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*Notice of Appeal.*

**Notice of Appeal.**

Filed June 5, 1916.

**New Jersey Supreme Court.**

10

UNION COUNTY.

STRATTON CHRISAFIDES,

*Plaintiff,*

*vs.*

BRUNSWICK MOTOR COMPANY,  
a corporation, and JOHN  
KNAUS,

*Action at  
Law.*

*Notice of  
Appeal.*

20

TAKE NOTICE, that the defendants appeal from the whole of the judgment entered in this cause, and each and every part thereof, to the Court of Errors and Appeals, in the last resort in all causes in the State of New Jersey.

Dated May 29, 1916.

WM. E. HOLMWOOD,

*Attorney for Defendants-Appellants.*

30

40

*Grounds of Appeal.*

**Grounds of Appeal.**

Filed July 1, 1916.

**New Jersey Court of Errors and Appeals**

10

STRATTON CHRISAFIDES,  
*Plaintiff-Appellee,*

*vs.*

BRUNSWICK MOTOR COMPANY,  
a corporation, and JOHN  
KNAUS,  
*Defendants-Appellants.*

*On Appeal  
from  
Supreme  
Court.*

*Grounds of  
Appeal.*

20

TO IRVING KUNZMAN, ESQ.,  
Attorney of Plaintiff.

TAKE NOTICE, that the following are the grounds to be urged by the appellants, on the appeal taken in this cause, on the second day of June, nineteen hundred and sixteen.

1. Because the learned trial court denied the motion made by defendants' attorney for a judgment of non-suit upon the opening made by plaintiff's attorney to the jury.

2. Because the learned trial court refused to strike out the testimony of the plaintiff when he answered the question: Q Could he have seen you if he had looked? Could he have seen you coming if he had looked? saying: "A Oh, yes, he could."

3. Because the learned trial judge failed to grant the motion made by defendants' attorney

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*Grounds of Appeal.*

for a judgment of non-suit at the close of plaintiff's case.

4. Because the learned trial judge charged the jury as follows:

"It is very difficult for me to feel that there was no negligence; a car coming along at a fair rate of speed, and turning a corner sharp, as he puts it, and a collision." 10

5. Because the learned trial judge refused to charge the defendants' first request to charge:

"The amount paid by the plaintiff and his co-partners for the services of a cook is not an element to be considered in the estimation of plaintiff's damages."

6. Because the learned trial judge refused to charge the defendants' second request to charge:

"Unless the plaintiff has established by the fair preponderance of the evidence that the hernia from which he suffers was caused by injury sustained by him through the negligence of the defendants, or either of them, and is not a re-occurrence of an old malady, you should exclude any items of expense arising out of said hernia from your estimation of damages." 20

7. Because the learned trial judge refused to charge the defendants' third request to charge: 30

"Plaintiff having testified that he has lost no money in his business since the date of the accident, he is not entitled to recover for time lost, unless such loss of time resulted in financial loss and is established by the evidence."

8. Because the learned trial judge refused to charge the defendants' fourth request to charge:

"If the chauffeur of the automobile in which plaintiff was riding could have avoided the collision by the exercise of reasonable care and cau- 40

*Grounds of Appeal.*

tion, and failed to exercise such care and caution, your verdict should be for the defendant."

9. Because the learned trial judge refused to charge the defendants' fifth request to charge:

10 "If you believe that the collision was a pure accident, there should be a verdict for the defendants."

10. Because the learned trial judge refused to charge the defendants' sixth request to charge:

"If you believe that the drivers of both automobiles exercised reasonable care, that is, the same amount of care as ordinarily prudent men would use under similar circumstances, then the defendants are not legally responsible for the injury and there should be a verdict for the defendants."

20 11. Because the learned trial judge refused to charge the defendants' seventh request to charge:

30 "The driver of defendants' automobile was not bound to use extraordinary care in travelling along the highway. Defendants fulfilled all legal obligations if the driver of the automobile used the same care that an ordinarily prudent and careful man would use under similar circumstances, and if you find this to be the case, your verdict should be for the defendants."

WM. E. HOLMWOOD ,

*Attorney for Defendants-Appellants.*

Service of the within grounds of appeal is hereby acknowledged this first day of July, 1916.

IRVING KUNZMAN,

*Attorney for Plaintiff-Appellee.*

*Summons.***Summons.**

The State of New Jersey to Brunswick Motor Company and John Knaus:

You are summoned to answer the annexed complaint of Stratton Chrissafides in an action at law in the Supreme Court. And take notice that unless you file your answer to said complaint with the Clerk of the Supreme Court, at Trenton, within twenty days, after the service upon you of this writ, and the annexed complaint, the plaintiff may proceed in the suit, and judgment may be entered against you. 10

Witness, William S. Gummere, Chief Justice of the Supreme Court at Trenton, this seventh day of February, nineteen hundred and sixteen. 20

WILLIAM C. GEBHARDT,  
*Clerk.*

IRVING KUNZMAN,  
*Attorney.*

30

40

*Complaint.*

**Complaint.**

Filed February 8, 1916.

SUPREME COURT OF NEW JERSEY.

UNION COUNTY.

10

STRATTON CHRISAFIDES,  
*Plaintiff,*

*vs.*

BRUNSWICK MOTOR COMPANY,  
a corporation, and JOHN  
KNAUS,

*Defendants.*

*Action at  
Law.*

*Complaint.*

20

Plaintiff, residing at 127 West Front street, Plainfield, New Jersey, says that:

(1) On December 23rd, 1915, the said plaintiff was travelling in a northerly direction in an automobile on the road from Plainfield to Metuchen, a public highway in the County of Middlesex, and State of New Jersey.

30 (2) While travelling and on the right side of the road the automobile in which the plaintiff was riding, approached a cross-road known as the road to Oak Tree from Metuchen.

40 (3) The motor-truck or bus owned by the defendant, Brunswick Motor Company, and driven along said cross-road by the defendant, John Knaus, a servant of said company in and about the business of said company, then and there while turning into the aforesaid road from Plainfield and Metuchen, carelessly and negligently ran into the automobile wherein plaintiff was sitting,

*Complaint.*

throwing plaintiff violently against the side and front of the automobile.

(4) As a result, plaintiff was injured receiving and inguinal hernia (rupture) on the left side of his abdomen, a contused and incised wound of the right cheek, contusion of the right lower lid, and a lacerated wound of the right index finger, plaintiff undergoing great pain and suffering. 10

(5) As a result of said injuries the plaintiff has not been able to fully attend to his work and business and has been forced to pay out large sums of money for medical attendance and other expenses incident upon the injuries.

Plaintiff demands Five Thousand (\$5,000) Dollars damages together with costs.

IRVING KUNZMAN, 20  
*Attorney for Plaintiff.*

30

40

*Answer of Brunswick Motor Company.***Answer of Brunswick Motor Company.**

Filed March 6, 1916.

The answer of the defendant, Brunswick Motor Company, residing at Milltown, New Jersey, to the complaint filed herein, respectfully shows:

- 10     1. This defendant has no knowledge of the matters and things alleged in paragraphs one and two of said complaint, and leaves the plaintiff to make such proof thereof that he may be advised is proper.
2. Defendant denies the allegations contained in paragraphs three, four and five of said complaint.

## DEFENSES.

20     The defendant will urge at the trial of the above entitled cause the following defenses:

1. That said complaint does not set forth the cause of action because it fails to allege in what particulars the defendant was negligent.
2. That said defendant was not guilty of negligence contributing in any way to the injury alleged to have been received by the plaintiff.
- 30     3. That the said plaintiff was guilty of contributory negligence in that he failed to maintain control of the automobile driven by him; in that he failed to use reasonable care to avoid injury; in that he operated his automobile at an excessive rate of speed; in that he failed to heed signals and warnings given to him; in that he failed to give warning of his approach toward the curve in the highway, and because of the fact that he operated said car in violation of an Act Concerning Motor Vehicles, chapter 113 of the laws of 1906, with the supplements and
- 40

*Answer of John Knaus.*

amendments thereto, and also in violation of an Act Providing for the Regulation of Vehicles, &c., known as chapter 156 of the laws of 1915.

WM. E. HOLMWOOD,  
*Attorney for Defendant.*

10

**Answer of John Knaus.**

Filed March 24, 1916.

The answer of the defendant, John Knaus, residing at Milltown, New Jersey, to the complaint filed herein, respectfully shows:

1. This defendant has no knowledge of the matters and things alleged in paragraphs one and two of said complaint, and leaves the plaintiff to make such proof whereof that he may be advised is proper.

20

2. Defendant denies the allegations contained in paragraphs three, four and five of said complaint.

## DEFENSES.

The defendant will urge at the trial of the above entitled cause the following defenses:

30

1. That said complaint does not set forth the cause of action because it fails to allege in what particulars the defendant was negligent.

2. That said defendant was not guilty of negligence contributing in any way to the injury alleged to have been received by the plaintiff.

3. That the said plaintiff was guilty of contributory negligence in that he failed to maintain control of the automobile driven by him; in that he failed to use reasonable care to avoid injury;

40

*Reply.*

10 in that he operated his automobile at an excessive rate of speed; in that he failed to heed signals and warnings given to him; in that he failed to give warning of his approach toward the curve in the highway, and because of the fact that he operated said car in violation of an Act Concerning Motor Vehicles, Chapter 113 of the Laws of 1906, with the supplements and amendments thereto, and also in violation of an Act Providing for the Regulation of Vehicles, &c., known as Chapter 156 of the Laws of 1915.

WM. E. HOLMWOOD,  
*Attorney for Defendant.*

20

**Reply.**

Filed March 14, 1916.

The reply of the plaintiff to the answer of the defendant, Brunswick Motor Company, a corporation, filed herein, respectfully shows:

The plaintiff denies the second and third paragraphs of the defenses set forth in the answer.

30

IRVING KUNZMAN,  
*Attorney for Plaintiff.*

40

*Stipulation.*

**Stipulation.**

Filed March 22, 1916.

It is hereby stipulated and agreed by and between the attorneys of the parties hereto, that the reply heretofore filed by the plaintiff to the answer of Brunswick Motor Company shall be considered as a reply to the answer filed by the defendant, John Knaus. 10

Dated, March, 1916.

IRVING KUNZMAN,  
*Attorney for Plaintiff.*

WM. E. HOLMWOOD,  
*Attorney for Defendant.*

20

30

40

*Judgment.***Judgment.**

## NEW JERSEY SUPREME COURT.

10	STRATTON CHRISAFIDES, <i>vs.</i> BRUNSWICK MOTOR COMPANY, and JOHN KNAUS.	}	<i>Action at Law. On Postea.</i>
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It is ordered that judgment be and hereby is entered in favor of plaintiff and against the defendants for the sum of eleven hundred dollars besides costs to be taxed nisi.

20 Entered May 15, 1916.

On motion of

IRVING KUNZMAN,  
*Attorney.*

A true copy.

WM. C. GEBHARDT,  
*Clerk.*

30

40

*Plaintiff's Opening.*

**Testimony.**

NEW JERSEY SUPREME COURT.

UNION COUNTY CIRCUIT.

May Term, 1916.

10

STRATTON CHRISSAFIDES.

*vs.*

BRUNSWICK MOTOR COMPANY,  
a corporation, *et als.*

*Action at  
Law.*

*No. 27 in the  
List.*

Transcript of stenographer's notes of evidence, taken in the above entitled matter, before Hon. Geo. S. Silzer, Judge of the Circuit Court and a Jury, in the Union County Court House, in the City of Elizabeth, New Jersey, on the fifth day of May, A. D. 1916, at 11:00 ~~p.~~ m. 20

Appearances:

Irving Kunzman, Esq., for the plaintiff.

William E. Holmwood, Esq., for the defendant.

A Jury being empanelled and found satisfactory, they were sworn. 30

PLAINTIFF'S OPENING.

*case of*  
Mr. Kunzman. This is a very simple <sup>^</sup> collision. The plaintiff, a restaurant proprietor of Plainfield was traveling in one of the famous cars known as a Ford toward Perth Amboy. He was not driving. There was another driver. He was sitting with the driver on the front seat. When he got out into the country at a place called Pump- 40

*Plaintiff's Opening.*

10 town the road branches off into two directions like the letter "y," and another road passes right across it. While going around the curve the car in which the plaintiff was traveling was struck and run into by a motor bus or truck driven by the defendant, John Knaus, and owned by the Brunswick Motor Company. This company is engaged in carrying passengers between Plainfield, Metuchen and New Brunswick. As the result of the collision the plaintiff was severely injured, a few minor injuries to the face and he was ruptured and we are going to prove to you that the defendant was responsible for this accident, that it was not the fault of the plaintiff and he is entitled to recover such damage as we will prove he has sustained.

20

*Mr. Holmwood.* If the Court please I object to proceeding without a certified transcript and ask my objection be noted.

*The Court.* Objection overruled. I understand you cannot point out that it is inaccurate.

*Mr. Holmwood.* I contend that the time is too short for me to go over it to satisfy myself.

30

*The Court.* I will give you time to do it

*Mr. Holmwood.* I also move at this time for a non-suit upon the opening. Merely a contention raised that the plaintiff was injured in turning a curve in the highway. There is no allegation made, no statement made by counsel in opening to the jury pointing out any element of negligence, or any allegation of negligence on the part of either of the defendants.

40

*Plaintiff's Opening.*

*The Court.* In what way do you claim that there was negligence?

*Mr. Kunzman.* The plaintiff was traveling and going around the curve on the right of the road and he was run into by the defendant. That is a prima facie case of negligence.

10

*The Court.* Where do you claim the defendant was negligent, in what particular?

*Mr. Kunzman.* The plaintiff was on the proper side of the road and he was run into by the defendant. That itself is presumptive evidence of negligence.

*The Court.* The mere happenings of an accident is no presumption of negligence. What way do you say the defendant was careless? Merely because two people come together does not make it negligence. If that it the fact then your party is negligent too, because you came together.

20

*Mr. Kunzman.* Is it true that the mere happening of an accident does not mean negligence, but where the plaintiff is on the right side of the road, traveling in the direction that the—traveling in accordance with the rule of the road, and the rule of the law, and then he is run into by the defendant, that is prima facie negligence. It calls upon the defendant to explain what he was doing there.

30

*The Court.* A man may be on the wrong side of the road, and yet be careful.

*Mr. Kunzman.* The fact that he is on the wrong side of the road—

*The Court.* I will <sup>not</sup> non-suit on the opening. I will give the plaintiff a chance to intro-

40

*Stratton Chrissafides, direct.*

duce testimony, but there will have to be more than that, Mr. Kunzman, if you want to hold anybody.

*Mr. Holmwood.* I ask an objection be noted.

10 *The Court.* Yes.

Exception allowed—sealed accordingly.

.....  
Judge.

*Mr. Holmwood.* I object to proceeding without a certified transcript.

*The Court.* Is this incorrect?

*Mr. Holmwood.* I think so.

*The Court.* Look at it.

20 *Mr. Holmwood.* I cannot tell without comparing it.

*The Court.* Then compare it. You know the old common law method was for counsel to certify it himself.

STRATTON CHRISSAFIDES, the plaintiff, being duly sworn on his oath, according to law, saith:

30 *Direct examination* by Mr. Kunzman.

*Mr. Kunzman.* Mr. Holmwood has kindly consented to have this as an illustration of the case.

Q Mr. Chrissafides, you are the plaintiff in this case? You are the person who is suing?

A Yes, sir.

Q What business are you in? A Restaurant business.

*Stratton Chrissafides, direct.*

Q You have a store at Plainfield? A I have a store at Plainfield, and a store in Westfield.

Q On December twenty-third did you have a store at Perth Amboy? A Yes, sir.

Q On December twenty-third you were traveling from Plainfield to Perth Amboy? A Yes, sir. 10

Q Who did you travel with? A Louis Molideske.

Q What kind of an automobile were you traveling in? A Ford car.

Q Who was driving? A Louis Molideske.

Q Where did you sit? A On the right hand side in the front seat.

Q What kind of a day was it, clear day? A Clear, bright day. 20

Q Did an accident happen to you on the way? A The accident happened on Pumptown.

Q On what side of the road where you? A On the right side of the road.

Q How fast were you going? A We were about moving at the time the accident happened.

Q This map is supposed to show the scene of the accident. Now, it is drawn to the scale of ten feet to the inch. Will you point out at about what point the accident occurred? A Somewhere right here (indicating). 30

Q Were you on the right side of the road? A The right side.

Q How far away were you from the—was the edge of the road, this road, when the accident occurred? A We were about here (indicating).

*Mr. Holmwood.* When you say "this road", do you know what road this is? It does not help the record any. 40

*Stratton Chrissafides, direct.*

*Mr. Kunzman.* This is the road from Park avenue, to Metuchen (indicating). This is the road from Oak Tree from Metuchen (indicating.) You were speaking about the distance from the road from Oak Tree.

10 Q How far was the place where the accident occurred?

*Mr. Holmwood.* Let him point out.

A Right here.

Q (continued)—to the road from Oak Tree to Metuchen? How far? A From Oak Tree to Metuchen?

Q Do you recall, do you remember about how far from the road to Metuchen were you  
20 when the accident occurred? A How far we were going to Metuchen?

Q Yes? A Was about fifteen minutes from here to Metuchen.

Q No. How many feet? What is the distance? A About sixty or seventy feet.

Q When did you first see the defendant?  
A I seen the car when I was about here (indicating). We could see over there. His car  
30 was right here (indicating).

Q Which way was he traveling? A Traveling up this way and we were going this way to Metuchen. He was going to Plainfield.

Q What did he do? A We were about coming right here when he come up this way, and for a moment we thought that he was going up this way. When he came right here and ran back to here (indicating.)

*The Court.* The road runs north.

*Stratton Chrissafides, direct.*

A This is Metuchen and this is going to Plainfield.

*The Court.* That is going north.

*By Mr. Holmwood.*

Q Indicating the northern side of the road to Plainfield where you saw this man turn in, is that right? A We saw the men turn in here. 10

*Mr. Holmwood.* Indicating the northern side of the road to Plainfield.

*By Mr. Kunzman.*

Q What you say is that he apparently was going straight on the road to Oak Tree, but when he reached—A He changed his mind that he should come this way. 20

*Mr. Holmwood.* I object. I move to strike that out.

*The Court.* Yes, that will be stricken out.

Q He went up as if to—A Went a little further over than the middle of the road before he turned over here this way.

Q He turned a short—did he make a short turn? 30

*Mr. Holmwood.* I object.

Q What kind of a turn did he make? A He made a very short turn.

Q Was it sudden? A I don't understand that.

Q Was it quick, unexpected? A Quick, unexpected.

Q Did he blow his horn before he turned the curve? A No, he didn't blow his horn. 40

*Stratton Chrissafides, direct.*

Q Would you have heard it if he had? A We could.

Q Did you give any other signal? A No, sir.

Q Did the driver of your car give a signal? A He did blow his horn.

10 Q How fast was he going? A The other driver or my driver?

Q The other driver. A Oh, he was going about between eighteen to twenty miles.

Q Did he have his brakes on when he struck you? A No, sir.

Q Where was your Ford struck? A In the front where is the radiator.

Q In the front, directly in front, or one side? A A little over the right side—a little over to the left side.

20 Q What happened to your machine, what happened to your car? A The lamp was broke, the radiator was broke, and the wheels was bent, with the axle, bent this way.

Q Do you mean one wheel would go on top of the other? A One wheel was on top of the other.

Q Did your car remain in the same place? A No. It was away back on the bank, up here on this here (indicating) pushed back about 30 twenty or twenty-five feet or so.

Q It was pushed back by the force of the collision? A Yes, force of the collision.

Q What happened to you? A The time that the other car hit us, I struck the windshield, fall head on the windshield, and then back this way, and then I find myself on my knees, on the floor of the car that I was driving into.

Q Was it a violent collision?

40 *Mr. Holmwood.* I object.

*Stratton Chrissafides, direct.*

Q State what force, if any, there was when he struck your car? A What force?

Q Yes? A I don't understand that.

*By the Court.*

Q How hard did it strike? A Oh, very hard. For instance, he blow me so that I couldn't understand anything after. 10

*By Mr. Kunzman.*

Q Was it lightly or very hard? A Very hard.

Q What did ~~he~~<sup>you</sup> find happened to you after the accident? What condition were you in after the accident? A Well, when I got out of the car I seen that there was blood right here on my eye, all over my eye.

Q Your eye or your face? A Eye, here all over this side, eye, and part of the cheek. And I went into a house there. 20

Q And what else? A And a little blood on my finger here through the glove. I had gloves on and through the glove was coming blood out of it.

Q How did you feel? A Stunned and dizzy, whatever you call it. Couldn't hardly walk.

Q Was there anything else the matter with you at this time? A Nothing else. 30

Q What did you do next? A I went into a house near the road there, and they give me some medicine, some kind of water, I don't know what was it, and clean off this part over here, and then piece of cotton, I was holding it until I went to the doctor.

Q How did you go to the doctor? A We telephoned to the Somerset garage in Plainfield so they sent a car down there and take me to the hospital or to a doctor. 40

*Stratton Chrissafides, direct.*

Q Who was driving the car that ran into you?

A Who was driving it?

Q Yes. A I know the man. I didn't know his name then.

Q Was it John Knaus? A John Knaus.

Q And that is a car owned by the Brunswick  
10 Motor Company? A Brunswick Motor Com-  
pany.

Q What did he say when he ran into you?

A He said that he didn't see us coming.

Q When was that? A After the collision  
happened.

Q Did he have curtains on his car? A He  
had curtains.

Q On where? A On the sides of the car.

Q He had a windshield in front? A Wind-  
20 shield and then the curtains.

Q Were the curtains down? A Curtains  
down.

Q Did he have any passengers with him at  
the time? A Any what?

Q Passengers? A One.

Q Where was the passenger sitting? A  
Where was sitting? We didn't see where was  
sitting. I didn't see.

Q Was the defendant's automobile hurt any?  
30 A Yes, sir.

Q How? A His axle was bent.

Q His front axle was bent? A Front axle.

Q You said before that you went to tele-  
phone for a doctor. Did you telephone for a  
doctor? A No. I said Louis Molideske tele-  
phoned for a car to come down and take me  
to the doctor.

Q Did the car come? A It did.

Q And you went where? A Car took me  
40 to Dr. Campbell's. *Campus*

*Stratton Chrissafides, direct.*

Q What time of day did the accident occur?

A About eleven o'clock.

Q Morning or evening? A Morning.

Q Could he have seen you if he had looked?  
Could he have seen you coming if he had looked?

A Oh, yes, he could.

*Mr. Holmwood.* I wish to strike that out.  
That is a conclusion whether he could see  
him or not.

10

*The Court.* I will let it stand.

Q Did the doctor examine you? A Yes, sir.

Q And treat you? A He did treat me on the  
cheek and the finger.

Q Nothing else? A Nothing else.

Q Where did you go then? A With the  
same car that took me to the doctor I went to  
my house.

20

Q Did you stay home all day? A I stayed  
home up to six o'clock, six o'clock in the evening.

Q What happened then? A Well, after I  
thought of going down to my business and so  
I dressed up and came down about—start down-  
town. After I went couple of blocks I felt some  
pain right over here somewhere on the side, on  
the left side. I was with my sister, so I told  
my sister we had better come back because I  
don't feel very good.

30

Q So you went where? A And we went  
back home and laid down again.

Q Did you have the doctor examine you for  
that? A The next day at ten o'clock.

Q You went down to the doctor's? A Yes.

Q Which doctor was it? A Dr. ~~Campbell~~ <sup>Campbell</sup> s.

Q And what did he tell you you had? A  
He told me that I had hernia.

Q Did he examine you? A Yes, sir.

40

*Stratton Chrissafides, direct.*

Q Did you have that hernia before the accident? A No, sir.

Q Did you ever have a hernia before? A I had once before.

Q How long ago? A Was six years and a few months before.

10 Q Were you operated on? A Yes, sir.

Q Where at? A At Rochester, New York.

Q In the hospital? A In the hospital.

Q Where you cured at that time? A Yes, sir.

Q After that operation six years ago did you wear a truss? A I only wore a truss for about, for no more than three months. And doctor told me I should wear one after the operation.

20 Q And you have never worn one since? A I did wear one. After three months I threw it away. I didn't wear it any more.

Q You say you were completely cured. A Yes, sir.

Q Did you do heavy work since that time? A Heavy work all the time.

Q And it never bothered you? A Never did.

30 Q After the accident when you discovered you had a hernia, what treatment did you take, if any? A I didn't took any treatment at all for a week or so, and I seen that this bothered me very much, so I had to go back to the doctor again, and he told me I should go and buy a truss, and I will do until I go under an operation.

Q Was the hernia growing larger? A Growing larger all the time.

Q Has it grown since you put a truss on? A A little bit.

40 Q Does it hurt you? A Very much.

*Stratton Chrissafides, direct.*

Q What do you do in your business? A In my business I ought to be cook, waiter, manager, and everything.

Q You are in charge of the business? A I am in charge of the business.

Q Does this injury interfere in any way with your usual work? A Yes, sir. 10

Q How? A I can't work. I can't do any heavy work. The only thing I can do is just bookkeeping or something like that, and then sit down.

Q Well, have you tried to act as a cook, after the accident? A I did many times that I had no employes and I had to do it. I couldn't do it. I thought of letting the business go and going—

Q Why couldn't you do it? A I felt pains all the time and I had to always squeeze myself this way. 20

Q And could you do any waiting? A Not much. Very little. Once in a while I will do it, but for half a hour or so and then I sit down.

Q After the accident how long were you confined home, if any? A Oh, I was home about four days or so and then I go out once in a while.

Q You could not attend to business? A Not for four days I didn't do nothing. 30

Q After that did you undertake your full duties in the business? A I never did took my full duties in the business. I always have somebody to do part of the business since then.

Q Have you had to hire someone? A Yes, sir.

Q Since the accident to take your place? A I have hired a cook.

Q Would you have had to hire someone to take your place? A Not before. 40

*Stratton Chrissafides, direct.*

Q If you didn't have the accident? A I didn't have to hire anybody.

Q How much did you pay? A I paid him fifty dollars a month and his board.

*Mr. Holmwood.* I object.

10 *The Court.* Why?

*Mr. Holmwood.* I do not think it is sufficiently established that this is the proper measure of damages that he established that he had to hire this man. He testified that he had a cook before.

*The Court.* No, he had to cook himself before. He is not able to do it now, so he had to hire somebody, as I understand it.

A I was doing the cooking myself before.

20 *The Court.* Now, he cannot do it, and he has to hire somebody else.

*Mr. Holmwood.* But as I understand him he was not doing all of it himself. He helped all around the store. He cooked and acted as manager and was doing everything. It does not appear exclusively that he did all the cooking there.

*The Court.* I will allow it to stand.

30 Q Would you have had to hire this man if you did not have this injury. A I didn't have to hire that man if I don't have the injury.

Q How soon after the accident did you hire him? A About ten days after.

Q How much do you pay him? A I pay him fifty dollars a month.

40 Q That is his salary? A That is his salary without board. And his board. He gets his board.

*Stratton Chrissafides, direct.*

Q How long have you been in the restaurant business? A In my own business I have been about four years.

Q And before then? A Before then I was working in hotels in New York.

Q You are familiar with the reasonable value of services of one working in the restaurant? A Yes, sir. 10

Q Is fifty dollars a month reasonable value for the work the man is doing? A That is a cook fifty dollars a month. For a place like mine; fifty dollars a month.

Q That is reasonable value? A For a cook.

Q What are your services worth at reasonable value? A About thirty dollars a week.

*By Mr. Holmwood.*

20

Q That is at the present time? A At the present time I don't think I am worth that much, no, not at the present time.

*By Mr. Kunzman.*

Q How much do you think your services are worth at the present time? A I don't know.

*The Court.* How do you think that is a measure of damages, Mr. Kunzman? 30

Q Have you had any other expenses because of the accident? A Yes, sir.

*The Court.* You cannot recover what his services are worth, if he hired someone else to take his place. The question is whether he has lost anything in his business by reason of it.

Q Does the man you have hired do all your work? A He doesn't do all the work. 40

*Stratton Chrissafides, direct.*

Q He only does part of it? A He only does the cooking, that is all.

Q He does work that you had done before the accident yourself? A No. He don't do what I was doing before.

10 Q He don't do as much? A Not as much as I was doing before.

Q That is only part? A That is only part of my business.

Q Have you had any other expenses? A Yes, sir.

Q Because of the accident? A First thing I paid three dollars for the car that took me to doctor, and then to the house. And \$1.65 for a pair of gloves which I had to tear it and take it off my finger here. It was stuck together.

20 Q You couldn't take the glove off? A You couldn't pull it down because I had to tear it. And seventy-five cents for medicine and bandages and things like that.

Q And what else? A Five dollars for Dr. *Campbell* ~~Campbell~~ and the truss, six dollars.

Q Anything else? A I don't remember of anything else!

Q Have you worn a truss since the accident? A I did.

30 Q And you still wear it? A I wear it now.

Q Is your present rupture in the same place that your old rupture was? A No, sir. It is on the same side, but it is far up than the other place.

Q And it has nothing to do with the other? A No, sir.

Q What did the doctors tell you you must do to get cured? A Have an operation.

40 *Mr. Kunzman.* Take the witness.

*Stratton Chrissafides, cross.*

*Cross-examination* by Mr. Holmwood.

Q Now, Mr. Chrissafides, how long before the accident was it that you last wore a truss? A How long?

Q Yes. A Six years.

Q And during that six years you didn't wear a truss once? A I didn't wear a truss. 10

Q And where were you operated on? A In Rochester, New York.

Q Whereabouts? A In Rochester, New York.

Q Well, in an hospital? A In the hospital.

Q What hospital? A Dr. Lee's hospital.

Q Did Dr. Lee perform the operation? A Dr. Lee and a helper he had there.

Q What is Dr. Lee's first name? A I don't know. 20

Q Do you know what street that is on in Rochester? A I don't know.

Q And how long ago was that; ten years ago? A No, sir.

Q How long? A That is about six years—1910 in June.

Q June, 1910? A June, 1910, if I am certain.

Q And on which side of your body was that hernia? A On the left side. 30

Q And it is at the same spot where you have the hernia now, isn't it? A No, sir.

Q How far from it? A About one inch farther.

Q About one inch away? A Yes, sir.

Q How do you know it is an inch away? A I can see it is.

Q Is there a scar there from your operation?

A There is a scar from the operation. 40

*Stratton Chrissafides, cross.*

Q And is it an inch away from that scar? A An inch away of where was the hernia before.

Q How far from the scar? A It is on the top of the scar; just about the top.

Q And it appears to be pushing the scar there, doesn't it? that is, pushing its way through the scar, doesn't it? A No. It is pushing my skin away up. Not the scar.

Q Pushing under where the scar is? A No, sir.

Q How far from the scar? A Oh, it is this side over here where the scar is. Here this side. The scar comes this side, and that other thing, the hernia, comes over here and pushes the skin up.

Q How long have you had that restaurant?

A It is about four years I guess I have been in partnership with my brothers. Some other brothers together.

Q Are they in partnership with you now?

A Partnership.

Q How many of them are in partnership?

A There is one, two and me, three, I am the third.

Q What do the other brothers do in the store? A Two of them; the other two partners are working down in Westfield, in the other store.

Q Have you another store in Westfield? A I have another store in Westfield.

Q That is two stores, is that all you had?

A At the time the accident happened I had another store in Perth Amboy, New Jersey, which I sold it to two other brothers.

Q Are any of your brothers helping you in this store? A In this store here?

Q Yes. A Only for to-day.

*Stratton Chrissafides, cross.*

Q To-day they are helping you? A Yes.

Q Do they help you at any other time? A Once in a while, they come there. I have only brother working for me as a waiter.

Q Does he work for you every day? A He is working for me every day. That is later, about two months he has worked for me. 10

Q And how many of them were working for you at the time of the accident? A At the time of the accident five altogether with me. Four and, I five.

Q All brothers? A No, sir; strangers.

Q You had five people working for you at the time of the accident? A No. Four and I, five altogether in the place.

Q And all in that one store? A That one store. 20

Q Where is this store? A 127 West Front street, Plainfield.

Q How long had you had five there before the accident? That is, including yourself? A How long what?

Q Had you had the five people working there before the accident? A Five people before the accident?

Q Yes. A I never had five people before the accident. 30

Q I say including yourself? A Including myself all the time.

Q You had five including yourself at the time of the accident, is that right? A All the time we were five there. ?

Q Before that how long did you employ five? A We were all the time five in the place. Always five. Never more. Unless my brother, one of the partners come over and help around. Then there is six. 40

*Stratton Chrissafides, cross.*

Q What are their names? A One of them is Periples, and the other is Milton Chrissafides. One is a brother-in-law, and the other is my brother.

Q And who are the other two? A The other are Constantine Chrissafides and Theodore  
10 Chrissafides, who are in Perth Amboy now.

Q These are the four who were with you at the time of the accident, that is right, is it?

A Who?

Q Those people you have just named were working. A No, sir. They were partners and they were working in Perth Amboy.

Q I ask you to give me the names of the four people in the store at the time of the accident? A At the time of the accident you want  
20 the names?

Q Yes? A One is Stephane, that is his name that is working for me. He is a Greek man. And the other one was an American boy, who I didn't took the name. He was only stop there for a week. That same week when happened the accident.

Q Was that after the accident he was there, or before? A On this—the same week when  
30 happened the accident. He only stopped there for a week. After the accident between twentieth and twenty-sixth. He left about twenty-sixth or twenty-seventh of December.

Q Who else? A And outside is waiters. I had fellow by name Minas. He isn't there no more.

Q When did he quit? A He quit long ago.

Q How long after the accident did he leave you? A About January. Sometime in January when he quit and I had to have somebody  
40 else inside.

*Stratton Chrissafides, cross.*

Q Who else did you have? A And George Chrissafides, that is another young brother, who isn't interested in the business. Only working. That is as far as I can remember.

Q Those are the four you had there the day of the accident? A Yes.

Q Now, how long before that did they work for you? A Minas, the waiter, worked about two months before. 10

Q Never mind taking them up one by one. All of them? A I have to say so because they come there and work for a week and then leave, and then so on. They never stay the same people in the place for longer than a month, because the work is very hard.

Q You had four in the store beside yourself? A Four. 20

Q At the time you started the store? A The time that I started the store. I didn't start the store, but the time I went into the store.

Q Who was working there for you in January? A In January who was working?

Q Yes. A I have to have my book here and see the names.

Q Were the same people working there that you gave the names of now? A No, not the same people working, but one. Only one work to-day from January in my place. There is one working to-day in my place since the accident happened. All the others left. 30

Q Who was working for you in January? A The same people I told you before.

Q These four? A Them four.

Q And who was working for you in February? A Who was working for me in February?

Q Yes. A That is a hard thing to tell you because so many—I have to have my book here 40

*Stratton Chrissafides, cross.*

and tell you the names. First I told you they come there for a week and leave.

Q Did you still keep four in February? A Yes, sir.

Q No more? A In February?

Q Yes. A How many do I still keep?

10 Q Yes? A That is the time I had to hire that cook, and I still have him over in that place now. I had to hire a cook at that time after the accident, about ten days. That was January.

Q It was in January you hired the cook? A In January.

Q Then you were mistaken a minute ago when you say you only had four there in January?

A I didn't say I had four in January.

20 Q Oh, yes you did. I asked you very particularly and you said you had four. Now, when did you get the cook? A The cook was in January some time.

Q And that was the time you let this other fellow go, wasn't it? A Which other fellow?

Q The man that you said left you in January?

A No, sir. There always leaving and hiring. Some leaves and I hire another fellow.

30 Q But you have a cook? A I have now. I will tell you what I have now, a cook, a dish washer, and someone cook, might cook, or call it second, and I have my brother, George Chrissafides as waiter, and another stranger as waiter again. That is three and two are five, and myself is six at the present time.

Q How long have you had six? A It is from January that I had six.

40 Q What time in January? A The first or second. I don't know what was it. And at the same time when I didn't have anybody I just telephoned to Perth Amboy for somebody to

*Stratton Chrissafides, cross.*

come over there and help me out. As many times I did telephone Perth Amboy and they came over and helped me.

Q Did you enlarge your store the first of the year? A Enlarge the store? No, sir.

Q How is business, a little better now than it was? A Just the same. 10

Q Just the same as you were doing before? A Almost the same thing, I should think it is worse than it was.

Q Your profits are just the same? A Same in profits. Well I couldn't say in profits. I don't see any profits.

Q You haven't lost any money in the business since the accident, have you? A I don't know that I have lost any money. I am losing every day. 20

Q Now, let us get back to the accident again, Mr. Chrissafides, and see what happened that day. This is an open field here, isn't it? A This is field.

Q This was in the winter time? A Winter time.

Q No buildings here? A No buildings.

Q No buildings anywheres around here? A Buildings over here.

Q But not on this side opening to the south side? A Nothing on this side. 30

Q And you can see across here about one thousand feet to where this road comes up? A I can see almost over here.

Q As you come along here in the car you can see one thousand feet across here to this road, can't you? A I don't know how far is one thousand feet.

Q You can see a good many times the length of this room? A Yes, sir. 40

*Stratton Chrissafides, cross.*

Q And there is absolutely no obstruction in your view, you can see right across here, and see anything passing up and down the road? A No, there is leaves.

Q Yes, but this is the winter time, and there was no leaves on the trees? A No, no leaves  
10 on the trees.

Q And the trees are twenty-five or thirty feet apart, aren't they? A Yes.

Q You came along here? A Yes.

Q And will you just take your pointer and show us where you were on the road when you first saw Mr. ——— the defendant's automobile?

A I seen almost from here and he was over that way, and I said to myself, I think the motor comes, because I had many times seen the motor.

Q You had heard the motor, did you hear it?  
20 A I didn't hear it. I seen it.

Q Where were you when you saw it? A Up around here somewhere.

Q Where was the motor? Just point out to the Jury where you were when you saw this?

*The Court.* Put a mark there "x".

Q Here where my pencil is? A Yes.

30 *By the Court.*

Q Now, where was the other car at that time?

A The car was somewhere over here.

Q That is off the map on the bottom. A Off the map.

*By Mr. Holmwood.*

Q And about how far would you say that was away from you when you saw it? A The  
40 car?

*Stratton Chrissafides, cross.*

Q Yes? A Three or four hundred feet. I don't know how far. I am not acquainted with the maps.

Q And you say it appeared to you as if he was going straight on Oak Tree road? A Yes, sir.

Q Directly north. And that when he came there, is this where he turned in? A Somewhere right here. After he passed immediately after the accident I seen the circle made. 10

Q When you say this one, taking the road this way, what part of the road was it? Right in there is where he turned? A Yes.

Q I will mark that with "T." And then he went on up this road, and where did the collision occur? A The collision occurred somewhere around here. 20

Q Right on top of the curve? A Almost in here right near the curve.

Q I will mark this with a "C" indicating collision. Is the road narrower here than it is—is the road narrower at the point of collision? A Narrower than this. This is a park in there and, of course, this is narrower than this one here.

Q You were going along at about twenty-five or thirty miles an hour, weren't you? A We? 30

Q Yes? A Why, we had to make this turn to this corner over here, and the driver wasn't moving almost. About five miles. I don't think he was making five miles at the time he was hit.

Q No obstructions here at all, it is just open lots, you could run a car right in there if you had an opportunity? A No. This is a little higher than the other over here.

Q Very slight, isn't it? A Slight. There is trees over here. 40

*Stratton Chrissafides, cross.*

Q It is not as high as the curb, is it? There is no curb, is there? A This is all curb there.

Q There is no curbstone? A No, there is no stone.

Q It is not as high as the curb? There is a little rise there, but it is not as high as the curbstone, is it? Is it? A Just a little rise.

Q And what is there in here? A It is fields.

Q And it is practically on the level with the road, isn't it? A It is little higher than the other.

Q Trifle higher than the road? A Yes. Like these two sticks here.

Q Doesn't slope up gradually? A Yes, and there is trees there.

20 *Mr. Holmwood.* Indicating about ten or twelve inches high, sloping gradually.

Q That condition is true all along this road, isn't it? A I didn't see the rest of the road.

Q Did you say this was Sunday morning? A I didn't say it was Sunday morning. That was on the twenty-third of December.

Q And where were you going that morning? A I was going to Perth Amboy.

30 Q On business? A On business. My brother telephoned me from Perth Amboy that I should go over because he was very busy and I should go there and help him out.

Q You had the store there? A I was interested at that time.

*Mr. Holmwood.* That is all.

*Louis Molideske, direct.*

LOUIS MOLIDESKE, produced as a witness, on behalf of the plaintiff, being duly sworn on his oath, according to law, saith:

*Direct examination by Mr. Kunzman.*

Q Where do you live? A Eighty Chatham street, Plainfield. 10

Q Are you the owner of the Ford? A I was at the time.

Q And you were driving it? A At the time; yes, sir.

Q Where were you sitting? A Sitting on the driving seat; left side of the car.

Q You have a left drive, so you sat on the left side? A Yes.

Q And Chrissafides sat where? A He sat alongside of me on the right, the entrance front side. 20

Q When you approached the curve on which the accident occurred, how fast were you going? A Well, I wasn't going over four or five miles an hour. You couldn't go very fast around that curve if you tried. The bank had a lot of stone on it, and you couldn't get off the road.

Q Did you see the White motor truck of the defendant company? A Not until they pretty near come to the curve, that is, seen him coming straight on. He was making for a line that way. 30

Q Did you give any warning? A I sounded my horn.

Q Did he sound his? A Not to my knowledge. Haven't heard it.

Q Would you have heard it if he had? A I surely ought to.

Q Will you point to the map and show the direction in which the White motor came and just show the— 40

*Louis Molideske, direct.*

*The Court.* Was this a motor truck? I understood it was a passenger car.

A It is a passenger body to carry passengers on it. Originally I think it was a truck. It is a passenger body.

10 Q It is a limousine body? A Yes.

Q Will you take the pointer and point out the course taken by the—what direction were you coming? A Here is coming from Plainfield. That road leads in. Park avenue runs about here. The road leads into the right on the way to Metuchen. This road here turn up to Oak Tree. This is coming from Metuchen towards Oak Tree. I was coming along here. When you get here there is a pump right there and two rocks. It comes into a "Y" like.

20 Q This is elevated? A Yes, it is raised and some stones around the pump right there. I was coming in right along here just about half way to the curve, was about there, a little bit this way, and I noticed the other car coming along on the right side of the road facing that way.

30 Q On the right side of the Oak Tree road, you mean? A The road from Metuchen to Oak Tree. He was coming on the right side pretty close to the end of the road too. He was coming along that way making fair time. Well, I noticed him, and before time I come to the curve, and that is about a couple of hundred feet, and he was coming along the other way towards Oak Tree, or turning that way. I don't know. Just he got about here he made a short turn right in this way and there is where he struck. Had a collision.

*Louis Molideske, direct.*

*By Mr. Holmwood.*

Q Around here where this mark "T"? A No, sir; not to my knowledge. He swung right up short that way. You see, had he swung over here, swung there, maybe a half circle and come right there to the left.

Q When you mean short, you don't mean that he cut over on this side? A What I mean short, instead of staying on the right, he come along that way, turned this way, he went around that road, you see, he come right in this way.

10

Q He had to turn short to get the road, or else he would have to go around the park? A There is no park there. It is a place about four or five foot square.

Q Well, he had to go around that? A That was the safest way.

20

*By Mr. Kunzman.*

Q Could he have kept to the right? A Certainly he could have kept to the right. When he come in that way he cut in and come in on left. Took a short cut and when he hit me he hit me in the front radiator, and just drove me up on the bank about twenty feet, I should judge, away from where the collision happened. Just turned the car right around and drove it right up on the bank. I had chains on the car, I think they kind of stopped it, or else I would have been over the fence.

30

Q How far were you from the elevation of the road, or from the side curb of the road when you were struck? A What do you mean? I was right close to the curb there. There is no curb there. There is a little elevation there and grass on it. There was a snow bank there at the time. Road was clear.

40

*Louis Molideske, direct.*

Q And by the force of the collision you were pushed about twenty feet back? A About twenty feet back.

Q Point the direction you were pushed? A Started out like this. There is a tree right in back of it. I came within a foot or so back of the tree.

10 Q He sounded no warning? A No warning whatever.

Q How wide is the road at that point? A This road here isn't as wide as the main road.

Q Do you know how wide it is? A I don't know. There is enough room for two vehicles to pass one another. I couldn't say how wide the road is, but I know there is room enough for two cars to pass one another.

20 Q Was there plenty of room for him to pass you?

*Mr. Holmwood.* I object. Testimony is the road is twenty feet wide. It is a matter of conclusion whether there is room or not.

*By the Court.*

Q How much room was there between you and the parkway at the time of the collision? A Well, if I understand you right, you mean if the two cars were side by side?

30 Q No. How much room was there between your car and the parkway? A I should judge about twelve feet or so. Perhaps a foot more or so. Between the outside of the car and the inside of the road.

*By Mr. Holmwood.*

Q You mean on your left? A Yes.

*Louis Molideske, direct.*

*By Mr. Kunzman.*

Q And the motor bus of the defendant, is it a closed car or open? A Closed car. Limousine body.

Q Is there anything on the side of the place where the driver sits? A What do you mean by anything on the side? 10

Q On the side of the car, is it open or is it closed in there? A What part of the car?

Q The front where the driver sits? A There is side curtains on it.

Q Did he have the curtains down? A Curtains were down, yes.

Q What did he say when he struck you? A Well, I happened to speak first. We both got out of there and I said, this is a fine mess.

*Mr. Holmwood.* Never mind what you said. 20

Q Say what he said. A I told him, this is a fine mess. Well, he said, I couldn't help it. My ideas was to go straight from Oak Tree. When I got to the corner I happened to think the road wasn't good and I made a short cut and I didn't see you coming. If there is any damage done my people will take care of you.

*Mr. Holmwood.* I object. This is binding upon the one defendant, but not upon the two defendants. 30

Q What happened to your car? A Why, he smashed the radiator in, front axle, one of the front wheels, the spokes were cracked and the lamp gone, the steering rod was bent.

Q What happened to the defendant's automobile? A Well, all I could notice right there, one of his tires blew out, and the front axle was bent. 40

*Louis Molideske, cross.*

Q Was his a heavy car? A Yes.

Q What happened to you? A Nothing happened to me. I just hit the steering wheel and got out of wind for a second, and that is all.

Q Did you see what happened to Chrissafides?

A Well, when I looked at him he was down on his knees on the floor.

Q With what force, if any, did he strike you?

A What force? What do you have reference to, the amount of speed he was making?

Q Well, suppose you tell us how fast he was driving when he struck you? A Well, I should judge he was driving about sixteen or eighteen miles an hour. Around that neighborhood.

Q Could he have seen you if he had looked?

A No reason why he couldn't see me. His wind shield was in front of him, and there was a mica glass in the side curtain.

Q Did you take Chrissafides home afterward?

Q No, sir; I did not. I telephoned for an automobile for him.

*Cross examination by Mr. Holmwood.*

Q How long have you driven a car, Mr. Molideske? A Four years.

Q And you are familiar with that road? A I think I am; yes, sir.

Q You are familiar with these passenger carrying automobiles that use that road, aren't you, like the automobile that you collided with that day? A I know he comes over that way.

Q You are familiar with that automobile? A I have seen the automobile. I have passed him many a time. Whether it is the same one or not. Some have other cars.

Q Carry several passengers, don't they? A She carries passengers. That is what they are driving the machine for, for that purpose.

*Louis Molideske, cross.*

Q Where were you when you first saw it that day? A On the road? I should judge I was about here, just about to make the turn.

Q That was when you first saw it. Shall I mark that, sir, right here? Is that right? A Do you mean where the collision happened?

Q No. Where you first saw him? A When I first saw him was about here. 10

Q What is your name? A Molideske.

Q I will put an "M" here where you first saw him. Where were they then? A Well, I should judge about there (indicating).

Q About how many feet away would you say, roughly? A Well, it must have been a couple of hundred feet away when I seen them. To go around the curve.

Q Several times the length of this room? A Yes, that is about right. 20

Q When did you first see that he was going to take the curve? A When he was taking the short turn?

Q Yes. A Around here then.

Q You were here when he made the turn. I will mark "M 2". That is where he made the turn, "M 2" where you were when he made the turn, is that right? A That is where the turn was made when he got there. That is where I was struck, about there. 30

Q He was about sixty feet away from you then when he made the turn to come into that road? A I don't think there is sixty feet on that road. I don't think the road is that wide.

Q I mean from where you were to where he made that turn? A Taking it across that way?

Q Yes. A I don't think there is sixty feet there. 40

*Louis Molideske, cross.*

Q Well, we will put a rule on it and see whether there was sixty feet or not. This is ten feet to the inch. Here is "M 2." Suppose you indicate to me where you saw him make the turn.

A He made the turn about here (indicating).

Q That was when he first started to make the  
10 turn that you were on? A Yes.

Q That is "M 3." The "M" signifies your view of the accident. The distance between "M 2" and "M 3" is eighty feet, eight inches. A Take it across that way.

Q I am talking about your line of vision. You could see eighty feet away when he made that turn. A I said before from here he was away two hundred feet when I first saw him coming along the road.

Q And when you first saw him start to make  
20 the turn he had come a little closer? A A little closer.

Q So that he was then about that measurement, about eighty feet? A Perhaps so.

Q I don't mean to the foot. I just want to give the jury an idea. Then he turned in here. And the collision occurred at the narrowest point of the road, is that right? A Well, I guess that road is about the same width.  
30 The road from here to there is about the same width until you come to the curve, and then she spreads out wider. That is only a short distance here where the road is narrower.

Q This road was on the south, this little place they call the parkway, or stone foundation, or whatever it is? A It is a pump.

Q Is a road that is used right along by vehicles coming both ways? A Oh, right along.

Q It is used by vehicles going to Plainfield  
40 and coming from Plainfield? A It is used by

*Louis Molideske, cross.*

vehicles going to Plainfield and coming from Plainfield; yes, sir.

Q When you saw him come along here about how far were you from this line of the street, the south line of the street? How many feet were you from the south boundary of the road? A Do you mean from what you call the curb? 10

Q No. You are riding along now and you are coming along here. Now, how far were you—there is no curb there, is there? A No.

Q How far were you from the south side of the road? How far away? A What do you mean by the south side of the road?

Q This is the south side of the road. This is the north side. Now, how far were you from the south side of the road? A This would be the side of the road where you can't drive any more. 20

Q This is the side you were on? A Yes.

Q How far from this line were you? A How close to it?

Q Well, close to it? A I wasn't six inches away from the side of the road.

Q Positive about that? A You can see where it happened there.

Q You were six inches after it happened, or before? A No, before. I had chains on. 30

Q Snow on the ground? A Some parts you couldn't get through with your chains. On that part it was pretty bare.

Q Snow deep on the bank? A No.

Q At that time the entire portion of this road was not traveled by automobiles? A Yes, it was. It was the best road to travel on.

Q I mean, the whole width of it wasn't traveled? A There was no snow I should judge from about there, there was no snow on the road. 40

*Louis Molideske, cross.*

Q None at all? A Very little.

Q Road was good and hard that morning? A No, they weren't hard. It was thawing.

Q It was a good, clear morning? A Clear morning.

10 Q You could see a long ways away? A Yes.

Q If you take a look from here you could see about one thousand feet across these lots, that is, to this road, couldn't you? A A person wanted to take a chance on his life, if he wanted to cross the road, perhaps he could.

Q Do you mean to say that coming up here in an automobile, if you take a glance across here you take a chance on your life? A Absolutely as by coming there with trees on the side.

20 Q Where were the trees? A Trees right along here.

Q About how far apart? A Well, they are away from the road I should judge about five or six feet, or perhaps more.

Q Now, what I want to ask you is, when you saw him make that turn did you have any reason to believe that you would not have room to get through there and have room to pass him? A No.

30 Q You could not tell when you first saw him whether you had enough room to pass or not, could you? A When I first saw him he was coming along straight on the road on the right side, right along that road, and it looked to me as if his intentions was to go straight on, and I got about here to make half of the curve, he made a short stop—a short turn, rather. Before I had time to do anything he was on top of me. Had I know he was going to turn there I could  
40 have got up on the bank.

*Louis Molideske, cross.*

Q Did you make any effort? A To turn out of the way, that was the only chance I had.

Q Did you make any effort? A I told you I had no chance to do anything.

Q Do you mean to say that he was eighty feet away and you didn't have any chance to turn out? A I don't know whether he was eighty feet or not. I won't swear to it. If I had thought at the time, perhaps I would have measured the distance. 10

Q He was away over this end of the road before he made the turn? A Yes.

Q And you hadn't come within a good many feet of the corner here, had you? A Which way?

Q Take this line here, how far away were you from the road? A I told you just about there (indicating.) 20

Q Then you would say the speed you were traveling when you saw him make this short turn, as you said, you had no opportunity to stop your car or avoid the collision? A I didn't see—I couldn't see whether there was going to be any collision. I was turning to the right, right close to the curb, and that man was coming there, and when he made that short turn I had no chance to do anything. 30

Q Well, didn't you have a chance when you were eighty feet away? A Because it took so short time I didn't get a chance to do anything.

Q You must have been coming eighty feet. A He was going fast, not me; I won't swear there was eighty feet there, because I think if you took his car and put it across the road I think it would take up the entire width of the road. 40

*Louis Molideske, cross.*

Q That is an ordinary seven passenger car?

A That is all. I think it would take up the width of that road, so there is no use trying to tell me there is eighty feet there. I won't swear to it.

Q It is an ordinary seven passenger car? A

10 Yes, there is all sizes of cars.

Q Do you mean to say it would take up a road twenty-six feet wide? A Take up enough not to let anybody else go by.

Q That is enough of it. The length of his car across the width of this road. He was coming head on towards you? A He was coming head on towards me. Just as he go here he made a short turn.

Q Well, Chrissafides said he turned up here about where "T" is. A I don't know what he said. I am merely telling you what took place, what happened, what I have seen and known.

Q When you say a short turn, you mean he swung suddenly? You don't mean that he didn't pass over to the right side of the road? A Instead of taking the road and coming around this way, as he should have done, he cut right across the left this way.

Q Mr. Chrissafides said he made that turn as he should have done. A I am not answering for Mr. Chrissafides.

Q You were both there together? A I was driving.

Q Both sitting on the front seat? A I couldn't tell you where he was looking. I know what I was looking at. I done the driving.

Q How long have you known Mr. Chrissafides? A Couple of years, I should judge.

40 *Mr. Holmwood.* That is all.

*Ellis Campus, direct.*

ELLIS CAMPUS, a witness produced on behalf of the plaintiff, being duly sworn according to law on his oath, saith:

*Direct examination by Mr. Kunzman.*

Q You are a practising physician in Plainfield? A I am. 10

Q Do you <sup>know</sup> the plaintiff, Chrissafides? A I do.

Q How long have you known him? A I know him since May 20th, 1915.

Q Are you his regular family physician? A I treat him; yes, sir.

Q More than once? A Yes.

Q Did he come to you on December 23rd for medical attention? A He did.

Q Did you examine him? A I did. 20

Q What did you find? A He had a contused, incised wound of the right side of the face in the region of the right cheek, and he had a swollen, discolored right lower lid. And he also had a laceration of his right fore finger about an inch long.

Q As to the injury on the cheek, what was it? A It was a cut about one-eighth of an inch deep.

Q Flesh wound? A Yes. Incised wound, and beside it was contused, black and blue all around it. 30

Q Did you treat them? A Yes, I did.

Q Did you find anything else the matter with him at that time? A At that time I didn't find anything else.

Q When did he come to you again? A I saw him December 29th, the next day.

Q Was that the day afterward? A The following day. 40

*Ellis Campus, direct.*

Q Why did he come to you then? A Well, I had advised him to come back, to see him about his wounds. I redressed his wounds on his face, and then he complained at that time of pain in the left lower abdominal region. Upon examination I discovered that he had a protusion, small  
10 protusion, about half an inch, or five-eighths of an inch, which became larger on coughing, and disappeared upon lying down, and which reappeared upon standing up, and also upon coughing became much larger.

Q In other words, it was a rupture? A I made a diagnosis of hernia, which is rupture.

Q Did he complain of pain? A He complained of pain, that is the symptom he complained of, and he also said he complained of  
20 the swelling. He drew my attention to the swelling.

Q Did it appear recent to you? A Apparently a recent swelling.

Q Did it seem to be in the first stages? A Small rupture, yes.

Q Have you seen the scar that he has on the left side of his abdomen? A I have.

Q Is this rupture or hernia, the present one, is that the same as the old one, or is that an independent one? A Well, I just don't know  
30 exactly where his first rupture was, but from the anatomical location, it apparently is independent of the old rupture.

Q From your examination of the location couldn't you say with reasonable certainty whether the rupture is independent of the old one?

Mr. Holmwood. I object. He said he  
40 does not know where the old one was.

*Ellis Campus, direct.*

*The Court.* I will admit the question.

(Question repeated by stenographer.)

A I could say that it is a recent rupture.

Q How could the rupture have been caused?

A Well, from the history of the case, the injury and the fact that the tension was drawn about the abdominal strain which must have necessarily occurred, was probably the most important logical fact of the cause.

10

Q Would a sudden strain cause it? A It would.

Q You have heard the plaintiff describe the happening of the accident. Could you say from that whether that could have caused it? A It could have caused it, yes.

Q Explain how it could have caused it? A Why, the jarring and the violence and the abdominal strain which necessarily would cause the abdominal strain and would cause enough strain to produce a rupture of the abdominal wall and a subsequent hernia which would develop there immediately or a few hours or a few days after.

20

Q From your knowledge of the history of the case and of the plaintiff, as his family physician, and the examination of the injury, could you state your expert opinion as to whether the accident did cause the injury? A I could.

30

Q And what is your belief in that respect? A Well, my belief that this rupture is a recent one, because on November 18th, 1915, when I examined him for another illness, making a thorough physical examination, I discovered a scar in that region, but no hernia. Consequently from his history of the strain and the violence that alone could account for the rupture.

40

*Ellis Campus, direct.*

Q Do you believe that there could have been any other cause? A In this particular case, no.

Q You would not say that absolutely, would you? Would you say that absolutely? A Well, I know his physical condition and I knew the condition of his abdominal muscles and I know that  
10 there was no other cause to account for his symptoms that he appeared at my office December 29th. That is my own judgment.

Q Have you examined him since? A I have.

Q What treatment have you prescribed for him? A On December 30th, 1915, the rupture was slightly larger, and I advised the wearing of a truss.

Q What date was that? A December 30th, as a temporary means of relief and to prevent it  
20 becoming larger, and also advised an operation as the radical cure of his rupture.

Q So you believe an operation can cure him?

A I do.

Q Can he get along now without his truss?

A Well, I advised him to wear a truss.

Q Why did you advise him to wear a truss?

A So that that rupture should not become any larger and give him more serious symptoms.

Q Would it become larger? A It is slowly  
30 becoming larger; yes, sir.

Adjourned until 1:30 P. M.

*Ellis Campus, direct.*

Afternoon session, 1:30 P. M.

ELLIS CAMPUS, resumed.

*Direct examination* (Continued), by Mr. Kunzman.

Q Doctor, will you tell me whether the efficiency of a person who has a rupture is impaired because of it? A It is. 10

Q How? A Well, he can't do as severe work as before the time that he obtained his rupture because of the fact that he may cause the rupture to increase and cause it to give more severe symptoms.

Q And then the patient also has a fear of doing anything strenuous? A I suppose he would naturally not do anything to make the hernia larger, knowing that he has a hernia. 20

Q Do you believe the proper remedy is an operation? A I do.

Q How long do you think the patient would have to spend in the hospital to take an operation? A Well, about three weeks in bed and probably three weeks' careful treatment.

Q What is the average time? A The average is from five to six weeks.

Q Altogether? A From the time he can resume a fair amount of activity. 30

Q After the five or six weeks is he perfectly cured, or is there still something to be cured? A Well, the cure is there if the operation is performed and the patient uses some care in going about at first.

Q Can you give a reasonable estimate of the hospital expense? A Yes.

Q Will you state what you consider a reasonable expense of such an operation? A At Plainfield, where is now? 40

*Ellis Campus, direct.*

Q Yes. A Well, we figure upward of three—seventy-five to one hundred dollars, and hospital bed amounts to seventeen and a half a week for how many weeks as he has to stay there. Say five weeks at seventeen dollars and a half. There is a fee for the use of the operating room, and a  
10 fee for the physician who administers the anaesthetic.

*By the Court.*

Q About two hundred dollars, I suppose? A About that, yes.

*By Mr. Kunzman.*

Q Would you say these expenses are peculiar to Plainfield or in this locality generally? A Why, yes. The operator gets the largest fee. It  
20 depends upon who does it. The average operator would charge—

Q That is a reasonable cost? A Yes, that is reasonable.

Q I wish to show the injury to the jury, and I want you to point out, doctor, as to the reasons why you think the injury was caused by the accident, and why it is a new and independent injury and has nothing to do with the old one? A The  
30 present rupture is situated at this point (indicating). From the history when he saw me in November, and then prior to that time he told me he was operated on for a hernia, it was low down in the left groin near the outside. Apparently his previous rupture must have been in this region; this is the old inguinal rupture. His internal ring is apparently at this point. The rupture at the present time is apparently external and slightly above the internal abdominal  
40 ring, showing that it is not at the place where

*Ellis Campus, direct.*

usually inguinal rupures occur, because had this been an old rupture, it would have undoubtedly appeared a long while before this, and most probably at the outside, it usually is over the external abdominal ring down externally and going into the bag. From his history and from the appearance, it apparently goes through a new point altogether. Not the usual site of internal hernias. And the fact that it occurred so soon after an accident, and with the symptoms that he complained of, local pain and swelling, which becomes quite large, I made a diagnosis of a new rupture, and as I said before, I think it is probably due to the accident. 10

Q After an operation for hernia, how soon after can you tell whether there is a complete cure or not? A Why, a complete cure should be told within the first month or two. If any recurrence at all it always will occur within twelve months. That is according to statements of Rose and Carlos, surgery. That is the usual history in the average case if there is a recurrence. 20

Q And it is your firm belief that it is an independent— A Undoubtedly independent from the previous one. 30

Q Point out where he had the old operation? A This scar is an unusually long one. It extends from the point from about an inch above the internal inguinal ring and the hernia which pushes the skin in the region of the scar. The hernia comes from within outward and pushes the skin in the upper extremity of the scar.

Q The scar crosses the spot where the hernia is now? A The scar is beneath the place where the hernia is protruding I say beneath. In front 40

*Ellis Campus, cross.*

of it undoubtedly. Here is your scar and the hernia coming behind it.

Q Does it ever happen in an operation of this sort that you are not successful? A It does happen, yes.

10 Q What is the average mortality for operations of that sort? A Well, from my own—

*Mr. Holmwood.* I object.

*The Court.* I will let him give his experience.

A From my own experience, the average mortality is about one per cent.

*By the Court.*

20 Q Practically negligible, isn't it, doctor? A One per cent, is not negligible.

*Mr. Kunzman.* Take the witness.

*Cross examination by Mr. Holmwood.*

Q You have no knowledge of any intention on his part to undergo an operation? A Why, yes. I advised him to be operated upon.

30 Q I know you advised him, but does he intend to do it, so far as you know? A He has expressed his opinion that he would like to have the operation performed.

Q Did he tell you, when he first consulted you, about the operation that he had had? A I noticed the scar and I asked him about it and he spoke to me and he said that he had an operation for hernia there some time ago.

40 Q When did you first notice the scar? A I noticed his scar the very first time I made—he became my patient. That was on May 20th, 1915, he had the scar there.

*Ellis Campus, cross.*

Q That was the first time you saw the scar of the old operation? A That is the first time I ever saw the patient, yes.

Q And that was the first time that you saw Mr. Chrissafides? A Yes.

Q For what did you attend him then? A He came in for a contusion of his eye. That is, an inflammation of the left eye. 10

Q Was it necessary to examine his groin to find out the condition of his heart? A I always do a thorough physical examination on all cases.

Q What was the purpose of examining his groin for heart trouble? A Eye. I examined thorough physically, head, neck, chest, abdomen, extremities, on the first examination on every case.

Q Made a thorough examination? A Always do on first cases. 20

Q Did you prescribe anything for him at that time? A For what? For the eye?

Q Yes. A I operated upon his eye there.

Q Which eye was that? A His left eye.

Q How many times did you see him in May, 1915? A That was May, 1915.

Q How many times did you see him then? A I advised him, after I operated upon him, to see an eye specialist— 30

Q I ask you how many times did you see him? A That day?

Q Yes. A Just once.

Q During May how many times did you see him? A Just once.

Q Only once? A Yes.

Q And did you see him from that time until after this accident? A I seen him, yes. I seen him September 18th, he came in for some condition. 40

*Ellis Campus, cross.*

Q What did you see him then for? A He had acute rheumatic fever. Articular rheumatism.

Q He hadn't been a normally perfect man prior to that time, had he? A Perfectly healthy.

10 Q How many times did you visit him in September? A Just came to the office September 18th, once.

Q And the other time in May he came to the office to see you? A About the eye, yes.

Q Do you keep records? A I do.

Q Have you got your records with you? A Yes.

Q Would you mind letting me see your records for May, 1915? A Yes.

20 Q Do you keep any other records besides these loose cards? A No. No others.

Q All these entries are made at the same time? A Yes. After my physical examination.

Q Both on the front and back of these? A Front and back. This is a new card.

Q Which of these entries shows the May transaction? A May 20th he was to see me.

30 Q What does this show on the other side? A May 20th once, and then he came in to see me September 28th, and then he came in to see me November 18th, and then he came in to see me December 23rd, 1915, and then December 24th and then December 30th and January 2nd, 1916.

Q Is this a copy, or is this the original? A These are my originals.

Q These are the originals you made each day at that time, is that right? A Each day I make my physical examination.

40 Q You just took out his card and made his record? A That is right.

*Ellis Campus, cross.*

*Mr. Holmwood.* I ask to have these marked.

Q You are sure they were not all written at one time? A Oh, no.

Q Positive about that? A You can see that.

(Card marked D. 1 for identification.)

10

(Card marked D. 2 for identification.)

Q These are in your handwriting, doctor? A Yes.

Q Showing you D. 1 for identification, the entries on the back of that card showing the dates November 10th and December 23rd? A Yes.

Q I show you the writing above the date November 10th. A Yes.

Q They were all written on the dates mentioned there? A Dates mentioned there; yes, sir. Each one separately.

20

Q On this D. 2 for identification, those entries, one was made in December and one in January. A Yes, sir.

Q Now, doctor, you said that in cases of hernia there is some slight loss of efficiency. Is that right? A There is some loss of efficiency, yes.

Q In some cases? A In the average case, yes.

30

Q Not in every case? A Well, it depends upon the character and the size.

Q A great many people have hernias? A Yes.

Q It is a very common ailment, isn't it? A Well, depends on what you call common. No. I don't know.

Q Nothing unusual about this hernia, is there? A Yes. It is abnormal.

40

*Norman N. Currie, direct.*

Q It is an extra large one? A This one, the present, no, it is not extra large.

Q In what way is it abnormal? A Every hernia is abnormal. A normal individual has no hernia.

10 Q I am speaking about this hernia. Is this a normal hernia? A A hernia itself is an abnormality.

Q Coming to this particular case, not what the effect of a hernia generally is, do you believe that it interferes at all with his work? A It does apparently.

20 Q In what way? A Well, from the history I got from the patient and from my own knowledge of hernias, the pain and so forth they give in hernias, and the constant thought of the fact that it will always get larger, and it causes reflex symptoms like a drag on the intestines, and if it does get larger there is a danger of constriction and strangulation, and then the mental effect upon the patient.

Q Is this the truss you prescribed for him? A No. I advised him to go to the Pomeroy Company to be measured for a truss.

*Mr. Holmwood.* That is all.

30

NORMAN N. CURIE, a witness produced on behalf of the plaintiff, being duly sworn according to law on his oath, saith:

*Direct examination* by Mr. Kunzman.

Q You are a practicing physician and surgeon in the City of Plainfield? A I am.

Q How long have you been? A Eighteen years.

40 Q Did you examine Chrissafides? A I did.

*Norman N. Currie, direct.*

Q When did you examine him? A 25th of January, and I examined him this morning.

Q You examined this rupture? A I did.

Q In your opinion, doctor, is that a recent rupture? A Yes.

Q Very recent? A Well, considering the size of it when I saw it, it was of a recent date. 10

Q It was larger the last time you saw it? A It was larger when I examined it this morning than it was in January.

Q From your examination of the injury, do you believe that the first operation six years ago cured him? Does the scar show that he was cured from his last hernia that he had six years ago? A He had a successful operation of his hernia six years ago. 20

Q You have no doubt about that? A No.

Q Do you believe that this injury is separate and distinct from the old one? A This is independent.

Q From the plaintiff's description of the accident, do you believe that the accident could have caused this injury? A Yes.

Q How could it have caused it? A Well, with his sudden forward—being suddenly thrown forward, and with the effort of his trying to save himself, sudden forcible muscular contraction there of the abdomen. 30

Q Do you believe from the circumstances of the case, from your examination of the injury that the burden of facts goes to show that the accident did cause the injury?

*Mr. Holmwood.* I object.

*The Court.* The question is overruled in that form. 40

*Norman N. Currie, cross.*

Q What is your opinion of the cause of the injury? A Well, according to the history, his hernia was due to the injury.

*Mr. Kunzsmann.* Take the witness.

*Cross examination by Mr. Holmwood.*

10 Q Doctor, it is not an unusual thing for a hernia to re-occur at the site of an old operation, is it? A Well, it is rather unusual.

Q I beg pardon. A It is.

Q But it does happen? A Oh, it does.

Q Previous operation for hernia would not discount a recurrence at the same site, would it, at the same spot? A It would not discount it.

Q It is possible for it to come at the same spot where the previous operation was, isn't it?  
20 A It is possible, yes.

Q When did you first see this case? A January 25th.

Q That is about a month after the accident?  
A Yes.

Q And what was the condition of the hernia then? A Why, he had a small protrusion in the upper angle at the junction of the internal ring, the abdominal opening.

30 Q Did you form any opinion from what you saw at that time as to how long that had been there? A Judging from my own knowledge of those things, it was my opinion that it was very recent.

Q And where was it with reference to the scar of the previous operation? A Right up above. The scar extended right over a little above the opening, or the ring, the internal ring.

*Motion for non-suit.*

And the protrusion was at the upper angle of the opening of the internal ring.

*Mr. Holmwood.* That is all.

*Mr. Kunzman.* Plaintiff rests.

Plaintiff rests.

#### MOTION FOR NON-SUIT.

10

*Mr. Holmwood.* I move for a non-suit as to both defendants upon the following grounds:

First, that there is no proof of any negligence upon the part of either of the defendants. The evidence is very clear. Both of the witnesses to the accident on behalf of the plaintiff testify that he made a wide swing and turned in on the right hand side of the road. The only evidence we have, aside from that, is that they came into collision. The mere fact of a collision is not sufficient. The plaintiff must show by a fair weight of the evidence that some act of negligence has been done, or something was omitted to have been done on the part of the defendants, for which they can be held. The testimony as to the blowing of horns is immaterial. There is no legal duty to blow horns at the corner of a wide space like that. Nor is there any testimony in the case that either of the parties were driving at an illegal rate of speed. There is absolutely no testimony to establish negligence on the part of either defendant.

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Second, on the second ground, it appears that it is a clear case of contributory negligence upon the part of the plaintiff's driver. He testified he could see across this lot and

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*Motion for non-suit.*

could see the approach of this automobile. He testifies, by marking on the map here, the points "M 2" and "M 3" the distance apart the automobiles were apart when he first saw them make the turn. I am not saying that he should have anticipated that he was to  
 10 make the turn one thousand feet across, but when he came to that point I say that distance away and saw the turn was to be made, he made no effort to get out of the way.

*The Court.* What do you do with the statement of the chauffeur of the Ford car that one of the defendants told him it was his fault and that he would pay the damage? Is not that enough to go to the jury?

*Mr. Holmwood.* That statement I concede  
 20 may be binding as against the chauffeur, but not as against the defendant, the Brunswick Motor Car Company. I am going to the situation of the Motor Car Company in a moment. However, a mere statement of that kind, an admission made that he would pay damages should be considered by the Court, not as the proximate establishing any negligence, or showing the proximate cause of  
 30 the accident, when it appears affirmatively upon the facts that his opinion of the law as to whether he was responsible or not, can have very little weight here. We must take the facts.

*The Court.* I have to let it go the jury, don't I?

*Mr. Holmwood.* As to the defendant Knauss that admission is subject to contradiction.

Third, I now come to the third point as to  
 40 the Brunswick Motor Car Company. There

*Motion for non-suit.*

is no evidence in this case that the car in question was being used in the business of the Motor Car Company, in the light of the case of Duran *vs.* Thompson, with which your Honor is probably familiar, in 71 Atlantic, that proof must be affirmatively shown.

10

*The Court.* The Duran case was a case where a girl took her father's car without his knowledge. You will find a car that belongs to a motor company in someone's possession, it is at least—

*Mr. Holmwood.* That is not sufficient. There is no testimony the father owned the car. They were trying to hold the father upon the master and servant, that the girl was the servant of the father to drive the family out and take them upon the pleasure trip, and the father knew she had the car. But she was not using it at the time in the scope of any employment on the part of the father, and that must be affirmatively shown. And then as to the situation of the defendant Brunswick Motor Car Company on the facts as to negligence, the contributory negligence, of course, the statement of the agent cannot bind the principal in the absence of showing the agency. The mere allegation that Knauss may have said to the driver—

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30

*The Court.* There is some testimony here by the chauffeur of the other car. The testimony of negligence is very slim, but there is just enough, in my opinion, to go to the jury, from the testimony of the driver of the other car, who said that the defend-

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*John Knaus, direct.*

10 ant's car suddenly turned in and ran all the way across to the left hand side where he was going and ran into them, although there was room enough for him to pass. That makes it a question for the jury to determine whether the driver of the motor bus was exercising proper care.

*Mr. Holmwood.* I agree that is a very arguable point so far as the defendant Knauss is concerned. There are two defendants.

*The Court.* If there is any doubt about the motor bus liability, I will permit Mr. Kunzman to call Mr. Knauss and ask him who he was working for. Is not it admitted in the pleadings?

20 *Mr. Kunzman.* I understood that was to be admitted, because I had served interrogatories on that point and did not receive them until this morning. I served them a month ago, acknowledged service on the 31st, and I was assured over the telephone that there would be no question about that, that he was driving the—Mr. Holmwood understood—

30 *Mr. Holmwood.* I have answered the interrogatories. You can offer them in evidence.

*The Court.* Call Mr. Knauss.

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

*Direct examination* by Mr. Kunzman.

40 Q Are you employed by the Brunswick Motor Company? A Yes, sir.

*John Knaus, direct.*

Q And were you on December 23rd employed by the Brunswick Motor Company? A Yes, sir.

Q Were you employed by the Brunswick Motor Company at the time of the accident? A Yes, sir.

Q In the business of the company? A How is that? 10

Q You were working for the company at the time the accident occurred? A Yes, sir.

Q What are your duties? A Chauffeur.

*Mr. Kunzman.* I wish to offer the interrogatories.

*The Court.* You do not need them.

*Mr. Kunzman.* That is as far as I want to make him my witness.

*The Court.* Cross examine. 20

*Mr. Holmwood.* That is all.

*The Court.* I will deny the motion and allow you an exception.

*Mr. Holmwood.* I have not opened as yet.

*The Court.* I thought you opened this morning.

*Mr. Holmwood.* No, I didn't.

*The Court.* Your time is passed. 30

*Mr. Holmwood.* Before starting in on the defense I wish to say this to the Court, that if possible, I have one more witness, a doctor, and I am informed that he is out of the State, he is in New York, as I understand, in the hospital, and I do not believe there is any chance to get him today.

*The Court.* We will get as far as we can.

*Mr. Holmwood.* The physician examined this man early in January. 40

*John Knaus, direct.*

JOHN KNAUSS, re-called.

*Direct examination by Mr. Holmwood.*

Q Mr. Knauss, what kind of a car were you driving the day of this accident? Describe it to the jury. A It was a White limousine, seven  
10 passenger, including the driver.

Q A little louder. A Seven passenger White limousine.

Q How long had you driven an automobile?  
A Three years.

*By the Court.*

Q What is that, Mr. Knauss? You say "White"? Was it originally a limousine? A No. It was a White motor truck which was with a limousine body built on.  
20

*By Mr. Holmwood.*

Q And carries six passengers besides the driver? A Yes.

Q Where were you going that day? A To Plainfield.

Q Now, will you tell the jury what occurred? Use this pointer and show them how you came along the road and what occurred when you got to the curve here? A Well, I was coming from  
30 Metuchen, going to Plainfield, and I had my side curtains down. I glanced out as I came along here through the side curtain, the mica in the side curtain and I didn't notice anything along here at all. The road apparently seemed clear all the way across. So naturally I came up here and made my circle around in here. All of a sudden I happened to spy something and I made a yank with the car off this way (indicating)  
40 around here, made the yank off sharp in this

*John Knaus, direct.*

way, and then off here. Naturally he swung this way and my left front wheel caught his left front wheel. Say, for instance, those are the tires, well, they caught right in, sort of locked in on the wheels.

Q Did the cars go along together after the wheels became locked? A No. As I struck him it seems it pushed his tail end around and the front wheels were still in the road here, and the rear wheels were back here. 10

Q And where did your car stop after the collision? A Why, I pulled up about right here (indicating).

Q About how far did you go after that? A Oh, probably seven or eight paces. That is about fifteen feet, isn't it?

Q Where was the other car after you stopped? A Why, he was about right here (indicating), his tail end. 20

Q Did you hear his automobile approaching?

*Mr. Kunzman.* Just point out where it was.

Q Where did you say it was? A Right about here.

Q How was it heading? A His car was setting about in this position. Naturally pushing him around this way he would set off this way, because his car was lighter. 30

Q Your car was a great deal heavier than his car? A Certainly was.

Q What is the weight of your car? A 5,400.

Q Did you hear anything as you approached the corner? A No, I did not.

Q Can you give us any indication about how fast you were going at the time? A Oh, I should judge I was going probably fourteen or 40

*John Knaus, direct.*

fifteen miles an hour. Naturally on a curve like that.

Q Did you make any statement to either of these two gentlemen, Mr. Chrissafides or the other gentleman, at the time of the accident? A Why, not just exactly. I told him the way it  
10 came around, probably it did naturally look as if it was my fault in a way. That is just the way I put it to him, and if there was any damages, of course, the company would have to settle, and that is all there was to it. That is the very statement I made.

Q That was merely your opinion? A My opinion.

Q What was there in the way you came around that gave you that opinion at that time? A Well, I don't know. The road was narrow  
20 at the point where I hit him, and, of course, he could have helped me avoid it in a way if he had only swung over a little more as I swung that way, he could have swung that way just an inch I would have cleared him.

Q Did you make any effort to direct your car past him when you saw he was there? A Yes, sir; I did. I pulled sharply to the right from his left.

30 Q And what did he do? A Why, he just— at the time I saw him, why, he was sticking his head out of the wind shield, holding fast to the wheel this way. The car coming straight on. Instead of making a move either way.

Q He didn't budge out of the road at all? A Not to my knowledge.

Q Didn't give way an inch either to the left or right? A No, sir.

40 Q Now, was there anything in the way, on that side of the road, in the case of an emergency,

*John Knaus, cross.*

is there any space here that a car could have gone? A Yes, sir.

Q How much space is there there? A Why, the space of about, oh, the dirt is probably from here back to the wall, the trees are set in on the property.

Q Are they big trees or little trees? A No. 10  
They are probably about that large around (indicating).

Q About six inches in diameter? A About six inches.

Q And about how far apart? A Oh, I should judge probably twenty or twenty-five feet apart.

Q And how do they set with reference to the edge of the road, whether on the edge of the roadway, or further in? A Further in. Probably, as I say, about from here ten or twelve feet. 20

Q They are in from where you sit to the wall about twelve feet? A About twelve feet, probably.

Q His car didn't turn nor move at all? A No, sir.

Q He kept straight on the way he was going?  
A Straight on; yes, sir.

*Cross examination by Mr. Kunzman.*

Q Was he on the right side of the road? A He was on the right, yes. 30

Q How far was he from where the elevation at the side starts? A How do you mean?

Q Is there an elevation at the side of the road? Is there a hill starting at the side of the road and coming up back towards the trees? A No. It is not a hill. It is just a natural incline comes off gradually and probably comes up about, I should judge, twelve to fourteen inches. 40

Q How far was he away from the place where

*John Knaus, cross.*

the incline starts going up? A Oh, that I couldn't just exactly say, in the excitement of the moment, I didn't take that much notice.

Q Could you tell whether it was far away or near? A Well, he was quite near to the edge.

Q What is the usual route you take from  
10 New Brunswick, is that where you go from? A  
New Brunswick, yes.

Q To Plainfield, what is the usual route?

*The Court.* Do you mean at this point?

*Mr. Kunzman.* Yes, at this point.

Q Do you always take the same road? A Well, it is according to the condition of the road.

Q You have your choice? Sometimes you take  
20 this road that goes in here, and sometimes you  
take this road? A Mostly the other road. In  
the winter that road was so bad we had the  
privilege of using either road. There is no set  
rule.

Q But you usually take this road, don't you?  
A Yes, sir.

Q Sometimes in bad weather conditions you  
take this road? A In some weather when the  
roads permit.

Q Did you have a passenger with you? A  
30 Yes.

Q Do you know his name? A Why, Deinzer,  
I believe.

Q Do you know him? A Yes.

Q Is he here in court? A No, he is not.

Q Did you see the plaintiff's automobile, or  
the automobile in which the plaintiff was riding,  
before you turned in? A No, I did not.

Q When did you first see him? A Oh, prob-  
40 ably it wasn't over two or three feet away from  
him when I spied him.

*John Knaus, cross.*

Q When you first saw him. How far away was he from the—from this road here to Metuchen, how far away was he from this road when you saw him? A As I came around here (indicating), about here (indicating), that is where I saw him.

Q Do you know how wide this road is? A 10  
I can't say exactly, no.

Q It has been stated before it is about twenty feet. Wasn't there plenty of room between his automobile and this side of the parkway for you to pass without colliding with him? A Well, I suppose probably there were.

Q How it is you happened to strike him? A Well, naturally taking the corner, if you think it is clear, you do not pull out as far as you would otherwise. If you happen to see anybody coming you naturally would pull out far enough to give them room. 20

Q If you had expected a vehicle there, you would undoubtedly have made the curve not so short and gone around? A I would have gone close up to this spot here (indicating), and swung over here. Along that edge.

Q Were you talking to the passenger at the time? A No, sir; I was not.

Q You were attending to your driving? A 30  
Yes, sir.

Q Did you give any warning signal that you were going to turn? A No, I did not. Didn't think it was necessary.

Q How far could you see from where you are passing, how far could you see? A I could see clear around here (indicating).

Q Did you look? A I did.

Q Didn't you see this car? A No, sir; I did not. 40

*John Knaus, cross.*

Q You didn't see it? A No, sir.

Q The car was there? A I know it was after I hit it.

10 Q Don't you think if you had looked you would have seen it? A Why, yes, I looked, but under the conditions, I had my side curtain down, and the curtain is in the center of where I sit, and I sat here and I glanced out. Well, naturally through this mica, or whatever it is, the vision is blurred a little. Well, I glanced out and saw nothing. In turning the corner with this man alongside of me said, look out, and just as I turned the corner I knocked the car.

Q The passenger saw it first? A He said look out when you make the corner.

20 Q Until that time you hadn't seen the plaintiff? A No, I hadn't seen a thing.

Q Isn't it a fact that you had first intended to go straight on as your habit is? A No, sir; I did not.

Q You didn't? A No, sir; positively not.

Q Point out on the map just where you made the turn? A I came up along here (indicating.)

30 Q Didn't you go further up here? A No, sir; I did not. There is where I went up there (Indicating.)

Q How long have you been driving this particular car? A Since last June.

Q Did you ever have the curtains on before? A Yes, sir.

Q Well, did you know that the vision was blurred when you looked through the mica? A Well, yes.

Q Yet you had the curtain down? A Yes.

40 Q And were going about how many miles an hour? A Not over twelve or fourteen.

*John Knaus, cross.*

Q You said fourteen or fifteen before. And you were going around a curve? A Fourteen or fifteen.

Q How far was the plaintiff's car pushed when you struck him? A Not very far. Just struck him and the tail end just merely swung around.

10

Q Did you hit him in the front? A Radiator. A glancing blow against the radiator. In the side of the wheel and the corner of the radiator here and smashed his lamp and the wheel and bent the axle.

Q Did you hear the signal of the plaintiff? A I did not.

Q Immediately after the accident didn't you say to the plaintiff and to Mr. Molidezky, it was my fault, didn't you say that, I didn't see you? A Not just exactly. I told him—

20

Q Did you state words to that effect? A I said that I didn't see him.

Q After the automobile came from Plainfield to take Chrissafides home did you say the same thing to Mr. Chrissafides and to Mr. Molidezky?

A Say what?

Q That it was your fault, that you didn't see him? A No.

30

Q Or words to that effect? A No, I did not.

Q Did you tell that to Mr. <sup>Hermstead</sup> ~~Holmwood~~? A I recognized his face, but I don't know his name?

Q Didn't you say to him, that you didn't see him? A Certainly I said I didn't see him.

Q That was the second time you said that, wasn't it? A Yes. That I didn't see him.

*Mr. Kunzman.* That is all.

40

*John Knaus, Re-direct—Re-cross.*

*Re-direct examination by Mr. Holmwood.*

Q You felt at that time a little bit responsible because you hadn't seen him? A Hadn't seen him. Naturally would.

10 Q How fast was he going when you did see him? Could you form any opinion? A Well, I couldn't just exactly say, no. The excitement of the moment—

Q Did he come upon you suddenly, or slowly? A Quite suddenly, yes.

*Mr. Holmwood.* That is all.

*By the Court.*

Q Mr. Knauss, at this time the business you were engaged in was as chauffeur for the Motor Company? A Yes.

20 Q And they were running a passenger service between Metuchen and New Brunswick and Plainfield? A Yes, sir.

Q And you were carrying a passenger at that time? A Yes, sir.

Q So that you were working for the defendant company? A Yes, sir.

Q In running the passengers back and forth? A Yes, sir.

30 *Re-cross examination by Mr. Kunzman.*

Q You collected fares, too? A Yes.

Q Why did you say "It was my fault?" A Well, I didn't just exactly say it was my fault. In the way naturally—

40 Q Or words to that effect? A Naturally anyone would think so, the way I came around the corner there, not seeing him, and pulling the corner sharp, you would naturally feel that way that you are a little bit to blame; I will admit that.

*Harry H. Satchwell, direct.*

Q Then you admit you were to blame? A Not altogether to blame, no.

Q Well, what could he have done to have prevented the accident? A Why, he could have simply have pulled sharp to his right as I did.

Q You said he was very near the beginning of the elevation, didn't you? A Yes, but it was a very slight incline. There is practically no elevation at all. It is a slight incline. A car would run up there and never know there was a bank there. 10

*Mr. Kunzman.* That is all.

*Mr. Holmwood.* That is all, Mr. Knauss.

HARRY H. SATCHWELL, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith: 20

*Direct examination by Mr. Holmwood.*

Q Doctor, at my request did you examine the plaintiff in this case? A I did on May 1st, 1916.

Q Where was that examination held? A At the office of Doctor Campus, in Plainfield.

Q That gentleman who testified here this morning? A Yes, sir. 30

Q Tell the Court and jury what you saw on that occasion? A My attention was directed to his left groin. In that part there was a scar about two inches long, showing several stitch marks, an old operation scar. Beneath the outer angle, the outer and upper end of this scar there was a small hernia about the size of the tip of my middle finger, about five-eighths of an inch in diameter. The muscles in the scar in some portion were thickened. The hernia was in 40

*Harry H. Satchwell, direct.*

the upper end of this thickening in the muscles. As I said, it was small, it was uncomplicated and could easily be reduced. The scar in the skin was very thin, and about one-quarter to three-eighths of an inch wide.

10 Q Is there any relation between the hernia as you saw it and the old operation? A From the history of the case there had been an operation for hernia some years before. From the appearance of the scar it was an operation scar. The hernia was in the upper end of what would be the scar in the muscles. Due to the operation.

Q And would that condition today be the result of the operation? A It could be.

Q Could it be caused by other causes? A Yes.

20 Q What? A Anything which caused an increase of pressure inside of the abdomen causing the bowels to bulge against that part could cause a stretching of the hole in the muscle, or the scar, and make a hernia. It could be due from anything to the outside causing pressure from without.

30 Q Did Mr. Chrissafides explain to you how this accident happened? A He said that he had been thrown forward, striking his head on the wind shield. He said he didn't know anything else about the injury, he didn't know how the rupture occurred.

Q In your opinion would the rupture arise from a throw of that kind? A With a man sitting on an automobile seat, with his knees bent, his thighs bent on the abdomen, being thrown forward, bending the thighs more, he would be in a position where he would be least apt to get a rupture from any cause.

40 Q Least apt to? A Least apt to.

*Harry H. Satchwell, cross.*

Q If it was not for this situation of an accident, and you examined that man, to what would you attribute his condition? A Without a history of accident I would say it came from the operation, it was the result of the operation, a recurrence of a hernia. There is nothing about—

10

Q Would it be possible for that to recur at this time, an operation performed six years ago? A It is possible at any time in the life of an operation for one to recur.

*Cross examination by Mr. Kunzman.*

Q Is this hernia independent of the old one? A It is, of course, not the old hernia. The old hernia was cured insofar as its disposition was concerned, by the operation. A hernia, as a recurrence after an operation, means a protrusion of the bowel through the scar. It would not be the same portion of bowel, and it would not be in the same place. We call it a return of the hernia.

20

Q But it is different then, isn't it? A Very naturally. The first hole was closed up by sutures, or stitches.

Q It is only a circumstance that he has an old hernia, it has nothing to do with this one, has it? A I would not be a bit surprised if this was a recurrence of the old hernia, independent of any injury caused. I say that for the reason that the scar and the skin is stretched to tissue paper thinness. That means that there must have been something under that scar stretching it for some time, at least a year.

30

Q Does this hernia appear very recent? A You could not tell from the size of the hernia, or the appearance, how long it had lasted. A her-

40

*Harry H. Satchwell, Re-direct—Re-cross.*

nia can be of this size and last a lifetime. The size of the rupture does not indicate, except as a possibility, the duration of its existence.

*Mr. Kunzman.* That is all.

*Re-direct examination* by Mr. Holmwood.

10 Q What would you say as to whether this man's condition at the present time, with reference to the hernia, interferes with his occupation? A The only way a small hernia can interfere with physical ability is by causing pain. That is, a hernia that is not complicated by inflammation. The pain is due to the bowel stretching up the ring in the muscles, the belly in the muscles. So long as he wears a truss and the bowel cannot push out and stretch that ring and  
20 cause no pain, it cannot cause disability.

Q Did you form any opinion, from your examination, as to whether he had pain? A Why, I could not tell from my examination. He did not complain of any on my examination.

Q Did you handle him? A Yes, I poked my finger in the ring and had him cough, and so on.

30 Q How did he act when you poked your finger in there? A He did not complain of pain. He allowed me to do it.

Q Didn't complain of pain. That is all.

*Re-cross examination* by Mr. Kunzman.

40 Q Isn't it usual for people having hernias to complain of pain if they do much walking, or have exercise? A You are making your question very broad. There are all kinds of hernias, and all sizes. Some are as big as grape fruit. A small hernia that is held in place by a

*Harry H. Satchwell, Re-cross.*

truss could not possibly cause pain. The pain is caused from the stretching of the ring.

Q What ring is that? A The new ring in the muscles the bowels pokes through. If the truss holds that back in place there can be no stretching. There is no other cause for pain in hernia.

10

Q How can that be cured? A By operation.

*Mr. Kunzman.* That is all.

*Mr. Holmwood.* That is all.

That is the defendant's case, with the execution of this additional witness.

*The Court.* With the exception of what?

*Mr. Holmwood.* With the exception of that other physician I spoke to your Honor about.

20

*The Court.* Gentlemen, the defendant is unable to get one of the doctors here whose testimony they need, and although we are all losing time by it, I think in the interest of justice we ought to have him here. So that you will be excused until Monday morning.

ADJOURNED UNTIL MONDAY,  
May 8th, 1916, at 9:30 a. m.

30

40

*Arthur H. Dundon, direct.*

NEW JERSEY SUPREME COURT.

UNION COUNTY.

May Term, 1916.

10 STRATTON CHRISAFIDES,

*vs.*

BRUNSWICK MOTOR COMPANY, a  
corporation, *et al.*

*Action at Law.*

*No. 27 in the  
List.*

20 Transcript of stenographer's notes of evidence  
in the above entitled cause, taken before Hon.  
George S. Silzer, Circuit Court Judge, and  
a jury, at the Court House in the City of Eliza-  
beth, N. J., on the eighth day of May, A. D.  
1916, at 9:30. a. m.

Appearances:

Irving Kunzman, Esq., for the Plaintiff.

William E. Holmwood, Esq., for the Defendant.

30 ARTHUR H. DUNDON, a witness produced on  
behalf of the defendant, being duly sworn ac-  
cording to law on his oath, saith:

*Direct examination* by Mr. Holmwood.

Q You are a practicing physician? A I am.

Q Where? A Plainfield, New Jersey.

*Mr. Holmwood.* The qualifications of the  
doctor are admitted.

Q Did you examine the plaintiff, Mr. Chris-  
safides, at my request? A I did, yes.

40 Q At what time, what date? A January  
11th, 1915.

*Arthur H. Dundon, direct.*

Q Will you tell the jury what you found as to his condition at that time? A Why, I found on examining this man he had a slight rupture, what we call a direct rupture. The gut was coming directly through his abdominal wound, or that is, through a scar where he had previously been operated on. It was small, about the size of a ten cent piece. The gut did not come through except on straining, or in making him cough, which is one of the tests we use to demonstrate whether or not he has a rupture there. 10

Q Was it observable except when he coughed at that time? A No.

Q Did you form any opinion as to the character of the rupture, and how long it had been there, from your examination? A Well, from observation of the wound, or that is, the scar, it looked as if the original operation had not been entirely a success, because the scar tissue over the wound was not regular and in perfect line, the way we would expect a wound that had healed immediately after operation. That is, it looked as if there had been some infection taken place and possibly sluffing, a destruction of tissue over the wound. 20

Q And did you form any opinion from that as to what was the cause of the rupture that you saw at that time? A Well, it may have been caused from the weakened tissues following the operation, or it may be caused by some other violence later on. It is impossible to state. 30

Q Did he tell you how long ago he had had the operation? A He told me ten years.

Q Did he say whether he had had more than one operation? A No. He had just the one operation. 40

*Arthur H. Dundon, cross.*

Q Did you form any opinion from your examination as to whether his condition at the time of your examination would interfere with his work? A Well, the rupture of that kind is so very small that unless he was doing heavy work it would not interfere a great deal with it. If he was doing heavy lifting and things of that kind it might cause him a good deal of pain and discomfort.

10 Q If the man was the owner of a restaurant and engaged in attending customers and doing part of the cooking, would you say that it would interfere with that employment? A Very slightly, if any.

*Mr. Holmwood.* That is all.

20 *Cross examination by Mr. Kunzman.* L

Q Doctor, after an operation for the rupture, how soon after can you tell whether the operation has been successful or not? A Well, authorities vary on that. Some men have made a period as long as three years after an operation, before it is successful. Ordinarily if a rupture holds up for three to six months I would think that it was a pretty successful operation.

30 Q Assuming in this case that the operation was performed about six years ago, would you say that it must have been successful if there was no re-appearance of it? A Well, no re-appearance until when?

Q Let us assume that the operation was six years ago, would you say that the operation was not successful? A Well, it is impossible to say. You mean considering his present condition with a hernia there?

40 Q Yes, sir. A I think it is impossible to say, because we are unable to say whether this

*Arthur H. Dundon, cross.*

rupture occurred three months after the operation or just occurred recently.

Q Isn't it the tendency for a rupture of this sort to get larger? A Yes, but nevertheless, a great many people have ruptures that do not grow very rapidly, and especially if a man is not doing heavy work. Depends a great deal on his occupation, whether the rupture grows fast and gets large or not. 10

Q Assuming your statement of authority that an operation, if made in three years—an operation, if unsuccessful will so appear in three years then it must have been at least three years since he has had this rupture, assuming your premises. Now, would you say that three years it would have reached a size larger than it is now? A No. It is perfectly possible for him to have had it longer than three years, without it gotten any larger. 20

Q Have you examined him since January 7th? A No, never seen him.

Q Suppose you examined him now and find it considerably larger in size. could you tell by the rate of growth whether it is a recent one or not? A No.

Q Was he wearing a truss when you examined him? A No. 30

Q Did you look whether there were any signs of his having worn a truss? A Not as I remember it, no.

Q Did you look? A Well, I suppose I looked, but I really don't remember whether there were any signs. I don't think there were, as far as I can remember, any signs of a truss.

*Arthur H. Dundon, cross.*

*Mr. Kunzman.* That is all.

*Mr. Holmwood.* That is all, doctor.

DEFENSE RESTS.

CASE CLOSED.

10      Mr. Holmwood sums up the case for the  
defendant.

Mr. Kunzman sums up the case for the  
plaintiff.

CASE CLOSED.

20

30

40

*Charge to Jury.***Charge to Jury.**

NEW JERSEY SUPREME COURT.

UNION COUNTY COURT.

May Term, 1916.

10

STRATTON CHRISAFIDES

*vs.*BRUNSWICK MOTOR COMPANY, a  
corporation, *et al.**Action at Law.**No. 27 in the  
List.*Charge to the Jury, by Hon. George S. Silzer,  
Circuit Court Judge, as follows:

20

Gentlemen of the Jury:

In this case the plaintiff sues to recover for a collision which occurred between his automobile and that of the defendant's. He claims that he has received damages as the result of that. The mere fact that an accident happened gives no right to recover. There must be more than that. There must be proof of negligence. The allegation of the plaintiff here is that the defendant, through its chauffeur, Mr. Knauss, and Knauss himself, who is a defendant, were negligent in the operation of this car, and that as the result of that negligence the accident occurred and the plaintiff was injured. So you must first take up the question as to whether there was negligence or not.

30

This case has a very refreshing aspect in one particular that is so often absent in cases of this kind. Frequently we find people who are in

40

*Charge to Jury.*

accidents of this kind trying to avoid responsibility and absolutely perjure themselves in order to do it. That is the reason I say it is rather refreshing to see this driver of this automobile, Mr. Knauss, upon the witness stand. He seemed to be an absolutely honest, truthful witness. And  
 10 the result of that is that you may determine, from his own testimony, whether you think he was negligent or not. You will remember that when the question was asked, "Did you admit that it was your fault?" or words to that effect, he replied, "Naturally anyone would think it was, the way I came around the corner there, not seeing him and pulling the corner sharp, you would naturally feel that way, that you were a little bit to blame. I will admit that." Then  
 20 the question was asked, "Then you admit you were to blame?" Answer, "Not altogether to blame, no." So take all the testimony and determine whether you think there was negligence or not. It is very difficult for me to feel that there was no negligence; a car coming along at a fair rate of speed and turning a corner sharp, as he puts it, and a collision. He looked, while some distance down the street, but did not look apparently as he came closer to the corner. But  
 30 it is for you to say, from all the evidence, whether this driver Knauss was negligent, or whether he was not.

If you find that he was negligent, then you come to the second question in the case, was there any contributory negligence on the part of the plaintiff and his driver. You see both parties upon the highway are obliged to exercise reasonable care, not only for their own safety, but for the safety of other people. So your second  
 40 question is, did the driver of the plaintiff's

*Charge to Jury.*

car exercise proper care. If the plaintiff's chauffeur was negligent, and that negligence contributed to the injury then, of course, he cannot recover. If they were both negligent they cannot recover. But if you find that the defendant was negligent, and the plaintiff was not, then you come to the question of damages. What is the amount that is sued for here, gentlemen? 10

*Mr. Kunzman.* Five thousand dollars.

*The Court.* Then you come to the question of damages.

The elements that you may consider in the question of damages are the pain and suffering, the bodily injuries that have been sustained, the effect on the health of the injured person, and you may consider as to whether that is temporary or permanent, and the pecuniary loss that has been the result of the injury so far as it relates to the sums expended to cure himself, because I charge you that there is no satisfactory proof in this case of a loss of money from his business, or in hiring help, which would justify you in finding any sum for that; but you may consider the other elements, the pain and suffering, the bodily injuries, the doctor's bills and other money expended in endeavoring to cure himself. 20 30

If you come to the question of damages you must consider very carefully, in order to arrive at an honest and just verdict, just what those injuries are, because if the plaintiff recovers, he can only recover for those injuries which are the direct and proximate result of this accident. Here was a hernia almost in the same place. If this hernia was not caused by the accident then, of course, it would be very unfair to make the 40

*Charge to Jury.*

defendants pay for it. Of course, on the other hand, if it was, then they should pay. And you may find some difficulty in determining just to what extent the present condition is due to the accident, and how much of it is chargeable to the previous condition. In other words, suppose

10 the man had had no previous hernia at the time of this collision, then your problem probably would have been very much more simple than it is when you find that the man had already had one, and that there was a certain weakness there. So that if you come to assess damages you ought to consider that very carefully and determine what is fair and honest, not only to the plaintiff, but also to the defendants. So that if they are responsible, that they shall pay only what is

20 right and proper in your judgment.

So take the case and determine first whether there was negligence on the part of the defendant. If there was not, that is the end of the case. If you find that there was, then take up the plaintiff's behavior, and his chauffeur's. If you find that the plaintiff's driver was negligent, then, of course, there may be no recovery. Or if they were both negligent, there may be no recovery. But if you find that the defendant was

30 negligent, and the plaintiff was not, then you may take up the question of damages, as I have already outlined them to you.

I decline to charge except as I have already charged, and allow an exception to the requests to charge.

40 *Mr. Holmwood.* I pray an exception to that portion of the charge in which the Court said, it is very difficult for me to feel that there is no negligence, and the balance of that sentence, which I did not get.

*Defendant's Requests to Charge.*

*The Court.* Yes, I will allow an exception to that.

Exception allowed—sealed accordingly.

*Judge.*

10

**Defendants Requests to Charge.**

(1)

“The amount paid by the plaintiff and his co-partners for the services of a cook is not an element to be considered in the estimation of plaintiff's damages.”

(2)

“Unless the plaintiff has established by the fair preponderance of the evidence that the hernia from which he suffers was caused by injury sustained by him through the negligence of the defendants, or either of them, and is not a recurrence of an old malady, you should exclude any items of expense arising out of said hernia from your estimation of damages.”

20

(3)

“Plaintiff having testified that he has lost no money in his business since the date of the accident, he is not entitled to recover for time lost, unless such loss of time resulted in financial loss and is established by the evidence.”

30

(4)

“If the chauffeur of the automobile in which plaintiff was riding could have avoided the collision by the exercise of reasonable care and caution, and failed to exercise such care and

40

*Defendant's Requests to Charge.*

caution, your verdict should be for the defendant."

(5)

10 "If you believe that the collision was a pure accident, there should be a verdict for the defendants."

(6)

"If you believe that the drivers of both automobiles exercised reasonable care, that is, the same amount of care as ordinarily prudent men would use under similar circumstances, then the defendants are not legally responsible for the injury and there should be a verdict for the defendants."

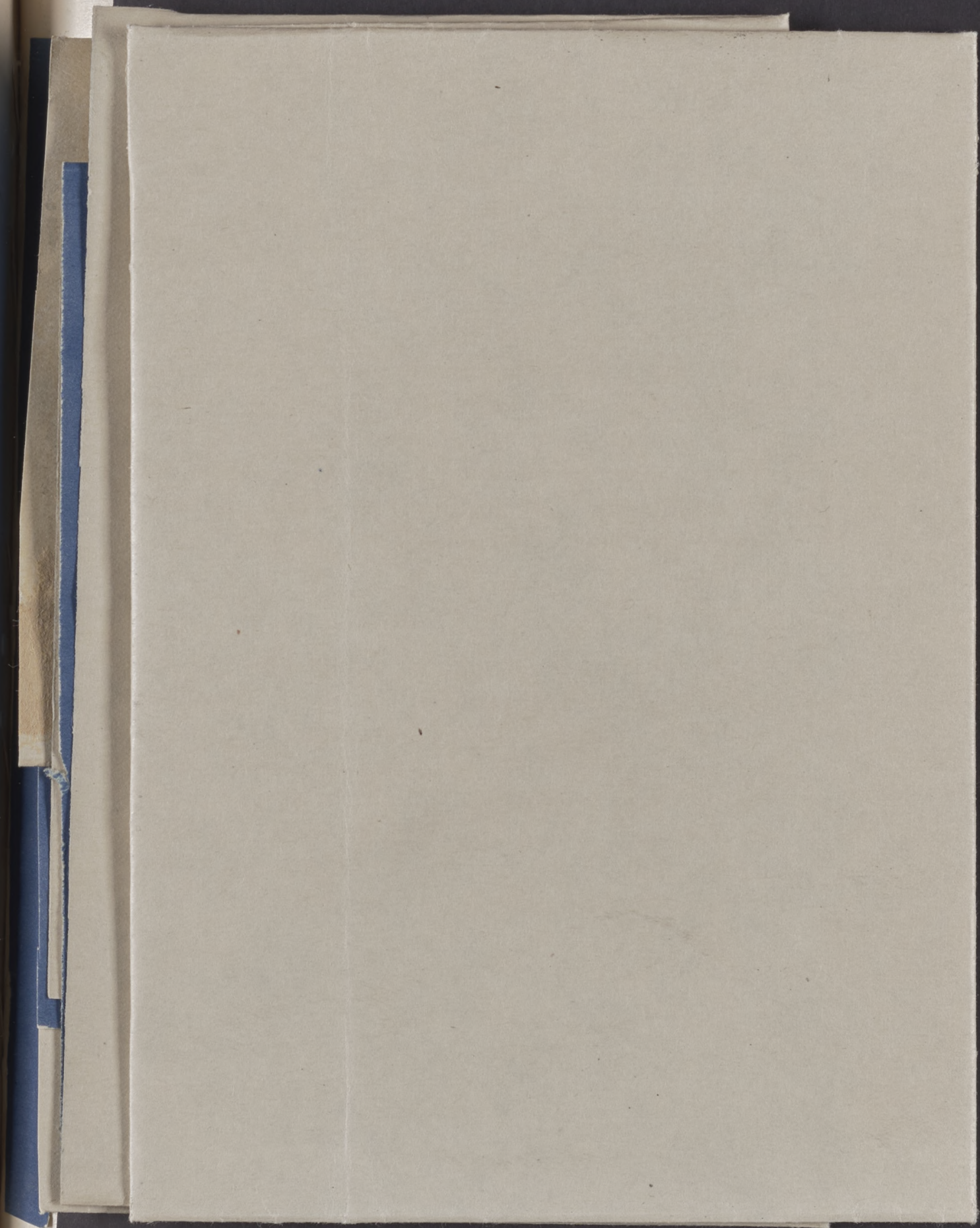
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(7)

"The driver of defendants' automobile was not bound to use extraordinary care in traveling along the highway. Defendants fulfilled all legal obligations if the driver of the automobile used the same care that an ordinarily prudent and careful man would use under similar circumstances, and if you find this to be the case, your verdict should be for the defendants."

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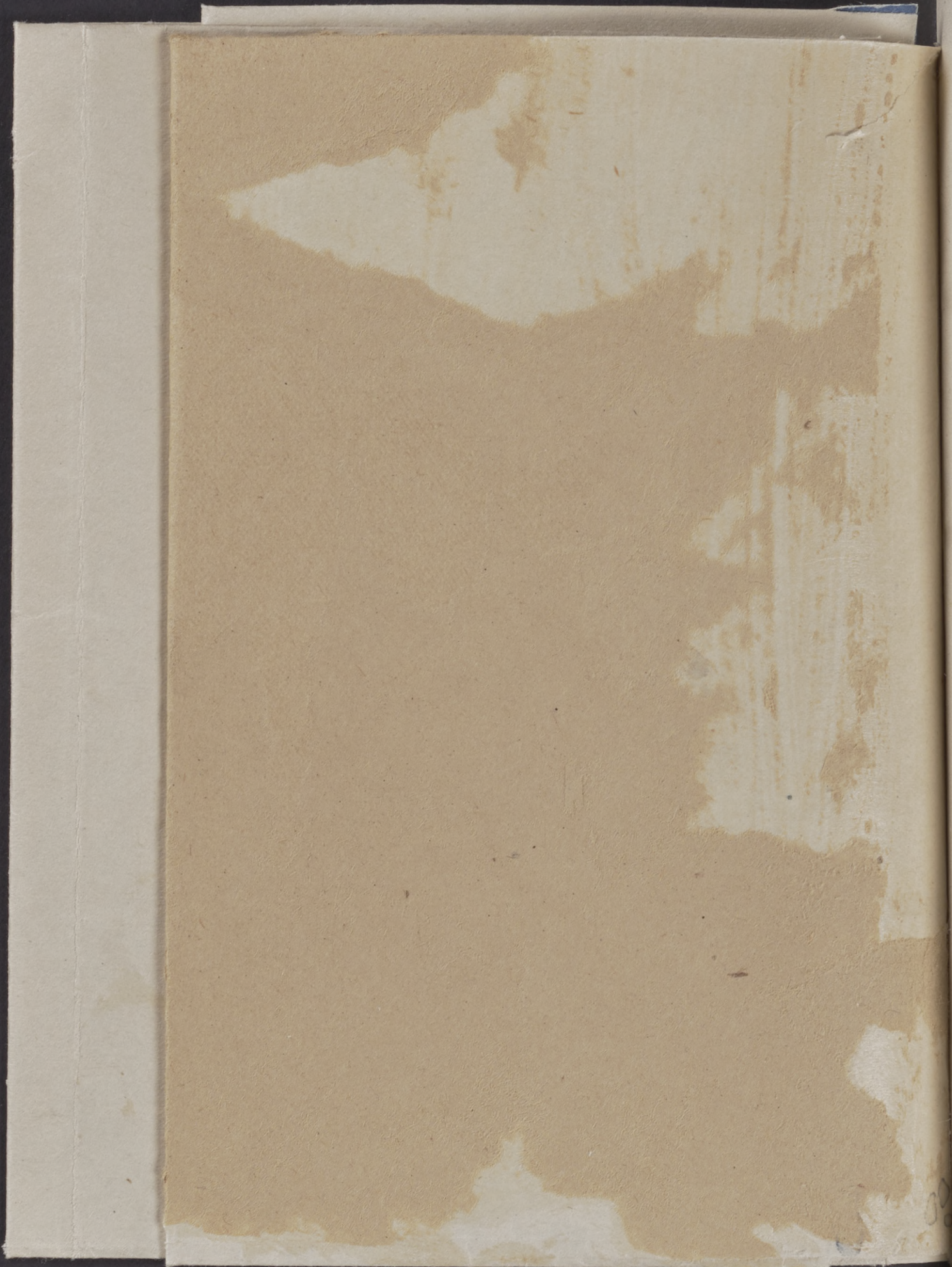
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## New Jersey Court of Errors and Appeals

STRATTON CHRISAFIDES, <i>Plaintiff-Respondent,</i>	}	<i>Action at Law</i>
<i>vs.</i>		
BRUNSWICK MOTORS COMPANY, and JOHN KNAUSS, <i>Defendants-Appellants.</i>		<i>On Appeal from Supreme Court.</i>

### Statement of Facts.

This action was brought against the defendants to recover damages for injuries to the plaintiff by reason of the alleged negligence of the defendant John Knauss in the operation of an automobile owned by the defendant Brunswick Motor Company. The case was tried at the Union Circuit before Judge Silzer, and a jury, and a verdict returned in favor of the plaintiff for \$1,100, upon which verdict judgment was duly entered. The appeal is from that judgment.

The accident occurred in the following manner: On December 23, 1915, plaintiff was riding in a Ford automobile driven by one Louis Molideske along a road in the open country running from Plainfield to Metuchen, (See Exhibit P. 1). As they were rounding the curve in the road to their right of the small parkway indicated on the sketch they came into collision with the automobile of the defendants, which was going in the opposite direction. There were no obstructions to the view (pg. 35). Plaintiff and his driver saw the defendants' motor car when they reached the point marked "X" on Ex. P.

1, (pg. 36), and defendants' car was about three or four hundred feet away (pg. 37). Plaintiff claims that defendants' car turned into the road to Plainfield at the point marked "T" on Ex. P-1 and that the collision occurred at the point marked "C" on Ex. P. 1 (pg. 37). The driver Molideske's description of the accident differs from the plaintiff's, his claim being that he first saw defendants' car when he was at point marked "M," that defendant started to make the turn at point marked "M3"; at which time he was at point marked "M2," (pg. 45-6). I recite these facts in order that the court may realize the effect upon the jury of that portion of the judge's charge to which exception was taken at the trial.

This appeal is upon objections noted at the trial to the action of the trial court in refusing to strike out the testimony of the plaintiff as to whether or not defendant Knauss could have seen him had he looked; to the action of the trial court in expressing an opinion upon the question of defendant's negligence which was tantamount to a direction of a verdict in favor of the plaintiff; and to the action of the trial court in refusing to charge certain requests made on behalf of the defendants.

#### I.

**The learned trial judge erred in expressing to the jury his opinion as to the negligence of the defendant Knauss, and in practically directing the jury to decide the issue upon his testimony alone.**

In his charge to the jury the trial judge selected part of the testimony of the defendant

Knauss, and commented thereon as follows:  
(Pg. 89-90).

"This case has a very refreshing aspect in one particular that is so often absent in cases of this kind. Frequently we find people who are in accidents of this kind trying to avoid responsibility and absolutely perjure themselves in order to do it. That is the reason I say it is rather refreshing to see this driver of this automobile, Mr. Knauss, upon the witness stand. He seemed to be an absolutely honest, truthful witness. And the result of that is that you may determine, from his own testimony, whether you think he was negligent or not. You will remember that when the question was asked, 'Did you admit that it was your fault?' or words to that effect, he replied, 'Naturally anyone would think it was, the way I came around the corner there, not seeing him and pulling the corner sharp. You would naturally feel that way, that you were a little bit to blame. I will admit that.' Then the question was asked, 'Then you admit you were to blame?'" Answer, 'Not altogether to blame, no.' So take all the testimony and determine whether you think there was negligence or not. *It is very difficult for me to feel that there was no negligence; a car coming along at a fair rate of speed and turning a corner sharp, as he puts it, and a collision.* He looked, while some distance down the street, but did not look apparently as he came closer to the corner. But it is for you to say, from all the evidence, whether this driver Knauss was negligent, or whether he was not."

Exception was duly noted to this portion of the charge (pg. 92), and is cited as the fourth ground of appeal, (pg. 3).

There is no question but that a judge is to be allowed wide latitude, under the decisions in this State, in commenting upon the evidence. But such comment should not go so far as to intrude upon the functions of the jury, as the sole judges of the facts. The action of the trial court in selecting this particular testimony and instructing the jury that they could determine from it whether defendant was negligent or not, and then expressing his opinion upon it to the effect, "It is very difficult for me to feel that there was no negligence, \* \* \*," amounted practically to a direction of a verdict in favor of the plaintiff, excluding altogether the other testimony offered, and also excluding from the consideration of the jury the question as to whether or not the occurrence could be classed as an unavoidable accident.

Nor does it seem reasonable to say that the subsequent general remarks of the trial judge at the conclusion of the paragraph quoted were sufficient to remove from the minds of the jury the impression undoubtedly created by the specific reference to that testimony and the inference drawn therefrom.

Perhaps closest in point of similarity of facts to the case at bar is the case of *Lindley v. O'Reilly*, (E. & A.), 17 Vr., (46 N. J. L.) 352. The opinion was read by Chancellor Runyon, and is so short, that I will quote it verbatim:

"The errors assigned in this case are to certain parts of the judge's charge and his refusal to charge as requested by the defendant's counsel. I think there was error in one of those matters. The suit is an

action of ejectment. One of the defences was a claim of title by adverse possession for twenty years. (While the general statement of the law on that subject, in the charge, is correct, there is a statement in regard to the proof which was very likely to mislead the jury, to the prejudice of the defendant. It is this: 'I do not see, under the law, how you can find that there was adverse possession for any part of this land, except the part where these posts were actually placed or the land used in connection with them.' This expression might well have been understood and accepted by the jury as a charge that, under the law, the appellant, the defendant below, had not, by the facts proven, established a title by adverse possession to the land in dispute, except, perhaps, as to the part of it which was occupied by the posts and the part used in connection with them. For this reason, I think the judgment should be reversed."

In *State v. Overton*, 85 N. J. L. 287, the comments, made by the trial court in the charge, were modified by the following instructions to the jury:

"You are to consider all the evidence there is in the case upon your own responsibility, and upon your own responsibility, declare by your verdict whether the defense has been established." (pg. 293-4).

This court in reviewing that case declared that the trial court was within his rights in expressing an opinion as to the evidence or commenting thereon to the jury, "provided the ultimate decision of disputed matters of fact is fairly left to them." \* \* \* \* \* "That the ultimate de-

termination of the facts was left to the jury is clear from the last paragraph quoted, and from other parts of the charge where the jury are distinctly instructed that they are the sole judges of the facts."

In the case at bar it can hardly be said that the disputed questions of fact were *fairly* left to the jury, as the instructions given were that they could decide the issue upon the testimony of Knauss alone, and the opinion of the court as to its bearing upon the question of negligence.

Such an instruction from the high authority of the presiding judge was bound to have tremendous effect upon the deliberation of the jury, and was extremely prejudicial to the defendants.

The well settled rule is briefly stated in the *American and English Encyclopedia of Law*, 2nd Ed., Vol. 23, p. 586, as follows:

"VI. Invasion of jury's province by the court—doctrine stated—As a corollary from the rule which has been stated throughout this title, that it is the province of the jury to determine questions of fact, it is well settled that the court must not, in either a civil action or a criminal prosecution, invade the province of the jury, by determining questions of fact, by assuming that a fact as to which there is a conflict in the evidence has been proven or by otherwise expressing an opinion as to the facts in the case."

In the leading case in New York, (*Allis v. Leonard*, 58 N. Y. 288), Judge Church, in delivering the opinion of the Court of Appeals, said:

"Two witnesses gave evidence tending to show that the plaintiff's general charac-

ter was bad. This evidence though not very  
 strong, was legitimate upon that question.  
 The judge charged the jury, 'that the im-  
 peachment, or attempted impeachment of  
 the plaintiff, has entirely failed; it has not  
 affected his credit,' etc., which was specifi-  
 cally excepted to. I can see no sufficient  
 answer to the point that this was error.  
 The evidence was competent, and whether  
 strong or weak, should have been sub-  
 mitted to the jury for their consideration,  
 upon the credibility of the witness. \* \* \* \*  
 There are cases holding that a mere opinion  
 or commentary upon the facts is not the  
 subject of an exception, but in such cases  
 it is held that the judge must accompany  
 such commentary with explicit instructions  
 that it is the duty of the jury, notwithstand-  
 ing, to consider the evidence and decide  
 as they think the truth requires. (19 Wend.  
 186; 42 Barb. 326). To be free from legal  
 objection it must be advisory merely, and  
 must not be put in the form of a direction  
 as matter of law (21 Wend. 509-525). The  
 jury is the constitutional tribunal for the  
 determination of questions of fact; and I  
 am persuaded that justice is better ad-  
 ministered when courts refrain altogether  
 from any interference with its rightful pro-  
 vince. Jurors cannot distinguish between a  
 direction in a matter of law or fact. They  
 are bound to take the law from the court;  
 and a positive direction from the bench,  
 as to a question of fact is as potent as if  
 it pertained to a question of law; and even  
 an expression of opinion calculated to in-  
 fluence the decision of the jury in a matter  
 clearly within their cognizance, should be

critically scrutinized. In this case the direction was unqualified, as we construe the charge."

In *Berkowitz v. Schlanger*, 70 Misc. 239, the New York Supreme Court Appellate Term held that where the trial judge in commenting on the testimony makes frequent use of the expression the defendant "would have you believe" in such a manner as to indicate to the jury his opinion that the defendant's evidence was not worthy of belief, the verdict for the plaintiff should be set aside.

Other authorities that may be referred to upon the point are:

*Driggs v. Phillips*, 103 N. Y. 77, 82.

*McMahon v. Metropolitan St. Rway. Co.*,  
97 App. Div. 466.

38 Cyc. 1643, 1645.

*Richardson v. VanNostram*, 43 Hun. 300.

## II.

**The learned trial judge erred in refusing to charge defendants' second request.**

Defendants requested the trial judge to charge the jury as follows: (pg. 93).

"Unless the plaintiff has established by the *fair preponderance of the evidence* that the hernia from which he suffers was caused by injury sustained by him through the negligence of the defendants, or either of them, and is not a reoccurrence of an old malady, you should exclude any items of expense arising out of said hernia from your estimation of damages."

This request was refused, and exception allowed (pg. 92) and is here raised as the sixth

ground of appeal, (pg. 3). The court did refer to part of the subject matter of this request in his charge (pg. 91-92), in this language:

“If you come to the question of damages you must consider very carefully, in order to arrive at an honest and just verdict, just what those injuries are, because if the plaintiff recovers, he can only recover for those injuries which are the direct and proximate result of this accident. Here was a hernia almost in the same place. If this hernia was not caused by the accident then, of course, it would be very unfair to make the defendants pay for it. Of course, on the other hand, if it was, then they should pay. And you may find some difficulty in determining just to what extent the present condition is due to the accident, and how much of it is chargeable to the previous condition. In other words, suppose the man had had no previous hernia at the time of this collision, then your problem probably would have been very much more simple than it is when you find that the man had already had one, and that there was a certain weakness there. So that if you come to assess damages you ought to consider that very carefully and determine what is fair and honest, not only to the plaintiff, but also to the defendants. So that if they are responsible, that they shall pay only what is right and proper in your judgment.”

The question of the burden of proof, and the duty of plaintiff to establish his damage by a fair preponderance of the evidence is not referred to in the charge. Such omission, after a request was presented to the trial judge was injurious to the defendants. It is respectfully

submitted that the request was fair and proper and should have been included in the instructions to the jury.

### III.

#### **The learned trial judge erred in refusing to charge defendants' fifth request.**

This request was as follows: (pg. 94).

"If you believe that the collision was a pure accident, there should be a verdict for the defendants."

Exception to this failure to charge was allowed (pg. 92) and it is assigned as the ninth ground of appeal, (pg. 4).

The defendants were entitled to have the jury consider the question as to whether or not the accident could be termed what has been variously defined in the law as a pure accident, an inevitable accident, or an unavoidable accident. So also, an instruction directed to the legal aspect of a pure accident, should have been given to the jury. The failure to charge this request was particularly harmful in this case, when we take such failure in connection with the comments made to the jury upon the question of negligence.

### IV.

#### **The learned trial judge erred in refusing to charge defendants' sixth and seventh requests.**

These requests, being similar in character, may be taken together and were as follows, (pg. 94):

"If you believe that the drivers of both automobiles exercised reasonable care, that

is, the same amount of care as ordinarily prudent men would use under similar circumstances, then the defendants are not legally responsible for the injury and there should be a verdict for the defendants."

"The driver of defendants' automobile was not bound to use extraordinary care in traveling along the highway. Defendants fulfilled all legal obligations if the driver of the automobile used the same care that an ordinarily prudent and careful man would use under similar circumstances, and if you find this to be the case, your verdict should be for the defendants."

Exception was allowed to the failure to charge these requests, and they constitute the tenth and eleventh grounds of appeal, (pg. 4).

Both requests relate to the legal duty of defendants in their use of the highway, and undertake to define "reasonable care" to the jury. Surely defendants were entitled to have their legal duty under the circumstances of the case, explained to the jury. A careful reading of the charge discloses that not a single word was said to the jury about the legal duty of the defendants, and that they received no instructions as to the degree of care required, except the expression, (pg. 90):

"You see both parties upon the highway are obliged to exercise reasonable care, not only for their own safety, but for the safety of other people."

The requests were designed to inform the jury as to the meaning of "reasonable care," and as to the character of the duty imposed by law upon the drivers of vehicles. The failure of the trial judge to charge these reasonable re-

quests was manifestly injurious to the defendants.

In *Paschel v. Hunter*, (Sup. Ct.) decided March 9th, 1916, 97 Atl. Rep. 40, the judgment of the district court was reversed because of the failure of the trial judge to charge a request as to the legal duties of the defendant under the circumstances of that case.

## V.

### **The learned trial judge erred in refusing to strike out certain testimony of the plaintiff.**

The plaintiff was asked on direct examination this question, (pg. 23):

“Q Could he have seen you if he had looked? Could he have seen you coming if he had looked?”

and answered before objection could be interposed,

“A Oh, yes, he could.”

Defendants' attorney thereupon moved to strike out the testimony, but the court permitted the same to stand. This objection is noted as the second ground of appeal.

Clearly this is a matter of opinion, upon which plaintiff was permitted to speculate. It was a conclusion as to the extent of the vision which another man, traveling in a different direction and under different conditions, had.

For the reasons heretofore advanced it is respectfully urged that the judgment appealed from be reversed.

Respectfully submitted,

WM. E. HOLMWOOD,  
*Counsel for Appellant.*

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# New Jersey Court of Errors and Appeals

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STRATTON CHRISSAFIDES  
Plaintiff-Respondent.

vs.

BRUNSWICK MOTOR CO.  
AND JOHN KNAUSS,  
Defendants-Appellants.

Action at Law  
On Appeal from  
Supreme Court.

## Brief for Plaintiff-Respondent

### STATEMENT OF FACTS.

Plaintiff was injured on December 23, 1915, by a motor bus of the defendant Brunswick Motor Company operated by its employe, the defendant, John Knauss, running into an automobile in which the plaintiff was riding and which was driven by Louis Molideske, its owner. The plaintiff claimed to have sustained serious injuries, and the jury awarded him \$1,100, and from the judgment entered on that verdict this appeal is taken.

The accident occurred about eleven o'clock in the morning of a clear day, at a turn in the road from Plainfield to Metuchen. The automobile in which the plaintiff was seated was hugging the right side of the road and was barely moving at the time. The defendant's motor bus, coming from the opposite direction, made a short, sudden, quick and unexpected turn while going from twelve to fifteen miles an hour and crashed into the automobile in which the plain-

tiff was seated, throwing the plaintiff against the windshield and then back and to his knees on the bottom of the car. He was stunned and dizzy and could hardly walk. One eye was covered with blood, as was also part of the cheek, and blood was coming through the glove he was wearing. After being attended to plaintiff went home and stayed all day. At six o'clock in the evening he attempted to go to his business, but, on account of pain in his side, had to return, after going a few blocks. An examination by a physician showed hernia had resulted.

The plaintiff and Louis Molideske, who owned and drove the car in which the plaintiff was riding, were the only witnesses as to the accident for the plaintiff, and the defendant John Knauss, was the only witness as to the accident for the defendant. There was a passenger riding with, and known to Knauss, but who was not called nor his absence accounted for. Two doctors testified for the plaintiff as to his injuries, and two physicians were called by the defense.

The defendant Knauss' own story of the accident is that he was only two or three feet away from the plaintiff when he "spied him." **Case, p. 74, lines 39-40**), that he gave no warning (**Case, p. 75, lines 32-34**), and was going twelve, fourteen or fifteen miles an hour around a curve when he hit him (**Case, p. 76, lines 39-40; p. 77, lines 1-3**).

The defendant Knauss' explanation of his failure to see the plaintiff was:

Why, yes, I looked, but under the conditions, I had my side curtain down and the curtain is in the center of where I sit, and I sat there, and I glanced out. Well, naturally through this mica, or whatever it is, the vision is blurred a little. Well, I glanced out and saw nothing. In turning the corner with this

man alongside of me said, look out, and just as I turned the corner I knocked the car.

**Case, p. 76, lines 8-16.**

And on being questioned as to his admission immediately after the accident that it was his fault, the defendant Knauss said:

Naturally anyone would think so, the way I came around the corner there, not seeing him, and pulling the corner sharp, you would naturally feel that way that you are a little bit to blame. I will admit that.

**Case, p. 78, lines 35-40.**

On being asked on his direct examination if he had made any statement at the time of the accident, the defendant Knauss said:

I told him the way it came around, probably it did naturally look as if it was my fault in a way. That is just the way I put it to him, and if there was any damages, of course, the company would have to settle, and that is all there was to it. That is the very statement I made.

**Case, p. 72, lines 9-15.**

## **GROUPS OF APPEAL**

The appellant filed eleven grounds of appeal, but he has abandoned the first and third grounds for failure to non-suit and the fifth, seventh and eighth grounds for failure to charge as requested. The fourth ground is point one in appellant's brief, the sixth ground point two, the ninth ground point three, the tenth and eleventh grounds point four, and the second ground point five.

### **I.**

It is settled beyond dispute in this State that a trial judge may express his opinion as to the testi-

mony, providing he leaves to the jury the decision as to questions of fact. That the trial judge in the case at bar so left the question of the negligence of the defendant is shown by the language following that complained of in the charge:

But it is for you to say, from all the evidence, whether this driver Knauss was negligent, or whether he was not.

**Case, Charge, p. 90, lines 29-32.**

**In Castner vs. Sliker, 33 N. J. L. (4 Vr.) 507 (Errors and Appeals, 1869),** Chancellor Zabriskie, in giving the opinion of the Court, said at p. 512:

It is the right and duty of a judge to comment upon the evidence, and in cases where he thinks it required for the promotion of justice, to give his views upon the weight of it, provided he leaves it for them to decide, upon their own views of it. This is too well settled by repeated decisions to be now called in question.

**In State vs. Hummer, 73, N. J. L. (44 Vr.) 714 (Errors and Appeals, 1906),** Justice Garrison, in giving the opinion of the court, said at p. 719:

The motion that it is any part of our judicial system that the jury, whether in civil or criminal cases, must be kept in ignorance of the impression made by the testimony upon the mind of the trial judge, is absolutely devoid of foundation.

## II.

The trial judge charged stronger than the request to charge. The fact that he did not use the exact words of the request to charge is not material. He charged

\*\*\* if the plaintiff recovers, he can only recover for those injuries which are the direct and proximate result of this accident. Here was a hernia almost in the same place. If this hernia was not caused by the accident then, of course, it would be very unfair to make the defendant pay for it.

**Case, Charge, p. 91, lines 35-40; p. 72, line 1.**

### III.

The language used by the trial judge in his charge on this point and which clearly covered the idea embraced by this request to charge was more adapted to explaining to the jury the legal principles which should govern in reaching a verdict than the language of the request. The judge charged:

The mere fact that an accident happened gives no right to recover. There must be more than that. There must be proof of negligence.

**Case, Charge, p. 89, lines 26-29.**

And then follows for a few pages that portion of the charge dealing with negligence.

### IV.

Both these requests are covered by that portion of the judge's charge relative to negligence, above noted under the preceding point, and by the following:

You see both parties upon the highway are obliged to exercise reasonable care, not only for their own safety, but for the safety of other people.

**Case, Charge, p. 90, lines 36-39.**

Furthermore, the testimony adduced in the case did not call for any elaborate discussion of reasonable or extraordinary care.

When the trial judge has stated to the jury in concrete terms the legal principles applicable to the case, it is not error for him to refuse to charge the abstract principles.

**Herlich vs. N. J. St. Ry. Co., 67 N. J. L. (38 Vr.) 574, 577. Errors and Appeals, 1902, Dixon, J.)**

## V.

Whether a trial judge will grant a motion to strike out testimony that has been received without objection is a matter of sound discretion and is not ground for reversal where an abusive use of such discretion is not manifest.

**In Clark vs. State, 47 N. J. L. (18 Vr.) 556 (Errors and Appeals, 1885), Justice Reed, in giving the opinion of the court, said at p. 558:**

The rule is established that counsel cannot take the chance of testimony making in his favor, and if it happens to be adverse, then interpose his objection.

**In State vs. Hummer, 73 N. J. L. (44 Vr.) 714 (Errors and Appeals, 1906), Justice Garrison in giving the opinion of the court, said at p. 717 relative to Clark vs. State, supra, on this point:**

This case and the reasoning upon which it was founded have been frequently approved in this court.

and also (at p. 717):

The reason for the rule in all these cases is that the opposite course would encourage counsel to refrain from objecting to questions manifestly illegal until he could elect, accord-

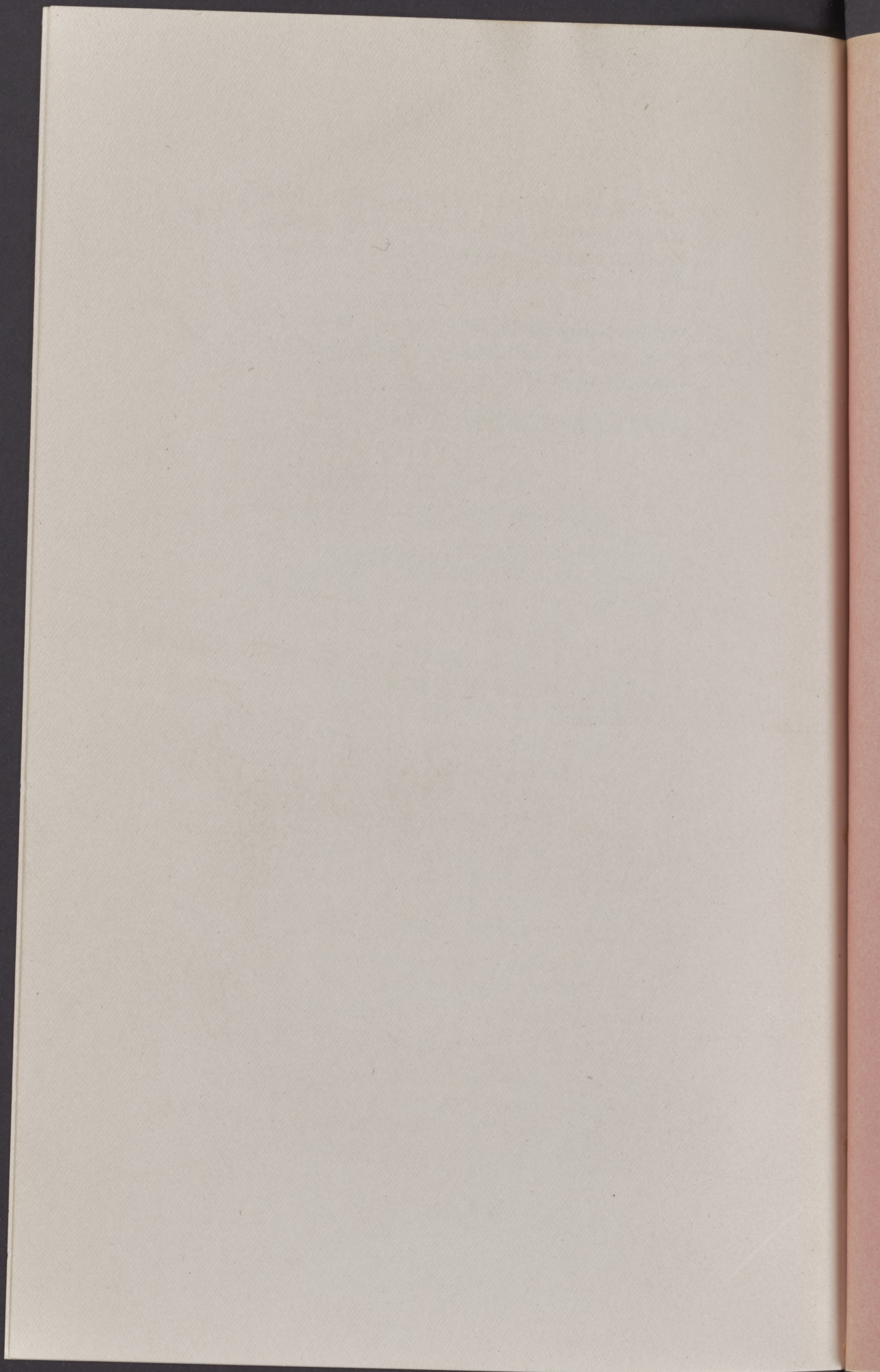
ing to the answer made for or against him, whether he would acquiesce in such illegalities or move to strike out the completed testimony.

It is respectfully submitted that not any of the grounds of appeal is well taken, and that the judgment should be affirmed.

Plainfield, N. J., November, 1916.

IRVING KUNZMAN,  
Attorney for Plaintiff-Respondent.

W. S. ANGLEMAN,  
Of Counsel.



WINE BOTTLES

