

## INDEX.

	Page
Writ of Summons .....	1
Complaint .....	2
Answer .....	6
Consent to Substitution of Attorney .....	8
Consent .....	9
Case .....	10-110
Charge .....	102
Postea .....	111
On Postea .....	112
Notice of Appeal .....	114
On Rule to Show Cause .....	115
On Appeal .....	117

## TESTIMONY.

### *For Plaintiff :*

John Clifford,	
Direct .....	12
Frank J. Oleri,	
Direct .....	13
Cross .....	17
William Rabiet,	
Direct .....	19
Cross .....	24
Re-direct .....	30
Re-cross .....	31
Louis C. Lange,	
Direct .....	31
Cross .....	40
Re-direct .....	43
Richard Muh,	
Direct .....	44
Cross .....	46
Re-direct .....	48

	Page
Lawrence Donna,	
Direct .....	49
Cross .....	52
Angello Senesi,	
Direct .....	55
Cross .....	57
Re-direct .....	61
Frank Ratz,	
Direct .....	61
Cross .....	66
Pauline Ratz,	
Direct .....	70
Cross .....	71
Dr. Wm. J. Arlitz,	
Direct .....	71
Cross .....	77
Harry J. Perlberg,	
Direct .....	80
Theodore Scolle,	
Direct .....	82
Cross .....	83
Frank Ratz, Sr.,	
Direct .....	86

*For Defendant:*

Edward Gail,	
Direct .....	87
Cross .....	90
Tessie Ford,	
Direct .....	93
Cross .....	95
Re-direct .....	100
Cross .....	100
Re-direct .....	101

**WRIT OF SUMMONS.**

THE STATE OF NEW JERSEY,

to

10

HILLSIDE BUS OWNERS ASSOCIATION,  
(a body corporate of New Jersey).

(L. S.) You are summoned to answer the  
annexed complaint of FRANK  
RATZ, individually and as next  
friend of FRANK RATZ, an in-  
fant, 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 ser-  
vice upon you of this Writ and the annexed  
complaint, the plaintiff may proceed in the suit,  
and judgment may be entered against you. 20

WITNESS: HON. WILLIAM S. GUMMERE,  
Chief Justice of the Supreme Court, at Trenton,  
this 10th day of December, 1925.

EDWARD J. KELLEHER,  
Clerk. 30

FRANCIS A. CASTELLANO, JR.,  
Attorney for Plaintiff,  
646 Tyler Place,  
West New York, N. J.

New York Address:  
299 Broadway,  
Manhattan, New York City. 40

## ACTION AT LAW.—COMPLAINT.

NEW JERSEY SUPREME COURT,  
HUDSON COUNTY.

10 FRANK RATZ, individually and as next friend  
of FRANK RATZ, an infant,  
Plaintiff,  
vs.

HILLSIDE BUS OWNERS ASSOCIATION  
(a body corporate of New Jersey),  
Defendant.

20 The above defendant in this cause was summoned to answer unto Frank Ratz, individually and as next friend of Frank Ratz, an infant, in an action at law, upon the following complaint:

Plaintiff, who resides in the Town of West New York, County of Hudson, State of New Jersey, says:

## AS A FIRST COUNT OR CAUSE OF ACTION.

30 1. Upon information and belief, on November 10, 1925, the above defendant, Hillside Bus Owners Association, a body corporate of New Jersey, owned, operated and controlled the auto jitney bus hereinafter mentioned, which it used for the carrying of passengers for hire.

40 2. Upon information and belief, on November 10th, 1925, the auto jitney bus which came in contact with the infant plaintiff at the time and place hereinafter mentioned, was in charge of and

*Action at Law.—Complaint.*

operated and controlled by the above defendant, Hillside Bus Owners Association, and its agent or servant in its service as a public carrier.

3. On or about November 10, 1925, while infant plaintiff was lawfully crossing the public highway known as Bergenline Avenue, at or near its intersection with the public highway known as 16th Street, in the Town of West New York, County of Hudson, N. J., without any fault on his part, an auto jitney bus then in charge of and operated by the above defendant, its agent or servant on and along Bergenline Avenue, struck infant plaintiff with great force and violence and ran him over, on said highway, and thereby infant plaintiff sustained among other injuries, divers fractures and other wounds of the collar bone and arms, a fracture and other injury of the spine, and divers contusions, abrasions and other wounds of the head, face, limbs and body, and severe and permanent internal injuries and severe shock and injury to his body and nervous system, as a result of which plaintiff became sick, sore, lame and disabled, and he so remains, and since November 10, 1925, he has been confined to the North Hudson Hospital, where he is undergoing divers surgical operations in an effort to be cured in part of said injuries, and infant plaintiff, since November 10, 1925, has been caused to endure great pain and suffering in consequence of said injuries, and plaintiff believes that he will continue to suffer such pain and disturbance for a long period of time in the future, and that such injuries will incapacitate and partially disable said infant plaintiff permanently in the use and enjoyment of his limbs, health, body and mind,

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*Action at Law.—Complaint.*

to his great and permanent detriment, loss and injury.

4. The collision or accident aforesaid was due proximately to the carelessness and negligence of the defendant in the operation of its said auto  
 10 jitney bus, in that it operated the same:

(a) On the left or wrong side of the highway.

(b) At an excessive and reckless rate of speed so as to lose control thereof.

(c) At a careless and negligent rate of speed so as to lose control thereof.

(d) At such speed on such highway, as to  
 20 be beyond its reasonable control.

(e) Without warning of any kind.

(f) Without keeping a proper lookout.

(g) Without proper brakes and other equipment so as to properly control same.

(h) In an unskilful, incompetent and reckless manner as to cause the same to collide  
 30 into infant plaintiff with great force and violence, causing the injuries aforesaid.

5. By reason of the premises the infant plaintiff, Frank Ratz, has been damaged in the sum of \$25000.

AS A SECOND COUNT OR CAUSE  
 OF ACTION.

6. Plaintiff repeats and realleges the allegations set forth in the paragraphs hereof design-  
 40

*Action at Law.—Complaint.*

ated "1", "2", "3" and "4" with the same force and effect as if herein set forth at length.

7. That plaintiff is the father of the infant, Frank Ratz, and the said infant resides with the plaintiff, who, because of the injuries sustained as aforesaid, has necessarily been compelled to engage various physicians to treat and attend the said infant in an endeavor to cure him of said injuries. That plaintiff has necessarily expended and will continue to expend large sums of money for such medical treatment and for medicinals and by reason of the permanent impairment and injuries sustained by the said infant plaintiff will partially lose the services, aid and assistance and earnings of the said infant permanently; all to the damage of plaintiff in the sum of \$5000. 10  
20

8. Plaintiff, as the next friend of Frank Ratz, an infant, demands judgment on the first count for the sum of \$25000.

9. Plaintiff demands judgment on the second count for the sum of \$5000.

FRANCIS A. CASTELLANO, JR., 30  
Attorney for Plaintiff,  
646 Tyler Place,  
West New York, N. J.

## ACTION AT LAW.—ANSWER.

NEW JERSEY SUPREME COURT,  
HUDSON COUNTY.

10 FRANK RATZ, individually and as next friend  
of FRANK RATZ, an infant,  
Plaintiff,

vs.

HILLSIDE BUS OWNERS ASSOCIATION  
(a body corporate of New Jersey)  
Defendant.

20 Defendant, Hillside Bus Owners Association,  
in answer to the Complaint says that:

## FIRST COUNT.

1. Defendant admits the allegations contained in paragraph one except that it denies that the Hillside Bus Owners Association is a body corporate of New Jersey.
- 30 2. It admits paragraph two.
3. It denies paragraph three.
4. It denies paragraph four.
5. It denies paragraph five.

## SECOND COUNT.

- 40 6. Defendant makes the same answer to paragraph six as heretofore made to the allegations

*Action at Law.—Answer.*

as set forth in paragraphs one, two and three and four of the First Count and makes the same a part hereof.

7. It has no knowledge or information sufficient to form a belief as to whether or not the plaintiff is the Father of the infant Frank Ratz, and denies all further allegations contained in said paragraph. 10

8. It denies paragraph eight.

9. It denies paragraph nine.

## FIRST SEPARATE DEFENSE.

Defendant says and will offer to prove at the trial that the injuries received by the plaintiff, if any, were contributed to by his own negligence. 20

## SECOND SEPARATE DEFENSE.

Defendant performed each and every duty which it owed the plaintiff.

## THIRD SEPARATE DEFENSE. 30

Defendant violated no duty or obligation which it owed the plaintiff.

## FOURTH SEPARATE DEFENSE.

Defendant is not guilty of the negligence complained of.

GEORGE L. RECORD,  
Attorney for Defendant. 40

**ACTION AT LAW—CONSENT TO  
SUBSTITUTION OF ATTORNEY.**

NEW JERSEY SUPREME COURT,  
HUDSON COUNTY.

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FRANK RATZ, individually, etc.,

Plaintiff,

vs.

HILLSIDE BUS OWNERS ASSOCIATION, ETC.,

Defendant.

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20

It is hereby consented that Alexander M. Mac  
Leod be substituted as the Attorney for the de-  
fendant in the above entitled cause.

Dated, April 6th, 1926.

.....  
Attorney for Defendant.

30

40

**CONSENT.**

NEW JERSEY SUPREME COURT,  
HUDSON COUNTY.

FRANK RATZ, as the next friend of  
FRANK RATZ, an infant, etc., 10  
Plaintiff,

vs.

HILLSIDE BUS OWNERS' ASSOCIATION,  
a body corporate of New Jersey,  
Defendant,

IT IS HEREBY CONSENTED by and be-  
tween the attorneys for the respective parties 20  
above named that the name of the defendant here-  
in be amended to read

HILLSIDE BUS OWNERS' ASSOCIATION  
without prejudice to the proceedings already had  
in the action, and that an order to that effect  
amending process and all pleadings in the action  
may be entered herein without further notice.

Dated, April 8th, 1926. 30

FRANCIS A. CASTELLANO,  
Attorney for Plaintiff,

ALEXANDER M. McLEOD,  
Attorney for Defendant.

## CASE.

## HUDSON COUNTY SUPREME COURT.

FRANK RATZ, individually and as next friend  
of FRANK RATZ, an infant,  
Plaintiff,

10

vs.

HILLSIDE BUS OWNERS ASSOCIATION,  
Defendant.

Jersey City, N. J. <sup>June</sup>~~January~~ 15, 1926.

Before:

20

HON. WILLARD W. CUTLER, J.  
and a Jury.

## APPEARANCES:

FRANCIS A. CASTELLANO. ESQ., For the Plaintiff;

ALEXANDER M. MACLEOD, ESQ., For the Defendant.

30

Twelve jurors were called and seated.

Mr. Castellano: Do any of you know  
Mr. McLeod, the Attorney for the De-  
fendant?

Mr. McLeod: I object, your Honor, to  
Mr. Castellano asking an omnibus ques-  
tion.

40

The Court: If counsel objects you will  
have to address your questions to each  
member of the jury individually, Mr. Cas-  
tellano.

*Case.*

Mr. Castellano: Mr. Foreman, do you know Mr. McLeod, who is going to try this case against me?

Mr. McLeod: I object to the question. It makes no difference whether he knows me or not.

The Court: He may answer the question. 10

Mr. McLeod: I now move for a mistrial on the ground the question being permitted, is prejudicial to the defendant. It is not material in arriving at a conclusion on the issues in this case.

The Court: Your motion is refused.

Mr. McLeod: Exception.

Mr. Castellano: Are you or any member of your family employed by the Hillside Bus Association? 20

The Foreman: No, sir.

Mr. Castellano: Do you own any stock or have you any financial interest in any casualty insurance company?

Mr. McLeod: I object to that. Of course it is discretionary with your Honor.

The Court: He may answer the question. 30

Mr. McLeod: I have no objection.

(The proceedings above set forth were had as to each individual juror, the questions being asked in the same way, objection made and the ruling the same.)

*John Clifford—For Plaintiff—Direct.*

JOHN CLIFFORD, sworn as a witness.

*Direct Examination by Mr. Castellano:*

10 Q. Your full name is John Clifford? A. Yes,  
sir.

Q. Where do you live? A. 588 Twenty-third  
street, West New York.

Q. You are a police officer attached to the  
West New York Police Department? A. Yes,  
sir.

Q. During the month of November, 1925, what  
were your duties? A. Regulating traffic.

20 Q. During the entire day was it your station  
at this police booth at 16th Street and Bergen-  
line Avenue? A. In the daytime, yes.

Q. What time did you go on? A. Eight  
o'clock.

Q. And when you went on duty on the 10th  
day of November, this accident had already hap-  
pened, is that right? A. Yes, sir.

Q. You are familiar with 16th Street and  
Bergenline Avenue? A. Yes, sir.

30 Q. Has there been any change there since  
the 10th day of November, 1925? A. Yes.

Q. Has there been a change in the police  
booth there? A. No, sir.

Q. It is in the same position now as it was  
then, is that right? A. Yes, sir.

Q. I show you some photographs will you  
look at them? A. Yes, sir.

40 Q. Do these five photographs show the intersec-  
tion of 16th Street and Bergenline Avenue as  
it appeared on the 10th day of November? A.  
Yes, sir, they do.

*John Clifford—For Plaintiff—Direct.*

Q. And these were taken from various points of 16th Street and Bergenline Avenue, were they?

Mr. McLeod: I object to that on the ground that he didn't take them.

Mr. Castellano: I withdraw the question.

10

Q. Do these five photographs show the conditions as they were on the 10th day of November at that intersection? There has been no change as regards the curb or streets or the traffic booth, which is shown?

Mr. McLeod: If you say so, I am satisfied.

20

Mr. Castellano: I offer these five photographs in evidence.

(Marked Exhibits P-1, P-2, P-3, P-4 and P-5.)

Mr. Castellano: That is all.

Mr. McLeod: No questions.

---

FRANK J. OLERI, sworn as a witness.

30

*Direct Examination by Mr. Castellano:*

Q. You are the town surveyor of the town of West New York? A. Yes, sir.

Q. How long have you been town surveyor?

A. For the past nine years.

Q. You live in West New York? A. Yes, sir.

Q. Where? A. 14 Monitor Place.

Q. At my request did you make a survey of

40

*John Clifford—For Plaintiff—Direct.*

the intersection of 16th Street and Bergenline Avenue? A. Yes, sir.

Q. And is this the survey which you made?

A. Yes, sir.

Q. What scale have you used? A. The scale is marked there, one inch equals 30 feet.

10

Q. Looking at this survey which you have made can you tell us—

Mr. Castellano: I offer the survey in evidence.

Mr. MacLeod: Are all the telegraph poles indicated?

A. Yes, they are all shown there.

20

Mr. MacLeod: There are no poles along here are there?

A. There are no poles at the corner.

Mr. MacLeod: So that there are no poles you have not got on this map?

The Witness: Surely.

Mr. MacLeod: I have no objection to the map.

30

(Marked Exhibit P-6.)

Q. Is this intersection at 16th Street and Bergenline Avenue a regular intersection, that is are there curbstones on both sides of Bergenline Avenue? A. Yes, sir.

Q. Are they on an even keel? A. They are not on the same line. The east side and the west side are off center from each other.

40

Q. Does that survey fairly represent in what

*Frank J. Oleri—For Plaintiff—Direct.*

relation the northerly curb line is on the east side of Bergenline Avenue and 16th Street with regard to the southerly curb line of 16th Street on the west side of Bergenline Avenue?

A. This is an accurate survey made of that intersection which shows both sides as well as the distances between curbs on Bergenline Avenue and the location of the booth. 10

Q. Well, what is the distance between the curblines on Bergenline Avenue? A. Why, there is an offset there of 27 and 1-2 feet, in other words the north curb line of 16th Street on the west side is 27 and 1-2 feet north of the north curb line of 16th Street, on the east side.

Q. What is the width of Bergenline Avenue at that point? A. Between curbs or between house lines? 20

Q. Between curbs. A. Between curbs it is 55 feet.

Q. And between house lines it is what? A. Between house lines it is 80 feet.

Q. Now, having in mind the curbing from in front of the drugstore on Bergenline Avenue to the northerly sidewalk of 16th Street on the west side of Bergenline Avenue, what distance is there between that crossing and the traffic booth? A. I don't understand what you mean by the crossing. 30

Q. The crossing from the east side to the west side, to the bank. A. The northwest corner?

Q. This northerly crossing of 16th Street, what distance is there between this crossing and the traffic booth? A. It is marked on the survey. 40

*Frank J. Oleri—For Plaintiff—Direct.*

The Court: Is there a crosswalk there?

The Witness: I don't think there is a crossing there. I would not be able to answer that question definitely.

10

Q. Having in mind the northerly curbstone of 16th Street on the side of the bank, the northerly sidewalk being projected across the cartracks here to a point in the center line of the street, how far distant is that point from the traffic booth? A. By that you mean the sidewalk?

that anybody did walk it.

20

Mr. MacLeod: I don't think the jury will understand that question; I know I don't.

30

Q. Well, referring to the map, if you were to walk on this side along the bank, the west side of Bergenline Avenue, on the northerly side of 16th Street, across the street to a point right by the middle of the street, what distance is there between that point even with this sidewalk, and the traffic booth which is somewhere down here.

Mr. MacLeod: I object to that question. It is assuming something which is not in evidence, a person walking from a certain point to another point.

Mr. Castellano: I only want to get the distance from a point even with the sidewalk on the northerly side. I don't say

40

*Frank J. Oleri—For Plaintiff—Cross.*

A. The distance between the center of the sidewalk projected to the point you have shown opposite the booth, and the booth itself is 54 feet and 5 inches.

Q. Now can you tell us the width of 16th Street on the east side of Bergenline Avenue? 10

The Court: Between curbs.

A. Between curbs it is 50 feet.

Q. And what is it between curbs on the west side? A. 30 feet and 3 inches.

Q. And what is the width between curbs on Bergenline Avenue? A. 55 feet.

Q. Now, all these measurements are between curbstones? A. Yes, sir. 20

Q. Taking this point at the northwest corner of 16th Street and across to the other side of the street, can you tell by your survey what sort of store there is on this side on an even line with the northerly sidewalk of 16th Street?

A. There is a drugstore there.

Q. What kind of a store is there on the northeast corner? A. A United Cigar Store.

Q. On the southwest corner? A. A haberdashers. 30

Mr. Castellano: That is all.

*Cross Examination by Mr. MacLeod:*

Q. On your map, assuming that these lines are the curbs— A. Yes, sir.

Q. This is 50 feet? A. Yes, sir.

Q. And from over here, from curb to curb it is 55 feet? A. Yes, sir. 40

*Frank J. Oleri—For Plaintiff—Cross.*

Q. Now then this little ring here on your map shows what? A. The traffic booth.

Q. That is not in the center of the road? A. No, sir.

10 Q. How far is it from the curb? A. It is 11 feet, 8 inches from the east curb.

Q. The south curb of Bergenline Avenue? A. Not the south curb, the east curb.

Q. This is the east curb, isn't it? A. Not that line, the other line. Not the house line, the curb line.

Q. From this point it is 11 feet 8 inches? A. To the edge of the booth it is 11 feet 8 inches.

20 Q. On Bergenline Avenue there are two sets of trolley tracks or four rails? A. Yes, sir.

Q. Are they in the center of Bergenline Avenue? A. Yes, sir.

Q. And the booth is over here towards the east curb? A. The outside edge of the booth.

Q. Show us on this picture where you think the booth would be, approximately? A. About here.

30 Q. So that it is about the center of 16th Street? A. I said 11 feet 8 inches from the curb. If it extended out it would be 21 feet, 11 inches.

Q. Then from the booth it is 44 feet or 43 feet, about, approximately between there and here? A. No, sir, 44 feet, less the size of the booth.

Q. How many feet would you say it was from there to over here? A. About 20 feet 4 inches.

40 Q. You say this is 20 feet 4 inches? A. Between the booth and the curb.

*William Rabiet—For Plaintiff—Direct.*

Q. 11 feet 8 inches between the curb and the booth and 20 feet 4 inches between the booth and the curb, that makes 31 feet or 32 feet and the whole street is 55 feet. A. 40 feet.

Q. You say it is 40 feet? A. About 40 feet.

Q. And this is going south and this is going north? A. Yes, sir. 10

Mr. MacLeod: That is all.

---

WILLIAM RABIET, sworn as a witness.

*Direct Examination by Mr. Castellano:*

Q. Where do you live? A. 654 Harrison Place. 20

Q. In the town of West New York? A. Yes sir.

Q. What is your occupation? A. At the present time United States mail carrier.

Q. On the tenth day of November what was your occupation? A. Mail messenger.

Q. And your office is on 16th Street, the corner of Bergenline Avenue, is it? A. Yes, sir.

Q. On the 10th day of November last year about seven o'clock in the morning where were you? A. I was delivering mail. I was standing at the bank waiting for a West New York car to come along. 30

Q. Did you have a package of mail with you? A. Yes sir, I had two parcels.

Q. This being 16th Street and this Bergenline Avenue here, you were standing somewhere near this bank? A. I was standing up against the bank, but according to the map it ought to be 40

*William Rabiet—For Plaintiff—Direct.*

here, this way. The bank is on this side as you are facing west.

Q. This is north and this is south. Your post office is somewheres in here, isn't it?

10 Mr. MacLeod: I object to counsel leading.

Q. All right, come down here and show us where you stood at the time of the accident. First of all where was your office? A. 16th Street roughly about, 21 feet south of Bergenline Avenue.

Q. When you got to the corner what kind of a store was there on this corner at the time? A. A drugstore.

20 Q. And whereabouts were you standing? A. I was standing right alongside of the bank.

Q. The bank is on the northwest corner of 16th Street and Bergenline Avenue, is that right? A. Yes, sir.

Q. And was there much traffic on the street at the time? A. No, sir.

Q. Were there any vehicles coming along Bergenline Avenue between 16th Street and 17th Street? A. Not that morning.

30 Q. As you stood there by the bank waiting for a car to come along, what sort of a store was on the opposite side of the street? A. A drugstore.

Q. Just before the accident happened to Frank Ratz, did you see an automobile other than the one which figured in the accident?

Mr. MacLeod: I object.

40 Mr. Castellano: I will withdraw the question.

*William Rabiet—For Plaintiff—Direct.*

Q. Tell us in your own way with regard to this accident, what you saw. A. I was standing there waiting for the West New York car and I was looking up to see if a car was approaching so that I could deliver my mail. I seen a bus standing, a Public Service bus and it appeared that there might have been a dozen— 10

Mr. MacLeod: I object to that.

Q. How many people were there getting in this Public Service bus? A. About eight.

Q. All right, tell us now what you saw? A. While this Public Service bus was picking up these passengers, I paid no more attention to the bus. Then all at once the boy leaves the crossing to come across while the Public Service bus was still standing there. I just cast my eyes a little to the left and there was a bus came down the avenue at a pretty good rate of speed. 20

Q. Now when you saw the boy coming across the street, from where did he leave the sidewalk, can you tell us? A. Even with the curbing of 16th Street, the opposite side, that would be the north side.

Q. That is a point even with this curbing? A. Yes, sir. 30

Q. As the boy left the curbing was he running or walking? A. He was just walking.

Q. And you say you saw the bus coming at a fast rate of speed?

Mr. MacLeod: I object to counsel repeating his answers.

Q. Just how fast was this bus going, what is your best recollection? A. 20 miles or over. 40

*William Rabiet—For Plaintiff—Direct.*

Q. Between the time that you turned and glanced to the left and you saw this boy and the time the bus actually hit Frank Ratz, from your recollection did the bus slacken its speed in any way?

10

Mr. MacLeod: I object to the question as leading.

The Court: He may tell us what he noticed about the bus, about its speed or anything of that sort.

Q. What did you notice about the speed of this bus? A. The bus never slackened up its speed at all.

20

Q. Did it blow any horn? A. No horn.

Q. And were you the first one to get to Frank Ratz? A. I was.

Q. Where was Frank Ratz at the time you got to him? A. About a foot from the rear wheel on the east side of the bus.

Q. Was he on the outside of the bus or underneath the bus? A. His body was underneath the bus and if the wheel had passed over him it would have run over his stomach.

30

Q. If the bus had continued the rear wheel would have gone right over his stomach? A. Yes, sir.

Q. In the position he was lying in? A. Yes, sir.

Q. Which part of Frank Ratz' body was outside the bus and which part was inside the bus? A. His feet was on the inside of the bus and his head facing east.

Q. And how far away from the traffic booth was the bus, about? A. Probably ten feet.

40

Q. Ten feet north of the booth or ten feet

*William Rabiet—For Plaintiff—Direct.*

south of the booth? A. Ten feet north of the booth.

Q. And with reference to the car tracks, this being the northbound car track and this being the south bound car track, where was the boy?

A. They boy was lying on the inside rail as you would term it, the inside rail of the southbound track. 10

Q. Will you come down and show us the inside rail of the southbound track? A. This would be the inside rail.

Q. And the boy was lying on this rail? A. Yes, sir.

Q. Between the bus and the booth there would be ten feet? A. Yes, sir.

Q. Did you pull the boy out from underneath the bus? A. I did. 20

Q. Where did you take the boy when you took him from underneath the bus? A. My first thought was to run to the police station and call an ambulance. The police station is just one block away.

Q. You did pull the boy out, didn't you? A. Yes.

Q. And before you went to the police station what did you do? A. I pulled the boy out, straightened him out, so that if the bus would move again—it would not run over him, and ran down to the police station and notified the policeman that a boy was seriously injured. 30

Q. And is this the police officer, Mr. Smith? A. Yes, sir.

The Court: When you laid the boy out, where did you lay him?

The Witness: Right on the sidewalk. 40

Mr. Castellano: That is all.

*William Rabiet—For Plaintiff—Cross.**Cross Examination by MacLeod:*

Q. Now, which side of the bus was the boy under? A. The bus was facing south, that would be the left hand side or the east side of the bus.

10 Q. In other words the Public Service bus was right about here, was it? A. Well, it didn't take up the whole front of the bank.

Q. Assuming that this is the bank, it would be about that way, wouldn't it? A. Yes, sir.

Q. And how far back was it from the corner? A. Well, probably three or four feet from the corner.

Q. That is the Public Service bus? A. Yes, sir

20 Q. And where were you at that time? A. I was standing there.

Q. Going to the Post Office? A. No, sir, I was standing there waiting for a car.

Q. You were standing there up against the bank, the steps are right there, aren't they? A. Not on the corner. There is an entrance about there.

30 Q. The steps are about 12 feet back from the corner, aren't they? A. About that, I have not measured them.

Q. We will say ten or twelve feet. A. If this is the bank, the steps would be about there.

Q. So that the steps are ten or twelve feet back and this bus was three feet from the corner? A. Yes, sir.

Q. And the boy walked from this side of the street, didn't he? A. Yes, sir.

40 Q. And you could stand back of the bus and see this boy coming from over there? A. I could look right over the hood of the bus.

*William Rabiet—For Plaintiff—Cross.*

Q. Oh, you were looking over the hood of the bus? A. Yes, sir.

Q. There is a lot of traffic around there, isn't there? A. No sir, not that morning.

Q. There was nobody else on the street but the bus that morning? A. That is all I saw.

Q. Now, isn't it a fact that the boy was running to catch this public service bus? A. He was walking. 10

Q. You just happened to be looking at him? A. I seen the boy coming across.

Q. You had to look over the hood of the Public Service bus to see him? A. Standing there I could see over the hood of the bus all right.

Q. Standing there you had to look over the bus to see him? A. Yes.

Q. And you just happened to glance to the left and saw this bus coming, is that right? A. Yes, sir. 20

Q. So that when you glanced to your left you saw a bus a block away? A. Yes, sir. I just looked up to see if my car was coming.

Q. And you observed all that a block away? A. Yes, sir.

Q. You had not seen the boy yet? A. No, sir.

Q. And when you saw the bus a block away, what was it doing? A. Picking up passengers. 30

Q. How many passengers got on the bus at 17th Street? A. I don't know.

Q. And what was the Public Service bus doing on the corner? A. The public service bus was picking up these passengers, the way any bus stops to pick up passengers.

Q. So that you saw the defendant's bus in this suit down at 17th Street, was that before the Public Service bus stopped? A. Yes, sir. 40

*William Rabiet—For Plaintiff—Cross.*

Q. Then you did not pay any more attention to bus no. 28, did you? A. No.

Q. And you did pay attention to the Public Service bus? A. It was right in front of me.

Q. You watched it? A. Yes, sir.

10 Q. Did you count the passengers that got on?  
A. I would not say I counted them exactly, I said about eight.

Q. Did you count them to know if they were seven or eight? A. I didn't count them.

Q. What makes you think there were about eight? A. Because there was quite a bunch around there.

Q. That is just a guess is it? A. Yes, sir.

20 Q. Was it after you counted the passengers  
or before you counted the passengers that you happened to glance to see the boy crossing the street, before he left the curb? A. The passengers were getting on the bus when the boy was crossing the street.

Q. The Public Service bus was still standing there, is that right? A. The Public Service bus was still standing there.

Q. Then you looked to your left and saw no. 28? A. I saw that bus through the Public Service bus window.

30 Q. So that you did not see the other bus coming until you saw it coming through the window of the Public Service bus? A. Yes, through the window of the Public Service bus and the boy was crossing the street,

Q. So that the first time you saw, "28" was when you glanced through the windows of the Public Service bus? A. Yes.

Q. Then you saw it? A. Yes, sir.

40 Q. Was that the same time you saw the boy

*William Rabiet—For Plaintiff—Cross.*

leaving the curb over here? A. No, the boy had crossed the street already.

Q. Completely crossed the street? A. Well, he was over half way across the street.

Q. He was not out on through this first track yet, was he? A. He had passed that.

10

Q. And the bus was coming down here, was it? A. Coming down.

Q. Well, the boy never did get in front of the bus, did he? A. Well, he was in the middle of the track on the southbound rail.

Q. Did you actually see the boy come in contact with the bus? A. I did.

Q. Well, did he come in contact with the front left fender of the bus or the front left wheel? A. Yes.

20

Q. Well, that front wheel didn't go over this boy, did it? A. I could not say that.

Q. Then you do not know whether it went over him or not? A. I seen him getting struck.

Q. I am asking you whether you know whether the front wheel went over him or not. A. I could not say that.

Q. So that when you got out where the bus was the boy was under the bus a foot of the rear wheel, is that right? A. Yes, sir.

30

Q. And you say if the bus had moved it would have gone over what part of his body? A. Over his stomach.

Q. But the bus stopped, didn't it? A. It did.

Q. When you ran from where you were to pick the boy up, you did not run in front of this Public Service bus, did you? A. Around the back.

Q. Why did you run around the back if the boy was lying up front here? A. Because that was the quickest way.

40

*William Rabiet—For Plaintiff—Cross.*

Q. The nearest way to go to the boy was to the rear of the Public Service bus and not in front of it? A. No, sir.

10 Q. There is no question in your mind that after the accident was over you ran behind this Public Service bus to get the boy instead of in front of it to get over here? A. That is right.

Q. You are sure of that now, are you? A. Yes, sir.

Q. You are clear that you went back of the Public Service bus to get to where the boy was, to pull him out? A. Yes, sir.

Q. You did not go in front to get him? A. No, sir.

20 Q. Yet you say the accident happened away up here? A. It did.

Q. Now, didn't the boy run across this corner and come over this way to get that bus and strike the left front fender of the bus? A. He didn't run catecorner across, he came right straight across.

30 Q. How long a time elapsed between the time you saw the bus passing the Public Service bus and the time of the impact, how much distance was there, ten or fifteen feet? A. I don't quite understand what you mean.

Q. I mean how far did the bus travel from the time you first saw it passing the Public Service bus until the boy and the bus came together? What distance, how far, ten or fifteen feet? A. At least fifteen feet.

Q. Between the time you saw it passing the Public Service bus until the boy was struck it went 15 feet? A. Yes, sir.

40 Q. And how far afterward did the bus go? A. About 15 feet.

*William Rabiet—For Plaintiff—Cross.*

Q. 15 feet after he struck the boy? A. Yes, sir.

Q. How far did it go before? I thought you said 15 feet? A. (No answer.)

Q. You saw the boy and the bus come in collision? A. Yes, sir. 10

Q. From that time on how far did the bus go, how many feet about? A. Probably 12 or 15 feet.

Q. So that altogether from the time you first saw it passing the Public Service bus that would be about 30 feet? A. (No answer.)

Q. Well, before it struck the boy it went 15 feet you say? A. Yes, sir.

Q. Can you tell how fast it was going? A. At least 20 miles an hour. 20

Q. How can you tell? A. I didn't have any speedometer to watch, of course.

Q. And why do you say 20 miles an hour if you do not know? A. It was going 20 miles an hour or over.

Q. You drive a car? A. I did, yes.

Q. Not now? A. No, sir.

Q. And you mean to tell us that going 20 miles an hour he stopped in 15 feet? A. That is what he did. 30

Q. How long is this bus? A. Well roughly I estimate it about 20 or 21 feet long.

Q. So that he stopped it in a little more than half its length? A. No, he stopped it more than that, probable nearly twice his length before he stopped.

Q. 44 feet? A. From the time he passed the Public Service bus.

Q. You say the bus only went 15 feet after 40

*William Rabiet—For Plaintiff—Re-direct.*

striking the boy? A. After they came together, yes.

Q. So that from the time he struck the boy until he stopped he only went 15 feet, is that right? A. He went 15 feet, yes, sir.

10 Q. So that after the impact the bus went a little more than half its length, didn't it? A. Yes, over 15 feet.

Q. Can you put a mark on this blackboard showing where the bus and the boy came together? A. This would be the point where the Public Service bus was standing and where I looked over the hood.

20 Q. Now I want you to mark where the impact happened? A. The impact was just about here.

Q. Can you point where the bus and the boy came in contact with each other? A. Yes, sir.

Q. As the boy was going across? A. Yes, sir.

Mr. MacLeod: That is all.

*Re-direct Examination by Mr. Castellano:*

30 Q. After the bus had stopped, after the accident, and the boy was underneath, do you know in what position the bus was with reference to this dry goods store on the corner? A. The bus was facing south, straddling the rails in the street.

Q. Straddling the rails, but in what position was it with reference to the dry goods store on the corner? Was it opposite the dry goods store? A. It was right about here, where I have the B.

40 Q. And you still say that this boy was ten

*Louis C. Lange—For Plaintiff—Direct.*

feet away from the police booth? A. About that.

Mr. Castellano: That is all.

*Re-cross Examination by Mr. MacLeod:*

10

Q. With the Public Service bus standing here, between this rail and the curb, it would just about fill that space, wouldn't it? A. No, there is still room between the rail and the Public Service bus.

Q. How much space is there from this rail to the curb? A. I have no idea how wide that is.

Mr. MacLeod: That is all.

20

LOUIS C. LANGE, sworn as a witness.

*Direct Examination by Mr. Castellano:*

Q. You are a duly licensed practising physician in the State of New Jersey? A. Yes, sir.

Q. How long have you been a practising physician? A. About 15 years.

30

Mr. MacLeod: We admit the qualifications of Dr. Lange.

Q. You are now attached to the North Hudson Hospital in some capacity? A. Yes, visiting surgeon.

Q. You specialize in surgery, do you? A. I do.

40

*Louis C. Lange—For Plaintiff—Direct.*

Q. Are you familiar with Frank Ratz, the infant plaintiff? A. I am.

Q. Do you remember when he was admitted to the North Hudson Hospital? A. From the record, November the 10th, 1925.

10 Q. Have you the record of the hospital with you? A. I have it right there.

Q. Did you examine Frank Ratz soon after his admission to the North Hudson Hospital? A. I did.

Q. What did you find the matter with him?

Mr. MacLeod: I object to the doctor using the records.

20 The Witness: Just for the dates. I don't care about the record only to recall the date.

Mr. MacLeod: Then I have no objection.

30 Q. What did you find the matter with him on the first day you examined him? A. When he was admitted to the hospital he was admitted in a condition of shock when I first saw him with evidence of a fracture of the clavicle and an evidence of hemorrhage and injury to his chest.

Q. What did you do for him Doctor? A. At that time?

Q. Yes. A. Practically nothing surgically except to treat the shock and put him at rest in the proper position.

Q. Did you continue to treat him there from day to day? A. I did until he was discharged from the hospital.

40 Q. Now about eleven days after his admis-

*Louis C. Lange—For Plaintiff—Direct.*

sion was there some operation performed upon him? A. Previous to that he had all evidences of fluid in his chest, and his left chest—I am referring to the left side now, that is the side that was injured, the left chest had been tapped, needles were put in the plural cavities and the fluid removed. About 50 cubic centimeters of fluid was withdrawn. On the condition not clearing up we made two or three subsequent punctures into the chest cavity, with absolutely no result on the fluid. Inasmuch as the pains persisted, I thought it best in my judgment to submit this boy to a surgical operation, to remove part of the rib and remove anything that might be present within the chest cavity to allow the lung to expand. That was done, I believe, on the 7th day of December.

Q. Now then you say you removed a portion of one of the ribs? A. One of the ribs.

Q. That is permanently removed, is it? A. Yes, that is permanent. Sometimes the rib does grow again within that channel.

Q. And when you removed a portion of that rib did you insert some sort of a drain to remove the pus? A. In this particular case, no.

Q. How did you allow the fluid to escape? A. We did that at the time of the operation. We removed all clots and fluid, as much as we possibly could. We don't drain conditions of that kind, for fear there might be pus formed.

Q. What did you do to him in the operation you performed on the 7th day of December?

A. We removed a section of the rib, opened the chest cavity and removed all clots and fluid.

Q. In that operation you extracted all the

*Louis C. Lange—For Plaintiff—Direct.*

fluids which was there at the time in the cavity? A. We did.

Q. What permanent injury has the boy now?

10 A. Although the x-ray does not demonstrate it on account of the fluid being present, this boy has some decided injury to his left chest wall, particularly in front of his left chest. That is, it is depressed. He has also this calicle which had been broken, which gives him a certain amount of discomfort, but in no way interferes with motion. As the result of the injury to his lung which caused the hemorrhage, he has to my mind a certain amount of adhesions within the chest cavity, that is, the lung being covered by what we call the plura and the ribs  
20 being lined likewise, that cavity is no longer normal, but there are these adhesions on the membrane. That does not allow his chest to expand as well as it ordinarily would. In other words there is not as good expansion of the left lung or the left chest, we will say, as compared with the right. The x-ray at the present time of course merely shows what fluid was in there.

30 Q. Is that a permanent condition, Doctor? A. That is permanent.

Q. What probable result will there be in the future on account of the condition of the lung?

Mr. MacLeod: I object to that.

40 Q. My question is will it increase in seriousness? A. Well, of course, anything that is injured would decrease resistance. If the boy was exposed to any tubercular infection in any way he would be more likely to get it in that lung.

*Louis C. Lange—For Plaintiff—Direct.*

Mr. MacLeod: I object to that as a possibility.

Q. Well, as a result of the trauma to the lung, bringing about the condition which you have described of the lung, with reasonable certainty can you say that there is danger of infection such as tuberculosis? 10

Mr. MacLeod: I object to that.

The Court: I don't think it is competent. Objection sustained.

Q. Does this injury subject him to the possibility of developing lung trouble?

Mr. MacLeod: I object. 20

Q. Well now, this thickening of the membrane around the lung, how does that interfere with the breathing? A. Well, if the boy runs or anything, it could possibly interfere, make him short of breath.

Mr. MacLeod: I object, he is talking now of possibilities. 30

Q. You said before Doctor one lung is now permanently affected in that it cannot function with the same volume or same affect as the other lung, is that right? A. Correct.

Q. What is that due to? A. Due to the adhesions between the lung and the plura, all due partly to the pressure on the upper chest wall, which is displaced.

Q. Is the heart affected in any way? A. When 40

*Louis C. Lange—For Plaintiff—Direct.*

the boy exerts himself the heart beats more rapidly.

10 Q. Is that due to the pressure on the wall of the chest? A. The pressure on the wall—any interference with heart action could be explained by pressure on the chest wall, being in the location of the heart.

Q. Did you have this x-ray made recently of Frank Ratz's chest? A. I did.

Q. Was it made under your instruction? A. I was present when it was taken but not when it was developed.

Mr. Castellano: I offer it in evidence.

(Marked Exhibit P-6.)

20

Q. That was made what day, Doctor? A. I don't remember the day. I know I was present. It was taken by Dr. Bernstein.

Q. There is a date there, 4-5-26. A. About that, yes.

Q. This report accompanied it? A. Yes, sir.

30 Q. Can you read this x-ray for us? A. Well, the x-ray shows a fracture of the clavicle, the inner third, with fairly good union. This portion of the chest wall is, you see, blurred, you have a complete obliteration of the whole left side. The thickening obliterates the picture.

Q. When was this picture taken? A. The fifth day of April, 1926.

Q. Have you any of the pictures which were taken at the hospital? A. I didn't bring those, they are practically the same pictures.

40 Q. This thickening of the covering of the lung, what affect has that upon the lung itself? A.

*Louis C. Lange—For Plaintiff—Direct.*

If you have a rubber ball, like a football and you have a leather covering outside, if you were to glue the walls, that is the leather, to the rubber in places, certainly you could not expect that to expand and collapse as well as it would if it were free. That is the best explanation I can give you. 10

Q. That is, the covering of the lung has hardened so that it has interfered with the expansion of the lung which is necessary for breathing, is that right? A. Yes, sir.

Q. And you say this condition is permanent? A. That I believe is permanent.

Q. Did you take charge of the patient after he left the hospital? A. I did.

Q. You have had charge of him ever since? A. Yes, sir. 20

Q. Up to to-day? A. Yes, sir.

Q. What has been the treatment after his discharge from the hospital? A. Well, the treatment after his discharge from the hospital is principally rest. I told him to rest and get out in the fresh air. There is not any other treatment.

Q. Has he complained of pain during the last few months?

Mr. MacLeod: I object to that, what the patient has said. 30

Q. Well, what have you done during the last few months for him? Have you prescribed any medicines for him? A. Just the cough medicine at one time when he was coughing. Other than that I didn't prescribe any medicine for him at all. I told him it was necessary for him to get out in the fresh air and sunshine. 40

*Louis C. Lange—For Plaintiff—Direct.*

Q. Have you prescribed anything for any part which hurts him?

Mr. MacLeod: I object, no part has been shown which hurts him yet.

10 Q. Do you know whether or not Frank Ratz has complained at all of any pain in this region?

Mr. MacLeod: I object.

The Court: He may answer.

A. The past two or three weeks I think when he came to see me he did complain of some pain in the front of the chest. Previous to that he had not complained of any real pain.

20 Q. Now, in what respect is Frank Ratz disabled if any? A. Disabled in the sense that he has a deformity of the collar bone, which in a sense does not interfere with the usefulness of his arm. He has, however, a reduction in the capacity of the lung or of the chest cavity on the left side, and that is his main incapacity, due to the injury to his anterior chest wall and the bleeding into the plura, that is, the cavity between the lung and the chest wall, which has  
30 resulted in permanent adhesions, and thickening of the plura. This has reduced the capacity of the lung to expand and contract.

Q. And does that condition interfere with him in any way, doing any hard manual labor? A. I have not demonstrated that. I could not say that it would until the boy was tested, except from what he says, that if he works—I think he says he gets short of breath, that is all.

40 Q. Can he lift on the left hand side as well as he can on the right hand side?

*Louis C. Lange—For Plaintiff—Direct.*

Mr. MacLeod: I object, that is very leading.

Q. Doctor, are these two conditions, the lung condition and the fractured clavicle, permanent defects?

10

Mr. MacLeod: The Doctor has answered this question about three times I believe.

The Court: Yes, he has already answered that.

A. The deformity due to the fracture is permanent. The deformity due to the pushing in of the chest wall is permanent. The lack of expansion of the lung or chest cavity on the left side due to the adhesion is permanent.

20

Q. Were there any fractured ribs, Doctor? A. There is no evidence from the x-ray. Still, there must have been some injury to the chest wall to push it in.

Mr. MacLeod: I object to any possibilities.

The Witness: There was in my opinion.

Mr. MacLeod: The x-ray shows that there was not.

30

The Court: Then the Doctor's opinion on the x-ray do not agree.

Q. In your opinion there was a fracture of several of the ribs? A. There was at the costal junction. Cartilage does not show in an x-ray.

Q. Now, after the discharge of Frank Ratz from the hospital, how often did you treat him or see him? A. I saw him about once a week. In the last month I think every two weeks.

40

*Louis C. Lange—For Plaintiff—Cross.*

Q. Did you see him as a private patient after his discharge from the hospital? A. I did.

Q. And what is the reasonable charge for your services, Doctor? A. For the entire treatment, \$425.

10 Q. And medically you have done the very best you could for him in the case? A. I have had consultations with other men.

Q. Did you suggest that Frank Ratz be examined by some other physician? A. I did.

Q. Did you suggest Dr. Arlitz? A. I didn't suggest Dr. Arlitz. I asked Dr. Bernstein, who took the x-ray, to examine him and render an opinion.

20 Q. Did you suggest that other treatments be had by any other expert?

Mr. MacLeod: I object.

Mr. Castellano: I withdraw the question.

*Cross Examination by Mr. MacLeod:*

Q. Doctor, you had an x-ray taken of the ribs? A. Yes, sir.

30 Q. And x-rays usually show a fracture of the ribs, do they not? A. Usually. It is very difficult, sometimes, to see them.

Q. Well, where there is a fracture, the x-ray is a very important thing in determining where it is, isn't it? A. Yes, we like to check our diagnosis with it.

Q. But the ex-ray is sometimes wrong? A. Absolutely.

Q. How often? A. Quite frequently.

40 Q. It might have been wrong in this case might it not, Doctor? A. It might be.

*Louis C. Lange—For Plaintiff—Cross.*

Q. For instance, how do you determine the condition of the left lung from this x-ray? A. By comparison with the other side and having operated upon the boy and having attended him and examined him.

Q. You say that in your opinion there were fractured ribs? A. Yes, sir. 10

Q. Yet the x-ray does not show them? A. To me they do not.

Q. Now in your opinion you say there is a depressed chest wall, is that right? A. Yes.

Q. Why do you say that? A. Because it is visible.

Q. On the x-ray? A. Not on the x-ray.

Q. Isn't that visible on the x-ray? A. Not that I can see. 20

Q. Didn't you say that this condition showed lack of air in the lungs? A. I said it shows a thickening of the plura.

Q. Didn't you say a little while ago that it showed lack of air in the lung? A. I did not.

Q. And you say the x-ray is not always correct? A. That is just a matter of opinion, not always.

Q. And you said that quite often they are not correct? A. That is my opinion. 30

Q. Don't you believe much in the x-ray? A. Absolutely. That is why I take them.

Q. Well, they are more certain than anything else? A. No, they are not.

Q. In other words you can tell by feeling whether there is a broken rib better than you can by taking an x-ray? A. Sometimes, yes.

Q. I don't mean sometimes. A. Well, we don't usually work that way. We take the two things together. 40

*Louis C. Lange—For Plaintiff—Cross.*

Q. You depend upon your feeling and the x-ray? A. Absolutely.

Q. Now then, Doctor, the adhesions are the result of the operation, are they? A. They are not.

10 Q. Don't they come after operations? A. Not usually, no.

Q. What are adhesions? A. Do you want me to explain in plain language to the jury?

Q. Yes. A. Adhesion means the drawing together of two surfaces, as I explained with the football. It is usually due to the throwing out of cells which become consolidated into fibrous tissue.

20 Q. What would you call this lung condition, a traumatic condition? A. Absolutely.

Q. The lung itself or the surroundings of the lung? A. I would say the lung and surroundings.

Q. But you do not know whether the lung itself was injured? A. Yes.

Q. Was there any traumatism to the lung itself that you know of? A. You do not usually get that amount of bleeding unless the lung is traumatized.

30 Q. The portion of this rib which you say you removed may grow in again, is that true, Doctor? A. Yes.

Q. He has stopped his coughing, has he? A. He has not complained to me in the last two visits.

Q. And he complained of no pain until about a couple of weeks ago? A. That is right.

40 Q. He has a very remarkable recovery, has he not, Doctor? A. Well, I would not say so. I would say he has a fair recovery considering the injury.

*Louis C. Lange—For Plaintiff—Re-direct.*

Q. And he has lost no motion in his arm from the fracture of the clavicle? A. No.

Q. And his lung condition you expect to improve? A. I had him playing a trombone in order to try to develop this lung.

Q. That requires quite a little lung power? 10  
A. That is why I gave it to him to play on.

Q. That requires quite a little wind? A. That is part of the treatment.

Q. And when any boy runs or plays his heart beat faster than normal, doesn't it? A. No.

Q. Do you mean to say that when a boy runs his heart does not beat faster? A. It increases, yes, when a boy runs, but they do not usually have to stop for air or anything 20 like that.

Q. You have prescribed fresh air and sunshine for his treatment? A. Yes.

Q. And blowing a trombone? A. Yes.

Q. And that is all he is doing now? A. Yes sir.

Q. How long has he been playing on this trombone? A. Well, I think probably three or four months. 30

Mr. MacLeod: That is all, Doctor.

*Re-direct Examination by Mr. Castellano:*

Q. Have you tried him running or climbing stairs, Doctor? A. No, I had him exercise in my office to see if his heart increased more than normal, and it did.

Mr. Castellano: That is all.

(Recess till ten A. M.) 40

*Richard Muh—For Plaintiff—Direct.*

Ten A. M., June 17, 1926.

RICHARD MUH, sworn as a witness.

*Direct Examination by Mr. Castellano:*

10

Q. Where do you live? A. 645 Tyler Place, West New York.

Q. What is your occupation? A. Police officer, town of West New York.

Q. On the 10th of November, 1925, were you a police officer? A. Yes, sir.

Q. And where were you stationed? A. Police headquarters.

Q. Were you here yesterday? A. I was.

20

Q. Did you hear the testimony given by a witness William Rabiet? A. I did.

Q. How did you come to go over to the scene of the accident on the 10th of November? A. Why the gentleman came into the police station and said there was an accident at 16th Street and Bergenline Avenue.

Q. That is Mr. Rabiet? A. Yes, sir.

Q. Did you go right out? A. Yes, sir.

30

Q. What did you find when you reached the corner of 16th Street and Bergenline Avenue?

A. I found a bus standing on the corner.

Q. Whereabouts on the corner?

Mr. MacLeod: I object to that. This is after the accident.

The Court: You may testify to that providing you connect it up. If you don't connect it up I will strike it out. Of course it may have been changed after the accident.

40

*Richard Muh—For Plaintiff—Direct.*

Q. How far away from headquarters is Bergenline Avenue and 16th Street? A. About 250 feet.

Q. And when you were notified by Mr. Rabiet did you come out immediately? A. I did.

10

Q. Did you stop for anything? A. No, sir.

Q. Whereabouts on Bergenline Avenue did you find this bus?

Mr. MacLeod: I object to that, there is no proper foundation for it.

The Court: If you do not connect it up I will strike it out.

Mr. MacLeod: Exception.

20

A. I found it on the southbound track on Bergenline Avenue about five or six feet south of the northwest corner.

Q. South of the northwest corner or south of the southwest corner?

Mr. MacLeod: I object to counsel leading the witness.

The Court: He may answer the question.

30

A. The northwest corner of 16th Street.

Q. What is on the northwest corner of 16th Street? A. A bank, the Title Guarantee Trust Company.

Q. Will you come down here to this drawing and tell us where you found this bus? A. About five or six feet the other side of this corner.

Q. Will you put a mark there?

Mr. MacLeod: I might suggest that he

40

*Richard Muh—For Plaintiff—Cross.*

put an A there indicating the position of the bus.

Q. When you reached the corner was the boy anywhere in sight? A. No, sir.

10 Q. He had been already taken away? A. Taken away by a yellow cab owned by Mr. Scallin.

Q. Did you take any article from anywhere near the bus or from the bus? A. I did.

Q. What did you take from the bus? A. I took a lunch box.

Q. Where did you find that lunch box? A. The lunch box was between the mudguard and the hood of the bus.

20 Q. On the right hand side or the left hand side? A. On the right hand side.

Q. Did you speak to the driver? A. I just asked him if he was driving the bus and he said yes. I asked him to produce his license, that his, his driver's license which he produced, and I told him when he finished his trip to come to police headquarters, that he was under arrest.

Q. Did the bus have any writing on the outside? A. That I didn't take notice to.

30

Mr. Castellano, cross examine.

*Cross Examination by Mr. MacLeod:*

Q. Was the lunch box underneath the bus? A. No sir, it was standing between the mudguard and the hood of the bus.

Q. On the left hand side of the bus? A. The right side of the bus, facing south.

40 Q. The boy was not there at all? A. No, sir.

*Richard Muh—For Plaintiff—Cross.*

Q. You do not know how the lunch box got there? A. I could not say.

Q. You do not know if the boy came from this side or the other side? A. I could not say.

Q. You do not even know how long after the accident you got there, do you? A. I don't suppose it was long after. This man came running in and said there was an accident. 10

Q. When you got there the bus was standing still? A. When I got there the bus was in that position.

Q. Did you see the Public Service bus parked there? A. No, sir, I did not.

Q. That was gone? A. That was gone.

Q. From the corner of the bank could you see the bus five or six feet back towards 17th Street? A. No. 20

Q. How many feet about? A. It was on the other side of 16th Street.

Q. This is 16th Street here, that is right, isn't it? A. Yes.

Q. Mr. Rabiet came and told you, didn't he? A. He did.

Q. And you went with him? A. Yes, sir.

Q. You went with him, didn't you? A. I rushed out before him. We always keep our uniform on in police headquarters. I rushed right out the door. 30

Q. You went out before him after he told you? A. Yes.

Q. And when you got back there the boy was gone? A. The boy was gone. The people around there informed me that the boy had been taken to the hospital.

Q. You came back there before Mr. Rabiet did, didn't you? A. Back where? 40

*Richard Muh—For Plaintiff—Re-direct.*

Q. Back to where the accident happened? A. It is only about 250 feet.

Q. But you did get there before Mr. Rabiet got there? A. Yes, because I rushed out ahead of him.

10

Mr. MacLeod: That is all.

*Re-direct Examination by Mr. Castellano:*

Q. Now, Mr. Muh, you understand this is north? A. Yes.

Q. And this is south? A. Yes, sir.

Q. Now with reference to this intersection here, whereabouts is your police station, on this side or this side?

20

Mr. MacLeod: I object, improper re-direct examination.

Mr. Castellano: I believe this witness is mistaken.

The Court: You may find out.

Q. With reference to the intersection of 16th Street, where is the police station? A. It is east of Bergenline Avenue.

30

Q. Show us where, east of Bergenline Avenue it is on this plan?

Mr. MacLeod: I object, improper re-direct examination.

The Court: If this witness has made an error, he may correct it.

Mr. McLeod: I withdraw the objection to save time.

40

Q. Where is your police headquarters, where would it be? A. The police station is this side.

*Lawrence Donna—For Plaintiff—Direct.*

Q. Do you know where the drugstore is? A. The northeast corner. The United Cigar store is on the southeast corner. There is the dry goods on the southwest and the bank is on the northwest.

Q. Now, where did you find the bus? A. It was five feet to the other side of the bank on the crossing, on the northwest crossing. 10

Q. And facing which way? A. Facing south.

Mr. MacLeod: He said that on his direct examination. There is no mistake at all about it.

Mr. Castellano: That is all.

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LAWRENCE DONNA, sworn as a witness. 20

*Direct Examination by Mr. Castellano:*

Q. Where do you live? A. 151 Kazoo Street, Union Hill.

Q. And what is your occupation? A. Bus operator.

Q. Working for what company? A. Public Service Transportation Company.

Q. On the 10th day of November were you operating a bus for the Public Service? A. Yes, sir. 30

Q. On what route? A. I worked on Fairview Avenue, but on the pull-out trip it is up Bergenline Avenue.

Q. You worked on Fairview Avenue? A. Yes, sir.

Q. What is that about Bergenline Avenue, do you go through it to go to Fairview? A. I go up Bergenline Avenue. 40

*Lawrence Donna—For Plaintiff—Direct.*

Q. What brought you on Bergenline Avenue on the morning of this day? A. Why, I had to pull out to my work at Fairview, to get up to Fairview to start work.

10 Q. In which direction were you operating your bus on Bergenline Avenue? A. Going north.

Q. Did you have any passengers on your bus? A. No, I did not.

Q. Had you had any trouble with the bus before the accident? A. Yes, sir.

Mr. MacLeod: I object, it is immaterial. What difference would it make?

Mr. Castellano: I withdraw the question.

20 Q. Then you were going up to Fairview starting work? A. Yes, sir.

Q. About what time in the morning? A. I could not say what time it was.

Q. Well it was— A. I guess I was delayed about an hour and a half, and I was due up at Fairview at 6:10.

Q. And you were an hour and a half late? Yes, sir.

30 Q. Where were you when the accident occurred, where did you get with your bus? A. I got as far as 16th Street and Bergenline Avenue.

Q. And you were facing north, were you? A. Facing north.

Q. Did you see the accident? A. Yes, sir.

40 Q. At the time of the accident was there any other bus besides the bus which figured in the accident and your bus on that corner? A. There was, I think, another Public Service bus in back of me.

*Lawrence Donna—For Plaintiff—Direct.*

Q. Any other buses? A. No, sir.

Q. Tell us in your own way what you saw of the accident. A. Well, I was coming up Bergenline Avenue this morning and at 16th Street, at the bank there, there was a Public Service bus parked and there was another independent bus coming down, I should judge about 25 miles an hour, and this young fellow, I didn't see him make no steps or nothing, I just seen him get hit. 10

Q. And at the time he was hit, how fast or how slow was this bus that hit him, running?

A. About 25 or 30 miles an hour.

Q. Going very fast, was it?

Mr. MacLeod: I object. 20

The Court: Strike that out. He gave the speed.

Q. Did it blow any horn? A. I could not hear because my motor was making a noise.

Q. Because your motor was running?

Mr. MacLeod: I object to counsel repeating the witness' answer.

Q. As this bus came down Bergenline Avenue before it hit the boy, was there much space between the spot where the Public Service bus was parked at 16th Street, before the bank? A. No, sir. 30

Q. When he hit the boy, did you see the boy do anything? A. Yes, sir, I see the boy try to grab the radiator of the independent bus and he got thrown in between the bumper and the radiator. I seen the front wheel go over him and the rear wheel stop right by him. 40

*Lawrence Donna—For Plaintiff—Cross.*

Q. Which front wheel went over him? A. The right—the left—the right wheel ran over him and the left rear wheel stopped right at him, just right by him.

10 Q. Now, when the bus came to a standstill, do you know where the bus was? A. Why, he was in between the two tracks.

Q. And whereabouts with reference to 16th Street? A. Well, he was past—I could not say the northwest or the northeast, because I get confused on that, but he was near the dry goods store, nearer to the dry good store, but this way to the booth.

Q. Will you come down and mark on this board where the bus stopped. A. Here.

20 Mr. MacLeod: I would suggest that the witness mark a D indicating where the bus stopped.

Q. After the bus stopped at the place where you marked it, could you see the boy underneath the bus? A. Yes, sir.

30 Q. Whereabouts did he lie? A. At the left rear wheel. The wheel was right up against him.

Mr. Castellano: That is all.

*Cross Examination by Mr. MacLeod:*

Q. Could you mark on the map where the bus was when it struck this boy? A. I can, yes.

Q. Do that please.

(Witness marks D-1.)

40

*Lawrence Donna—For Plaintiff—Cross.*

Q. Indicating D-1 where the boy was struck.

Q. You did not see the boy leave the sidewalk, did you? A. No, sir.

Q. You were looking straight ahead north, weren't you? A. Yes, sir.

Q. You were driving your bus coming along and nobody was in it? A. It was empty. 10

Q. You were an hour and a half late and you were in a hurry? A. No, sir.

Q. But you were late? A. I was late but I didn't have to be in.

Q. An hour and a half late and you did not have to hurry? A. No, sir.

Q. Sure of that? A. Positively.

Q. And you were observing the road you were operating on? A. Yes, sir. 20

Q. And you were keeping on your right side? A. Yes, sir.

Q. And you were watching along the right side, were you? A. And the left side as well, yes.

Q. Why didn't you see the boy walk out on the right side? A. I seen the boy on the left side.

Q. You never saw the boy leave the curb? A. No, sir. 30

Q. The first thing you knew he was hit? A. Yes, sir.

Q. And that is the first thing you knew about this accident? A. When the boy was hit.

Q. Before they came together you did not see the boy did you? A. I saw the bus passing the Public Service bus and I thought then—

Q. Never mind what you thought, just what did you see? A. I seen the boy getting hit and I seen the bus going down— 40

*Lawrence Donna—For Plaintiff—Cross.*

Q. You saw the boy getting hit? A. Yes, sir.

Q. Sure of that? A. Yes, sir.

Q. Nobody told you to say that? A. No, sir.

Q. The first thing you saw of the boy was when the bus came in contact with him? A. Yes, sir.

10 Q. And before that you saw this bus coming down here? A. I seen it passing this Public Service bus.

Q. Don't you know that the boy darted out across the road? A. I don't know that.

Q. Are you sure of that? A. Positively.

Q. You don't know whether the independent bus blew its horn or not? A. I don't know, I could not hear it.

20 Q. He may have blown it and you did not hear it, is that right? A. Yes, sir.

Q. Now you say that the front right wheel of this independent bus went right over this boy, is that right? A. Yes, sir.

Q. What part of the boy did it go over, his leg? A. I think it went over his chest.

Q. The whole bus? A. Yes, sir.

Q. That was a big bus, wasn't it? A. It is a big bus.

30 Q. Do you know about the size of that bus? A. No, sir.

Q. You drive a bus? A. Yes, but I never measured it.

Q. It is one of the big buses, isn't it? A. I guess it is, but I don't know the length of it.

Q. What does it weigh, about five tons? A. I guess so.

40 Q. And you mean to say that the right front wheel of this five ton bus went over the boy's chest? A. Positively.

*Angello Senesi—For Plaintiff—Direct.*

Q. It was the front right wheel, was it, that went over him? A. The front right wheel.

Q. When the front wheel went over him this boy laid here under the left rear wheel, is that right? A. Yes, sir.

Q. Sure of that? A. Positive of that. 10

Mr. MacLeod: That is all.

ANGELLO SENESI, sworn as a witness.

*Direct Examination by Mr. Castellano:*

Q. Where do you live, Mr. Senesi? A. West New York. 20

Q. What address? A. Well it was on the 10th of November I seen that happen—

Q. One minute, where do you live? A. I live at 432 16th Street. *432 10th Str.*

Q. 10th and Bergenline Avenue, West New York? A. Yes, sir.

Q. What business are you in? A. I was a coal dealer.

Q. Now on the day of this accident, the 10th day of November, early in the morniig, where were you? A. I was with my truck on 16th Street on the southeast corner. 30

Q. The southeast corner of what street? A. 16th Street and Bergenline Avenue.

Q. In front of what store was the truck stopped? A. The cigar store on the corner.

Q. You were stopped on that corner were you? A. Yes, sir.

Q. Did you see an accident that day? A. Yes, sir, I did. 40

*Angello Senesi—For Plaintiff—Direct.*

Q. About what time in the morning? A. It was pretty nearly seven o'clock, that is the time.

Q. And at what corner did the accident happen? A. It was at the other side of the street, the west north.

10 Q. The northwest corner? A. Yes sir, in front of the bank.

Q. Did you see any automobiles on that side of the street? A. Yes sir, the Public Service bus was standing in front of the bank, and an independent bus was coming, and I seen him knock down this boy.

Q. You saw this independent bus knock down the boy? A. Yes sir.

20

Mr. MacLeod: I object to counsel repeating the witness's answers.

Q. Now, after this independent bus hit the boy, did it stop right away? A. It don't stop very quick because he was going fast; he never stopped quick.

Q. Where did he stop? A. I think he passed over 16th.

30

Mr. MacLeod: I object and ask that that be stricken out, what he thinks.

The Court: Tell us what you saw.

Q. Where did the bus stop after the accident? A. He stopped in the middle of 16th Street on Bergenline Avenue, pretty near the police booth, five or six feet away.

Q. When he stopped did you see where the boy was? A. Yes sir he was down in the middle of the tracks.

40

*Angello Senesi—For Plaintiff—Cross.*

Q. Whereabouts was the boy? A. In the middle of the tracks pretty nearly the police booth.

Q. At that time that the independent bus hit the boy, how was the bus going, fast or slow? A. After, he went slow. 10

Q. Not after, before. A. Oh, first he could not stop quick.

Q. How fast was the bus going? A. I think he went full speed, I don't know.

Q. What speed is that? A. It is real fast.

Q. How fast? A. About 25 miles an hour or so much.

Mr. Castellano: Cross examine.

*Cross Examination by Mr. MacLeod:* 20

Q. Do you know what the full speed of a bus is? A. I don't know.

Q. Then why did you tell us at full speed? A. (No answer.)

Q. Why did you say the full speed of this bus was 25 miles an hour when you don't know? A. Because on the corner where my house is, when I come out I can only go seven or eight miles an hour and— 30

Q. Where were you going this morning? A. I supply all the business people over there with ice.

Q. Where were you going? A. I was stopped, I was supplying the people.

Q. You were sitting on your wagon? A. Well, I was getting a piece of ice ready.

Q. What kind of a truck did you have then?

A. A horse and truck.

Q. You do not drive a motor? A. No sir. 40

*Angello Senesi—For Plaintiff—Cross.*

Q. You do not drive an automobile? A. No sir.

Q. So that you do not know the speed of automobiles? A. Well, I don't know about the bus.

10 Q. But you said this bus was going 25 miles an hour? A. That is what I think.

Q. Did anybody tell you to say that this independent bus was going 25 miles an hour? A. Nobody tells me. I think he runs fast, if it is 20 miles an hour or 25 miles an hour I don't know.

Q. Did you talk to the attorney about this case? A. I talked to him when I came, when he tells me if I see everything, he wants me  
20 for a witness.

Q. When was that? A. Well, when he took the case.

Q. When? A. When he gets the case from these people.

Q. How long ago? A. About a month or a month and a half.

Q. What did you do on your ice wagon? A. I cut a piece of ice and I was getting it ready—

30 Q. Was your ice wagon on Bergenline Avenue or on 16th Street? A. Yes sir, east.

Q. Which was it on, Bergenline Avenue or 16th Street? A. On Bergenline Avenue, the corner of 16th Street.

Q. In front of the cigar store? A. Yes sir.

Q. At that time, you had cut a piece of ice? A. Yes sir, I cut a piece of ice and I gave it to the boy.

Q. You cut the ice from the back step? A.  
40 Yes sir.

*Angello Senesi—For Plaintiff—Cross.*

Q. Then, after you cut the ice and gave it to the boy, what did you do? A. Then I went on the front.

Q. Did you get hold of the horse or the horse's head? A. No.

Q. Where did you go on the front part of your wagon? A. I went and sat there. 10

Q. You were standing over here? A. I was near the front.

Q. What were you doing, looking over here at the bank? A. That was after I chopped the ice.

Q. Why did you look over there? A. I look all over, I was looking all over that day.

Q. Did you see the boy on the sidewalk here? A. I never seen the boy running across. 20

Q. Did you see the boy running across? A. No sir, I never seen him run across.

Q. The first time you saw the boy was when he was hit? A. Yes sir.

Q. You are sure of that? A. Yes sir.

Q. You did not see him any time before? A. No.

Q. You did not see the boy on the sidewalk here? A. No sir.

Q. You did not see him go across the street? A. No sir. 30

Q. The first time you saw the boy was when the automobile and the boy came together? A. When he was hit, yes.

Q. Who told you to say that? A. Nobody tells me.

Q. Did you see the bus before it hit the boy? A. I never seen it before.

Q. Don't misunderstand me. You know the bus that hit the boy? A. Yes sir. 40

*Angello Senesi—For Plaintiff—Re-direct.*

Q. Well, did you see the bus before it hit that boy? A. Not very long.

Q. Well, how long before? A. About ten or fifteen feet.

10 Q. But you did not see the boy until he was hit? A. I seen him when he gets hit.

Q. What did you do after the accident, did you go on delivering your ice? A. Yes, sure.

Q. Did you go to pick the boy up? A. No, there was lots of people around there.

Q. There were a lot of people there before you? A. There was more people when I got over.

20 Q. You did not go over there to help him, did you? A. I did go afterward.

Q. How long after? A. The same time.

Q. I thought you said you went on delivering your ice. A. I was standing there on the front.

Q. The bus was on its right hand side after the accident, wasn't it? A. Yes sir.

Q. It did not go over to the left side of the road? A. He was pretty nearly on the tracks on the left side.

Q. On the south bound tracks? A. Yes.

30 Q. What part of the bus struck the boy? A. The independent bus.

Q. Well, what part of the independent bus? A. I don't know.

Q. The back part, the side or the fender, the wheel, what part of the bus hit the boy? A. Oh, the front.

Q. What part of the front? A. The front.

Q. Can you say whether it was the left side of the front or the fender? A. The left front.

40

*Frank Ratz—For Plaintiff—Direct.*

Q. The boy ran into the left front fender, didn't he? A. He ran in, yes.

Mr. MacLeod: That is all.

*Re-direct Examination by Mr. Castellano:*

10

Q. Did you see the boy running at all at that time? A. In front of the bus you mean?

Q. Did you see the boy run? A. No, I never seen the boy run.

Q. At the time the bus hit him, what was the boy doing? A. He fell down.

Q. Just before the boy was hit by the bus, did you see the boy do anything? A. No, I didn't see anything.

20

Mr. Castellano: That is all.

---

FRANK RATZ, sworn.

*Direct Examination by Mr. Castellano:*

Q. How old are you? A. 15. I will be 16 in September.

Q. Do you remember the day of this accident? A. I think it was Tuesday, November the 10th, 1925.

30

Q. Now, on that day what were you doing? A. I was going to work.

Q. And what kind of work had you been doing before that day? A. Well, I was working in a pipe factory, sandpapering and polishing the pipe.

Q. And how much were you earning a week in this pipe factory? A. \$17.28 a week.

40

*Frank Ratz—For Plaintiff—Direct.*

Q. On the day of the accident where did you live? A. I lived at 632 Bergenline Avenue.

Q. 632 Bergenline Avenue, is that on the west side of Bergenline Avenue or the east side of Bergenline Avenue? A. Toward the east side from Bergenline Avenue.

10 Q. What time did you leave your home on this morning? A. About five minutes to seven.

Q. What time did you have to report for work? A. Half past seven.

Q. Where? A. Union City.

Q. How far away is 16th Street and Bergenline Avenue from the place where you worked? A. I worked at Fulton Street and New York Avenue, Union City. It is not far, I don't know just how far it is.

20 Q. How long does it take the bus to get down there? A. About ten or fifteen minutes.

Q. Now, did you have anything on your arm? A. Yes, a lunch kit.

Q. What kind of a kit was it? A. It was my lunch.

Q. What was it made of? A. Tin.

Q. Tell us in your own way how this accident happened. A. I came to 16th Street and Bergenline Avenue and I saw a Public Service bus standing on the corner by the bank. I looked down then I looked up and I saw the independent bus on 17th Street. Then I started across and I was about five feet away from the Public Service bus, I looked around back and I saw the independent bus coming straight at me. I tried to jump, but it hit me and I felt myself going under the bus.

Q. When you tried to jump, which way did you try to jump? A. This way.

40

*Frank Ratz—For Plaintiff—Direct.*

Q. Toward the bank or away from the bank?

A. Away from the bank.

Q. As you walked across Bergenline Avenue did you look to see this independent bus coming down? A. Yes, I saw him coming at the curb, but all of a sudden he turned into the street.

10

Q. You say you saw him coming near the curb, which curb? A. On the other side where the Public Service bus was, between 16th and 17th street.

Q. How far away from 17th Street was it when you looked again and saw the independent bus coming near the curb? A. It was about by the butcher store.

Q. And the butcher store is about how far away from the bank? A. It is only a little ways up.

Q. Is the butcher store nearest 17th Street or nearest 16th Street? A. Near to 16th Street.

20

Q. Now, when you saw it coming along at the butcher store near the curb, what did you do? A. I went across, and I stopped to see where he was going to go, and all of a sudden I saw the independent bus coming down on me. I tried to jump out of the way, but he caught me right in the middle—

Q. Before the accident which bus did you intend to take? A. I intended to take the Public Service bus.

30

Q. Now, when you saw this bus, when you were about five feet away from the Public Service bus, was it going fast or slow? A. The independent bus?

Q. Yes. It was going fast.

Q. Why didn't you jump toward the Public Service bus?

Mr. MacLeod: I object, incompetent.

The Court: I don't think it is competent.

40

*Frank Ratz—For Plaintiff—Direct.*

Q. How far away were you from the Public Service bus at the time that you saw this independent bus coming straight at you? A. About five feet.

10 Q. When you say it was five feet do you mean five feet from the side, five feet from the rear or five feet from the front? A. The Public Service bus was standing this way and I was a little in the front.

The Court: That does not mean anything on the record.

Q. Was it five feet from the front or five feet from the rear? A. From the front.

20 Q. So that you then decided to go to the rear to get on the Public Service bus? A. Yes, sir.

Q. Why didn't you go straight ahead and pass in front of the Public Service bus?

Mr. MacLeod: I object.

The Court: He may answer.

A. I was afraid he might start off.

Q. After you saw the independent bus coming straight up, was there much room between its left side and the Public Service bus? A. No.

30 Q. Did you hear any horn blown at that time? A. No, he didn't blow any horn.

Q. Are you sure about that? A. Yes I am sure.

Q. Now you were hit, do you remember anything more? A. After I was hit?

Q. Yes. A. No sir. I was taken to the hospital.

Q. Did you suffer much pain in the hospital? A. Yes sir.

40 Q. Great pain or little pain? A. Great pain.

*Frank Ratz—For Plaintiff—Direct.*

Q. When did you have this great pain? A. I had this great pain when I came right away in the hospital and when they were putting long needles in my side to take out the fluid, and then after the operation.

Q. How many times did they stick those needles in your side? A. About five times. 10

Q. Did you have much pain after the operation? A. Yes sir.

Q. Do you have any pain now? A. I get it every once in a while over my heart and on the side.

Q. Before this accident did you ever have any other accident? A. No, sir.

Q. Were you ever sick? A. No.

Q. How much did you weight before the accident? A. About 130. 20

Q. How much do you weigh now? A. About 120.

Q. After the accident, and after you left the hospital were you strong? A. Weak.

Q. What did you take for this weakness? A. The Doctor gave me a tonic and all kinds of medicine.

Q. When was the last time you went to a doctor and told him you had a pain? A. Well, this last Saturday I was there and I told him I had pain all over my side. 30

Q. All over your side where? A. On the left side, all over the heart and all around.

Q. Did the doctor ever give you any medicine to rub on your left side? A. Yes, sir.

Q. How long ago did he give you any medicine for that? A. A good long time.

Q. A month or a week ago? A. Two or three months ago and I am using it yet. 40

*Frank Ratz—For Plaintiff—Cross.*

Q. Now, do you have any coughing at night?

A. I still cough every once in a while, day and night time, all the time.

Q. Did you ever cough before the accident?

A. No, sir.

10 Q. Before the accident did you ever play baseball or games? A. Yes, sir, I was always playing, everything.

Q. Baseball too? A. Yes, sir.

Q. Do you play any games now? A. No. If I play I get too tired and I get short of breath and I cannot play any more.

Q. Can you walk up and down stairs well?

A. No, I have to stop about every two landings. If I go easy I can, but if I hurry I have to stop.

40 Q. Can you lift anything on your left side?

A. No, sir.

Q. When you do lift on your left side, what do you have? A. I have pain all over the side.

Mr. Castellano: That is all.

*Cross Examination by Mr. MacLeod:*

Q. You cough day and night? A. Yes, sir.

30 Q. All the time? A. I cough a little bit, but I don't cough as much as I used to, because the Doctor gave me medicine.

Q. You have not coughed since you have been in Court? A. No, I coughed this morning, while I was home.

Q. So that you do not cough all the time? A. No.

Q. And you did not cough while you were here in the Court room? A. No.

40

*Frank Ratz—For Plaintiff—Cross.*

Q. You were here all through the trial? A. Yes.

Q. Did you hear the doctor say that your cough was all better? A. No, he only asked me if I coughed.

Q. Isn't your cough all better? A. No, it is not all better, I still cough. 10

Q. Are you sure of that? A. Yes, I am, sure of that.

Q. Now what happened to you, right after you were hit? A. I flew up in the air.

Q. You flew up in the air? A. Yes, sir.

Q. Were you knocked up in the air? A. Yes, sir.

Q. Sure of that? A. Yes, sir.

Q. How far? A. I guess about to the police booth, I just don't know how far. 20

Q. By the police booth? A. Yes, near the police booth.

Q. About 35 feet that is. A. Maybe, I don't know.

Q. You lived 'at 632 Bergenline Avenue? A. 636.

Q. How old were you when you were working? A. 15.

Q. How old were you when you started to work? A. 15. 30

Q. And you lived up north on Bergenline Avenue? A. Yes, sir.

Q. Did you live on this block here? A. Right on Bergenline Avenue, straight up on the side where the drug store is.

Q. How far down towards 17th Street did you live, how many houses from the corner is it approximately? A. Right in front of the butcher store. 40

*Frank Ratz—For Plaintiff—Cross.*

Q. How far down is that? A. It is about in the middle of the street.

Q. So that you got out of your house down here? A. Yes, sir.

10 Q. Was the Public Service bus there when you came out of your house? A. Yes.

Q. So that when you came out of your door you saw the Public Service bus there, did you? A. Yes, sir.

Q. Sure of that? A. Yes, sir.

Q. And that is the bus you were going to get? A. Yes, sir.

Q. Then you started after it, did you? A. Yes, sir.

Q. And you ran? A. No, sir, I walked.

20 Q. You ran away down the middle of the block— A. It was not near the middle of the block.

Q. You said the middle of the block? A. I said near the middle.

Q. It was almost the middle? A. Well, yes.

Q. So that when you came out of your house and saw this bus there you started after it? A. Yes I went after it.

30 Q. And you cut across the street? A. I didn't. I went right straight down to the drug store.

Q. The drug store is on this corner here? A. Yes, sir.

Q. Did you walk down here and over to the other side? A. At the crossing there.

Q. And you did not cut across? A. No, sir.

Q. Sure of that? A. Yes, sir.

Q. Did anybody tell you to say you walked that way? A. No, sir.

40 Q. You were in a hurry to get the bus? A. No, sir. I had a half hour's time to get to work.

*Frank Ratz—For Plaintiff—Cross.*

Q. But you were after this bus? A. I wanted to get down to the corner, that is all.

Q. When you were out in the middle of the street or on the southbound track, you thought the bus was going to start, didn't you, the Public Service bus? A. Yes, sir.

Q. And you changed your mind, and instead of going in front of it you went around in back of it? A. I went around in back of it, I didn't want to go in the front of it. I was afraid he might start.

Q. And wasn't it when you got across about to where this A is, where the officer says the bus stopped, wasn't it when you got about there that you turned around to come back and ran directly in front of this independent bus? A. I looked first if the Public Service bus was going to start and I looked around, I wanted to go around back of it. The Public Service bus was standing still and the independent bus came right out at me and I tried to jump out of the way and he caught me right in the middle.

Q. Where were you when you did that? A. About five feet away.

Q. Were you running? A. No, sir, I was walking across the street.

Q. Positive about that? A. Yes, sir.

Q. No question about that? A. No, sir, I am sure I was walking.

Q. And you say you were thrown up in the air? A. Yes, sir, I was thrown up in the air.

Q. And then you say the left front wheel went over you? A. It was the right front wheel.

Q. You did not feel any wheel go over your body? A. I could not, I was unconscious.

Mr. MacLeod: That is all.

*Pauline Ratz—For Plaintiff—Direct.*

PAULINE RATZ, sworn as a witness.

*Direct Examination by Mr. Castellano:*

10 Q. You are the mother of the infant who was hurt? A. Yes, sir.

Q. And you are the wife of Frank Ratz who is suing as the next friend is that right? A. Yes sir.

Q. Where do you live now? A. 636 Bergenline Avenue.

Q. At the time of this accident where did you live? A. 632.

20 Q. Now, how many houses is 632 away from 16th Street? A. It is about a quarter of a block to 16th Street.

Q. Before this accident was Frank ever sick? A. Never.

Q. Was he a good strong, healthy boy? A. Stronger than I was.

Mr. MacLeod: I object to that.

The Court: She may say whether he was strong or not.

30 Q. Did you ever have to call a doctor in for him at all? A. Never.

Q. How much was he earning a week on the day of the accident? A. Seventeen dollars and something.

Q. Since the accident have you paid any bills for medicine?

Mr. MacLeod: I object to that, what she paid.

40

The Witness: My husband pays.

*Dr. William J. Arlitz—For Plaintiff—Direct.*

Q. Do you know what the hospital bill was?

Mr. MacLeod: That is not proper.

Mr. Castellano: Cross examine.

*Cross Examination by Mr. MacLeod:*

10

Q. Was your boy ever sick in his life? A. No, sir.

Q. Never had diptheria? A. No, sir.

Q. Measles? A. No, sir

Q. Scarlet fever? A. No, sir.

Q. Never even had the measles? A. No, sir, he was a very healthy boy.

Q. No childhood diseases at all? A. He didn't even have a cough like children have or nothing.

20

Q. Never even had a cold? A. A little cold.

Q. Never had an earache? A. No, sir

Q. Never had any of the diseases of children? A. No, he was very healthy.

Q. Sure of that? A. Yes, sir, and he was much stronger than I am.

Mr. MacLeod: That is all.

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DR. WILLIAM J. ARLITZ, sworn.

30

*Direct Examination by Mr. Castellano:*

Q. You are a duly licensed physician and surgeon of this state? A. I am.

Q. How long have you been a doctor? A. 35 years.

Mr. MacLeod: We will admit the Doctor's qualifications.

40

*Dr. William J. Arlitz—For Plaintiff—Direct.*

Q. Doctor, you have handled a great many cases of trauma? A. Thousands of them.

Q. And you also handled thousands of cases when you were head of the compensation bureau? A. Yes, sir.

10 Q. Did you make an examination of Frank Ratz? A. I did.

Q. Do you remember the date? A. June 1st of this year.

Q. And what did you find upon your examination? A. I found that the boy had a deforming fracture of his left collar bone. I found a scar below the angle of the left shoulder blade which was due to an operation. I found that his entire left lung was collapsed. I found that the breath  
20 sounds and the voice sounds were all tremendously exaggerated, which indicated that the lung was not functioning. I found the breath and voice sounds considerably exaggerated on the other side. My conclusion was that this boy had sustained a puncture or tearing of the lung as a result of this accident, and that there was no attempt at refunctioning. I also examined the radiographs in the case which were furnished to me by Dr. Bernstein and Dr. Perlberg and  
30 these radiographs all indicated that my diagnosis is correct, that the left lung is not functioning.

I also found that this boy's face was decidedly flushed or 'hectic, as it is called, and that in itself is a circumstance which indicates that the individual is suffering with a chronic ailment of the lungs.

Q. Is there any respirator capacity in the left lung? A. Apparently not. The entire left lung  
40 is absolutely flat. The radiographs show that

*Dr. William J. Arlitz—For Plaintiff—Direct.*

the detail of the entire lung is obscured. There is no detail, and they show the markings on the right side to be exaggerated. In other words as a result of the injury to the left side, he has had some inflammatory reaction on the right side.

10

Q. So that as a result his right lung is, to some extent, injured? A. It is involved to some extent as a result of the trauma on the left side.

Q. Now Doctor, is it true that even in healthy persons there is always present tubercular bacilli in the respiratory parts of the body? A. Yes, but they are harmless; they never do any damage unless the resistance of the individual is lessened or else the parts become inflamed, then of course they produce damage.

20

Q. Are the parts here much inflamed?

Mr. MacLeod: I object to any testimony as to possibilities.

A. I may say that insofar as I can determine at this time there are no evidences of an acute pulmonary tuberculosis as a result of the tuberculosis bacilli being present. I have said that tissues that are injured are a fertile field for the development of tuberculosis, which, however, had not occurred in this case up to that time.

30

Q. Now, the radiograph which you said you examined of Dr. Bernstein, is that the one which is marked Exhibit P-6? A. Yes, this is the first x-ray which shows to a very considerable extent—there you see the definition of the lung. On the other side there is practically no definition. That means that the covering on the lung and the lining on the ribs are obscuring because of the thickening and disease, hence the lack of definition in the lung.

40

*Dr. William J. Arlitz—For Plaintiff—Direct.*

Q. Now the other radiograph which you mentioned, is that the radiograph made yesterday by Dr. Perlberg? A. The radiograph made yesterday shows the condition to be worse than it was at the time that radiograph was made.  
10 The definition in the right lung is not as clear as it was, and this shadow has now traveled more to the right side. There is practically no definition of the lung tissue on the left side in this radiograph.

Mr. Castellano: May I have this radiograph marked for identification at the present time?

20 (Marked Exhibit P-7 for identification.)

Q. What do you say about the ability and capacity of this boy to do the things which the ordinary boy of his age at this time can do? A. He could not do them. He might make the attempt, but he could not do them because he is a sick boy. He should be under treatment. He should be sent away to a different climate with the hope that his condition might improve.  
30 His condition has not improved during the period between the time the radiograph was taken by Dr. Bernstein and the time the radiograph was taken by Dr. Perlberg. He appears to have grown worse in that time.

Q. These conditions you have testified to in this boy, are they permanent conditions? A. Well, so far as I can determine they are all permanent on the left side. Since we are not permitted to indulge in possibilities that is as far as I can go. I would, if it was my case, send  
40 him to the mountains with the hope that his con-

*Dr. William J. Arlitz—For Plaintiff—Direct.*

dition might grow better. Of course I cannot say that it will grow better, but that is a possibility.

Q. What is the proximate cause for such an injury as you found in this boy's lung?

Mr. MacLeod: I object to that.

The Court: Sustain the objection.

10

Q. What does the lung indicate, in its present condition, to you?

Mr. MacLeod: The Doctor has already testified to that.

The Witness: I have already said that this boy has a complete loss of function in his left lung, but he is functioning with one lung only.

20

Q. Well, assuming Doctor, that this boy Frank Ratz on November the 10th, 1925, was then about 15 years of age was hit by the front of an incoming bus and was thrown and fell under such bus and then was taken to a hospital where he remained for a period of upward of a month and where on December 7th an operation was performed upon this boy to remove some fluid which had formed in his chest, would you say the condition which you found at the present time is attributable to the accident which happened on November the 10th?

30

Mr. MacLeod: I object on the ground that it is not a proper hypothetical question. It does not contain all the facts.

40

*Dr. William J. Arlitz—For Plaintiff—Direct.*

The Court: If the Doctor can answer it I am going to allow him to do so.

10 Q. Assuming Doctor, that the bus that hit this boy on the 10th day of November, knocked him down and ran him over would you say that the injuries which you find are attributable to this accident?

Mr. MacLeod: I object on the same grounds.

Mr. Castellano: I withdraw the question.

20 Q. Assuming Doctor, that this boy Frank Ratz, a lad 15 years of age, who prior to the 10th day of November, 1925, had always been well, had never met with any other accident, never had any occasion to call a doctor for any ailment and assume that on the 10th day of November he was hit by a large jitney bus, thrown in the air, and run over by the front part of the bus, that he was picked up between the front wheel and the rear wheel on the left side of the bus, lying under the bus in such a way that had it moved the rear wheel would have passed over his stomach, assuming that 30 this boy soon after the accident was taken to the North Hudson Hospital where he was given first aid and during the period of time from November 10th to December 7th needles were stuck into his side on about five occasions in an effort to remove fluid which the doctors believed was in his chest and which would not come out by tapping, that on December 7th, 40 in an effort to get to this fluid which was formed

*Dr. William J. Arlitz—For Plaintiff—Cross.*

in his chest a portion of the 8th rib, I believe it was, was removed and the fluid in his chest was removed, that it was bloody fluid, assuming that later on an X-ray was made by Dr. Bernstein, which radiograph you have examined, and a further X-ray made by Dr. Perlberg, which you have also examined, would you say that the conditions which are shown in these radiographs and which conditions you found as a result of your examination, be attributable to the accident which occurred on November the 10th, 1925? 10

Mr. MacLeod: I object on the ground that the question assumes facts which are not in evidence. 20

The Court: I will allow it.

Mr. MacLeod: Exception.

A. Yes, I believe that the accident could be the cause of the loss of function and the pathological findings that are in evidence at this time.

Mr. Castellano: That is all.

*Cross Examination by Mr. MacLeod:* 30

Q. Did you get a history from the young man when he came before you for examination?

A. No, I did not other than he had had an accident.

Q. I mean, you did not treat him, did you?

A. No, I came here for the purpose of testifying.

Q. You were just called there by the attorney 40

*Dr. William J. Arlitz—For Plaintiff—Cross.*

to examine him for the purpose of testifying as to what injuries you found? A. Yes, sir.

Q. When did you examine him? A. In my office.

Q. When? A. The first of June this year.

10. Q. You had not seen him before? A. Never saw him before, and have not seen him since.

Q. Never treated him? A. No.

Q. Do you think that if he had gone to the mountains he would be much improved to-day?

A. I think that is his only hope.

Q. Do you think blowing a trombone will also help him? A. No, I don't think so.

Q. That would not help him, would it? A. I don't think so.

20. Q. Playing a trombone for the last six months has been producing more harm than good? A. Some doctors think otherwise.

Q. I am asking you. A. I have an opinion.

Q. Doctors disagree a great deal, don't they? A. Yes, sir.

Q. And your opinion may be different from another doctor's opinion? A. Yes. He is taking that as a medical gymnastic.

30. Q. Did you know he was blowing a trombone? A. You said he was, so I inferred it. I know I didn't tell him to blow a trombone.

Q. You did not advise him to blow a trombone? A. No, I did not. Another doctor might.

Q. And you would not allow it, Doctor? A. I don't think I would, no.

Q. Who is his family physician, do you know? A. Dr. Louis Lange.

40. Q. And he knows all about the boy's condition, having attended him? A. I don't know that.

*Dr. William J. Arlitz—For Plaintiff—Cross.*

Q. Did you inquire from the family physician the condition of the boy? A. No, I know however that Dr. Lange is a very competent doctor.

Q. And if he advised him to blow a horn that would be proper advice from his point of view? A. I am not passing judgment upon what Dr. Lange said about the blowing of a trombone. 10

Q. But you doctors all differ very often, don't you? A. Differ?

Q. Yes. A. Why certainly. Unless there were differences of opinion we would be at a standstill and there would be no education. We would be primitive people.

Q. And it is the differences that advance you? A. Differences of opinion make the world go. 20

Q. One doctor sends you to the seashore and another doctor sends you to the mountains? A. I don't think that is just so. I think we all send pulmonary cases to the mountains.

Q. Some doctors advise warm applications and other doctors advise ice applications? A. Not if they understand their business. Cold is used primarily to allay inflammation and heat is used to produce absorption. 30

Q. But some will use heat where you might think it would be better to have cold? A. I am not responsible for that.

Q. But that goes to show that there are differences? A. There must be differences of opinion, honest differences of opinion.

Q. And you say there is a chronic ailment of the lung? A. That is my best judgment.

Q. And chronic means that it has been of long 40

*Harry J. Perlberg—For Plaintiff—Direct.*

standing? A. Yes, and has grown worse.

Q. Now then I want to know if you asked Dr. Lange whether this boy had ever had any other symptoms at all? A. No, I did not. I never had a conversation with Dr. Lange about this case.

10 Q. From the x-rays you did not see any fracture of the ribs, did you? A. I cannot see it, but I can find the fracture of the clavicle.

Q. I do not mean that, I mean a fracture of the ribs. A. I cannot see it, the definition is obscured.

Q. There is no loss of motion due to the clavicle, is there? A. Not a loss of motion. There is a very pronounced deformity there.

20 Q. There is no loss of motion or loss of use? A. Of his arm, I think not.

Q. There is a drooping of his shoulder as a result of the fracture to the clavicle? A. Well, there may have been.

Q. This chronic condition of the lung, did that antedate the accident of November the 10th, 1925? A. I have already said my best judgment is that this condition has been brought about by a puncturing of the lung. My best  
30 judgment is, it is not due to disease. It is essentially due to the trauma or due to an accident.

Mr. MacLeod: That is all.

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HARRY J. PERLBERG, sworn as a witness.

*Direct Examination by Mr. Castellano:*

Q. You are a duly licensed physician in the  
40 State of New Jersey? A. I am.

*Harry J. Perlberg—For Plaintiff—Direct.*

Q. And specializing in any subject? A. Specializing in roentgenology, which means the taking of x-rays.

Q. Do you hold any official position? A. I do. Roentgenologist for the Jersey City Hospital, and attending roentgenologist to the Hudson County Tuberculosis Hospital. 10

Q. And up at the Hudson County Tuberculosis Hospital, do you handle many lung cases? A. Yes, all that they have there.

Q. And they are considerable are they? A. Yes, sir.

Q. Did you meet Frank Ratz yesterday? A. Yes, sir.

Q. Did you make a radiograph of his chest? A. I did. 20

Q. And is this the radiograph you made yesterday? A. It is.

Mr. Castellano: May I have this marked in evidence now.

(Marked Exhibit P-7.)

Q. What is the instrument you use in taking radiographs? A. It is the regulation large size latest type x-ray machine. 30

Q. Will you read this x-ray Doctor, as to what it shows? A. The findings show on the left side a complete solid density filling the entire chest with an obliteration of the lung structure. On the right side there are indications of inflammation in that lung. These are the remains of the inflammatory condition.

Q. Have you also examined the radiograph Exhibit P-5 in this case? A. Yes, sir, I did. 40

*Theodore Scolle—For Plaintiff—Direct.*

Q. And as between the two radiographs, Exhibit P-5 and the one which you made, Exhibit P-7, what changes do you notice if anything? A. An examination of the radiograph taken yesterday shows the density of the left lung to be more pronounced than it was on the earlier picture.

10 Q. Which indicates what? A. That the plura, the covering of the lung is thicker now than it was then.

Q. And that indicates what to you? A. It indicates the progress of the inflammation to be a little worse now than it was.

Mr. Castellano: That is all.

The Court: What would it show, Doctor, in a normal lung?

20 The Witness: If the lung were normal it would show black on both sides. A perfectly normal lung would show black with little white lung markings like the branches or twigs of a tree.

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THEODORE SCOLLE, sworn as a witness.

*Direct Examination by Mr. Castellano:*

30 Q. Where do you live? A. 581 Bergenline Avenue, West New York.

Q. Are you the man that operates a taxicab business at the corner of 16th Street and Bergenline Avenue? A. I do.

Q. Do you know Frank Ratz? A. No sir.

Q. Well, do you know him now? A. I know him since the accident.

Q. You are the man that took him away from there? A. Yes.

40 Q. Did you see the accident? A. No sir.

*Theodore Scolle—For Plaintiff—Cross.*

Q. At the time of the accident how far away were you? A. About the length of this room, about 25 feet.

Q. And you were on Bergenline Avenue? A. On 16th Street.

Q. What was the first thing you saw about the accident? A. I saw about three or four fellows taking 'him from under the bus. 10

Q. And where was this bus stopped at the time you saw some persons taking Frank Ratz from underneath the bus? A. Right about seven or eight feet from the police booth.

Q. Come down to the blackboard and show us where you saw the bus stop when they were taking the boy from underneath. A. Here.

Q. And who was there—supposing that this is the northbound car track and this is the southbound car track, this line here is the center of the two car tracks, now where was the bus stopped? A. Right here. 20

Q. Right in the center? A. Right in the center.

Q. Put a mark there, an S. A. All right.

Q. In other words if you took a line from the police booth to the dry goods store on the corner, how far away from that line would it be? A. Five or six feet. 30

Q. North or south of that line? A. North.

Q. Did you use one of your taxicabs to take him away? A. I did.

Q. Personally? A. Yes I did.

Mr. Castellano: That is all.

*Cross Examination by Mr. MacLeod:*

Q. Were you there when the officer came, where were you then? A. I had him in the rig already and the officer came after me. 40

*Theodore Scolle—For Plaintiff—Cross.*

Q. On which corner were you standing? A. The southeast corner opposite the drugstore.

Q. You have your taxicabs on Bergenline Avenue or 16th Street? A. On 16th Street.

Q. Is there a place there where you go in, a waiting room or something of the kind? A. 10 There is an office.

Q. Were you in the office? A. No sir, I was just going to the office.

Q. You were walking to your office? A. I was walking up there when I seen the crowd.

Q. Up toward Bergenline Avenue? A. Yes, on the west side of the sidewalk.

Q. This is the southerly sidewalk, isn't it? A. No sir, I was on that side coming up north.

Q. You were walking north? A. Yes sir.

20 Q. Were you on Bergenline Avenue or 16th Street? A. 16th Street.

Q. And you said you were walking to the office? A. Yes sir.

Q. Going down Bergenline Avenue, where were your taxicabs? A. On 16th Street.

Q. So that you were walking right up this way going around to your office? A. Yes sir.

30 Q. And while you were walking up here you saw a crowd over there? A. I was on this side of the street, about 15 or 20 feet from the corner.

Q. Were you on the easterly side of Bergenline Avenue? A. No sir, the westerly side.

Q. Then you were over here? A. That is what I am trying to have you understand. I live on the west side of the street and I was walking up this side to get to the corner to go to my office.

40 Q. How far had you walked when you saw the crowd, had you started to cross the street? A. No sir, about 15 or 20 feet.

*Theodore Scolle—For Plaintiff—Cross.*

Q. Before you started to cross? A. Yes sir.

Q. Then you saw some people gathered around? A. Yes, down near the police booth.

Q. And you walked over there? A. Then I went over to see what was the matter. I seen them dragging a young boy out.

10

Q. But you did not see what happened to him?

A. I did not see whether the boy was struck or anything. I seen the people over there. When they got him out I put him in the taxicab and took him to the hospital.

Q. When they took the boy out, did they take him from near the rear wheel? A. Yes sir, they were dragging him from under the bus.

Q. His feet were under the bus and his head was outside? A. It appeared to me that they were taking him by the shoulders. I didn't take notice. When I seen them dragging the boy out I went over for the cab.

20

Q. You just looked and saw the boy and you ran for the cab? A. Yes sir.

Q. You could not tell what position he was in? A. No sir.

Q. What side of the bus were they dragging him from, the left side or the right side? A. I believe it was toward the drugstore side.

30

Q. That would be the left side of the bus? A. Well, the left side going down, yes.

Q. And the bus was going down, wasn't it? A. Yes.

Q. Which way was he facing? A. Facing?

Q. This side on the picture? A. Yes sir.

Q. And when they dragged him out did they drag him out from the left side of the bus going south or from the right side? A. From the left side, the bus was facing south.

40

*Frank Ratz, Sr.—For Plaintiff—Direct.*

Q. The way the bus was facing when you saw it, it was on the left side? A. The left side going with the bus.

Mr. MacLeod: That is all.

10

FRANK RATZ, Sr., sworn.

*Direct Examination by Mr. Castellano:*

Q. Where do you live, Mr. Ratz? A. 636 Bergenline Avenue.

Q. West New York? A. Yes, sir.

Q. You are the father of Frank Ratz who was hurt? A. Yes, sir.

20 Q. Now before the accident was your son ever sick? A. Never.

Q. Did he ever have any other accident? A. Never.

Q. Was he working on the 10th day of November? A. He went to work.

Q. And how much was he making a week? A. Seventeen dollars and some cents.

30 Q. Has he been working since the day of the accident? A. No, he could not do any work because he cannot get enough breath.

Q. Has he earned any money since the day of the accident? A. No, sir.

Q. What did he do with the seventeen dollars which he had been earning before the day of the accident? What did he do with his wages? A. Well, he tried to help out his parents.

40 Mr. MacLeod: I ask that that be struck out as not material. Under the law the parents are entitled to the income of the child until he is 21 years of age.

*Edward Gail—For Defendant—Direct.*

Q. Did you get this bill from the North Hudson Hospital for the treatment of your boy while he was there? A. Yes, sir.

Q. Did you pay any part of the bill? A. \$25.

Q. And how much did you owe? A. Well—

Q. How much is the entire bill? A. The whole bill is \$114. 10

Mr. Castellano: I offer it in evidence.

Mr. MacLeod: Of course the bill is not admissable in evidence. The testimony is he paid \$25 and he owes the balance. I think that is proper.

Q. Besides this bill have you paid any other money to any other doctors? A. We only pay for the medicine. 20

Q. Did you pay Dr. Bernstein? A. We paid Dr. Bernstein for the x-ray ten dollars.

Q. And you paid for some medicine? A. Some medicine.

Mr. Castellano: That is all.

Mr. MacLeod: No questions.

Mr. Castellano: The plaintiff rests. 30

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DEFENSE.

EDWARD GAIL, sworn as a witness.

*Direct Examination by Mr. MacLeod:*

Q. Where do you live? A. 641 Pan Beuren Place, West New York. 40

*Edward Gail—For Defendant—Direct.*

Q. Were you operating a bus on November the 10th, 1925? A. Yes, sir.

Q. On Bergenline Avenue? A. Yes, sir.

Q. Do you remember an accident having happened on that day? A. Yes, sir.

10 Q. What time did the accident happen? A. Between quarter of seven and seven o'clock.

Q. In what direction were you going, north or south? A. South of Bergenline Avenue.

Q. Near what intersection did this accident take place? A. 16th Street and Bergenline Avenue.

Q. Had you crossed 16th Street when the accident happened? A. No, sir.

20 Q. You were approaching that street then? A. Yes, sir.

Q. Do you remember a Public Service bus being parked at the corner of 16th Street in front of the bank, at Bergenline Avenue? A. He was just pulling away from the corner as I was approaching the corner.

Q. Now then, just tell the court and jury as you approached this corner, coming south on Bergenline Avenue, what side of the street you were on. A. The right side.

30 Q. Just tell the court and jury what happened. A. As I was approaching 16th Street, the Public Service bus was pulling away, he was just starting off, and there was a fellow ran out in front of me from behind a touring car going up Bergenline Avenue; he was running to catch the Public Service bus.

Q. What part of your car came in contact with him? A. The left fender.

40 Q. Front or rear? A. Front.

*Edward Gail—For Defendant—Direct.*

Q. What did you do when that happened? A. Well, I applied my brakes as quickly as possible.

Q. How far did you go after he ran into your left fender? A. I should judge I went half the length of the bus.

Q. And how long was your bus? A. I do not know how long it is.

10

Q. It is about 25 feet long and you went half the length of it? A. Yes, sir.

Q. Did you get out? A. I jumped out right away and pulled the fellow up.

Q. Did you see the boy that ran into your bus? A. Yes, Frank Ratz.

Q. What side of the bus was he on? A. The left hand side.

Q. How was he lying on the left side of the bus? A. He was like this part of his legs were underneath the bus and his head was out.

20

Q. You picked him up? A. Yes, there was another fellow helped me, the Public Service driver and myself.

Q. That is, the driver of the Public Service bus standing there? A. He was on 16th Street, the opposite corner.

Q. Do you know where the Public Service driver is now? A. Yes, sir, he is down in Florida.

30

Q. How long before this boy ran into your left front fender did you see him? A. Well, no more than as I seen him he was hit.

Q. About how far from your fender was he when you saw him? A. He was not half a foot in front of me.

Q. What was he doing? A. He was running. If he took a step shorter he would have run into my side.

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*Edward Gail—For Defendant—Cross.*

Mr. Castellano: I object to what might have happened if he had taken a step shorter.

The Court: Strike it out as a conclusion.

10 Q. How fast were you going at that time? A. Well I should judge between 12 and 14 miles an hour.

Mr. MacLeod: Cross-examine.

*Cross Examination by Mr. Castellano:*

20 Q. How far away were you from the Public Service bus when you saw the Public Service bus start off? A. I was about a car's length away, a bus length behind, I should say about 15 or 18 feet behind him.

Q. And when you were that distance behind him you actually saw that Public Service bus start? A. Yes.

Q. Was there any regulation at that time and is there any regulation now about passing a moving bus, one bus passing another bus?

30 Mr. MacLeod: I object to that.  
The Court: Objection sustained.

Q. Are you familiar with the town ordinance which prohibits one jitney bus from passing another jitney bus while in motion?

Mr. MacLeod: I object, incompetent, irrelevant and immaterial and not proper.

The Court: Sustain the objection.

Mr. Castellano: Exception.

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*Edward Gail—For Defendant—Cross.*

Q. Have you ever been fined for passing a bus in motion?

Mr. MacLeod: Same objection.

The Court: Sustain the objection.

Q. Now then when you saw the Public Service bus which had taken passengers on before the bank, start off, what did you do? A. Well, I was coming down the avenue. 10

Q. What did you do? A. I kept going. He was ahead of me.

Q. Did you increase your speed or slacken your speed? A. That is a fire crossing. I slowed up there.

Q. Didn't you attempt to pass this bus at the corner? A. Where? 20

Q. 16th Street? A. No, sir.

Q. Sure about that? A. No, sir.

Q. And wasn't it while you were passing this bus that the accident happened? A. No, sir.

Q. You know the clerk of the West New York court? A. Yes, sir.

Q. Did you say to him that you never saw the boy until you hit him?

Mr. MacLeod: I object. 30

A. No sir.

Q. Sure about that? A. Yes sir.

Q. Isn't it a fact you never saw the boy until you did actually hit him? A. I saw him when he was a half foot in front of me.

Q. In which direction was he going, toward the bank or away from the bank? A. He was running to the back of the Public Service bus. 40

*Edward Gail—For Defendant—Cross.*

Q. And how far away from the Public Service bus was he? A. The same length as I was, only I was half a foot nearer.

Q. How far away from the side of the bus was he? A. Which side?

10 Q. From the left hand side of the standing Public Service bus? A. Well, he was the width of my bus and about a half a foot besides.

Q. In what direction did he jump, toward the bus or to the other side? A. He did not jump at all. He ran right to me.

Q. Didn't he jump to the side? A. He didn't jump at all, he just kept running.

20 Q. You only saw him about a half foot before you hit him? A. Yes. He was still coming. He didn't even know I was near him.

Mr. Castellano: I move to strike that part of the answer out.

The Court: That will be stricken out.

Q. You did not sound any horn at 16th Street corner did you? A. I was coming to a stop.

30 Q. The question is did you or did you not sound your horn? A. I did not.

Q. Isn't it true that you were going 25 miles an hour? A. No sir. The bus has a governor on it so that it cannot go that fast.

Q. Was the governor working? A. Yes, sir. It could not go over 22 miles an hour in high speed. I didn't even have the bus in high speed yet. I had it in second speed.

40 Q. Now then, what time did you start off on your work before this accident? A. What time in the morning?

*Tessie Ford—For Defendant—Direct.*

Q. Yes. A. Oh, I started about 5:40 out of Hoboken.

Q. And when did you reach the northern terminal of your run? A. Well, it takes about 35 or 40 minutes to make each trip.

Q. So that you started in at 5:40 and went up to the northern end of your route? A. Yes sir. 10

Q. By the way, where you start off at the northern terminal of your trip, is that the same place the Public Service starts off? A. Yes sir.

Q. Do you know whether or not you started off before this Public Service bus which was at 16th Street at the time of the accident? A. Yes sir, I started ahead of him. 20

Q. How do you know you started ahead of him? A. I know I started ahead of him.

Q. How much ahead of him did you start? A. I could not tell you that, they have not got any regular headway.

Q. Whereabouts did this Public Service bus pass you then?

Mr. MacLeod: I object, immaterial.

The Court: Sustain the objection. 30

Mr. Castellano: That is all.

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TESSIE FORD, sworn as a witness.

*Direct Examination by Mr. MacLeod:*

Q. Where do you live? A. 705 Madison Street, West New York. 40

*Tessie Ford—For Defendant—Direct.*

Q. On November 10th, 1925, at seven o'clock in the morning where were you? A. I was just coming from the United Cigar store.

Q. That is this United Cigar store here? A. Yes, sir.

10 Q. Which way were you walking? A. Walking toward the bank.

Q. Were you walking straight across? A. That corner is catecorner.

Q. Did you see the boy? A. Yes, sir.

Q. And where was the boy? A. The boy was just crossing.

Q. What was he doing? A. He was running.

20 Q. And what else did you see, just tell us. A. I saw the bus standing right by the bank, standing still, and I saw this other bus coming, and as I did I stopped there and I saw this boy running across to catch the bus, that is all I saw.

Q. What part of the bus did he run into?

Mr. Castellano: I object to that as leading.

30 Q. Well, what did the boy do when he ran across, what happened to him? A. I saw him running this way and he ran back to catch the bus that was standing there.

Q. What came in contact with him? A. That bus.

Q. Which side? A. This side.

Q. The left side.

Mr. Castellano: I object.

40 Q. What do you mean by putting out your hand? A. He hit the left hand.

*Tessie Ford—For Defendant—Cross.*

Q. Did you see that? A. Yes, sir.

Q. What happened to the little fellow after that? A. That is all I remember. Then I seen the lunch box there. I was so excited I didn't see any more.

Q. How far did the bus go after the impact?  
A. I saw the bus standing down near the—

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Q. How far did he go after the boy came in contact with him, how far did he travel? A. (No answer.)

Q. Did the bus go very far? A. Not very far.

Q. Did you see the little fellow pulled out from underneath the bus? A. No, sir.

Q. What did you do then? A. I went right into work.

Q. What time were you due at work? A. I am due at work at seven o'clock.

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Q. Was the boy running fast or slow? A. The boy was running to catch the bus.

Q. Which bus was he running to catch? A. The first one that was stopped.

Q. That is the yellow bus? A. Yes, sir.

Q. Where was that stopped, the yellow bus?  
A. Right at the bank, the corner of the bank.

Q. Was the boy running fast or slow? A. He was running to catch the bus.

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Q. Was he running fast or slow? A. (No answer.)

Q. How was he running, fast or slow? A. Yes, sir.

Q. Which do you mean? A. Fast; he was running to catch the bus.

Mr. MacLeod: Cross examine.

*Cross Examination by Mr. Castellano:*

Q. On which side of Bergenline Avenue were you on that day? A. The right hand side.

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*Tessie Ford—For Defendant—Cross.*

Q. Which side is that, is that the same side the bank is on or the side the drug store is on? A. The bank.

Q. And which side was the boy on, the side toward the bank or the other side? A. On the other side.

10 Q. And where were you at the time? A. I was just going from the United Cigar store. I was going catecorner.

Q. Where were you coming from? A. From the United Cigar store.

Q. What had you been doing in the United Cigar store? A. Telephoning.

Q. Was the cigar store open at that hour? A. Yes, sir.

20 Q. And whereabouts were you when the accident happened? A. A little further up from the booth.

Q. On the car tracks or off the car tracks? A. Off the car tracks. I was just cutting catecorner over.

Q. Was there any police officer in the booth? A. No sir.

30 Q. Now when you were out there in the roadway didn't you have to look out to see that you were not hurt by any bus or automobiles? A. Yes sir.

Q. Well, when did you see the bus for the first time? A. When I looked up to see if there was anything coming my way so that I would not get hurt.

Q. And where was he at that time? A. He was just running across to catch the bus.

Q. Where was he? A. Past the drugstore. He crossed there before he came to the drugstore.

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*Tessie Ford—For Defendant—Cross.*

Q. A little before he came to the drugstore?

A. Yes sir.

Q. That is, 'he was running before he came to the drugstore? A. Yes sir. He was running to catch the bus.

Q. When he left the drugstore corner and came out in the street, didn't he stop running?

A. No sir.

Q. Sure about that? A. Positively.

Q. And at the time you saw him running, before he got to the drugstore, you were out in the middle of Bergenline Avenue, is that right?

A. I was just crossing, yes.

Q. On Bergenline Avenue? A. On Bergenline Avenue right opposite the United Cigar store.

Q. And a little above the booth? A. Yes sir.

Q. And you say you were looking out for buses so that you would not be hurt? A. Yes, sir.

Q. And you saw this boy running toward the drugstore? A. When he crossed the street he crossed before he came to the drugstore.

Q. You saw 'him before he got to the drugstore?

A. The drugstore is here, and he crossed cate-corner like.

Q. Isn't it true that the boy went up to the drugstore always remaining on the sidewalk, before he started across? A. He crossed before he came to the drugstore.

Q. What made you look over toward the right hand side, toward the drugstore at that time?

A. I was looking to see a girl that was standing there. I wanted to speak to her.

Q. You were walking toward the bank? A. I was just going out of the cigar store.

*Tessie Ford—For Defendant—Cross.*

Q. You said before that you were out near the police booth? A. Yes, near the police booth.

Q. And out on Bergenline Avenue? A. Yes sir.

10 Q. And you had to look out for buses yourself? A. I did. I just looked up.

Q. And you looked over to the right 'hand side to attract the attention of this girl? A. Yes sir.

Q. What was the name of that girl? A. I just know her from coming in there, in the store where I was working.

Q. And you were trying to attract her attention? A. I was trying to get her to come over on the side of the bank.

20 Q. And all this while you were walking toward the bank? A. Yes sir.

Q. Walking away from where she was standing? A. Yes sir. I worked on the side from where I was going.

Q. What was this girl doing? A. She was standing there.

Q. All alone? A. All alone.

Q. Whereabouts was she with reference to the drugstore? A. She was standing right by the drugstore.

30 Q. What was she doing? A. Standing there.

Q. Did she work in the neighborhood? A. I could not tell you. I only knew her from coming in the store and I wanted to tell her that I was not going to be in the store any longer, that I was going to give up that job.

Q. So that you were trying to attract her attention so as to tell her that? A. Yes, sir.

40 Q. And all the while you were continuing to walk toward the bank? A. Yes sir.

*Tessie Ford—For Defendant—Cross.*

Q. Is this girl in court to-day? A. No sir.

Q. You do not know her name? A. No sir.

Q. And while you were trying to attract 'her attention you saw this boy running, is that right? A. Yes sir.

Q. And where was he running the first time you saw him running? A. He was running cate-corner across the street to catch the bus. 10

Q. Didn't he come down to the corner before starting across? A. Just before he came to the drugstore he crossed. I just saw him running as he was going across.

Q. Then he started to cross just before he came to the drugstore? Is that right? A. Yes sir.

Q. Did he pass the florist? A. Yes sir.

Q. Sure about that? A. Yes sir. 20

Q. Who told you to say anything about catecorner? A. Nobody. My own eyes saw it.

Q. Have you seen any person besides Mr. MacLeod to tell your story to about seeing this accident? A. No I have not.

Q. Didn't you ever speak to Mr. Higgins, Mr. Hobart Higgins? A. No sir.

Q. Have you ever been down to 15 Exchange Place and talked over this case? A. No sir. 30

Q. Have you ever seen this gentleman over here? A. No sir.

Mr. MacLeod: Indicating Mr. Ritter.

Q. You never saw him before? A. No sir.

Q. Right after the accident you continued to the place where you worked? A. Yes sir. I went to work right away and I was all excited over the accident.

Q. You didn't stop for a second? A. No sir, I went right to the store. 40

*Tessie Ford—For Defendant—Cross.*

Q. You did not see the boy being pulled from underneath the bus? A. No sir.

Q. Did you see him under the bus? A. No sir.

10 Q. Do you know how he came to get under the bus? A. No sir.

Q. You just went on about your business, didn't you? A. I went right down to the store.

Q. Do you know whether or not this Public Service bus was stopped or in motion when the accident happened? A. It was stopped.

Q. Are you sure about that? A. Yes sir.

Mr. Castellano: That is all.

20 *Re-direct Examination by Mr. MacLeod:*

Q. You spoke to me about this case, didn't you? A. Yes sir.

Q. You told me how it happened? A. Yes sir.

Q. And you told me everything that you are telling now on the stand and to the jury? A. Yes sir.

Q. The same story? A. Positive, everything.

30 Mr. MacLeod: That is all.

*Cross Examination by Mr. Castellano:*

Q. Did you give your name to anybody at the time of the accident? A. No sir.

Q. How did Mr. MacLeod come to hear your story?

Mr. MacLeod: I object to that.

The Witness: I told you the story here.

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*Tessie Ford—For Defendant—Re-direct.*

Q. Well, who told you that this case was coming on? A. Why, I just heard it from some of the fellows that work on the buses.

Q. Who do you know that worked on the buses? A. Who do I know?

Q. Yes. A. I don't know any of them by name, but there is a whole crowd of them hanging down on the corner where we live by the florist there. 10

Q. And where is that corner? A. 18th Street, where they gather.

Q. 18th Street near where? A. Bergenline Avenue. Right by the florist they all stand there and my brother-in-law knows one of them and one of them works with him.

Q. And your brother-in-law is a chauffeur and works for the buses? A. No sir, my brother-in-law is in his own business. 20

Q. And this is right near where you live, you say? A. Right down at the corner of 18th Street and Bergenline Avenue. I live at 18th Street and Madison Avenue, 705.

Q. What do you do now? A. Cashier and bookkeeper.

Q. Where? A. 577 Bergenline Avenue. 30

Mr. Castellano: That is all.

*Re-direct Examination by Mr. MacLeod:*

Q. Were you subpoenaed to be here? A. Yes. I had to leave it so that the boss would know where I am.

Q. You got a subpoena to be here? A. Yes. I left it in the office so that the boss could see it. 40

*Charge.*

Mr. MacLeod: That is our case, with the exception of a witness whom we have not been able to get here, the Public Service bus driver, who was driving the car and who had a good view of it. We rest.

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Mr. Castellano: We rest.

The Court thereupon charged the jury as follows:

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**CHARGE.**

The Court: Gentlemen of the Jury: On the 20 10th day of November, 1925, Frank Ratz, one of the plaintiffs in this suit, a young man in his teens being fourteen or fifteen years old, as I recall, while crossing Bergenline Avenue, came in contact with an automobile owned and operated by the defendant and was injured. This boy claims that the driver of this bus operated it in a negligent manner and ran into him and caused the injuries of which he now complains, and by his father as his next friend he brings this suit 30 to recover the damages which he sustained and his father joins with him in this suit asking at your hands to be compensated for the damages which he sustained by reason of this accident to his son.

The defendant, however, denies liability, and claims that this boy ran into the bus and was injured by his own negligence. So, members of the jury, you see you have a question of fact to decide. The mere fact that the boy was injured

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*Charge.*

in an accident does not entitle him or his father to recover. They must go further than that before they can ask a verdict against the defendant. They must satisfy you by a preponderance of the evidence that the accident in which this boy was injured was the result of negligence on the part of the driver of this bus, for under our law negligence is never presumed. It must be established by the evidence of the person who claims damages by reason of the alleged negligence; so in this case before the plaintiffs can ask a verdict at your hands they must satisfy you by a preponderance of the evidence that the accident was caused by the negligence of the driver of this bus. If you find the accident was caused by this young man crossing the street, running into the bus without any negligence on the part of the bus driver, there could be no recovery by either of the plaintiffs. This driver of the bus had a right to operate the bus along the street. If the accident was at a crosswalk, at a place where the houses were on an average less than 100 feet apart, the pedestrian had the right of way over a moving vehicle, but that does not give the pedestrian the right to cross over the street in a negligent or careless manner. If the accident occurred at any other part of a public road than at a crossing, the pedestrian had no greater right than the driver of the vehicle. The rights of both were the same. The law casts upon the driver of a vehicle the duty of using the care and caution that a reasonably prudent person would have used in operating a bus along that street at a time and in the way and manner in which he did operate,

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*Charge.*

under the circumstances of the case. He was obliged to use that care and caution that a reasonably prudent person would have used. If he failed to use that care and caution and the accident occurred by reason of his negligence, his failure to use such care and caution, then the plaintiffs would be entitled to a verdict unless this boy himself was negligent and his negligence was the proximate cause of the accident.

The plaintiff was obliged to use the care and caution that a reasonably prudent person would have used in crossing over a street in the way and manner in which it did cross, in other words, under all the circumstances of the case you are to say whether this boy used the care and caution that a reasonably prudent person would have used. If he did not, and his negligence was one of the causes of the accident, then he cannot recover and neither can his father recover, because contributory negligence is a defense to an action of this kind.

So, members of the jury, you see it is entirely a question of the evidence which you have heard. You are the sole judges of the evidence. It is not what counsel says the witnesses have testified to; you are the sole judges of what the witnesses have sworn to and the weight and credibility which you will give to their testimony. It is not the number of witnesses that should govern you, but you should take all their testimony and weigh it carefully and then say what the facts actually were from the evidence which you have heard.

*Charge.*

It is not a question of sympathy. It is not a question of prejudice. It is for you to determine this case from the evidence. If you find that the accident was due to the negligence of the driver of this bus, and this boy was not guilty of contributory negligence, then both father and son can recover. They can not recover one joint verdict. It must be a separate verdict because their damages are to be ascertained in a different way and manner. The father would be entitled to be compensated for his loss that he sustained by reason of the injury to his boy. The father is entitled, under the law of this State to the earnings of his son until he is 21 years of age or emancipated, that is, until he leaves home or goes away from parental care, so if this boy has been incapacitated for work and has not been able since the accident to earn what he was earning before that time, which I think was seventeen dollars and some cents a week, the father is entitled to be compensated for that. If the father has been obliged to lay out and expend moneys for the care of his son in endeavoring to cure him from the injuries which he sustained, that would include medicine, hospital bills, doctor bills, he would be entitled to be compensated for that. If you find that for the future he is going to be unable to earn what he earned before, and that his father will lose money by reason of the failure of the boy to work until he is 21 years of age, the father will be entitled to be compensated for that. In other words you are to say how much the father has lost by reason of the injury to the

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*Charge.*

boy. He would be entitled to be compensated for that loss.

10 The boy is entitled, if you find that he can recover at all, to recover a sum which would compensate him for that injury, and that includes pain and suffering. It is not an arbitrary sum. How long was he obliged to suffer, and what was the severity of the pain. Award him a sum which would compensate him for that pain and suffering. If there is a permanent injury as a result of this accident, he is entitled to be compensated for that permanent injury. But, you must be satisfied, members of the jury, as to the probable condition of this boy in the future. It is not the possible condition. The law does not deal in possibilities. If you find there is a condition that is permanent or which will exist for a considerable length of time, he is entitled to be compensated for that.

20 But if you find, members of the jury, when you go into your jury room, that the plaintiff has failed to establish that the accident was due to the negligence of this driver, or if you are satisfied that the driver was negligent but that the boy was guilty of contributory negligence, then it is immaterial how much he suffered or what his loss or his father's loss has been; unless it appear that there can be a recovery, there can be no verdict against this defendant. Those facts, gentlemen of the jury, must be established by the evidence. The plaintiff must establish by a preponderance of the evidence the negligence of the driver of the bus. Where the defendant comes in and says the plaintiff is guilty of contributory negligence,

*Charge.*

the burden of showing contributory negligence rests upon the defendant who sets up that defense.

I have been requested to charge you by the defendant: first, it is for the jury to determine the facts and to judge the weight that shall be given to the evidence of any and all of the witnesses and in so doing this the jury can take into consideration the demeanor of the witnesses on the stand, the interest if any which he has in the outcome of the suit and whether the story he tells is a probable one.

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I so charge you.

Second, due and ordinary care is to be exercised by all persons using the public highways. A man is bound to look where he is going. He is bound to take notice that vehicles have equal right with him and to take notice of such rights and to use his own with due regard thereto.

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That is true, unless it is at a street crossing where the houses are less than one hundred feet apart and there the pedestrian has a right of way over a moving vehicle; but that does not give the pedestrian a right to neglect to use the care and caution that a reasonably prudent person would use in crossing a highway at such a point.

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Third, where there is contradictory evidence as in this case, there are some well established rules by which we must be governed. One is that where a witness says he looked and did not see an object which he must have seen. ~~You have a right to take that into consideration~~

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*if he did look such testimony is unworthy of consideration.*

*Charge.*

~~in determining the weight and credibility that you will give such testimony. I so charge you.~~

Fourth, if you find the plaintiff guilty of negligence even if the defendant is guilty of negligence then the jury must find a verdict for the defendant because the law does not allow a jury

10 to say which one was more negligent.

That is true, members of the jury. If you find that this boy was guilty of negligence and that such negligence on his part contributed to the accident, there can be no recovery.

Fifth, a recovery against a defendant by a plaintiff must be denied to one who in any degree made himself the instrumentality of his own injury.

20 I so charge you.

Sixth, The law imposes upon the plaintiff a reasonable degree of care which is that care which the reasonable prudent person would or should exercise, that person having in mind all the facts, all the circumstances and all the conditions surrounding and existing at and about the time and place of the happening complained of so that he will not bring harm to himself.

I so charge you.

30 Seventh, The mere fact that the court charges damages last is no indication that the plaintiff should recover.

Of course, gentlemen of the jury, that is for you to determine, but if you find for the plaintiffs then, you, of course, must determine the damages in the way and manner I 'have indicated. If you find the plaintiffs cannot recover, then you need not consider the damage

40 at all.

(Jury retires.)

*Charge.*

## DEFENDANT'S REQUESTS TO CHARGE.

1. It is for the jury to determine the facts and to judge the weight that shall be given to the evidence of any and all of the witnesses and in so doing this jury can take into consideration the demeanor of the witnesses on the stand, the interest if any which he has in the outcome of the suit and whether the story he tells is a probable one. 10

2. Due and ordinary care is to be exercised by all persons using the public highways. A man is bound to look where he is going. He is bound to take notice that vehicles have equal rights with him and to take notice of such rights and to use his own with due regard thereto. 20

3. Where there is contradictory evidence as in this case, there are some well established rules by which we must be governed. One is that where a witness says he looked and did not see an object which he must have seen if he did look such testimony is unworthy of consideration. 30

4. If you find the plaintiff guilty of negligence even if the defendant is guilty of negligence then the jury must find a verdict for the defendant because the law does not allow a jury to say which one was more negligent. 40

*Charge.*

5. A recovery against a defendant by a plaintiff must be denied to one who in any degree made himself the instrumentality of his own injury.

10 6. The law imposes upon the plaintiff a reasonable degree of care which is that care which the reasonable prudent person would or should exercise, that person having in mind all the facts, all the circumstances and all the conditions surrounding and existing at and about the time and place of the happening complained of so that he will not bring harm to himself.

20 7. The mere fact that the court charges damages last is no indication that the plaintiff should recover.

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## ACTION AT LAW.—POSTEA.

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

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FRANK RATZ, (SR.), individually and as next  
friend of FRANK RATZ (JR.) an infant, 10  
Plaintiffs,  
vs.

HILLSIDE BUS OWNERS' ASSOCIATION,  
Defendant.

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This action was tried before Judge Willard W. Cutler, with a jury, at the Hudson County Circuit, on June 14th, and 15th, 1926. 20

The cause having been heard and submitted to the Jury upon the issues raised between the above plaintiffs and the defendant, the Jury rendered a verdict in favor of the plaintiffs and against the defendant, as follows: In favor of the plaintiff, Frank Ratz Junior for the sum of Seven Thousand Five Hundred (\$7,500.00) Dollars, and in favor of Frank Ratz Senior, in the sum of One Thousand (\$1000.) Dollars. 30

Dated, June 17, 1926.

WILLIARD W. CUTLER,  
Judge.

A true copy

EDWARD J. KELLEHER,  
Clerk.

**ACTION AT LAW.—ON POSTEA.**  
**NEW JERSEY SUPREME COURT.**

---

FRANK RATZ, (SR.) individually and as next  
 friend of FRANK RATZ. (JR.) an infant,  
Plaintiffs,

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vs.

HILLSIDE BUS OWNERS' ASSOCIATION,  
Defendant.

---

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It is ordered that Judgment be and hereby is entered against the defendant and in favor of Frank Ratz, (Jr.) by his next friend, Frank Ratz (Sr.) individually, plaintiff for the sum of seven thousand five hundred dollars, and in favor of Frank Ratz, (Sr.) individually, plaintiff, for the sum of one thousand dollars, besides costs to be taxed nisi.

Entered, June 18, 1926.

On motion of  
 FRANCIS A. CASTELLANO, JR.,  
 Attorney.

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Whereupon, it is adjudged that the plaintiff, Frank Ratz, (Jr.) an infant. by his next friend, Frank Ratz, (Sr.) plaintiff, do recover of the said defendant Hillside Bus Owners' Association. the sum of seven thousand, five hundred dollars damages, and that the plaintiff, Frank Ratz. (Sr.) individually plaintiff, do recover of the said defendant, Hillside Bus owners' Association, the sum of one thousand dollars damages,

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together with their costs, which have been taxed

*Action at Law.—On Postea.*

at the sum of fifty-five dollars and eighty cents, making in the whole the sum of eight thousand, five hundred and fifty-five dollars and eighty cents.

Judgment entered June 18, 1926.

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\$7500.00 F. R. Jr.

1000.00 F. R. Sr.

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8500.00

55.80

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\$8555.80

WM. S. GUMMERE,

C. J. 20

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## NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT,

HUDSON CONTY.

10 FRANK RATZ, individually and as next friend  
of FRANK RATZ, an infant,  
Plaintiff,  
vs.

HILLSIDE BUS OWNERS' ASSOCIATION,  
(a body corporate of New Jersey),  
Defendant.

20 To: FRANCIS A. CASTELLANO. JR.

TAKE NOTICE that the defendant appeals to  
the Court of Errors and Appeals of the State of  
New Jersey from the whole of the judgment en-  
tered in this case

.....  
Attorney for Defendant.

30 Dated: June 15th, 1926.

**ACTION AT LAW.—ON RULE TO SHOW CAUSE  
RULE EXTENDING TIME TO SERVE GROUNDS  
OF APPEAL.**

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

10

FRANK RATZ, individually and as next friend  
of FRANK RATZ, an infant.

Plaintiff,

vs.

HILLSIDE BUS OWNERS' ASSOCIATION,

Defendant.

It appearing to the Court that a Notice of Appeal to the Court of Errors and Appeals of the State of New Jersey from the whole of the judgment entered in this case has been served upon the attorney for the plaintiff and filed in due course, and that owing to the requirement of the official Court stenographer to perform other immediate Court duties. the said defendant has been unable to obtain a transcript of the testimony taken at the trial of the aforesaid case at the Hudson County Circuit, thereby prejudicing the attorney for the said defendant in the preparation in writing of the grounds of such appeal in accordance with Rule No. 139 of this Court, and of the preparation of the state of the case upon which said motion is intended to be argued, in accordance with Rule No. 126 of this Court, for the aforesaid causes;

20

30

It is, therefore, on this 9th day of July 1926,  
ORDERED that the time within which said

40

*Action at Law.—On Appeal Rule Extending  
Time to Serve Grounds of Appeal.*

grounds of appeal shall be served upon the opposite party shall be and the same is hereby extended until the first day of August, 1926.

10 It is further ORDERED, that the time within which said defendant shall prepare and deliver to the adverse party a state of the case upon which said motion is intended to be argued, be and the same is hereby extended until August 15th, 1926.

JAMES F. MINTURN,  
Judge.

On motion of:

20 ALEXANDER M. MACLEOD,  
Attorney for Defendant,  
Hillside Bus Owners Assoc.

I hereby consent to the entry of the above Rule.

FRANCIS A. CASTELLANO, JR.,  
Attorney for Plaintiff.

Dated, July 9th, 1926.

30

40

## ACTION AT LAW.—ON APPEAL.

NEW JERSEY SUPREME COURT,

HUDSON COUNTY.

---

FRANK RATZ, individually and as next friend  
of FRANK RATZ, an infant, 10  
Plaintiff,  
vs.

HILLSIDE BUS OWNERS ASSOCIATION.  
Defendant.

---

The defendant Hillside Bus Owners Association write down the following reasons why the verdict of the plaintiff against this defendant in the above entitled matter should be set aside and a new trial granted. 20

1. The court permitted counsel for the plaintiff to ask the following question of the jurors before they were sworn.

**Q. Mr. Foreman do you know Mr. MacLeod who is going to try this case against me?**

This question was asked of each individual juror and objection made thereon. 30

2. The court erred in refusing to grant a mistrial on the ground of the above question being permitted.

3. The court permitted the witness Richard Muh to answer the following question.

**Q. Whereabouts on Bergenline Avenue did you find this bus?** 40

*Grounds of Appeal.*

A. I found it on the southbound track on Bergenline Avenue about five or six feet south of the northwest corner.

**10** 4. The verdict of the jury was contrary to the weight of evidence.

5. There was no evidence to support the verdict of the jury.

6. The damages awarded by the verdict are excessive.

ALEXANDER M. McLEOD,  
Attorney for Defendant.

**20**

**30**

**40**

## New Jersey Court of Errors and Appeals 10

FRANK RATZ, individually and as  
next friend of FRANK RATZ, an  
infant,

*Plaintiff-Appellee,*

vs.

HILLSIDE BUS OWNERS'

ASSOCIATION,

*Defendant-Appellant.*

No. 85.

20

**APPELLEE'S BRIEF.**

**Statement.**

Defendant appeals from a judgment recovered 30  
by plaintiffs, father and son, for \$1,000 and \$7,500  
respectively, after a trial of the issues had before  
Hon. Willard W. Cutler, and a jury, at the Hudson  
County Circuit on June 14 and 15, 1926.

**Facts.**

Plaintiffs sued to recover damages for personal 40  
injuries, loss of services, etc., alleged to have been  
sustained by reason of the negligent operation by

defendant of one of its jitney buses on November 10, 1925.

10 About 6:55 o'clock in the morning of November 10, 1925, infant plaintiff, Frank Ratz, 15 years of age, left his home, at 632 Bergenline Avenue, West New York, N. J. (page 62, line 10), to report for work at a factory in Union City, where he was then employed. He carried a tin luncheon kit (page 62, line 24) and, according to his testimony, it was his intention to board a jitney bus going south to reach his place of work.

20 Bergenline Avenue is an important public highway running north and south, and through various municipalities of North Hudson, including West New York and Union City. At the time of this accident the people of this section were furnished with fast transportation by two competing lines of buses (the Public Service Bus Line and defendant's line, known as the Independents) running along Bergenline Avenue and having terminals at the same points. The Public Service Railway Company also operates a trolley line along said highway.

30 Frank Ratz, Jr., walked south along the easterly walk of Bergenline Avenue (page 62) and when he reached the first window of the drug store on the northeast corner of Bergenline Avenue and 16th Street, he noticed a Public Service bus stopped in front of the Title Guarantee and Trust Company Bank, across the street from him at the northwest corner. He decided to board that bus. Before crossing over, however, he states that he looked up and down Bergenline Avenue (page 62, line 30) and saw no other cars excepting the Public Service bus stopped in front of the bank and an independent bus at 17th Street. He started  
40 across, and as he walked across Bergenline Ave-

nue he noticed the Independent bus proceeding south from 17th Street towards 16th Street, *close to the curb* on the westerly side of Bergenline Avenue (page 63, lines 10 to 30); as he reached a point about five feet distant from the front of the standing Public Service bus (page 64, lines 1 to 14), for fear that it "might start off," he started to go around the rear of such bus. As he was about to do so, the Independent bus, which had been coming down "at the curb" (page 63, line 10), "all of a sudden turned into the street, straight" at him (page 62, line 30). He tried to jump out of the way, but was hit by the front center of said bus (page 63, lines 26 to 30; page 69, lines 20 to 30). He was thrown up in the air and the bus went over him (page 69, lines 33 to 40). He stated that the operator of defendant's bus blew no horn and was going "fast" (page 63, line 36). After the accident the boy's kit was found lodged between the fender and the hood of the bus on the right-hand side of the bus (page 46, line 20). Defendant's chauffeur admitted in the course of his cross examination that he did not sound his horn at the time of the accident (page 92, line 30).

Plaintiff's witnesses, William Rabeit, Lawrence Donna, Angelo Senesi and Theodore Scolle, all corroborated plaintiff's version of the occurrence in its material points. All these witnesses were disinterested and their testimony could not be weakened or discredited on cross examination.

Lawrence Donna, a chauffeur in charge of a Public Service bus, who saw the accident, testified, in part, as follows (page 51):

"I was coming up Bergenline Avenue this morning and at 16th Street, at the bank there, there was a Public Service bus parked, and

there was another independent bus coming down, I should judge about 25 miles an hour, and this young fellow, I didn't see him make no steps or nothing, I just seen him get hit.

Q. And at the time he was hit, how fast or how slow was this bus that hit him running?

A. About 25 or 30 miles an hour.

10 Q. As this bus came down Bergenline Avenue, before it hit the boy, was there much space between the spot where the Public Service bus was parked at 16th Street, before the bank? A. No, sir.

20 Q. When he hit the boy, did you see the boy do anything? A. Yes, sir, I see the boy try to grab the radiator of the independent bus and he got thrown in between the bumper and the radiator. I seen the front wheel go over him and the rear wheel stop right by him."

This witness testified further that the right front wheel went over the boy and when the bus stopped the left rear wheel stopped right by his body and that the bus came to a stop after the accident *at a point near the dry goods store* (southwest corner) on the car tracks (page 52).

30 William Rabeit, mail messenger, attached to the West New York Branch of the Post Office, testified that at the time of the accident he was waiting for a trolley car in front of the entrance to the bank on the northwest corner of Bergenline Avenue and 16th Street (page 19). There was not much traffic at that hour of the morning (page 20, lines 25 to 30). As he was standing there, waiting for a trolley car, a Public Service bus was standing at the bank corner taking on some eight  
40 or more passengers; he saw plaintiff start to

cross the street, from a point even with the north-  
 erly curbing of 16th Street; the boy walked across  
 (page 21); the witness looked to the left and saw  
 the bus which hit plaintiff coming down Bergen-  
 line Avenue at over 20 miles an hour (page 29,  
 lines 20 to 30); up to the time the bus struck the  
 boy *it never slackened its speed* (page 22). He  
 was the first person to assist the boy after the  
 accident and he found him under the bus in such  
 a position that if the bus had proceeded another  
 foot or two the left rear wheel would have passed  
 over his stomach. The bus stopped at a point on  
 the car tracks *about ten feet north of the traffic  
 booth* (page 23, line 1); he pulled the boy out from  
 under the bus; there was nobody else on the street,  
 but the bus that morning (page 25, line 10). 10

By the witnesses, Angelo Senesi and Theodore  
 Scolle, plaintiff proved that defendant's bus  
 stopped at a point on the southbound tracks on  
 Bergenline Avenue from five to eight feet from  
 the traffic booth (page 56, line 36) (page 83, line  
 14); and as to speed, Angelo Senesi testified that  
 defendant's bus was operated at 25 miles an hour  
 at the time of the accident (page 57, line 16). 20

It was shown that the distance between the  
 point where the boy was hit on the car tracks (in  
 front of the bank) and the police booth was 54  
 feet 5 inches (page 17, line 7), so that if the jury  
 believed Rabeit that the boy walked "straight"  
 across from the drug store towards him on the  
 bank corner (page 28, line 24) the bus must have  
 traveled entirely across 16th Street for a distance  
 of some fifty feet or more before it was brought  
 to a standstill, carrying the boy some forty feet  
 between its bumper and radiator until he fell  
 through and under the bus. 30  
 40

### The Injuries.

Plaintiff, Frank Ratz, Jr., was severely and permanently injured and no attempt was made by defendant to minimize the injuries by calling medical experts to refute in any degree the testimony of plaintiff's three physicians, Lange, Arlitz and Perlberg.

10 Dr. William J. Arlitz testified for plaintiff as follows (page 72):

20 "I found that the boy had a deforming fracture of his left collar bone. I found a scar below the left shoulder blade which was due to an operation. I found that his entire left lung was collapsed. I found that the breath sounds and the voice sounds were all tremendously exaggerated, which indicated that the lung was not functioning. I found the breath and voice sounds considerably exaggerated on the other side. My conclusion was that this boy had sustained a puncture or tearing of the lung as a result of this accident, and that there was no attempt at refunctioning. I also examined the radiographs in the case which were furnished to me by Dr. Bernstein and Dr. Perlberg and these radiographs all indicated that my diagnosis is correct, that the left lung is not functioning."

30 \* \* \* \* \*

40 "Q. Is there any respiratory capacity in the left lung? A. Apparently not. The entire left lung is absolutely flat. The radiographs show that the detail of the entire lung is obscured. There is no detail, and they show

the markings on the right side to be exaggerated. In other words, as a result of the injury to the left side he has had some inflammatory reaction on the right side.

Q. So that as a result his right lung is, to some extent, injured? A. It is involved to some extent as a result of the trauma on the left side." (10

\* \* \* \* \*

"Q. Now, the radiograph which you said you examined of Dr. Bernstein, is that the one which is marked Exhibit P-6? A. Yes, this is the first X-ray which shows to a very considerable extent—there you see the definition of the lung. On the other side there is practically no definition. That means that the covering on the lung and the lining on the ribs are obscuring because of the thickening and disease, hence the lack of definition in the lung. (20

Q. Now the other radiograph which you mentioned, is that the radiograph made yesterday by Dr. Perlberg? A. The radiograph made yesterday shows the condition to be worse than it was at the time that radiograph was made. The definition in the right lung is not as clear as it was, and this shadow has now traveled more to the right side. There is practically no definition of the lung tissue on the left side in this radiograph. (30

Mr. Castellano: May I have this radiograph marked for identification at the present time?

(Marked Exhibit P-7 for identification.) (40

10 Q. What do you say about the ability and capacity of this boy to do the things which the ordinary boy of his age at this time can do? A. He could not do them. He might make the attempt, but he could not do them because he is a sick boy. He should be under treatment. He should be sent away to a different climate with the hope that his condition might improve. His condition has not improved during the period between the time the radiograph was taken by Dr. Bernstein and the time the radiograph was taken by Dr. Perlberg. He appears to have grown worse in that time."

20 (Note: Exhibits 6 and 7 as attached to the case on appeal, by mistake of appellant's photographer, appear transposed, so that the lung condition will be found the reverse. See particularly the writing on Exhibit 7.)

#### Defense.

30 Defendant called only two witnesses to support its defense; its chauffeur, Edward Gail, and one Tessie Ford. Gail testified that he did not see the boy until he hit him. Defendant's counsel several time adroitly asks him (see page 89):

"How long before this boy *ran into your left front fender* did you see him? A. Well, no more than as I seen him he was hit."

40 The witness states that the boy ran from behind a touring car going north on Bergenline Avenue, but no other witness, either for plaintiff or defendant,

mentions any auto vehicle having to do with the accident other than the two buses mentioned, and Donna and Rabeit stated there was no other traffic at or near the point of accident.

Tessie Ford, who heard of the case through "some fellows that work on the buses" and "hang around" the corner where she lives (page 101), after a series of leading questions by defendant's counsel (pages 94, 95), stated that she saw the boy *running* across the street. Her testimony was forced from her by leading questions, and lacked the essential elements entitling it to be believed. She gave her name to no person at the time of the accident (page 100, line 32), but hurried on to her shop and did not stop to see the boy taken from under the bus (page 95, line 15). 10 20

### Charge.

There were no exceptions noted by defendant to the Court's charge, and defendant's requests were all charged. Defendant failed to urge the usual motions to dismiss or for a directed verdict, either at the end of plaintiff's case or at the close of the entire case. Upon the evidence adduced there was no sound legal reason to bar the case from going to the jury, and such failure on its part amounted to an admission that the issues presented a jury question. 30

### POINT I.

**Plaintiff's verdicts should not be disturbed.**

Upon the record of the trial it is impossible to find that the infant Frank Ratz was guilty of con- 40

tributory negligence *as a matter of law*. Neither can it be successfully argued that there was *no evidence* to support the verdict of the jury. A jury question was presented within the rule laid down in the cases cited in *Dickerson vs. Mutual Grocery Co.*, 100 N. J. L., 118.

10 It is therefore unnecessary to answer appellant's Points "II," "III," "IV."

This Court has frequently stated that upon appeal the question of the excessiveness of damages cannot be raised,

*Mooney vs. O'Reilly*, 2 N. J. Misc. R., 239;  
*Flanigan vs. Guggenheim Smelting Co.*,  
63 N. J. L., 647;

20 *Bouvier vs. Baltimore & N. Y. R'way Co.*,  
67 N. J. L., 296,

and that the Court of Errors and Appeals is not empowered to set aside a verdict as against the weight of evidence.

*Byrne Co. vs. Snead & Co.*, 98 N. J. L.,  
256; 118 Atl. R., 841.

30 In the case of *Eberling vs. Mutilod*, 90 N. J. L.,  
478, this Court stated:

"There was evidence to support the verdict and this Court will not review the findings of fact in a court below beyond ascertaining that there was evidence to support such findings" (citing *Larned vs. MacCarthy*, 85 N. J. L., 589).

40 Plaintiff and his witnesses by the great preponderance of the evidence showed that the accident

occurred solely by reason of the negligent operation of defendant's bus. Infant plaintiff carefully crossed at the drug store, starting from a point opposite the bank corner. He looked up and down before leaving the sidewalk, and was vigilant while crossing. He showed care, caution and good judgment in not proceeding across the front of the parked Public Service bus standing at the bank, and in deciding to go around the rear of the bus. He was in no hurry as he had thirty-five minutes' time to get to his place of work at Union City, which point he could reach by bus in ten minutes (page 62). It was due to the sudden change of the direction of the Independent bus that the boy was struck down without a chance to escape. 10

Gail, the operator of the Independent bus, had been passed by the Public Service bus on this southbound trip, although he was the first to leave the starting point (page 93). When the Independent bus finished taking on passengers at 17th Street, the Public Service bus was still ahead, taking on passengers at 16th Street (page 25, line 30). The Independent bus continued on towards 16th Street, proceeding *close to the curb*. It is reasonable to conclude that the operator did so in order to better observe whether any passengers would be left by the Public Service bus at the corner as possible fares for his bus. It is also reasonable to believe that when Gail was satisfied that the Public Service was about to take on *all* the waiting fares, he decided not to stop behind it but pass it before it started in motion. Such operation naturally required swift decision and execution, and while the operator was so engaged in regaining the lead which was rightfully his, and probably engaged in observing the movements of the operator of the rival bus, he failed to look out for 20 30 40

the safety of pedestrians who might be crossing and failed to sound any horn or other warning, but increased his speed in turning out from near the curb to go around the standing bus, and by such sudden and swift movement trapped the boy by the side of the bus as he was about to start for the rear.

10

### POINT II.

**The Court committed no error in its rulings.**

The case of Boyd vs. Husted, 127 Atl. R., 667, is certainly not authority for the proposition that it is reversible error to permit counsel for a party to ask of individual jurors before acceptance as jurors, whether they know opposing counsel.

20

The allowance of such question was within the discretion of the trial Court. It is hard to conceive how such a question might *tend* to prejudice a jury in any way. It is the accepted practice, at least in the Hudson Circuit, to permit such a question. The statute (Comp. Stat. Supt., 1911-1915, page 841, Section 23) permits the questioning of any juror "for the purpose of eliciting information" upon which may be determined the advisability of a peremptory challenge. As soon as a juror states that he does not know the opposing party or attorney the questioner is generally satisfied and is no longer concerned in eliciting information as to whether he should exercise his right to challenge. It has been found that the allowance of such a question makes for speed in selecting a jury in this thickly settled district, where there is less chance of counsel being acquainted with the usual run of jurymen.

30

40

Likewise, the ruling of the Court, as to the position where Officer Muh found the bus on Bergenline Avenue, after the accident, was not prejudicial error. The Court expressly stated:

“If you don’t connect it up I will strike it out. Of course it may have been changed after the accident” (page 44, line 35).

10

The witness testified that he found the bus on the northwest crossing “about five feet to the other side of the bank” (page 49, line 10). Such testimony was favorable to defendant, as plaintiff’s claim is that the bus traveled some forty or fifty feet south of the northwest crossing (where the accident occurred), before it was halted near the police booth, and in front of the dry goods store.

20

Defendant accepted the benefit of such favorable testimony and with such purpose in mind, made no request upon the Court to strike out such testimony, as the Court stated would be done. The testimony elicited did not harm or prejudice defendant’s case, but on the other hand hurt plaintiff. The duty of connecting such testimony up by showing that the bus had not been moved from the time it came to a stop until the witness saw it, would have fallen upon plaintiff only if the police officer had fixed the position of the bus at a point near the police booth as testified to by plaintiff’s main witnesses.

30

40

**POINT III.**

The verdicts and judgment appealed from should be sustained.

10 If anything, the verdict for the father of \$1,000 is exceedingly small. Up to the day of trial Frank Ratz, Jr., had been disabled for some thirty weeks. The loss of earnings at \$17 per week and medical and hospital expenses exceeded \$1,000.

The amount awarded to the son of \$7,500, while a substantial verdict, was barely commensurate to the severe permanent injuries sustained and the pain and discomfort caused thereby.

20 Both verdicts and plaintiff's judgment should be affirmed in all respects.

Respectfully submitted,

FRANCIS A. CASTELLANO, JR.,  
Attorney for Plaintiff.

ALFONSO BIVONA, Esq.,  
of Counsel.

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1514

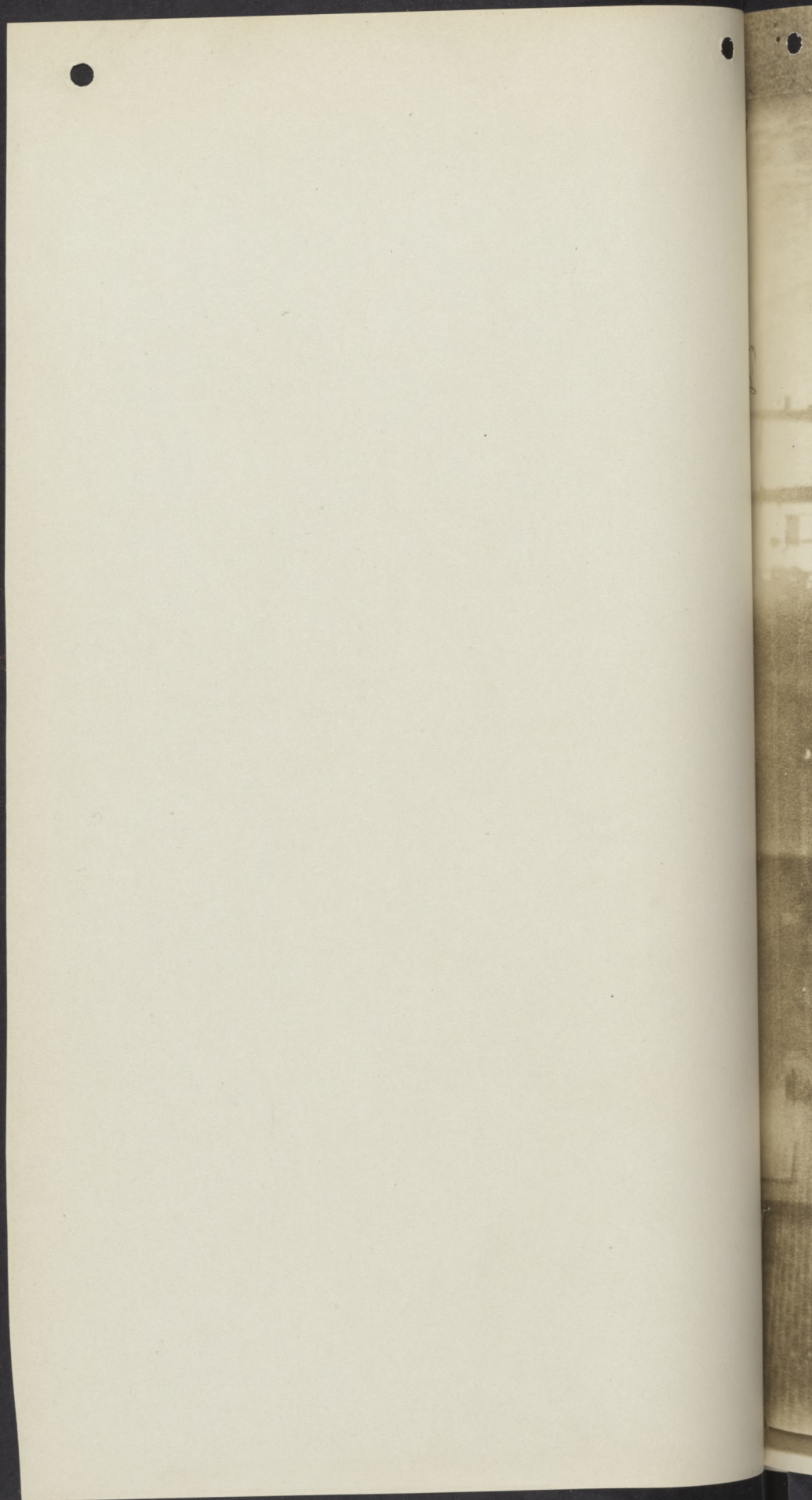
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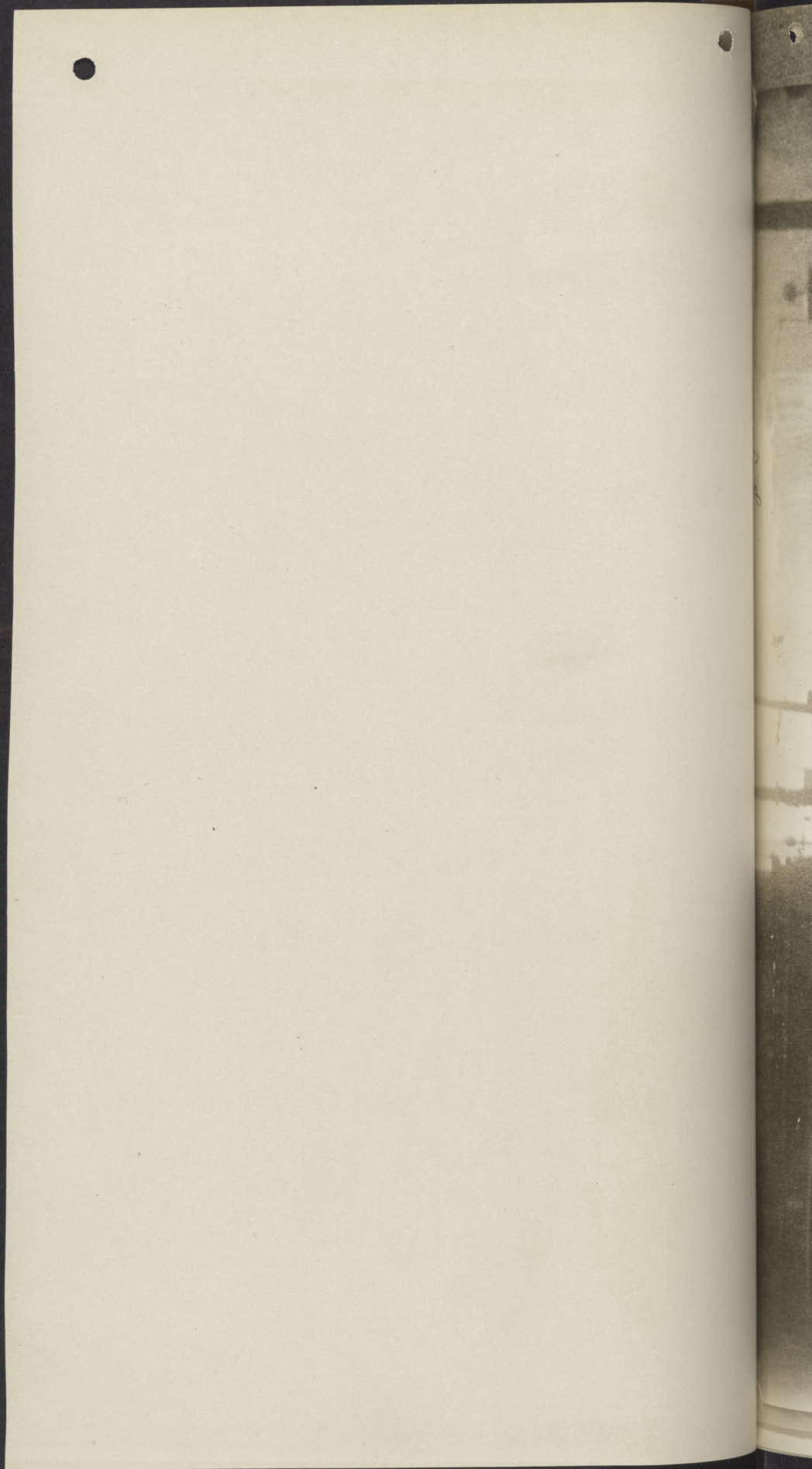
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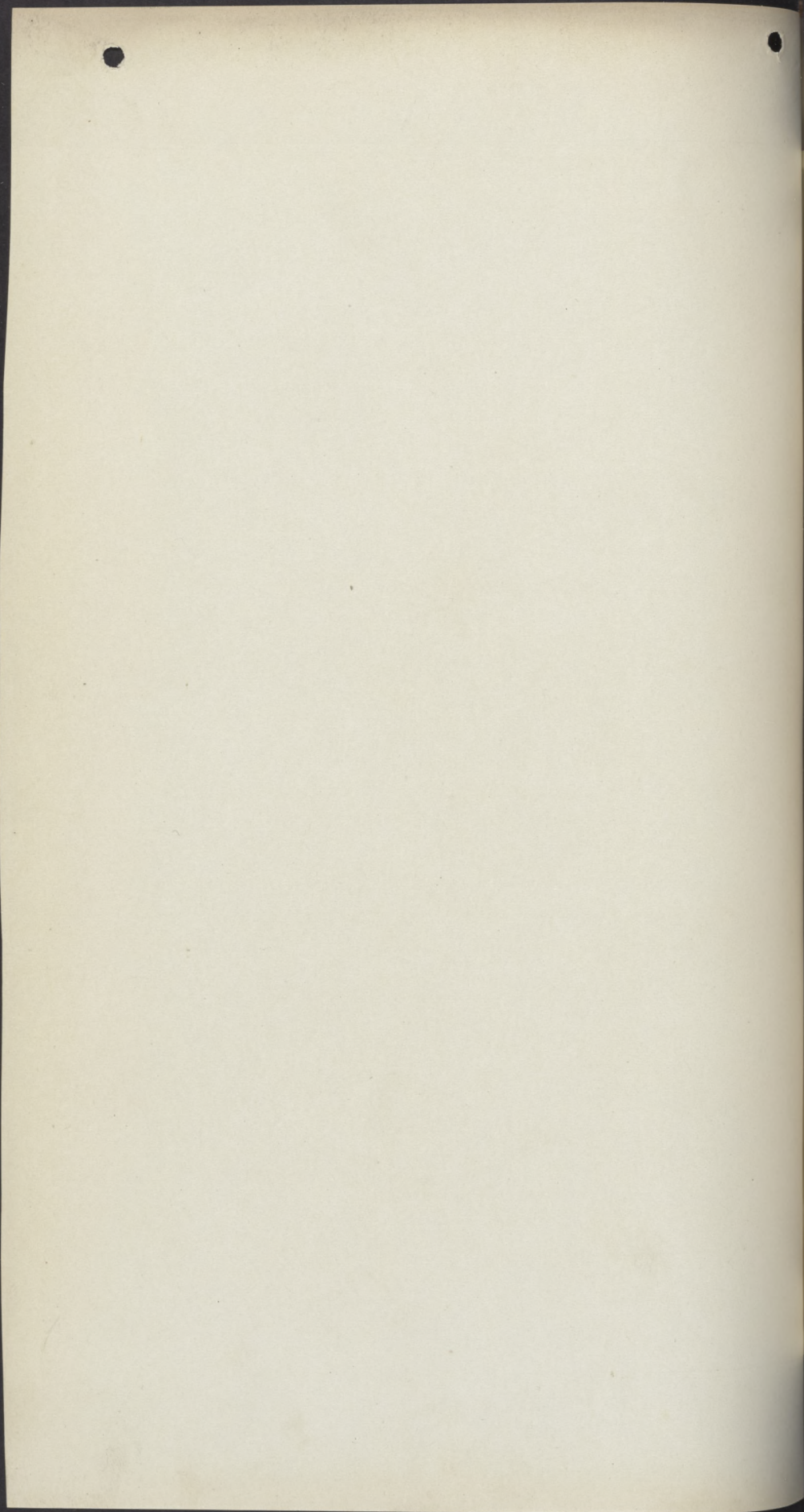




IRVING MEN'S SHOP

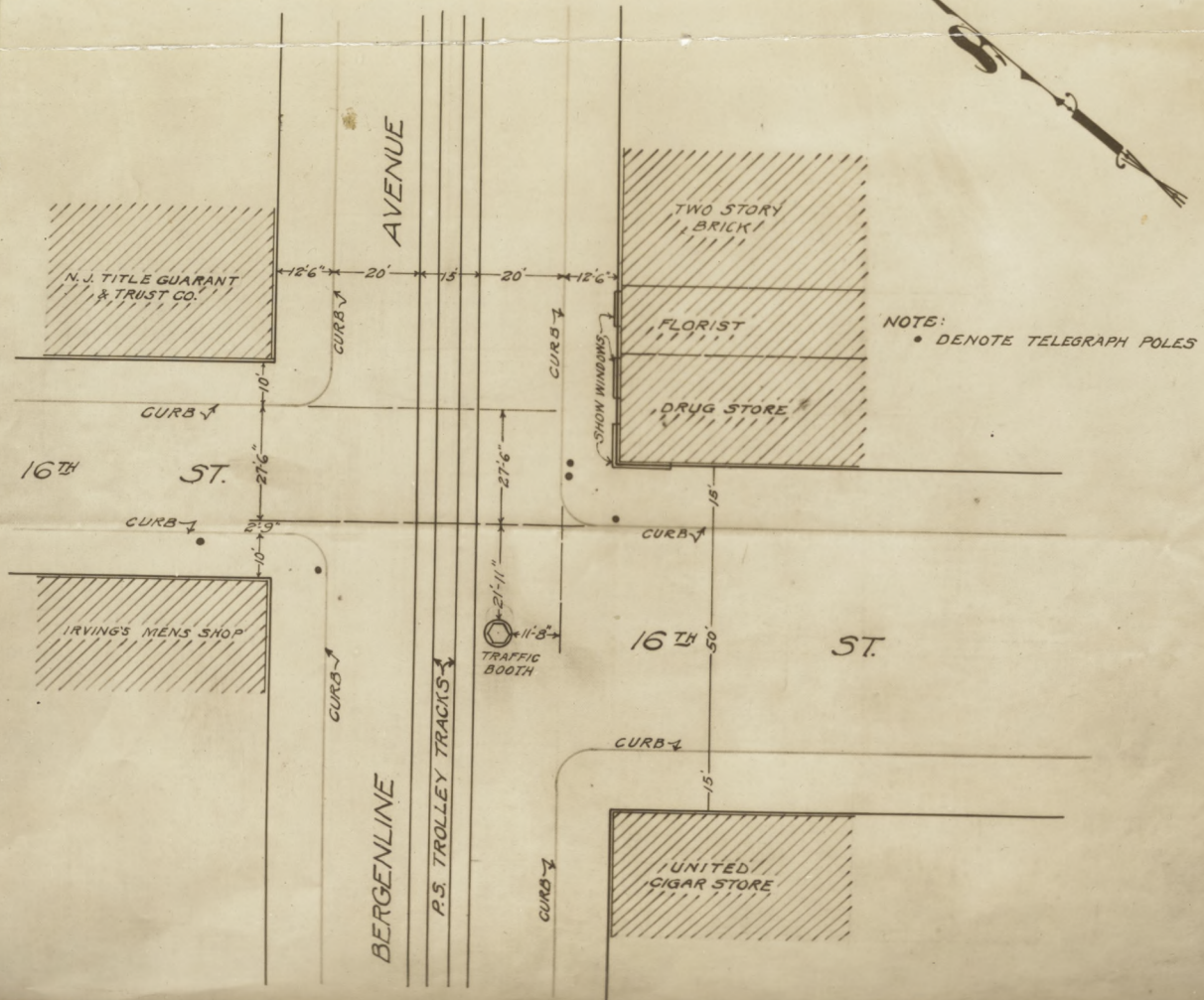
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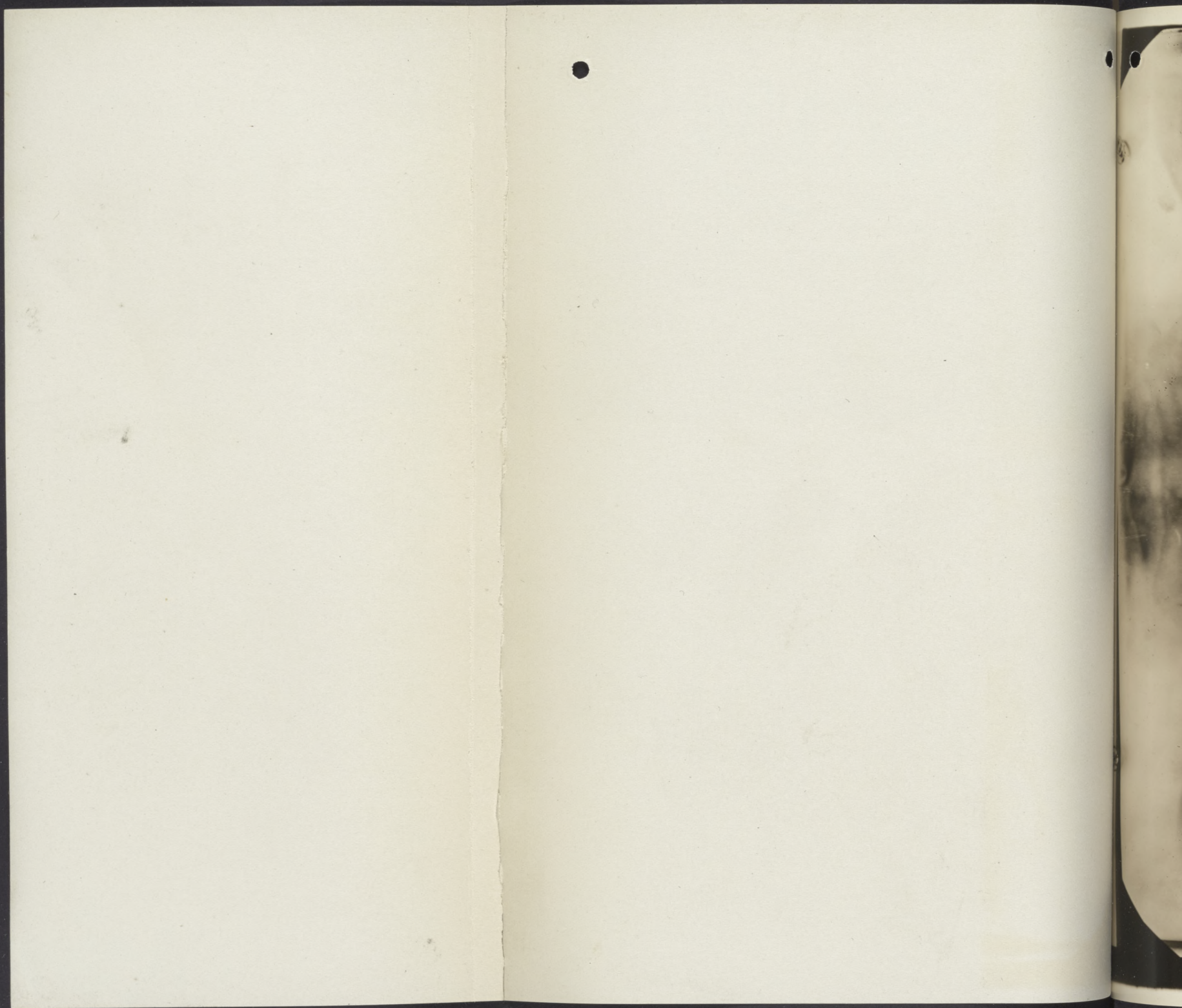
IRVING



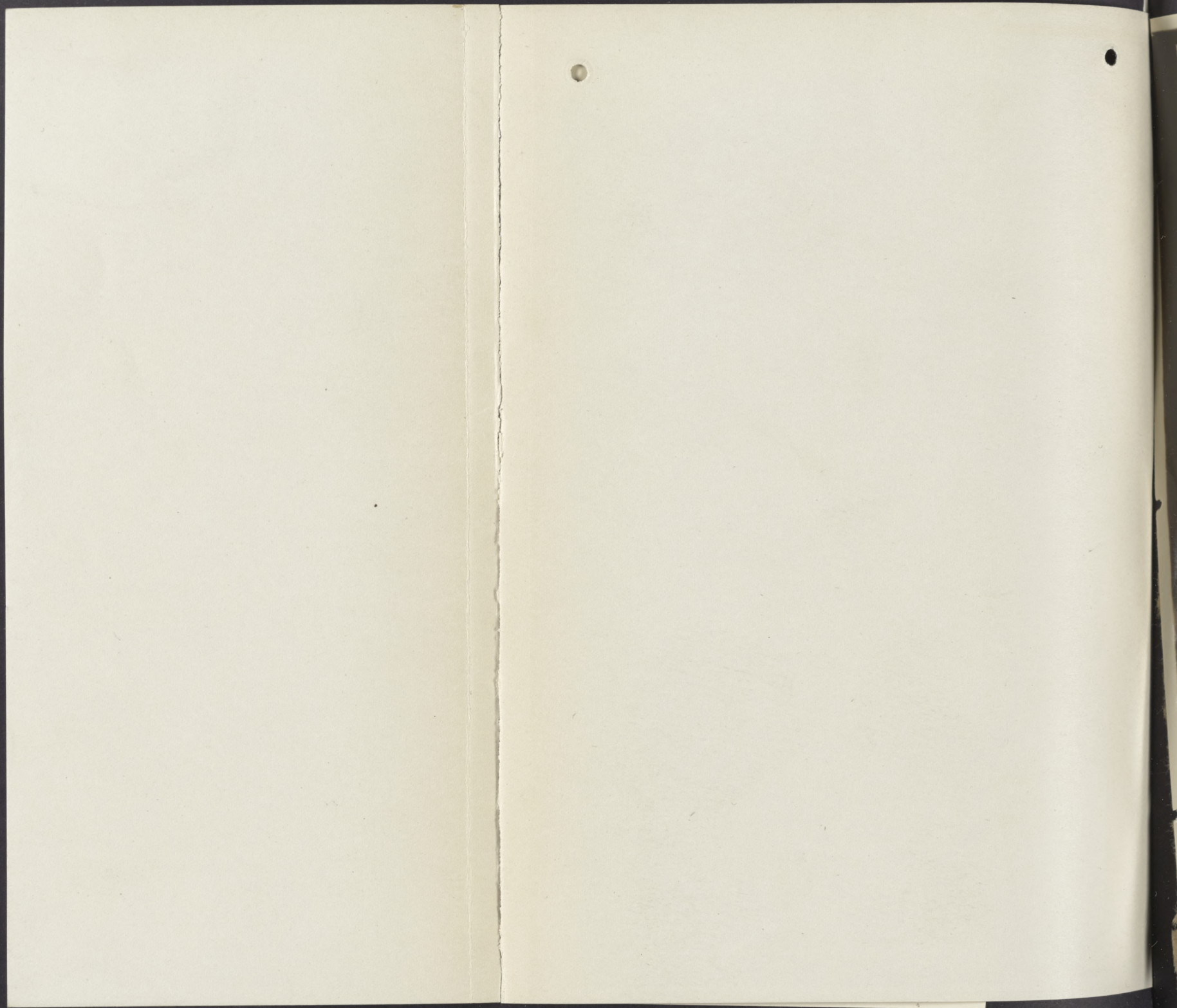
app-6

MAP OF SURVEY  
 SHOWING THE INTERSECTION OF  
 16<sup>TH</sup> ST. & BERGENLINE AVE.  
 TOWN OF WEST NEW YORK  
 HUDSON CO. N. J.  
 FOR: MR. FRANK CASTELLANO  
 SURVEYED BY: Frank J. Olsen, C.E.  
 DATE 5-1-26 SCALE 1" = 30' AUTHORIZATION No. 243  
 660 BERGENLINE AVE.  
 WEST NEW YORK, N. J.





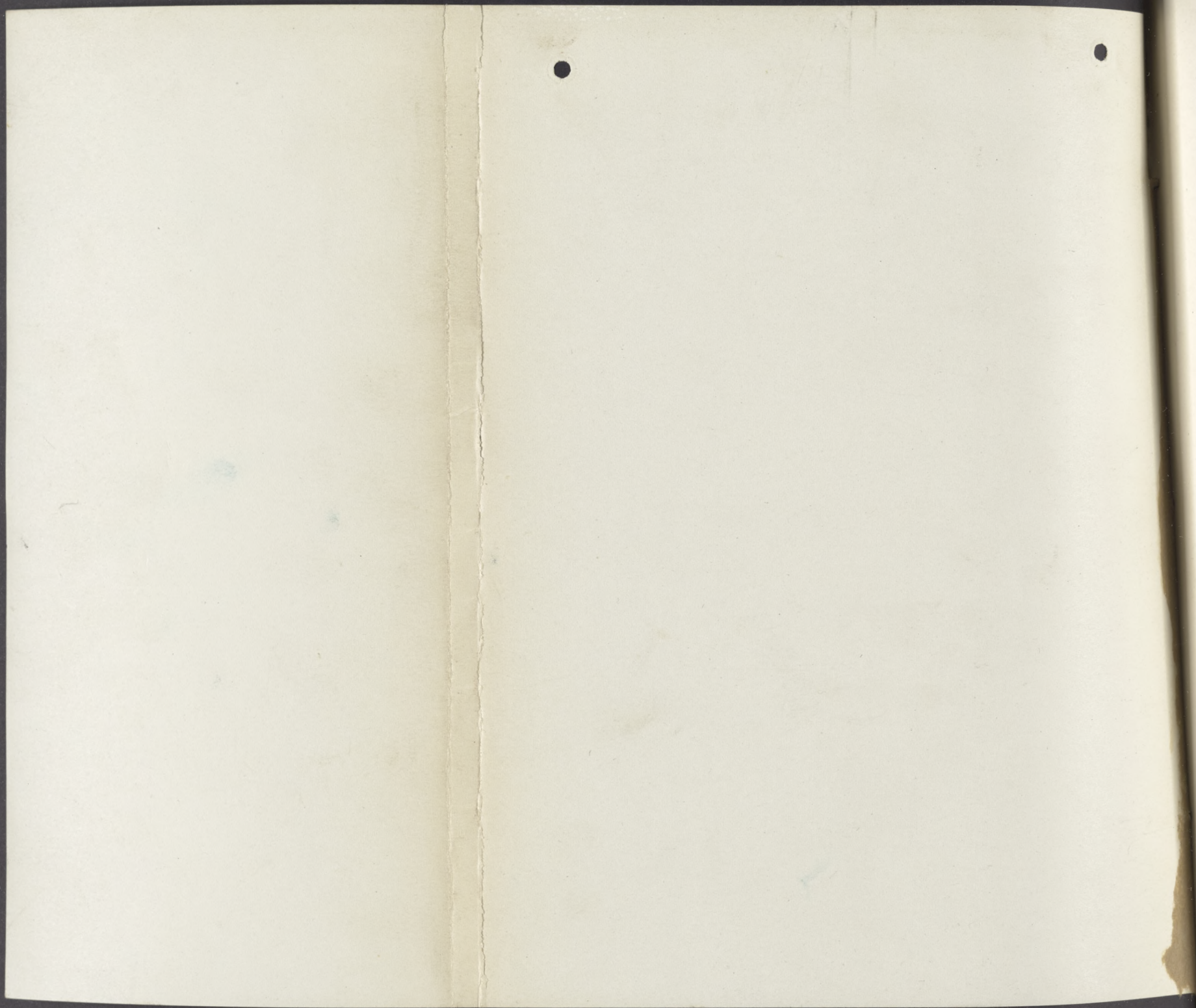
P6



18585 RIGHT

P7

Mr. Frank Post  
2-14-36



55 Oct. 1. 1926

**New Jersey Court of Errors  
and Appeals**

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FRANK RATZ, individually and as next friend of  
FRANK RATZ, an infant,

Plaintiff-Appellee,

vs.

HILLSIDE BUS OWNERS ASSOCIATION,

Defendant-Appellant.

---

**BRIEF FOR DEFENDANT-APPELLANT.**

---

**STATEMENT.**

The position of the defendant appellant is that on November 10, 1925, while the defendant was operating through an agent a jitney bus on Bergenline Avenue, at or near the intersection of 16th Street, in the Town of West New York, the infant plaintiff ran across the street with the purpose of trying to reach a Public Service bus which was standing on the other side of the street, and ran into the defendant's bus and was thrown down and injured by the collision; that the operator of the defendant's bus was unable to prevent this collision because the boy darted out so suddenly from the sidewalk that the operator was unable to stop the bus after he saw the boy.

Judgment was rendered against the defendant for \$7,500. for the infant plaintiff, and \$1,000.

for his father, who sues individually and as his next friend.

We seek to set aside this verdict for the reasons hereinafter set forth.

### POINT I.

#### THE COURT ERRED IN ALLOWING CERTAIN QUESTIONS TO BE ASKED OF THE JURY AND OF THE WITNESSES.

At the opening of the trial the plaintiff's attorney asked each member of the jury the following question:

“Do you know Mr. MacLeod, who is going to try this case against me? (page 11).”

This was objected to, and on the refusal of the court to exclude the question, Mr. MacLeod made a motion for a mistrial on the ground that the question was prejudicial to the defendant, and was not material in arriving at a conclusion on the issues in this case.

We submit to the court that such a question is plainly irrelevant and has no object except to prejudice the jury.

*Boyd v. Husted*, 127 Atl. Rep. 667.

The court also erred in permitting the following question (page 45):

“Whereabouts on Bergenline Avenue did you find this bus?”

This question was objected to, and the objection over-ruled, and exception taken.

The police officer of whom this question was asked and who answered it, did not arrive on the scene until after the accident. Somebody went up to the nearest police station and informed this officer of the accident, and he went down to the place of the accident.

It is obvious that the position of this bus some minutes after the accident, as testified to by a man who did not witness the accident, is not relevant. The court in deciding to allow it said it would have to be connected up with the case, which was not done by any subsequent testimony.

## POINT II.

### **THE INFANT PLAINTIFF WAS PLAINLY GUILTY OF CONTRIBUTORY NEGLIGENCE.**

A reading of the testimony will convince the court that even if the driver of the bus was at fault, the negligence of the infant plaintiff was the direct cause of this accident.

Let us examine the testimony of each of the witnesses of the accident.

Witness Rabiet (page 19), was a mail carrier, he was standing in front of the bank on the northwest corner of 16th Street and Bergenline Avenue. He says there were no vehicles between 16th and 17th Street. This establishes the fact that the boy had an unobstructed view of the defendant's bus. He saw the Public Service bus standing at the corner and some people getting onto it. This is his language:

“Then all at once the boy leaves the crossing to come across while the Public Service bus was still standing there. I just cast my eyes a little to the left and there was a bus came down the avenue at a pretty good rate of speed.”

On page 25 he says, he saw the defendant's bus when it was a block away. On page 27 he says he saw the defendant's bus coming through the window of the Public Service bus when the infant plaintiff was half way across the street.

The next witness who saw the accident is Donna, the driver of another Public Service bus (page 49.) He didn't see the boy at all until just at the time he was hit. He did not see the boy leave the curb (page 53.)

On the cross-examination he sticks to this story, that he never saw the boy until at the very moment he was hit.

The next witness, Senesi (page 55). was an iceman, with a horse drawn truck standing in front of a cigar store opposite the bank. On page 59 he says, he never saw the boy running across the street.

“Q. The first time you saw the boy was when he was hit? A. Yes sir.

Q. You are sure of that? A. Yes sir.

Q. You did not see him at any time before? A. No.”

The infant plaintiff Ratz testified (page 62), that he came out of his house on Bergenline Avenue, which is between 16th and 17th Street, and saw the Public Service bus standing on the corner by the bank. He says (page 63):

“A. I looked down, then I looked up and saw the independent bus on 17th Street. Then I started across and I was about five feet away from the Public Service bus, I looked around back and I saw the independent bus coming straight at me. I tried to jump, but it hit me and I felt myself going under the bus. \* \* \*

Q. As you walked across Bergenline Avenue did you look to see this independent bus coming down? A. Yes, I saw him coming at the curb, but all of a sudden he turned into the street.”

He further says, page 63, that he saw the independent bus coming in to the curb, about by the butcher store, which is in the middle of the block, nearer to 16th Street than 17th Street.

“Q. Now, when you saw it coming alone at the butcher store near the curb, what did you do? A. I went across, and I stopped to see where he was going to go, and all of a sudden I saw the independent bus coming down on me.”

On cross examination, on page 67, he says that when he got near the Public Service bus he went to the back of it, which would bring his face in the direction of defendant's bus.

This is all the testimony of the plaintiff's witnesses upon this subject.

We submit that this testimony establishes the plainest kind of contributory negligence on the part of the infant plaintiff. None of the witnesses testified to anything which would obstruct his vision of the defendant's bus. The boy himself admits that he saw it at the corner

of 17th Street when he started to cross, while he was still on the sidewalk, and that he saw it again when he was half way across the street. Upon his own statement therefore he was guilty of contributory negligence. He had a plain view of this bus for half a block and saw it suddenly moving in his direction. It was his plain duty to keep this bus in view. He knew that the business of a bus is to carry passengers and that in order to serve the people buses have to go at a fair rate of speed, they cannot move slowly like a truck.

This testimony is corroborated by witness Gail (page 87), the operator of defendant's bus. His story in substance is that the boy suddenly ran out from behind a touring car to catch the Public Service bus, and that his movement was so sudden that he was unable to stop his bus before the collision (pages 88-92.)

A witness named Tessie Ford, on behalf of the defense, testified (pages 94 and 95), that she witnessed the accident; that she was coming out of the cigar store near the bank; that she saw the boy running across the street to catch the Public Service bus. She reiterates that he was running fast to catch the bus (page 95.)

In light of all this testimony, how can there be any serious claim that this boy exercised the caution which a prudent person is required to use in crossing a busy street. If the boy had not seen the bus he would still be guilty of contributory negligence because it was his duty to look carefully, but he expressly admits that he did see the bus, once more than half a block away before he left the sidewalk, and once still nearer, when he was in the middle of the road, and when he had ample time to turn back or to protect himself by standing still.

This evidence brings the infant plaintiff within the law as to contributory negligence as the same has been established in this court.

*William Brady*, who sues, etc, v. *The Consolidated Traction Company*, 64 N. J. L. 373.

*Helen Fitzhenry* v. *The Consolidated Traction Company*, 64 N. J. L. 674.

*Michael Farese*, who sues, etc. v. *North Jersey Street Railway Company*, 76 N. J. L. 457.

*Charles Turner*, by his next Friend, v. *Perry E. Hall*, 74 N. J. L. 214.

*Thomas Verdon*, by his next friend, v. *The Crescent Automobile Company*, 80 N. J. L. 199.

*James* v. *Delaware, L. & W. R. R.*, 92 N. J. L. 149.

*Holl* v. *Public Service Ry. Co.*, 90 N. J. L. 386.

*Sheets* v. *Connelly St. R. Co.*, 54 N. J. L. 518.

*North Hudson* v. *Flanagan*, 57 N. J. L. 696.

*Smith* v. *N. J. St. Ry. Co.*, 73 N. J. L. 295.

*Brown* v. *Railroad Co.*, 68 N. J. L. 618.

*Kolankiewicz* v. *Burke*, 91 Law, 567.

A good statement on contributory negligence is contained in the case of *Baltimore Traction Co. v. Helms*, in 36 L. A. R.. 217, in which the court says:

“And therefore if the plaintiff by ordinary care, could have avoided the consequences of the alleged negligence of

the defendant,—and there can be no doubt, from his own testimony, that he could have done so,—and failed so to do, he would be the author of his own misfortune, and therefore no action would lie. *Price's Case*, 23 Md. 420. Whatever may have been the opinion of the plaintiff as to his power to stop and look before crossing the track, the fact is that he did not take this precaution. Nor is there any thing in the evidence to show that he, or any man with ordinary powers, could not have both stopped and looked in time to avoid injury. It does not appear, however, that he made any effort to do either, for he was in the center of the track before he saw the car. If a witness who can see testifies that he looked, and did not see an object which if he looked, he must have seen, such testimony is unworthy of consideration.”

\* \* \*

“Due and ordinary care is to be exercised in crossing public streets, as in all other transactions of life. Even upon the sidewalk, specially devoted to foot passengers, a man is bound to look where he is going; and this duty is still more imperative when he is about to cross the middle of the street, where horses, wagons and cars have equal rights with himself, and where he is bound to take notice of such other rights, and to use his own with due regard thereto. *Busby v. Philadelphia Traction Co.*, 126 Pa., 559. A similar view prevails in Missouri, Michigan, New York, New Jersey and Louisiana.”

Citing:

*Sheets v. Connelly St. R. Co.*, 54 N. J.  
L. 518,  
*Newark Pass. R. Co. v. Block*, 55 N. J.  
L. 606.

### POINT III.

#### THE VERDICT IS AGAINST THE WEIGHT OF EVIDENCE.

The evidence cited under the previous point is pertinent in the consideration of this point. The only evidence given by any of the witnesses which attributes any fault to the defendant's operator was that he was running fast. All the witnesses agree that after the boy was hit he was picked up in front of the rear wheel, and therefore after the collision the bus could not have gone more than twelve feet. No bus running at a dangerously rapid rate of speed can stop in that space. This is conclusive evidence that the speed was not excessive.

In considering the speed of vehicles it should be borne in mind that a jitney bus is carrying passengers to their work, and that it must necessarily go at a fair rate of speed. The bus operator testifies that he had a governor on his bus which limits the speed to twenty-five miles an hour, and that he was in second speed at the time. All pedestrians are familiar with the fact that a bus has to go with fair speed in order to discharge its function of carrying passengers to their work.

Witness Senesi, under cross-examination is very indefinite about the speed. He testified that he thought he went full speed (page 57), but each estimate he qualifies by saying "I don't know." On cross-examination he is asked if he knows what full speed is, and makes no answer. He says (page 58) that he never drove an automobile, and that he does not know about the speed of a bus. He says:

"I think he runs fast if it is 20 miles an hour or 25 miles an hour I don't know."

The infant plaintiff says, on page 63, that when he saw the bus it was going fast, but he doesn't define what he means by this term, and he has also testified that he was in full view of the bus before he left the sidewalk and while he was crossing the street.

This is all the testimony of the plaintiff which tends to throw any blame whatever upon the driver of the bus. The most that can be held out of this testimony is the claim that the driver of the bus could have seen the boy as he was crossing the street. If we assume that he could and did, we submit that he had a right to assume that the boy having the bus in full view, would not run in front of it or into it.

We submit therefore that the overwhelming weight of the evidence of those who saw the accident, supports the defendant's position that no negligence was attributable to the driver of the defendant's bus.

**POINT IV.****THE DAMAGES AWARDED BY THE JURY  
ARE EXCESSIVE.**

We submit that the verdict of \$7,500. for the infant plaintiff and \$1,000. for his father, is excessive in view of the testimony.

The evidence of the doctors is that the infant plaintiff's injuries are serious. The main injury of a permanent character is the one to the lungs.

Dr. Lange (page 42) admits that the coughing has stopped and that he has had a fair recovery considering the injury, and that he had lost no motion in his arm from the fracture of the clavicle.

Dr. Arlitz (pages 74-75) testifies that the conditions to which he has testified in the boy are permanent on the left side; that the boy ought to be sent to the mountains, with the hope that his condition might grow better.

The evidence of the doctors seems to be that the boy is physically weakened by the injury to his lung, but this will not prevent him from following some gainful occupation which does not require physical exertion.

In view of this evidence we submit that this verdict ought to be substantially reduced.

Respectfully submitted,

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