries and for her doctor's bill. She also claims that there is permanent or continuing injury of the second finger; that it becomes stiffened and the like, and that there is a loss of function amounting to twenty-five per cent., not in the whole hand, but simply in that finger. You will pass on that. She also claims that there is still a swelling or a lump on the head. You will also pass on that.

The father and mother both sue. The father is

The Court's Charge.

primarily responsible for the doctors' bills for the son under age, Charles, and he sues for reimbursement for doctors and hospital bills, which he incurred in the reasonable and proper treatment of his son's injuries.

The father was also the owner of the automobile. You will remember the evidence along that line: I believe the automobile was about a year and three or four months old. That you will remember. As to what was its cost—

The Court: Was it new when he bought it?

Mr. Brown: Yes.

The Court (continuing): It was new when he bought it. There is no evidence as to the mileage of the car. Still, it was a year and three or four months old.

The Court: How much did he pay for it new?

Mr. Brown: Two thousand dollars.

The Court (continuing): It cost \$2,000 new. An automobile man on the stand said that it had a market value of \$1,400 before the accident—an automobile that cost \$2,000 new, was a year and three or four months old, and yet he says that it had a market value of \$1,400. You are to pass on that.

If this man John Skiba is entitled to a verdict, then he is entitled to a verdict that will also include what you, from the preponderance of the evidence in this case, conclude was the difference between the market value of his car before the accident and the market value of his car after the accident as a result of the accident.

There is another distinct suit which is brought by Mike Cherepanoh, as the next friend of Helen Puha. This girl's parents, evidently, are dead. I don't know whether they are or not. But, be that

The Court's Charge.

as it may, Mike Cherepanoh is her grandfather. Helen is also under age, and that is the reason why someone, as next friend, had to sue, and her grandfather sued.

10 She says that as a result of this physical happening she bit her tongue, and that there is a slight piece of that tongue which is still overlapping and out of its normal place today. One of the doctors said that a minor operation would remove what is at least an annoyance that is there. She broke some of her teeth. You will remember the testimony along that line. This girl wasn't old enough to be at work at that time. In other words, she was still a school girl.

20 If she is entitled to a verdict, she is entitled to be compensated for such an amount as you think will fairly compensate her for the physical injuries which she sustained, for the pain and suffering which accompanied those injuries, and for whatever you believe is proper compensation for any permanent or continuing injury that she will suffer because of this physical happening.

30 As I said before, when it comes to considering permanent or continuing injury, you must not only be satisfied from the preponderance of the evidence, but from the preponderance of the evidence to a point of certainty.

Her grandfather also sues in an individual capacity. He sues to be reimbursed for such expenses as he reasonably and properly incurred in the reasonable and proper treatment of his grandchild's injuries—doctors' bills and the like.

40 Now, the attorney and I had a discussion with reference to contributory negligence while he was summing up. It was perfectly proper for him to argue the way he did. The Court disagreed with

The Court's Charge.

him on one phase of the law as to this case. I will try to explain what that difference is.

If one of you good jurors is driving your automobile, and you unfortunately have a collision with another car, and you should sue the driver of that other car or the owner and the driver, and you could prove that he was negligent in the driving of that car, and negligent in such a way that it was the immediate or effective cause of the accident, of course, you would be entitled to damages unless you yourself were guilty of contributory negligence; because if you contributed by your negligence to the happening, you could not recover even though the other side was negligent. 10

And so with this case: If you found that the driver of the defendants' car was negligent and negligent in such a way that it was the proximate cause of this accident, and you also found that Charles Skiba was contributorily negligent, Charles Skiba could not recover under the law, because he helped to make the accident by his own negligence. I hope you get that point. 20

To carry the illustration further: Suppose one of you good jurors is riding in the rear seat while somebody else is driving, and you have a collision, and you are able to prove that the negligence of the driver of the other car was the proximate or immediate or effective cause of the accident; and suppose they are able to prove that the driver of your car was also negligent, and negligent in such a way that it contributed to that accident,—well, that would bar the driver of your car from recovering for something that he helped to make by his contributory negligence. But, how about you as a passenger in the car—whether you are in there by invitation or whether you asked 30 40

The Court's Charge.

for the ride? If you were in that car by invitation you could recover from both the driver of your car and the driver of the other car. If you were in that car at your own request you could recover from the driver of the other car, but
10 you could not recover from your own driver unless his negligence was wilful.

If you were not an invitee in your car, that is, if you had asked for the ride, even though the driver of your car was negligent, you could not recover against him unless you could prove that he wilfully injured you; but if you were an invitee you could recover against him if he was negligent and his negligence was the proximate cause of the accident and you could also recover against
20 the other driver if he was negligent even though you could not recover against your own driver.

If the facts were such that you could not recover from your own driver, even though he was negligent, because you were a licensee and not an invitee, yet if the other driver's negligence was the proximate cause of the accident, since there was no relationship between you and the driver of the other car, you could recover against him because there was no relationship of invitee, or
30 licensee, or of any other kind between you and the driver of the other car.

In that case you could recover against him even though the circumstances might be such that the fact that you were a licensee in the car you were in, you could not recover from your own driver.

So you see that so far as this is concerned, if Charles Skiba in any way contributed to this accident by his negligence, he could not recover; but
40 even though he did contribute to this accident and

The Court's Charge.

by his conduct thereby bar himself from a recovery, if the defendants' driver was so negligent in the driving of his truck that it was the proximate cause of the accident, then all the persons, excepting Skiba, who were injured and were in that car can hold him responsible.

10

Now, the question is, so far as all these plaintiffs are concerned outside of Skiba (and I explained Skiba's case: If he is guilty of contributory negligence, then he cannot recover even though the driver of the defendants' truck was negligent): Whether the driver of this truck was negligent. Was he? Did he do anything which a reasonably prudent driver would not have done under similar time, place and circumstances, and from the doing of which this accident resulted? If he did, that was negligence upon his part.

20

Did he omit to do anything which an ordinarily prudent driver would not have omitted to have done under similar time, place and circumstances, and from which omission there was the proximate cause of this accident? If he did, that is negligence.

Was it the result of the sole and exclusive negligence of the driver of the defendants' truck, or was it due to the sole and exclusive negligence of the driver Skiba? Of course, if it was due to the sole and exclusive negligence of Skiba, then no one of the plaintiffs would be entitled to a verdict.

30

To sum up: If this accident was the result of the sole and exclusive negligence of the driver of the defendants' truck, then all of the plaintiffs are entitled to verdicts.

If this accident was due to the negligence of the driver of the defendants' truck and yet Charles Skiba was contributorily negligent, all of the plain-

40

The Court's Charge.

tiffs except Charles Skiba would be entitled to verdicts.

10 If this accident was due to the sole and exclusive negligence of Skiba, the driver of the car in which all of the plaintiffs were, then no one of the plaintiffs is entitled to a verdict.

You may take the case.

(The jury retired.)

(The jury was brought back to the courtroom.)

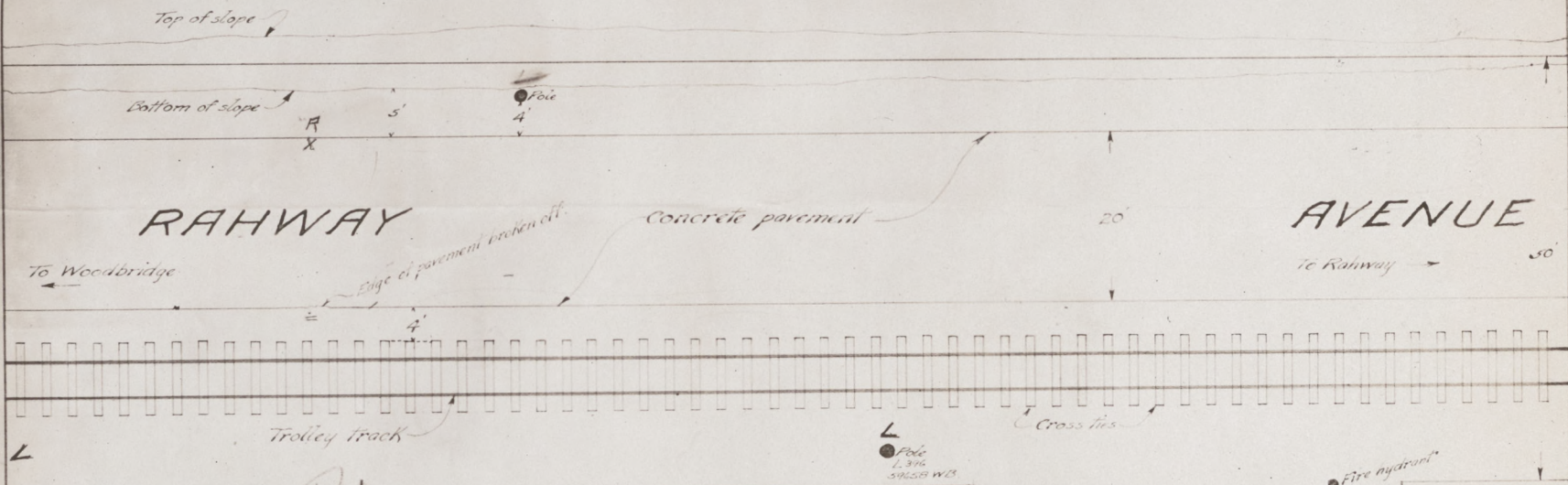
20 The Court: The attorneys inform me that under the pleadings Charles Skiba, the driver of the car, is alleged to have been the servant or agent of his father, the owner of the car. That will qualify what I said to this extent: that if Charles Skiba, the driver of the car, was the servant or agent of his father, and is not entitled to a verdict, even though you find the defendants' driver was guilty of negligence, because you also find that Charles Skiba was guilty of contributory negligence, that would also bar the father from a verdict for the recovery of damages done to his automobile, or reimbursement of expenses for doctors' or hospital bills.

30 (The jury retired.)

Exhibits Offered in Both Cases Tried Together.

(See photographs following.)

MAP OF RAHWAY AVE.
 AT
 OMAR AVE.
 TOWNSHIP OF WOODBRIDGE, N. J.
 Scale: 1"=10' March 28, 1929.



RAHWAY

AVENUE

Subst. P1
 4/12/29
 8/15/29

Surveyed and mapped by Jed J. Sivour,
 Licensed Municipal Engineer & Land Surveyor, 1912.
 545 Roosevelt Ave. Newark, N. J.

OMAR AVENUE



Handwritten notes and sketches on the right edge of the page, including a drawing of a structure and some illegible text.



Schulz P 2-47-12-23
Grob

Handwritten notes and diagrams on the right edge of the page, including a small sketch of a structure and some illegible text.



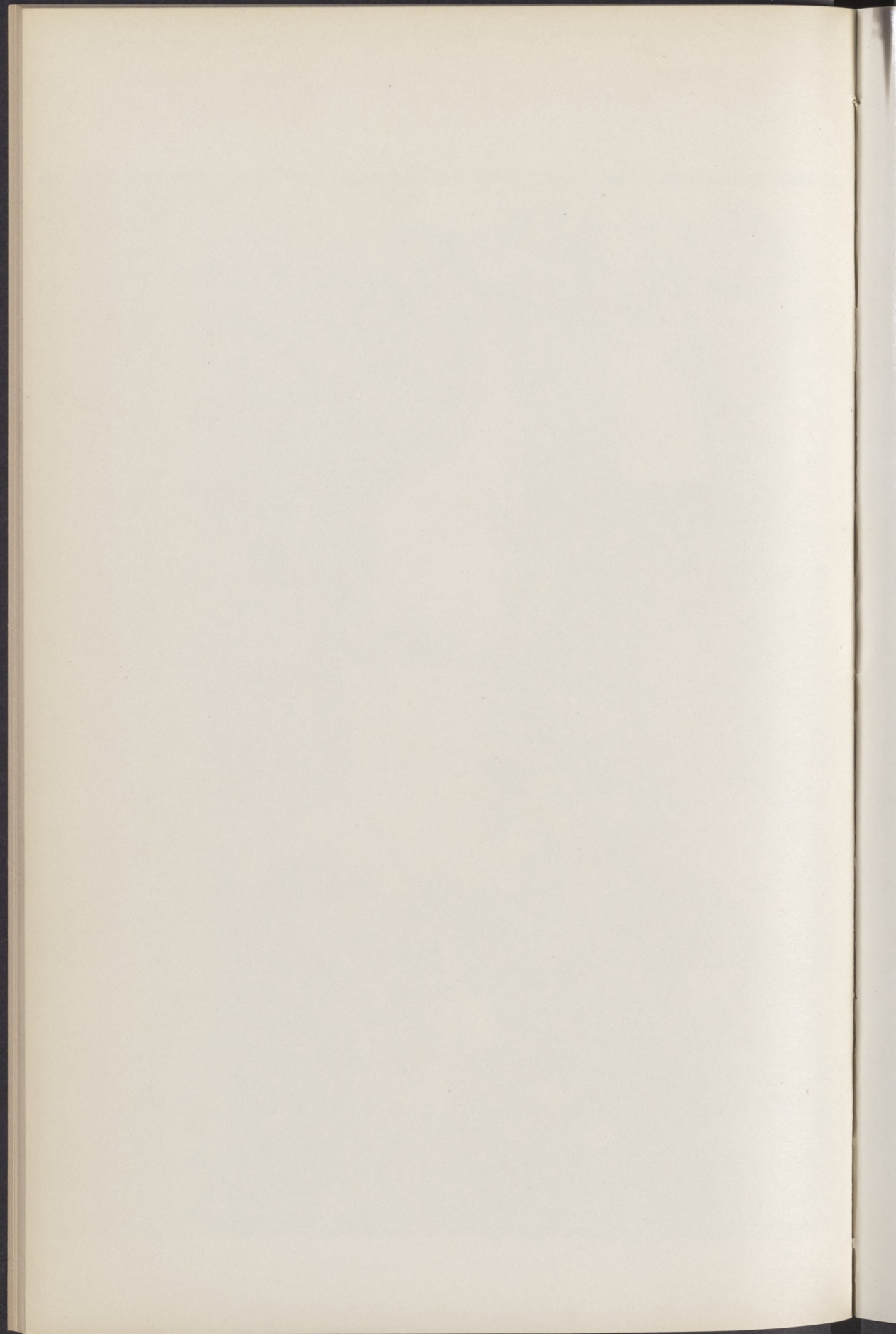
Pole 123

FURNITURE
P. 4

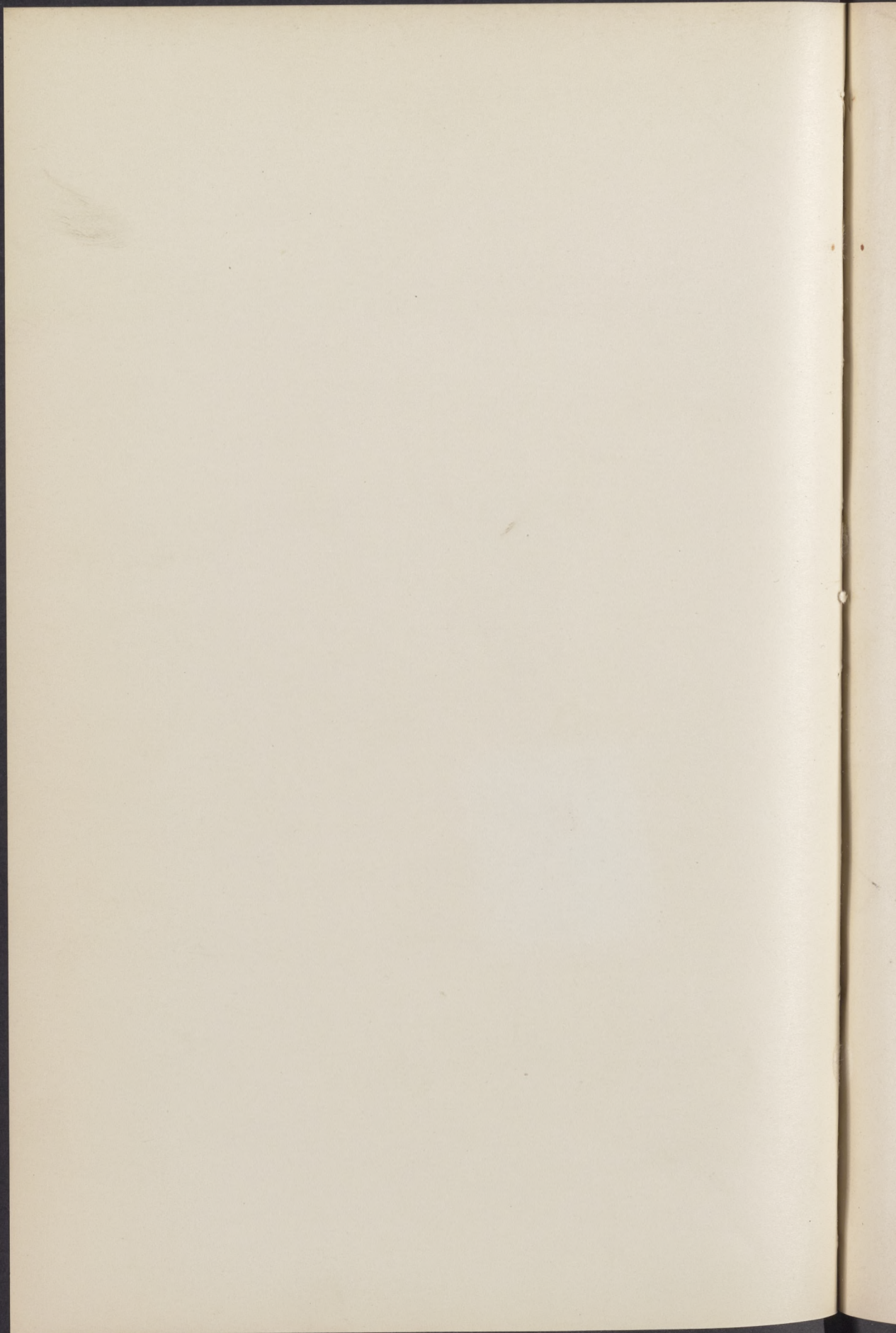












149 149 OCT. T. 1929
150 150 OCT. T. 1929

New Jersey Court of Errors and Appeals

CHARLES SKIBA, infant, by JOHN SKIBA
and MARY SKIBA, his next friends,
and JOHN SKIBA, MARY SKIBA and
ANNA SKIBA, individually,
Plaintiffs-Appellees,

Case No. 149.
Oct. Term, 1929.

v.

EDWARD HMIELESKI and LILLIAN
HMIELESKI,
Defendants-Appellants.

Action at Law.

HELEN PUHA, infant, by MIKE CHERE-
PANAH, her next friend, and MIKE
CHEREPANAH, individually,
Plaintiffs-Appellees,

On Appeal
from Middlesex
County Circuit
Court.

v.

EDWARD HMIELESKI and LILLIAN
HMIELESKI,
Defendants-Appellants.

Case No. 150.
Oct. Term, 1929.

BRIEF OF DEFENDANTS-APPELLANTS.

These are appeals from judgments entered in two suits instituted in the Middlesex County Circuit Court against defendants-appellants. The two suits were tried together. The suits were instituted to recover damages alleged to have been sustained by the plaintiffs as a result of a collision between an automobile owned by the plaintiff, John Skiba, and operated by his agent or servant, Charles Skiba, one of the plaintiffs, with a Mack automobile truck owned by the defendants and operated by their agent or servant.

One suit was instituted by Charles Skiba, infant, by John Skiba and Mary Skiba, his next friends, and John Skiba, Mary Skiba and Anna Skiba, individually. Pleadings, judgment record, notice of appeal and grounds of appeal are printed on pages 1-18.

The other suit was instituted by Helen Puha, infant, by Mike Cherepanah, her next friend, and Mike Cherepanah, individually. The pleadings, judgment record, notice of appeal and grounds of appeal, etc., are printed on pages 19-31.

It appears from the pleadings and testimony that:

1. Charles Skiba was the driver of the automobile owned by the plaintiff John Skiba, and in which all of the plaintiffs with the exception of Mary Skiba and Mike Cherepanah were riding at the time of the accident.

2. John Skiba was the owner of the automobile in question and at the time of the accident he had requested Charles Skiba to drive the car.

3. Anna Skiba, the daughter of John Skiba, was a passenger in the automobile at the time of the accident.

4. John Skiba and Mary Skiba sued for moneys expended because of the injuries to their son, Charles Skiba.

5. Helen Puha was a passenger in the automobile at the time of the accident.

Argument was had before the Trial Judge, HON. PETER F. DALY, for the setting aside of the verdicts of the jury and the granting of a new trial upon the ground that the verdicts were excessive. The exceptions were not argued before the Circuit Judge and *were reserved and were not considered.*

The actual rules to show cause are not printed in the record for the reason that through inadvertence, the Trial Judge never actually signed the rules, but the matter was argued by both counsel, who appeared, by consent, on short notice in pursuance with the direction of Judge DALY, who wanted the matter argued forthwith while the matter was fresh in his mind. Judge DALY reduced the verdicts in some instances so that, as the matter now stands, the judgments appealed from are as follows:

1. Charles Skiba, \$2,000.
2. Anna Skiba, \$1,200.
3. John Skiba, \$1,075.
4. Helen Puha, \$1,000.
5. Mike Cherepanah, \$100.

From these judgments these appeals are taken.

Grounds of Appeal.

The grounds of appeal are the same in both cases and are directed solely to:

1. The Court's refusal to grant a motion of nonsuit.
2. The Court's refusal to grant a motion for direction of a verdict in favor of the defendants.

Statement of the Case.

The testimony shows that on the night in question the Mack truck owned by the defendants was being driven by their agent or servant along Rahway Avenue, Woodbridge, New Jersey, in a southerly direction. The car in which the plaintiffs were riding was being driven along Rahway Avenue in a northerly direction. As the Mack truck

approached the scene of the accident there was an automobile parked on the right-hand side of the road, facing in the direction in which the Mack truck was proceeding. In order to pass the parked car it was necessary for the driver of the Mack truck to turn to the left and pass the parked car on the left. The parked car was parked in the roadway and occupied the greater portion of the right-hand side of the roadway. So, in passing, it was necessary for the driver of the Mack truck to drive the truck over the center of the highway so that it was partly on the left-hand side of the roadway. The uncontradicted testimony is that the lights on the Mack truck were lighted. As the Mack truck had passed the parked car the front of the Mack truck had arrived at a point about parallel with the front of the parked car. Before the Mack truck was completely past the parked car so that it could be driven over entirely to the right-hand side the roadway, the plaintiffs' car crashed into the Mack truck head-on. The driver of plaintiffs' car should have seen the Mack truck when it was at a distance of two or three hundred feet away and in plenty of time for the plaintiffs' car, if it was under proper control, to be stopped or slowed up so as to avoid hitting the Mack truck. The uncontradicted testimony is to the effect that the plaintiff Charles Skiba, the driver of plaintiffs' car, saw the parked car a quarter of a mile away, but did not look at it again. He testified he could see a quarter of a mile beyond. The road was clear, yet he did not see defendants' truck, although the lights were on, until it was on top of him. *The only inference that can be drawn is he did not look.* There was a gully on the plaintiffs' right-hand side of the road and there was not room for the plaintiffs' car to pass the Mack truck while the Mack truck was passing the parked car.

Under these circumstances, it is contended as a matter of law that Charles Skiba, the driver of the plaintiffs' car, was negligent, and the *proximate cause* of the accident was his negligence, and that therefore he could not recover. That as to the plaintiff John Skiba, the driver, Charles Skiba, was acting as his agent or servant, and he is responsible for Charles Skiba's contributory negligence. While this cannot be said as to the other passengers in the plaintiffs' car, nevertheless it is also contended that as to all of the plaintiffs, *including the passengers*, that the *proximate cause* of the accident was solely the negligence of Charles Skiba and that there was no negligence on the part of defendants' driver, and therefore the judgments against defendants must be set aside.

ARGUMENT.

POINT I.

The Court erroneously denied defendants' motion for a nonsuit.

At the conclusion of the plaintiffs' case motion for nonsuit was made on behalf of the defendant, which motion was denied and exception duly taken (p. 84).

The denial of the motion for a nonsuit was erroneous in that:

1. As to the plaintiffs Charles Skiba and John Skiba, the negligence of Charles Skiba, the driver of plaintiffs' car, was the proximate cause of the accident or at least contributed to the happening.
2. As to all of the plaintiffs, the proximate cause of the accident was solely the negligence of Charles Skiba, the driver of plaintiffs' car.

3. As to all of the plaintiffs, the accident was not the result of any negligence on the part of defendants' agent, but was solely caused by the negligence of someone other than the defendants' agent, to wit: Charles Skiba, one of the plaintiffs.

Further, in this connection, we desire to call to the attention of the Court that the uncontradicted evidence is to the effect that at the time of the accident the defendants' agent was lawfully and properly operating the Mack truck and was passing a car parked on the right-hand side of the road on the left, which was in full compliance with the provisions of the Motor Vehicle Traffic Law. Further, that at the time he did this, there was no car approaching on his left in the opposite direction excepting the plaintiffs' car, which was two or three hundred feet away.

Testimony.

A brief synopsis of the testimony is important. However, only the testimony bearing directly on the points urged for a reversal will be referred to.

Plaintiffs' Case.

Fred Simons:

Mr. Simons produced a map which he had made showing the roadway at the place of the accident. The map was admitted in evidence as Exhibit "P-1" and is included in the State of Case following page 116. Mr. Simons' testimony was to the effect that the road was a concrete road and on one side there was a narrow shoulder about five feet wide and on the other side was a sort of a ditch. His testimony on cross examination shows that the road was well lighted by electric lights. According to the map, the roadway was 20 feet wide. Also it is a straight road (pp. 37-38).

Philip Jaffe:

Mr. Jaffe, photographer, testified to the taking of certain photographs of the condition of the roadway and of plaintiffs' automobile. These photographs were marked as Exhibits "P-2, P-3, P-4 and P-5" and are included in the State of Case following page 116 (p. 39).

Harry Romeo:

Mr. Romeo testified that he was the driver of the car which was parked in the roadway. That the accident occurred shortly before eight o'clock in the evening. That he heard the truck coming along in back and it was going down on the right side of the road. That the truck swerved out into the roadway to pass the parked car. The truck was going about eighteen miles an hour and the plaintiffs' car was going about twenty-five miles an hour. That the first time that he saw the truck was when it was about twenty feet behind him. That the plaintiffs' car at the time of the impact was over on plaintiffs' right-hand side of the roadway (pp. 40-44).

Cross examination:

On cross examination he testified that his car was parked on the right-hand side of the road; that his right wheels were about three feet off the concrete pavement so that the greater portion of his car was on the paved portion of the concrete road. His car was a Paige. That he was getting ready to start his car off when he saw the truck coming from the rear. That when he first saw the truck it was about 12 feet in the rear of his car and that before that he had seen the plaintiffs' car which he judged was about 70 or 75 feet in front of his car (p. 45). That there were lights on the parked car. His testimony would indicate

that the plaintiffs' car travelled at least 75 feet while the truck was travelling 12 or 18 feet. It is also to the effect that the left-hand side of plaintiffs' car collided with the truck (p. 46). He was asked as to how long he had been looking at the plaintiffs' car and said *that it might have been a minute or so*. His testimony also shows that there was a trailer attached to the Mack truck and that at the time of the accident the trailer was closer to his car than the truck itself. That the driver was swinging back with the truck and that at the time of the accident the truck was pulling out around his car, it having gotten up to his radiator (p. 48). He was asked as to whether he saw any mark on the concrete to indicate whether or not the driver of plaintiffs' car attempted to put on brakes, but he said that he did not see anything (p. 51). He testified that he did hear the applying of the brakes of the truck and also heard the plaintiffs' car give a little squeal when the plaintiffs' car was about ten or twelve feet from the front of his car. He also testified that the plaintiffs' car continued right on. Also that the truck stopped about four feet after the accident (p. 51).

Morris Hertz:

Mr. Hertz testified that he arrived at the point of the accident immediately after the collision and it was in the vicinity of eight o'clock. That the Mack truck was on the left-hand side of the road and immediately in front of it was the plaintiffs' car all smashed up (pp. 52-54).

Nathaniel Jacoby:

Mr. Jacoby testified that he was driving the car in which Mr. Hertz was and arrived at the scene of the accident shortly after. He testified that the Mack truck, both front and rear, was entirely on

the portion of the concrete on the roadway and that the plaintiffs' car's right wheels were about three feet on the shoulder. From his testimony it appears that there were tracks on the plaintiffs' right (p. 55).

George M. Leonard:

Mr. Leonard, a police officer, arrived at the scene of the accident after the accident. His testimony would indicate that the accident occurred while the truck and trailer were out in the left-hand side of the road making the turn around the parked car. He says that the right-hand side of the rear of the truck was about eight feet from its extreme right to the road (pp. 57-59).

Andrew Simonson:

Mr. Simonson, the other police officer, testified that he arrived at the scene of the accident after the accident. That when he arrived there the Mack truck was facing in a southerly direction and plaintiffs' car was headed in a northerly direction; that they were wedged together and the left front wheel of the Mack truck was about a foot on the concrete on the left; the rear wheels were headed about the center line and the right of plaintiffs' car was about two or three feet off the right of the road (p. 60). On cross examination he testified that he had made the police record of the accident and that there were skid marks on the right-hand side of the road which would indicate that the driver of the truck had turned on the brakes before the accident. He also testified:

"A. The right rear wheel of the Mack truck was just a little bit in on the right of the road" (p. 60, line 20).

That the truck and trailer were on a line coming from the right-hand side of the road around on an angle and facing south (p. 63).

Anna Skiba:

Anna Skiba testified that she was in the rumble seat of the automobile and that she did not see the truck until it was right on top of the car just about before it was hit. That the right-hand wheel of plaintiffs' automobile was about one foot off the concrete (p. 67). Her testimony on cross examination indicates that the driver of plaintiffs' car did not pull to the right until just at the time of the crash of the accident (pp. 70-71).

"Q. And the first thing you knew about it you felt a quick pull to what direction, the right? A. Right.

"Q. That was off the road and then the crash at about the same time? A. Yes, sir" (p. 71, line 15).

Helen Puha:

Helen Puha was riding with Anna Skiba in the rumble seat in the rear of the car. She did not know anything about the accident except on cross examination she testified that at the time they were going about 20 or 25 miles an hour (p. 75).

Charles Skiba:

Charles Skiba, the driver of plaintiffs' automobile, testified that he saw the parked car and also saw the Mack truck about ten or eight feet ahead of him; that he made a swerve to the right but could not avoid it. That the first he saw of the Mack truck was when it was right in front of him (p. 77):

"Q. How did the Mack pull across that road? A. I don't know. I haven't seen it. All I seen it was right in front of me. I didn't see it which way it came or anything" (p. 77, line 28).

On cross examination he testified that he was going about 20 or 25 miles an hour; that he should

judge that he was about a quarter of a mile away when he noticed the parked car (p. 78, line 35).

"Q. How far were you from the car that was parked on the opposite side of the road when you first saw it? A. I should judge about one-quarter mile before I noticed that car parked. *Then I didn't pay any attention to it.*

"Q. How far were you from the parked car when you first saw the car? A. Well, that is what I say.

"Q. Quarter of a mile? A. Yes. But I didn't pay any attention after I noticed that car, see.

"Q. You saw this car parked at the road when you were a quarter of a mile from it? A. Yes, sir.

"Q. You kept on going? A. I kept on going.

"Q. Did you see the truck as it was coming up the road? A. I haven't seen the truck until I was right on top of it, about eight or ten feet away.

"Q. Did you, at any time, cast your eyes toward the car that was parked at the road there? A. I wasn't looking at the car; I was just looking straight ahead.

"Q. Well, did your looking straight ahead bring you beyond the car that was parked on the road? A. Yes.

"Q. How far behind the car could you see? A. Well, I don't know.

"Q. Well, could you see for any distance behind that car? A. Yes, certainly.

"Q. Could you see another quarter of a mile in back of the car? A. Yes.

"Q. Did you look beyond the car and attempt to see that quarter of a mile beyond? A. Well, when I was coming down I noticed that car. I didn't bother looking at the car any more. I just noticed there and I kept on going ahead.

"Q. You saw that car on the extreme left side of the road as you were going along, is that right? A. Yes, sir.

"Q. You knew it was parked there, did you not? A. Yes.

"Q. That is all you did, you saw that car and then kept right on going? A. I kept on going.

"Q. Where were you with reference to that parked car when you first saw the truck? A. I don't know how close I was to that car or anything.

"Q. How far away from the front of the truck were you when you first saw the truck? A. About eight or ten foot away.

"Q. And where was the truck with reference to the parked car passing it? A. I don't know.

"Q. Well, you know where the parked car was? A. It was on his right and on my left.

"Q. And you know where the accident happened? A. Yes, sir.

"Q. That was right next to the parked car, was it not? A. Well, I don't know that, see.

"Q. Did you attempt to stop your car when you saw this truck? A. I tried to make a right swing.

"Q. Did you put your foot on the brake? A. I don't believe I applied the brake, it was too sudden.

"Q. You don't know how fast the truck was coming, do you? A. No, sir.

"Q. What distance did your car travel from the time you saw the truck until you hit it? A. Well, I kept the same speed up.

"Q. Didn't try to stop your car at all? A. I didn't get a chance. The truck came up all of a sudden.

"Q. The road is straight there? A. Straight road.

"Q. You could have seen a quarter of a mile beyond the parked car, is that right? A. Well—

"Q. I mean, it was a clear night? A. Yes, it was a clear night.

"Q. Wasn't raining? A. No, sir.

"Q. Clear? A. Yes.

"Q. You could have seen? A. Yes, sir.

"Q. Did you actually look beyond the parked car? A. Certainly I did look, but I

have not seen it—I haven't noticed the truck coming up" (see pp. 79-81).

And he further testified as follows:

"Q. In other words, as you were driving your car along this highway you saw the parked car, didn't pay any more attention to whether there were any other cars on the road, or anything, but just drove right along, is that right? A. Well, I was looking straight ahead.

"Q. You knew when the truck was in front of you, it was straight ahead in front of you, wasn't it? A. Yes. All the ways on his left side.

"Q. On its left-hand side of the road? A. Yes, sir.

"Q. And you were right in front of it? A. Right in front of it.

"Q. Did you see it start over on your side of the road? A. What?

"Q. Did you see it when it started over on your side of the road? A. No, sir" (see pp. 81-82).

John Skiba:

The plaintiff John Skiba, who was riding in the front seat with Charles Skiba, was produced on behalf of the plaintiffs and testified to the damage to the car, etc., but did not give any testimony in relation to the accident.

At the conclusion of the plaintiffs' case, counsel for defendants made a motion for nonsuit as follows:

"M. Moser: I move for a nonsuit on the ground that at the present stage of the case there is no evidence in the case of any negligence on the part of the driver of this truck.

"The evidence clearly indicates there was a car parked at the roadway; he, in endeavoring to go around that car, pulled over on the left side of the road. The Traffic Act says

that a person in overtaking an automobile must pass to the left.

"Further evidence in the plaintiffs' case is to the effect, as given by Harry Romeo, that the truck when it started to pull out on the left-hand side of the road passed his car that was parked there, was twelve feet behind his car; that at that particular time he turned around facing in the opposite direction to see the automobile owned by the plaintiff and that was seventy feet away.

"That clearly indicates that if the plaintiff had been operating his automobile in a careful, prudent manner that he should have stopped it until the defendant's truck had gotten around it.

"Further, the testimony of the plaintiff John Skiba, or Charles Skiba, the driver of the plaintiff's car, is to the effect that he could see a quarter of a mile ahead and actually did see the parked car when he was a quarter of a mile from it, and could see a quarter of a mile beyond the parked car.

"Nevertheless, while he was so occupying that proper locality he did not see the truck which was going in the opposite direction which conclusively—which the court must find conclusively establishes that either he did not look to see the truck or that if he did look he looked ineffectively.

"And therefore the accident was wholly and solely the result of the negligent operation of the automobile by Charles Skiba, which is the plaintiffs' automobile, and is in no wise a result of the negligence of the defendant's agent" (pp. 84-85).

Exception was duly taken to the Court's denial to grant the motion to direct a nonsuit (p. 85).

POINT II.

The Trial Court erroneously denied defendants' motion for a direction of a verdict.

At the conclusion of the entire case, counsel for defendants made a motion for a direction of a verdict on the same grounds urged on the motion for a nonsuit and upon the ground that plaintiffs other than driver were not invitees but merely licensees, which motion was denied and exception duly taken (p. 102).

What has been said under Point I, therefore, is pertinent on this point and we ask the Court to consider it under this point the same as though it were here repeated.

Defendants' Witnesses.

The defendants produced John Bonien who was the driver of defendants' truck at the time of the accident. He testified that the truck was a six-wheel trailer (p. 88); that the truck had a governor on it which limited its maximum speed to twelve miles an hour and that it was sealed up; that the car was in good condition (p. 89). Just before the accident he saw the car parked on the right-hand side of the road; that he was travelling in the center of the road; that as he got to the parked car he looked ahead and saw headlights about 250 feet away; that he was then most past the parked car; that plaintiffs' car hit the truck right in the center. A photograph of defendants' truck after the accident was admitted in evidence as Defendants' Exhibit One (p. 89). It is found in the record following page 116.

There were presto and kerosene lights on the truck. The kerosene lights were on the side in back of the motor and the presto lights were in

front of the motor; that they were all lighted (p. 90); that the accident put out one of the presto lights and he then turned off the presto tank with a key. The truck was eight feet wide and that at the time of the accident he was travelling twelve miles an hour (p. 91); that the plaintiffs' car came on "full speed" (p. 91).

Cross examination:

On cross examination he testified that he remembered lighting the lights on the truck in Jersey City; that the impact of the accident slid the wheel of his truck to the left (p. 93). After the accident he took the man down to the hospital (p. 96).

Andrew Simonson:

Mr. Simonson, one of the police officers who testified for the plaintiffs and who arrived at the scene of the accident shortly after it, testified that there were two oil lamps lighted on the truck when he got there (p. 97).

Michael Sandor:

Mr. Sandor's home is about five hundred feet from the accident; that he heard the commotion and went up to see what was the matter; that he was asked as to the position of the Mack truck:

"Q. Where was the Mack truck? A. The Mack truck was on the left-hand side of the road facing toward Perth Amboy, and it was about a foot and a half away from the edge of the concrete. The truck itself was straight. The trailer—looked like it started going over on the left-hand side.

"Q. Did you take any notice of whether or not there were any lights on the respective automobiles? A. I did, two kerosene lights and a headlight was burning.

"Q. On what? A. On the truck.

"Q. Was any part of the Mack truck over or any part of the Mack truck off the concrete? A. No, sir" (pp. 98-99).

On cross examination:

"Q. Where was the Skiba car, Mr. Sandor? A. It was half underneath the truck.

"Q. I mean with regard to the pavement. Half way on it? A. It was on the pavement about the same way that the truck was.

"By the Court:

"Q. What do you mean, 'the same way the truck was'? A. On the left side of the road. It was on the left side of the road and the Mack truck was on the left-hand side but it was in line with the Mack truck" (p. 99).

He testified that the front end of the Mack truck was about a foot and a half from the edge of the concrete and the rear end about ten feet away from the edge of the concrete. Also that the front end of the plaintiffs' car was about a foot and a half from the edge of the concrete (p. 99).

Anna Sandor:

Anna Sandor, the wife of the previous witness, also testified that she arrived at the scene of the accident and that no part of the Mack truck was off the concrete and also that there were two oil lamps burning on the truck and the right-hand side headlight was burning (p. 100).

Margaret Herman:

Margaret Herman testified that she was at the home of Mr. and Mrs. Sandor and went to the scene of the accident with them; that there were two kerosene lamps and the one front light on the truck lighted; that she saw the left-hand lamp smashed (p. 101).

Law.

In the case of *Hammond v. Morrison*, 90 N. J. L. 15, Chief Justice GUMMERE, on page 16, said:

“The defendant did not deny that the decedent came to his death in the way above stated, but attempted to excuse himself upon the ground that just before the collision the street lights which he had passed were reflected into his eyes by the windshield of his car, so that he was unable to see in front of him, and that this temporary blindness was the cause of the collision. His own story demonstrates his lack of care. No man is entitled to operate an automobile through a public street blindfolded. When his vision is temporarily destroyed in the way which the defendant indicated, it is his duty to stop his car, and so adjust his windshield as to prevent its interfering with his ability to see in front of him. The defendant, instead of doing this, took the chance of finding the way clear, and ran blindly into the trolley car behind which the decedent was standing. Having seen fit to do this, he cannot escape responsibility if his reckless conduct results in injury to a fellow being.”

In the case of *Spawn v. Goldberg*, 94 N. J. L. 335, the Supreme Court, Mr. Justice TRENCHARD, writing the opinion, held that it is a duty of the driver of an automobile to use reasonable care to avoid injury to others, and it is a breach of that duty to fail to stop the machine or slacken its speed when that is the only way in which injury to others can be avoided.

Proximate cause and contributory negligence are questions ordinarily for juries, but where facts are undisputed and susceptible of but one inference, the question then becomes one of law for the Court. *Cirpiano v. Casalla*, 130 Atl. Rep. 885 (not officially reported).

In the case of *Paschel v. Hunter*, 88 N. J. L. 445, the syllabus is as follows:

“Plaintiff was riding a bicycle on a public highway, proceeding on the right-hand side of the road, and was followed by an automobile driven by defendant. When plaintiff reached an intersecting street he turned to the left to go into the cross street, without giving any signal, and in the consequent collision the hind wheel of the bicycle struck the hind wheel of the automobile. The automobile was running at a fair rate of speed and would have passed to the left of the bicycle had the latter held its course. In this state of the proofs, the trial court declined to charge the jury that ‘the defendant was observing the law when he passed to the left even if it would take him across the centre line of the road to the left side.’ Held, that the request contained a correct statement of the law of the road, to be applied to the facts of the case, and that the denial of the request was injurious error.”

On page 446, Mr. Justice GARRISON, writing the opinion of the Supreme Court, said:

“The judgment is here upon appeal and the state of the case shows that the trial court refused to charge the jury that ‘the defendant was observing the law when he passed to the left, even if it would take him across the centre line of the road to the left side.’ This was a correct statement of the legal situation that results from the statutory mandate that a vehicle when overtaken by a carriage shall keep to the right so as to permit such carriage to pass; for, of course, if the foremost vehicle must keep to the right the overtaking one must pass to the left.”

Section 8 of the Traffic Act, Chapter 281 of the Laws of 1928, P. L. 1928, page 734, provides that:

"8. (a) The driver of any vehicle overtaking another vehicle proceeding in the same direction shall pass at a safe distance to the left thereof, and shall not again drive to the right side of the highway until safely clear of such overtaken vehicle."

It is respectfully submitted that there is no evidence that any negligence on the part of the driver of defendants' motor truck was the *proximate cause* of the accident. The driver of the truck was proceeding along the highway. He was driving in the center of the road. His lights were lighted. He was not driving at an excessive rate of speed. He came to a car parked on the right side of the road. In order to pass the parked car it was necessary for him to turn out to the left. While turning to the left he observed the lights of plaintiffs' car 250 feet away. If plaintiff was driving at a rate of 25 miles an hour there was ample time for defendants' driver to pass the parked car and turn on to the right side of the road. It must be noted that at the time of the accident the front of defendants' truck was on a line with the front of the parked car. It must also be remembered that the driver of the plaintiffs' car testified that he saw the parked automobile about a quarter of a mile away. He therefore had noticed that a car approaching from the opposite direction would necessarily have to turn out to the left. There was not room for plaintiffs' car to pass while the truck was passing the parked car. The driver of the plaintiffs' car says that he did not see defendants' truck until it was right on top of him. This in itself would indicate that the accident was caused by the negligence of the plaintiff driver. The plaintiff driver further testified that after observing the parked car a quarter of a mile away he did not look at it again. The

uncontradicted testimony is to the effect that the night was clear. Also that the road was straight. Plaintiff driver testified that he could see a quarter of a mile behind the parked car. The only inference that can be drawn from this testimony is that either the plaintiff did not look, if his testimony be true that he did not see defendants' truck with its lights on approaching, or that the driver of plaintiffs' car, instead of stopping and permitting defendants' truck to get out of the way, took a chance and kept right on going. There is no testimony that he slackened speed. He undoubtedly took the chance of being able to pull over on to the shoulder of the road and get out of the way, but was unable because of the gulley on the side of the road and the trolley tracks.

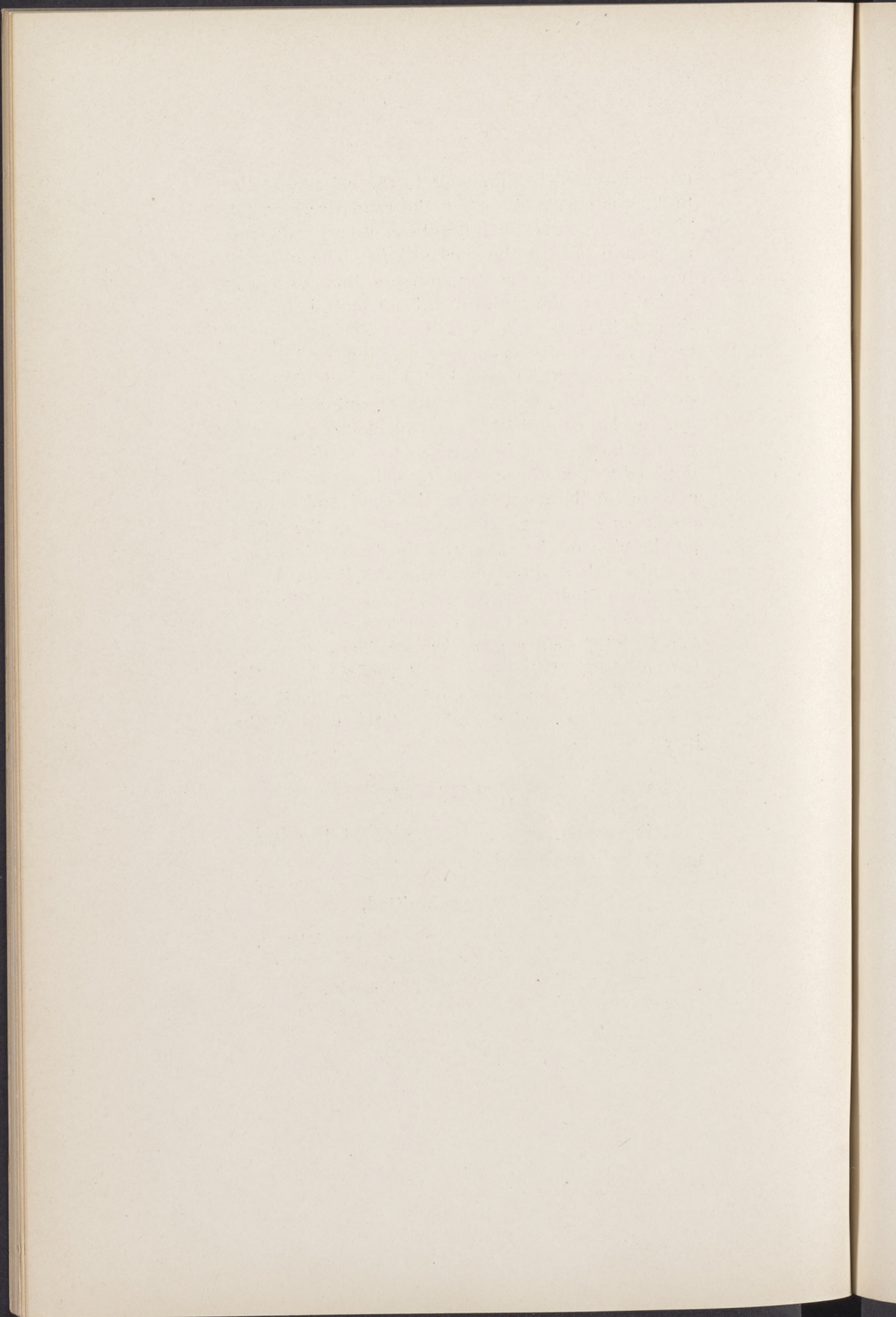
Under all of these circumstances it is respectfully submitted that the only inference that can be drawn from the facts is that the *negligence of the plaintiff driver was the proximate cause of the accident*. This being so, it was error for the Trial Judge to deny the motions for nonsuit and direction of a verdict and send the case to the jury.

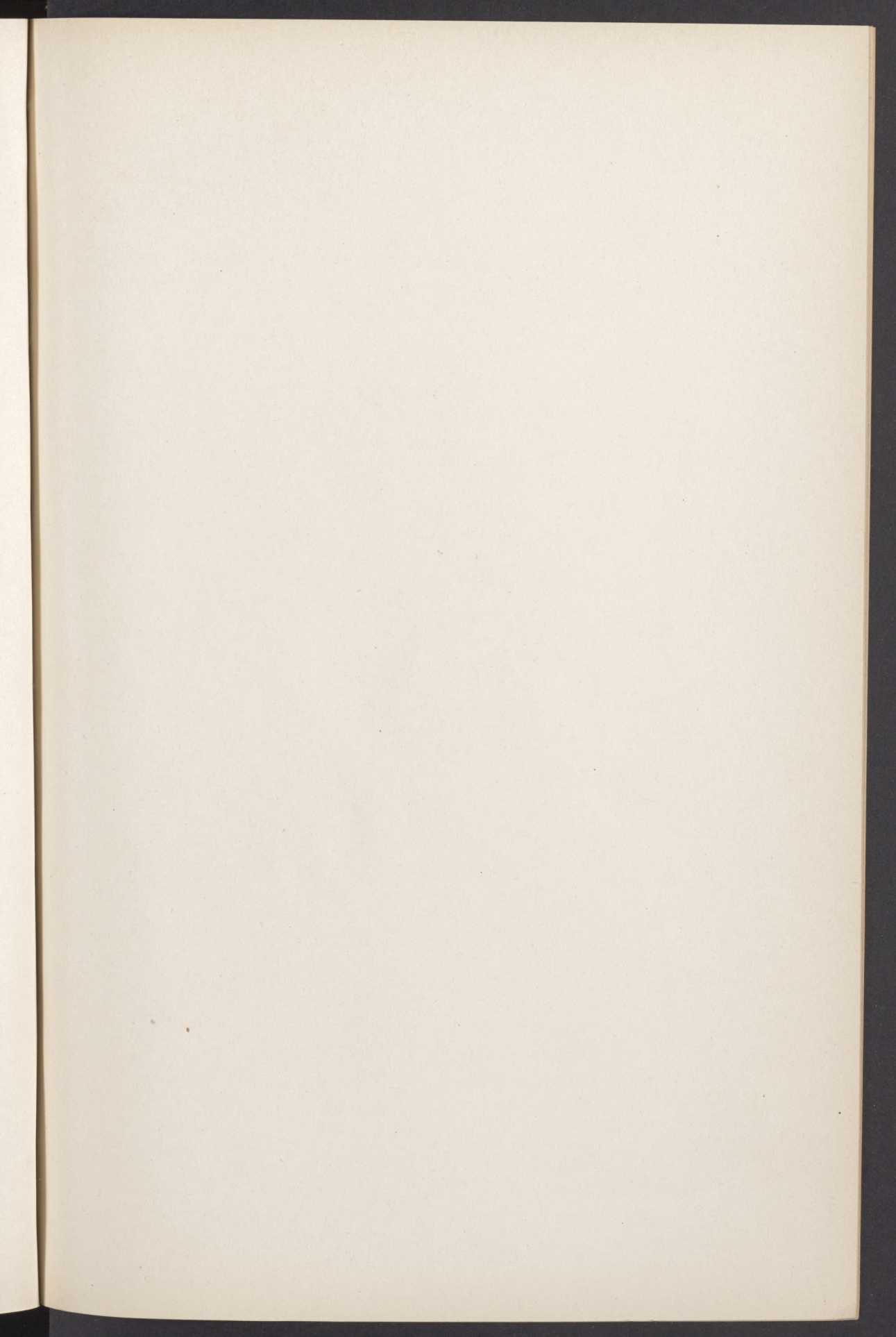
CONCLUSION.

It is respectfully submitted that the judgments below should be reversed.

Respectfully submitted,

CAREY & LANE,
Solicitors for and of Counsel
with Appellants.





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New Jersey Court of Errors and Appeals

CHARLES SKIBA, infant, by JOHN SKIBA
and MARY SKIBA, his next friends,
and JOHN SKIBA, MARY SKIBA and
ANNA SKIBA, individually,
Plaintiffs-Appellees,

vs.

EDWARD HMIELESKI and LILLIAN
HMIELESKI,
Defendants-Appellants.

Case No. 149
Oct. Term 1929.

Action at Law.
On Appeal from
Middlesex County
Circuit Court.

HELEN PUHA, infant, by MIKE CHERE-
PANAH, her next friend, and MIKE
CHEREPANAH, individually,
Plaintiffs-Appellees,

vs.

EDWARD HMIELESKI and LILLIAN
HMIELESKI,
Defendants-Appellants.

Case No. 150
Oct. Term 1929.

BRIEF FOR PLAINTIFFS-APPELLEES.

These actions were instituted on the part of Charles Skiba, infant, by his parents, John Skiba and Mary Skiba, who also sued for themselves, and Anna Skiba, against Edward Hmieleski and Lillian Hmieleski, the appellants. The action of Helen Puhah, infant, was brought by her next friend, Mike Cherepanah, who also sues on his own behalf. The causes were tried together before the Honorable Peter F. Daly, Circuit Court

Judge, with a jury at the Middlesex Circuit and resulted in a general verdict against both of the defendants.

Thereupon the defendants obtained rules to show cause why the said verdict should not be set aside and also why the same should not be reduced on the ground that the verdicts were excessive. The verdicts of Charles Skiba and Anna Skiba were reduced and the rules to show cause were discharged with regard to the remaining plaintiffs. The verdicts appealed from are in the amounts set forth in the appellants' brief.

On page 2 of appellants' brief, it is claimed under the paragraph marked 1, that the plaintiff, John Skiba, was a passenger in the automobile at the time of the accident. This is not so, and does not appear, either in any of the pleadings or the testimony. As will be shown later in the brief, the passengers in the automobile were Charles Skiba, who was driving, Peter Landick, his uncle, sitting in the front seat with him, and Anna Skiba and Helen Puha who were in the "rumble" seat. As a result of the accident Landick was instantly killed and therefore his testimony does not appear. **The reason for setting this out is due to the fact that later in the defendants' brief, page 13, it is claimed that John Skiba was a passenger but did not give any testimony in relation to the accident.**

The defendants take this appeal alleging that the Court erroneously refused to grant a non-suit at the close of the plaintiffs' case and also failed to direct a verdict after the close of the entire case.

ARGUMENT.

POINT I.

The Court did not err in refusing to grant defendants' motion for a non-suit.

Harry Romeo, a witness for the plaintiffs, testified that his car was parked on the road at the time and place of the accident (S. C., p. 40, lines 20 to 41), and that he saw the Skiba car coming down the road toward the front of his car (S. C., p. 41, lines 39 to 40). He also noticed the truck approaching from his rear to the point of the accident (S. C., p. 43, lines 1 to 12). He saw the Skiba car seventy feet away (S. C., p. 45, lines 35 to 38) and the truck was about twenty feet behind him (S. C., p. 42, lines 31 to 35). The truck **swerved out** to its left-hand side of the road to pass his car (S. C., p. 42, lines 9 to 12) and that it struck the Skiba car which was three feet on the dirt shoulder on its right-hand side of the road (S. C., p. 43, lines 13 to 18). He further testifies on cross-examination (S. C., p. 46, lines 11 to 42, and p. 47, lines 1 to 25) as follows:

“Q. This truck came along in back and turned out to pass your car, is that right? A. Yes.

Q. What kind of a truck was it? A. A Mack, a big Mack, six wheels on it.

Q. That was a truck and a trailer, is that correct? A. Yes, with a load of sugar on it.

Q. Had a big wide van body? A. Yes. Trailer body does.

Q. That is a big van body, a closed in body was it? A. A rack body.

Q. As he came along in the back of your car he pulled out, did he not? A. I don't think he saw them. I don't think he saw my car at the time he pulled out, because he pulled

out—he did not exactly pull out like you naturally would pull out and stay close to the car, he just swerved right out and before he came to a stop he was away on the other side of the road. There was plenty of room for him if he stayed on the road.

Q. You mean that he pulled across the road as if to go into the meadow there? A. Yes, his left wheel was off the road when he hit this car. He hit him right in front.

Q. What part of the Skiba car came in contact with the truck? A. Well, it was right near the left side of the car in the front, front left.

Q. Came in contact with what part of the truck? A. The front of the truck.

Q. Well, what part of the front of the truck, the left or right? A. Right near the center.

Q. Right near the center? A. Yes.

Q. And how far were the right wheels of the Skiba car off the concrete? A. The front wheel must have been three or four feet and the back wasn't as much because the car was more of an angle off the pavement.

Q. So that the middle of the Skiba car, you want to tell us, was at the left front wheel of the truck, is that right? A. The middle of the car?

Q. Yes. A. The middle of the front you mean or what?

Q. The middle of the front of the Skiba car was at about the left front wheel of the truck? A. No. The left part of the Skiba car was hit.

Q. By what part of the truck? A. The bumper, the front part of the truck.

Q. Was it on the left or right side? A. Of the truck? Right near the center crashed right into him.

Q. You are sure that the wheels of the Skiba car were only three feet off the pavement? A. Well, that was my judgment of the thing."

That after the accident, he observed that the Skiba car was on its right hand side of the road,

with its right wheel three feet off the pavement (S. C., p. 47, lines 23 to 25) and that the truck was over on its left hand side of the road (S. C., p. 46, lines 30 to 33). That the truck pulled out to its left and covered the entire road is borne out by this witness in his testimony (S. C., p. 50, lines 26 to 41):

“Q. As a matter of fact, didn't that truck pass your car in the ordinary way, and pulled out from behind it and continued on down the road? A. No, he didn't.

Q. What did he do that was not the ordinary method of passing a truck? A. Pulled over the road too far, the way I could see it.

Q. Well how far did he pull over? A. I don't know. Must have been all of fifteen feet.”

Morris Hertz, a witness for the plaintiff, came after the accident (S. C., p. 52, lines 17 to 22) and found the Mack truck on its left hand side of the road (S. C., p. 52, lines 25 to 27) and the Willys Knight automobile (plaintiffs' car) on its right hand side of the road with the right front and rear wheel about three feet off the pavement (S. C., p. 52, lines 31 to 33) and that the truck was extended across the entire road (S. C., p. 53, lines 11 to 13):

“Q. Yes. The straight line represents the pavement on the east side and this represents the pavement on the west side. A. Well now, the truck was in an oblique position with the rear wheels of the truck more towards the center, about three feet off the edge of the pavement and the front right up against the edge of the pavement. The roadster was for the most part on the road, on the gravel part of the road.”

Nathaniel Jacoby, a witness for the plaintiff, corroborates the foregoing witnesses with regard to the position of both of the machines, to the

effect that the truck was on its left hand side of the road and the Willys Knight on its right hand side of the road, when he arrived at the scene of the accident (S. C., p. 55, lines 10 to 39).

George M. Leonard, a police officer of the Township of Woodbridge, testified that when he arrived at the scene of the accident, the Mack truck was on an angle of forty-five degrees and the Skiba car was "Mostly to the car tracks" (S. C., p. 57, lines 27 to 32).

Andrew Simonson, a police officer of the Township of Woodbridge, a witness for the plaintiff, corroborates the testimony of the foregoing witnesses with regard to the position of the automobiles when he arrived at the scene of the accident (S. C., p. 60, lines 10 to 24). He further testified that photographs show where the Willys Knight was after the accident (S. C., p. 63, lines 13 to 15), and that the truck was at an angle across the road (S. C., p. 62, lines 16 to 34).

Charles Skiba, the driver of the plaintiffs' car, testified that he saw the parked car and continued to observe the road by looking straight ahead. He further testifies that he did not see the Mack truck until it was eight or ten feet away from him (S. C., p. 77, lines 16 to 24) and that it pulled away over to its left hand side of the road (S. C., p. 81, lines 31 to 34).

The testimony of all these witnesses and especially the witness, Harry Romeo, bear out that the plaintiffs' car was proceeding in a northerly direction along the highway at the rate of twenty to twenty-five miles an hour in open country. That the truck was proceeding in a southerly direction and pulled out sharply, cutting across the entire width of the road to pass the parked car. And that in so doing he took up the entire road passing some fifteen feet to the left of the parked car. That the truck thereupon struck the Skiba car

while it was proceeding on its right hand side of the road, three feet over on the dirt shoulder almost on the trolley tracks. All of the above was borne out by witnesses on both sides, who came to the scene after the accident.

The defendant was negligent in that he endeavored to pass a car while another car was approaching from the opposite direction.

That he was negligent in that he pulled out sharply to pass the car without first making the observation as to whether or not another car was coming.

That he was negligent in that he operated his car away over on the left hand side of the road, despite the fact that he had sufficient room on the road, to clear the Skiba car if he had passed in the usual manner.

POINT II.

The Court did not err in denying defendants' motion for a direction of verdict.

The defendants' own witness John Bonien, driver of the truck, testifies that he was operating his automobile on the left hand side of the road (S. C., p. 94, lines 1 to 10). And he further testifies that when his truck was alongside of the parked car, he saw the Skiba car two hundred and fifty feet away (S. C., p. 94, lines 13 to 17), and that he was proceeding at the rate of twelve miles an hour (S. C., p. 94, lines 18 and 19). This testimony is disputed by the witness Harry Romeo.

The witness Michael Sandor, called on the defendants' behalf, testifies that when the accident took place, he heard the commotion and came over, and that the trailer looked like it was starting over to the left hand side (S. C., p. 98, lines

29 to 36). That the truck was on the left hand side of the road (S. C., p. 99, lines 28 to 41) and was still on a slant across the highway.

This is borne out by the remaining witnesses of the defendants who also testified that the truck was straight on the road and the trailer was sideways on its left hand side.

Law.

The rule is well settled that in passing upon motions to non-suit and for a 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 motion is made and must give him the benefit of all legitimate inferences which are to be drawn therefrom, in his favor.

Andre vs. Mertens, 88 N. J. L., at 627;
Sefler vs. Vandebeek and Sons, 88 N. J. L., at 637;
Maudsley vs. Richardson and Boynton Co., 101 N. J. L. 562.

The appellants rely upon the case of *Hammond vs. Morrison*, 90 N. J. L. 15, which is admitted to be the law of this State. The facts in that case were that the defendant could not see by reason of the reflection of street lights in his eyes. In the case at bar the plaintiff says that he did not see the defendant's car until it pulled sharply to the left in its endeavor to pass the parked car. There is no evidence showing that the plaintiff's car should have stopped. The inference to be drawn from the testimony of the witness Harry Romeo is that the truck came very close to the back of his car and then swerved across the road without determining whether or not the road was

clear. The relevancy of the cited case to the case at bar is not apparent.

In the case of *Spawn vs. G. Abberg*, 94 N. J. L. 335, cited by the appellants, the Appellate Court sustained the refusal of the Trial Court to nonsuit and Mr. Justice Trenchard said, at page 337:

“And so the fact the driver of the Jitney Bus in which the plaintiff was riding failed to accord to the defendant the right of way as directed by the traffic act, is not in itself a sufficient reason for a direction of a verdict for the defendant, when as here, such fact is but one factor in the situation which, considered as a whole, presents a jury question as to the defendant’s negligence under all the circumstances.” *Paulsen vs. Klinge*, 92 N. J. L. 99; *Winch vs. Johnson*, *Id.* 219.

In the case of *Winch vs. Johnson*, above cited, Mr. Justice Minturn said, at page 220:

“The question, therefore, was one for the Jury, under the familiar rule whether, under all the circumstances, including the failure to observe the provisions of the Traffic act, the accident arose by reason of the defendant’s negligence, and whether the plaintiff by reason of any act of his was a proximate and contributing factor to the result, so far as the latter doctrine can be applicable in this instance, in view of the plaintiff’s status as passenger.”

The plaintiffs cite the case of *Smith vs. Barnard*, 82 N. J. L. 468, in which the syllabus is as follows:

“The law of the road relating to the passing by one vehicle of another one ahead and moving in the same direction, does not relieve the driver of the former from the duty resting on him of using reasonable care to observe and avoid other vehicles, including those going in the opposite direction.”

In that case, the Trial Court non-suited the plaintiff and upon appeal the judgment of the Lower Court was reversed, Mr. Justice Parker saying, at page 470:

“From this and from the fact as the Jury might have found, that the automobile turned sharply to the left, struck the left forewheel of the plaintiff’s wagon at an angle, as testified, and with enough force to throw all three occupants out of it and kill one of them, it was entirely open to the jury to infer that the defendant had ‘failed to keep a proper lookout and have his automobile under control’; and that if he had done either, the accident would not have resulted. As has been said, if the defendant’s duty was to pass the peddler’s wagon on the left, he was not entitled to do so at the risk of other vehicles with rights equal to his own and which, coming from the opposite direction, had primarily at least as much right as he to use the space to the south of the peddler’s wagon. As to such vehicles a duty of reasonable care rested upon him to discover and avoid them; and whether he exercised such care under the circumstances was a question for the jury.” (Plaintiff’s italics.)

In the case of *Paschel vs. Hunter*, 88 N. J. L. 445, cited by the appellants, involved the propriety of the Court’s refusal to charge “the defendant was observing the law when he passed to the left even if it would take him across the center line of the road to the left side”.

Although there is no dispute as to the propriety of the charge on this appeal, plaintiff admits that the request properly stated the law. The question was still one for the jury as stated by Mr. Justice Garrison, at page 446:

“It was proper for the Trial Court to leave to the jury the questions of negligence and contributory negligence, although if the verdict were before us on a rule to show cause

it would be set aside as against the clear weight of the evidence.”

All of the cases cited by the plaintiff or appellant were matters properly left to the determination of the jury. The facts in the Paschel case are different entirely from the case at bar but the Court still said that it was a jury matter. The question in the instant case is not concerned with the weight of the evidence but whether the Court did not err in permitting the jury to determine the fact.

That there was enough evidence in the case at bar to submit the questions of fact to the jury cannot be seriously questioned. The plaintiff was proceeding on his right in a northerly direction and when he was approximately seventy feet away from the point of the accident the truck was about twenty feet directly in the rear of the parked car. That the truck swerved sharply out covering the entire road and struck the automobile of the plaintiffs which had already reached the parked car. This was testified to by the witness, Romeo, and could be reasonably inferred from the testimony of the other witnesses as to the position of the truck on the road. If the defendant had passed the car in question in the ordinary manner, keeping as close to the same as reasonably possible, he would never have struck the automobile of the plaintiff. The road was twenty feet wide with dirt shoulders of four feet on both sides. The truck was eight feet wide according to the defendant's own witness. The Skiba car and the parked car were both on the dirt shoulder at least three feet each. And since both of the cars, the parked car and the Skiba car, only took up six feet of the actual concrete part of the road it would still leave fourteen feet in which the truck could have passed without touching either of the cars in question.

The greater weight of the testimony is that the Skiba car was not on a line with the front part of the truck, and that at least three feet of it was on the dirt shoulder. It is reasonable to believe that the person that took the chance was the driver of the truck and whose negligent act caused the accident. He made no observation but pulled out without first determining whether or not another car was approaching in the opposite direction. The testimony to the effect that the truck swerved out sharply to the left makes it almost identical with *Smith vs. Barnard* cited heretofore.

As to the plaintiffs, Anna Skiba and Helen Puha, it is contended they are entitled to recover in any event, upon the negligence of the defendant. They were passengers in the automobile of the plaintiff and had no control over the operation of the same.

In the case of *Jacobson vs. Bentley Morrison Corp.*, 135 Atl. p. 461, Mr. Justice Trenchard, delivering the opinion of the Court states on page 462:

“The true rule deducible from our own cases and supported by the great weight of authority by Courts of other jurisdiction, is that, where a person, personally in the exercise of that degree of care which common prudence requires under all the attending circumstances is injured through the negligence of some third person, and the concurring negligence of one with whom the plaintiff is riding as guest or companion, whether as invitee or as a mere licensee, between whom and the plaintiff the relation of master and servant, or principal or agent, or mutual responsibility in a common enterprise does not, in fact exist, the plaintiff being at the time in no position to exercise authority or control over the driver, then the negligence of the driver is not imputable to the injured person, but the latter is entitled to recover against the third person

through whose wrong his injuries were sustained." *Lange vs. N. Y. S. & W. R. R. Co.*, 89 N. J. L. 604, 99 A. 346; *Mittlesdorfer vs. West Jersey etc. R. R. Co.*, 77 N. Y. L. 698, 73 A. 538; etc.

The question of plaintiff's contributory negligence was also one for the jury. In considering that question the facts proved, and the legitimate inferences to be drawn from them, must be taken in the light most favorable to the plaintiff.

Upon the whole, it is submitted, that the plaintiff had equal rights on the road, and if anything had the right of way over the truck approaching in the opposite direction (Section 9-a, Chapter 281, Laws of 1928):

"The driver of a vehicle shall not drive to the left side of center line of 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."

The testimony of Romeo, witness for the plaintiff, was that he looked and saw the Skiba car seventy to seventy-five feet away; that he turned around and saw the truck twenty feet behind his car and that the truck pulled out to pass his car which was parked on the right. The truck was under an obligation to wait until the Skiba car had passed so that he could pass in safety. This he failed to do and therefore was the sole cause of the accident himself. The only disinterested eye witness to the accident was Romeo, and he testified that the accident did occur solely through the negligence of the driver of the truck. It is therefore disputed in the testimony, that the Skiba car was two hundred and fifty feet away from the defend-

ants' truck as the latter was passing the parked car. And certainly if that distance separated the two vehicles, the driver of the truck could have had plenty of time in which to have gotten to the right hand side of the road. The only inferences that can be drawn are that the driver of the truck did not make the proper observation or took the chance of passing the car and miscalculated the distance, thereby causing the accident himself. The jury had the right to infer that the driver of the Skiba car did not see the truck until it was eight or ten feet away from him by reason of the manner in which the truck swerved out to pass the car. That he pulled out on an angle of forty-five degrees, and the position of the cars after the accident showed this conclusively. That he did so, in the face of another car coming down the road in the opposite direction is borne out by the testimony.

It was proper therefore that the jury pass upon the questions of fact, and to determine the negligence or contributory negligence in the cause.

The Court did not err in refusing to non-suit the plaintiffs after their case was in and did not err in refusing to grant a direction of a verdict after all of the testimony.

It is respectfully submitted that the judgment of the lower Court be affirmed.

Respectfully submitted,

ELMER E. BROWN,
Attorney for and of Counsel
with Plaintiffs.

