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COPY OF JUDGMENT.

NEW JERSEY SUPREME COURT.

CAROLINE CRONECKER,

VS.

CHARLES R. HALL,

ACTION AT LAW.
ON POSTEA.

JUDGMENT FOR DE- 10
FENDANT.

HOWARD L. MILLER
AND LAWRENCE B.
READER, ATTORNEYS.

Judgment entered this seventeenth day of No-
vember, A. D. nineteen hundred and seventeen for
the sum of thirty-nine dollars and ten cents costs 20
in favor of the defendant and against the plaintiff.
Costs \$39.10.

WM. S. GUMMERE, C. J.

I, Enoch L. Johnson, clerk of the Supreme Court
of the State of New Jersey, do certify that the fore-
going is a true copy of the judgment entered in
above-stated cause which said judgment is recorded
in this office in Vol. 10 of Judgments, page 447.

In testimony whereof I have hereunto set 30
(Seal) my hand and seal of said court at Trenton,
this twenty-second day of April, A. D. one
thousand nine hundred and eighteen.

ENOCH L. JOHNSON,
Clerk.

NOTICE AND GROUNDS OF APPEAL.

NEW JERSEY SUPREME COURT.

<p>CAROLINE CRONECKER, <i>Plaintiff and Appellant,</i> vs. 10 CHARLES R. HALL, <i>Defendant and</i> <i>Respondent.</i></p>	}	<p>ACTION AT LAW. NOTICE AND GROUNDS OF APPEAL.</p>
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*To Howard L. Miller and Lawrence B. Reader,
 Esqs., Attorneys of Defendant and Respondent:*

20 Take Notice that the plaintiff, Caroline Cronecker, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this case on the following ground:

That the trial Judge improperly and unlawfully directed a verdict in favor of the defendant, whereas the matters involved should have been passed upon by the jury.

WESCOTT & WEAVER,
Attorneys of Appellants.

30 Due and legal service of within notice is hereby acknowledged this 24th day of April, 1918.

HOWARD L. MILLER,
 LAWRENCE B. READER,
Attorneys for Respondent.

SUMMONS AND COMPLAINT.

The State of New Jersey, to Charles R. Hall:

GREETING:

You are summoned to answer the annexed complaint of Caroline Cronecker, in an action at law in the Supreme Court of the State of New Jersey; 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 service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. 10

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

WILLIAM C. GEBHARDT,
Clerk.

MATTHEW JEFFERSON,
RICHARD W. CRONECKER,
Attorneys.

30

Complaint.

NEW JERSEY SUPREME COURT.
CAPE MAY COUNTY.

10	CAROLINE CRONECKER, <i>Plaintiff,</i>	}	COMPLAINT. ACTION AT LAW.
	VS.		
	CHARLES R. HALL, <i>Defendant.</i>		

Caroline Cronecker, residing in the City of Sea
Isle City, County of Cape May, State of New
20 Jersey, says:

1. On November 8th, 1914, plaintiff's automobile
was being carefully driven along the Shore Road,
at Swanton, in Cape May County.

2. On that day defendant's automobile, driven
by Brown, a chauffeur of defendant, along the said
highway, negligently ran upon and against plain-
tiff's automobile and thereby broke and injured the
30 same.

Plaintiff demands three thousand dollars dam-
ages.

MATTHEW JEFFERSON,
RICHARD W. CRONECKER,
Attorneys for Plaintiff.

ANSWER.

NEW JERSEY SUPREME COURT.

CAPE MAY COUNTY.

10

CAROLINE CRONECKER,
Plaintiff,
 VS.
 CHARLES R. HALL,
Defendant.

ACTION AT LAW.
 ANSWER.

Defendant, Charles R. Hall, who resides in Philadelphia, Pennsylvania, says that:

20

He denies the truth of the matters contained in the complaint.

DEFENSES.

1. Defendant says that the collision referred to in said complaint was occasioned solely by the negligence of plaintiff because of the careless and reckless manner in which they drove their automobile at the time and place alleged in said complaint.

30

2. Defendant says that the driver of his car was not his agent at the time of said accident, and was executing no orders of said defendant's, and was not actually engaged in serving said defendant, and

at the time and place of the alleged accident or collision the driver of this defendant's car was not in the employ of said defendant.

HOWARD L. MILLER,
LAWRENCE B. READER,
Attorneys of Defendant.

10 STATE OF NEW JERSEY, }
COUNTY OF CAMDEN, } ss.

LAWRENCE B. READER, of full age, being duly sworn, on his oath says, that he is one of the attorneys of the above-named defendant and actually entrusted with the conduct of said defence, and that he believes the said defendant has a just and legal defense to said action on the merits of the case.

LAWRENCE B. READER.

20 Sworn and subscribed before me this first day of March, 1915.

TESTIMONY.

NEW JERSEY SUPREME COURT.
CAPE MAY COUNTY.

CAROLINE CRONECKER,	}	ACTION AT LAW.	10
VS.			
CHARLES R. HALL.			

Cape May Court House, N. J., September 11, 1917.

TESTIMONY.

20

Before HON. HOWARD CARROW, JUDGE, and Jury.

APPEARANCES:

For plaintiff: RICHARD W. CRONECKER, ESQ.;
HON. JOHN W. WESCOTT.

For defendant: HOWARD L. MILLER, ESQ.; LAW-
RENCE B. READER, ESQ. 30

The Court: It seems to me the pleadings will have to be amended. I call your attention to the complaint in the case, "Caroline Cronecker, resid-

ing in the City of Sea Isle, County of Cape May, State of New Jersey, says on November eighth, 1914, plaintiff's automobile was being carefully driven along the Shore Road at Swain in Cape May County. On that day defendant's automobile, driven by Brown, a chauffeur of defendant, along the said highway, negligently ran upon and against plaintiff's automobile, and thereby broke and injured the same." The complaint may be amended so as to
10 show that the chauffeur of defendant was the agent of defendant, engaged in the defendant's business at the time. That amendment may be made. I notice the answer sets up specifically that he was not his agent.

Mr. Miller: We have no objection to the amendment.

The Court: And a reply may be ordered filed
20 nunc pro tunc, so as to make the cause at issue on the merits.

AUGUSTUS CRONECKER, SWORN.

Direct examination.

By Mr. Wescott:

30 Q. Where do you live, Mr. Cronecker?

A. Sea Isle City.

Q. How are you related to Caroline Cronecker?

A. Son.

Q. On the eighth of November, 1914, did your mother have an automobile?

A. Yes, sir.

Q. Was it new or old?

A. Why, the car, I imagine, was a little over a year old.

Q. It was a new car?

A. Yes.

Mr. Miller: I object, your Honor. I object to the process of telling this answer.

(Last two questions and answers repeated.) 10

The Court: I see no reason for criticising the question.

Q. What kind of a car was it?

A. Buick.

Q. What did your mother pay for the car?

A. \$1685, I believe the bill is.

Mr. Miller: I want to enter an objection at this time, your Honor, to this method of proving the value of this car. What they paid for it certainly is not the measure of damage. This car was over a year old. 20

The Court: Well, it is one of the ways by which the jury may infer the damage. I think the plaintiff can show what he paid for the car when new, how long he had used it, how it had been used and the condition in which the car was at the time of the accident, and he may supplement that by other proof, if he desires, to show the value of the car. 30

Mr. Miller: In the event of failure to supplement the proof, I renew this motion to strike this answer out.

Q. Is that the bill for the car?

A. Yes, sir.

Q. And the receipt?

A. Yes, sir.

Q. What condition was the car in on the eighth of November, 1914?

A. Well, I would say that the car was in very good condition.

10 By the Court:

Q. When was the car bought?

A. Tenth month thirtieth, 1912. October thirtieth, 1912.

Q. The car was bought October thirtieth, 1912, and the accident happened November eighth, 1914?

A. Yes.

By Mr. Wescott:

20

Q. Had the car been used much from the time it was purchased to the date of the accident?

A. Why, the car was driven between eight and ten thousand miles.

Q. What was its value on the eighth of November, 1914?

A. Well, to Mrs. Cronecker, the same as a new car.

30 Mr. Miller: I object again to this answer and move it be stricken out.

Q. What was its value? Can't you tell us? Was it worth any less than it was when you bought it?

A. Well, being over a year old, it was worth somewhat less, but to the owner it had the same value.

The Court: That is not the criterion. What it was worth to the owner has not anything to do with it. It is what it was worth in the market. What was its value?

Q. Where did you get this machine?

A. Bought it from Mr. Young, the agent for the Buick Company in Wildwood.

Q. Was it a new machine when you bought it?

A. Yes, sir.

Q. Did anybody use it besides you and your mother? 10

A. No, sir.

Q. Had its value been impaired by such use as you and your mother had put the car to?

A. No, sir.

Q. Now, on the eighth of November, 1914—what day of the week was that?

A. Sunday.

Q. Did you take that car anywhere?

A. Yes, sir. We drove it from Sea Isle City. 20

Q. Who was with you in the car?

A. My sister, Matilda, Charles Sloback, Victoria Bailey.

By the Court:

Q. What was the car worth? Irrespective of Mrs. Cronecker, what was it worth in the market?

A. Well, we refused a trade in for another car only a month before that at a thousand dollars, on a trade in, because the car had been used so little. 30

Q. Well, how much do you say it was worth? Was it worth more than a thousand dollars?

A. Oh, certainly.

Q. How much more?

A. It was worth fifteen hundred dollars.

Mr. Miller: I ask that an exception be indicated.

The Court: Exception to what?

Mr. Miller: To the answer. My motion is to strike it out. The measure of damage is depreciation. If this witness knows what the depreciation is, he can testify. He has not testified that he even knows. That is a scientific matter of calculation.

10 The Court: You can not wait until the question is answered and then make your motion.

Mr. Miller: I have been doing my best to object right along. I do not want to appear captious.

By Mr. Wescott:

Q. There were three or four people in this automobile besides yourself?

20 A. Three besides myself.

Q. What time of the day did you start out?

A. Why, I should say around four o'clock.

Q. What kind of a day was it?

A. Beautiful, about the same as today, I would say.

Q. You started from what point with your car?

A. Bellevue Hotel, Sea Isle.

Q. Is that your mother's hotel?

30 A. Yes, sir.

Q. You four in that automobile started from the hotel on that day about four o'clock?

A. Yes, sir.

Q. Now, you went where?

A. Went over to the main Seashore Road and was coming down, that is, south, toward Wildwood.

Q. What road were you on?

A. Seashore Road.

Q. Where is the Seashore Road? Where is that located? Where does it run?

A. It extends from Beasley's Point to Cape May. This road in front of the Court House.

Q. Does it touch the place where your mother's hotel was?

A. No. You must cross the pike, the boulevard from Sea Isle to the main road.

10

Q. How far did you have to drive out to get in the main road?

A. About three miles.

Q. Then the main road from there runs towards Cape May?

A. Yes, sir.

Q. And you were on that main road?

A. Yes, sir.

Q. Going in what direction?

A. South.

20

Q. Towards Cape May?

A. Yes.

Q. What point in the road did you reach before the accident happened?

A. We approaching the curve at Swain.

Q. About how wide is that road there?

A. Thirty feet, I imagine.

Q. Any more than that?

A. Maybe forty. It is very wide. Thirty to forty feet. I didn't measure it.

30

Q. How much of a curve was there in the road there?

A. Very sharp curve.

Q. As you were approaching that curve who was driving the machine?

A. Myself.

Q. And ahead of you what did you notice, if anything?

A. I noticed a machine approaching, going at a very high rate of speed. As I was moving along, another car came up in back of it, and just as they got to the head of the curve the cars were about even. The car in the back was trying to pass the car in the front.

Q. What did you do?

10 A. I immediately—I saw that—it seemed that this man that was driving the car in the back saw me about the same time that I saw him. He locked his brakes and the car started to skid.

Q. What had you done before that? Anything at all?

A. Why, as soon as I—I kept on driving and I drove our car off the right of the road up an embankment.

Q. How much off the road did you get?

20 A. Why, the back end of our car was completely off the side of the road. The front end was up an embankment I should say about two feet. I had come to a standstill before he hit me.

Q. You had not only run off the road but you had stopped?

A. Yes, stopped the car.

Q. Now, was it sandy or hard or what kind of a road?

A. Where I stopped?

30 Q. No, there generally?

A. Why, the center of the road was hard but the side is very soft, sandy.

Q. Now, describe to the jury how these cars proceeded as they approached you, how they acted.

A. The car in the front, he kept going, and the second car, as soon as he saw me, it looked like he

locked his brakes and the rear end of his car turned completely around. We all thought the car was going to upset. Instead of that he tried to straighten it out and he must have lost control, because he came right straight up the embankment and hit the front end of our car, which was eight or ten feet from the road.

Q. About how fast was this car going when it skidded?

A. Well, I would say they were going at least 10 forty or forty-five miles an hour.

Q. What happened to your car?

A. They hit our car and completely wrecked it, throwing all of the occupants out. I was thrown under the other car, my sister in the road, and the other two was thrown out in the center of the road.

Q. Did any of the occupants get hurt?

A. Not seriously, but we were all bruised. I was knocked unconscious.

Q. Now, whose car was it that struck you? 20

A. Mr. Hall's car; Cadillac.

Q. A Cadillac, was it?

A. Yes, sir.

Q. When you say Mr. Hall, do you mean Charles R. Hall, the defendant in this case?

A. Yes, sir.

Q. How many were in his car?

A. Why, four that I know of. I know of four.

Q. Who was driving his car?

A. Mr. Brown. 30

Q. Who was Brown?

A. Chauffeur employed by Mr. Hall.

Q. What is Mr. Hall's business down there?

A. Real estate.

Q. Does he have an extensive or a small business in real estate there?

A. Very extensive.

Q. How long has he been in the real estate business, about, in that place?

A. Why, I should say seven or eight years that I know of.

Q. And do you know in a general way where his business extends?

A. Avalon. Formerly in Stone Harbor before he came to Avalon. He was connected with Risley Brothers, I believe, at Stone Harbor.

10 Q. How many automobiles did Mr. Hall have in his business?

A. I only knew of two at that time. He had another car.

Q. How many chauffeurs did he have at that time?

A. Only the one that I know of, Mr. Brown.

Q. And the same chauffeur ran all the cars, did he?

A. I believe so, to my knowledge.

20 Q. You don't know whether he had other chauffeurs or not?

A. No, I don't know.

Q. Did Mr. Hall have a sign down there anywhere?

A. Yes, a sign opposite the Pennsylvania Railroad station in Avalon.

Q. How big is it?

A. I should say it was about eight by twenty, something like that; very large sign.

Q. Painted sign?

30 A. Yes, sir.

Q. Can you recite from memory what is on that sign?

A. I don't know the exact words, but it says, "Stop here," they have automobiles to take people around there at the station, showing them lots.

Q. Look at that print there and say whether or not that is the copy of a sign he has up there?

A. It is, yes, sir.

Q. Read it, please.

A. "Get off here. This is Avalon. Automobiles and guides are waiting to show you improvements and property. Call opposite. Charles R. Hall." His office was opposite the railroad station.

Q. How high up in the air is that sign?

A. Twelve or fifteen feet.

Q. Had it been there before the eighth of November, 1914?

10

A. Yes, sir.

Q. And is still there?

A. I believe so. It was there Sunday.

Q. Did Mr. Hall have real estate business in other places than Avalon and the neighborhood there?

A. In Stone Harbor.

Q. Anywhere else?

A. Not to my knowledge.

Q. Well, to what is not your knowledge, what you have heard.

20

Mr. Miller: I object.

(Objection sustained.)

Q. Didn't you ever hear Hall say anything about his business in other places?

A. Not particularly, no.

Q. Well, generally?

A. Well, I know that he drives all over the county with people.

30

Q. Did you hear what Mr. Miller said in the opening of the case here about his having business down in Florida?

A. Yes.

Q. Well, you knew of that?

A. Yes.

Mr. Miller: We will admit that.

Q. Now, what was Mr. Hall's method of conducting his business with his patrons when they would come to Avalon?

10 A. Take them around in the machine, showing them property, and the trains in the afternoon going to Philadelphia are generally late, that is, leaving late, I would say for amusement to take up the time in the afternoons. It is only natural that he would take them out and show them the surrounding country.

Q. How many times, few or many, have you seen Mr. Hall's chauffeurs taking agents around to show them property?

A. Many times.

Q. Do you know how long Brown had been in his service, the one that was driving the car on the occasion of this accident?

20 A. Why, the summer previous to the accident he was working for Mr. Hall, because he told me so himself. I would say two years.

Q. Did you ever see Brown engaged in Hall's service?

A. Yes, sir.

Q. What did you see him doing?

A. Driving the car, his car.

Q. Well, anybody in the car?

A. Always had someone in the car.

30 Q. Well, what was he doing with these people in this car?

A. I would say showing them around, showing them property.

Mr. Miller: I object.

Q. Don't say, "I would say." Don't you know what he was doing?

A. Well, I don't know what business he had with them.

Q. I didn't mean to ask you what particular property he was going to show them. Here you knew that Brown was Hall's chauffeur for a couple of years and he had automobiles and he took people around to show them property. Now, you have told us that. And you often saw them? 10

A. Yes, sir.

Q. Often saw him with people in the automobile?

A. Yes, sir.

Q. What was Brown doing with these people in the automobile, standing them on their heads, driving them or showing them property or what?

A. He was taking them out for a ride.

Q. Only for a ride? Well, when he was taking them around to show them property, what was he doing then? 20

A. On business.

Q. He was taking them around to show them property, wasn't he, when he was doing that?

A. Yes.

Q. And that included a ride?

A. Yes, sir.

Q. Well, how long did Brown remain in Hall's service after the accident, about? 30

A. I couldn't tell you that. I saw him several days after the accident.

Q. Go back to your mother's car again. Who repaired the car or undertook to repair it?

A. It was impossible to have it repaired. She had several people, machinists —

Q. Did anybody work at the car, look at it, put their hands on it, do a thing to it?

A. Yes, we had machinists, experts, come there to see how they could repair it and what they would charge.

Q. Well, what condition was the car in after this collision with the other car?

A. Complete wreck.

Q. What became of the car?

10 A. We sold it for junk.

Q. How much did your mother get for it?

A. \$200.

Q. Was there any damage done to the other car?

A. Yes.

Q. Considerable?

A. Well, they had a heavy steel bumper —

Q. I don't care.

A. — that was broken and the frame was bent. They got home, I believe, under their own power.

20 Q. Was there any considerable damage done to it?

A. Yes, I would say three or four hundred dollars.

Q. Was your mother sued for that, ever?

A. No, sir.

Q. Any complaint made to her about it?

A. No, sir.

Q. Shortly before you approached that curve in the road who was driving the car?

30 A. My sister.

Q. And when you approached the curve and saw these cars ahead of you coming down the road, did your sister keep on driving the car?

A. No.

Q. What happened?

A. Before I saw either car I told her that I would

take the wheel, because I didn't think that she could drive the car well enough to go around the corner.

Q. That is the way you happened to be driving at that time?

A. Yes, sir.

Q. Had you had experience in driving cars?

A. Yes, sir.

Q. Considerable?

A. Well, I had driven a car over five years up to that time.

10

Cross-examination.

By Mr. Miller:

Q. Well, then, someone else had run this car?

A. Yes, sir.

Q. So that your previous testimony that no one else had run the car, that is not true, is it?

A. I don't think that I said that no one run the 20 car before.

Q. Had many times had you been to Avalon previous to 1914?

A. Many times, I would say.

By the Court:

Q. How near to Avalon did this collision occur?

A. About five miles from Avalon.

Q. How near Stone Harbor?

30

A. I would say six or seven miles. It was between the Avalon Boulevard and the Stone Harbor Boulevard.

Q. Well, was it in the locality of Mr. Hall's real estate interests?

A. Well, I would say yes, because he has interests

in Stone Harbor and Avalon and the accident happened between the two points.

Q. On the public highway.

By Mr. Wescott:

Q. Let me ask you, Mr. Cronecker, this question; do you know whether or not during the course of Mr. Hall's business his chauffeurs took his patrons who came there to look at property out riding to
10 show them the country?

A. Yes.

Q. They did that?

A. Yes, sir.

By Mr. Miller:

Q. What business had Mr. Hall in Stone Harbor at this time?

A. He had business interests in Stone Harbor before he went to Avalon.

20 Q. What business interests had Mr. Hall in Stone Harbor at the time this accident occurred?

A. Having land interests there.

The Court: Are you certain of that?

A. No, I am not certain. I don't know.

Q. Well, do you know that he had none at that time?

A. I don't know whether he had or not.

30 Q. You stated that he was taking these people out that were looking at properties at Stone Harbor. Now, do you mean that or don't you?

The Court: Well, he has already said he did not know whether it was a fact that Mr. Hall owned property at Stone Harbor.

Q. When you said that he was taking these people out for rides, you didn't know that at all, did you?

A. I know he does take them out, because we have a witness here who will testify that he had him out on business and it wasn't in Avalon.

Q. Then the testimony you are giving is what the witness will follow up with and which you got from him; is that the idea?

A. Well, it is only natural that he told me and it must be true. I take it for granted. 10

Q. That is how you know it?

A. Yes, sir.

Q. So of your own knowledge you don't know a thing about the business of Mr. Hall, do you?

A. I know that he took people out, because I have been in Avalon and passed his car many times with people on the main road.

Q. What business did he have in Stone Harbor at the time of this accident?

A. Same business he was having in Avalon. 20

Q. You are sure of that, are you?

A. To the best of my knowledge, yes.

Q. And you want to insist that Mr. Hall, at the time of this accident, had business interests in Stone Harbor land interests; is that right?

A. Yes, sir.

Q. These folks were racing, you say?

A. Yes, sir.

Mr. Wescott: No, he did not say that. I said that. 30

Q. Well, what do you say about it?

A. I would say they were racing.

Q. They were both coming pretty fast down the Boulevard?

A. Yes.

Q. Now, at the point where this accident happened —

The Court: Mr. Miller, let me ask you a question; do you dispute the fact that Brown negligently ran into Mr. Cronecker's car?

10 Mr. Miller: I think, on the contrary, I would like to emphasize the fact that this was racing. I think under the authorities, that excludes us from any liability.

The Court: That phase of the case can be eliminated, then, if you concede that Brown negligently ran Mr. Cronecker's car down. Is that conceded?

Mr. Miller: Yes.

20 Q. There is no doubt in your mind, Mr. Cronecker, that these machines were racing?

A. No.

Q. And that is why you steered to the right of the road, to avoid contact with them, because of the speed with which they were coming; isn't that true?

A. The one car, Mr. Hall's car. The other car had plenty of room. I got out of the road of that.

Q. Well, Mr. Hall's car was then endeavoring at a high rate of speed to pass the other car?

30 A. Yes, sir.

Q. And was taking the left side so that at the time you first saw them they were about abreast?

A. Ahead of that curve they were abreast.

Q. Now, how far was this point from Avalon?

A. I don't know exactly, but I will say between five and six miles, I imagine.

By the Court:

Q. Five or six miles away from Avalon?

A. Yes, away from Avalon.

Q. Now, I want to go back to the Stone Harbor; do you know as a fact, Mr. Cronecker, that Mr. Hall was interested in real estate matters in Stone Harbor, or is it only your opinion?

A. I do not know whether he was or not at that time, but he was connected in Stone Harbor before 10 he went to Avalon.

Q. Well, is it only an impression that you have that he was interested, or did you know it as a fact?

A. I do not know.

Q. That is what I thought. I did not want the record to show that you stated the fact concerning that matter, that it is a fact, unless you knew it to be so.

Mr. Miller: I think in order to keep this record 20 straight I will move at this time to strike out all that testimony touching that.

The Court: He has straightened it out. He says it is only an impression. He does not state it to be a fact.

IRVING FITCH, sworn.

30

Direct examination.

By Mr. Wescott:

Q. Mr. Fitch, where do you live, please?

A. Sea Isle City.

- Q. How long have you lived there or in that neighborhood?
- A. About eleven years.
- Q. What is your business?
- A. City clerk.
- Q. Have you any other business?
- A. Insurance business.
- Q. Any other?
- A. Store.
- 10 Q. Any other?
- A. Why, not outside of that, no.
- Q. Ever buy and sell real estate?
- A. I have done some real estate business; very small.
- Q. Had you a real estate place of business at Avalon —
- A. At Peermont.
- Q. — in November, 1914?
- A. I just can't tell you when we closed the office
- 20 there. Opened it in 1913 and was there about a year. I was doing some business over there at that time.
- Q. Is that near Avalon?
- A. Yes, part of Avalon.
- Q. Do you know Mr. Charles Hall?
- A. I do.
- Q. What was his business?
- A. Real estate.
- Q. Do you remember any signs that he had up
- 30 there?
- A. I have seen several there, yes.
- Q. Now, how extensive were his real estate operations in that community?
- A. Very extensive.
- Q. Embracing what parts of the community?
- A. Why, he had, as I understood, lots in all parts

of Avalon, both Peermont and Avalon, the entire beach there.

Q. Any other places?

A. Stone Harbor.

Q. Any other place?

A. Not that I know of.

Q. How far are Stone Harbor and Avalon apart, about?

A. Both on the same beach. At that time you had to come to the Seashore Road to go to Stone Harbor. 10

Q. Both on the same beach and you had to use the same road to get to either?

A. That is it.

Q. To get from one place to the other?

A. There are different entries to Stone Harbor. Different entries to each place.

Q. But to get from one place to the other, Avalon to Stone Harbor, you had to take this main drive, what do you call it?

A. Seashore Road. 20

Q. Seashore Road. That is correct, is it?

A. Yes, sir.

Q. Have you any idea how many agents or chauffeurs Mr. Hall had in his business?

A. He had several agents. I don't know how many chauffeurs.

Q. How many machines had he, automobiles?

A. Two to the best of my knowledge.

Q. Remember the names of any of his agents or chauffeurs? 30

A. Why, I know his chauffeur Brown, man by the name of Werkheiser, I don't know whether he is agent or treasurer, connected with him. Another man by the name of—I don't recall his name at this time. I can't recall the name of the other fellow. I knew one other man he had with him.

Q. How did Mr. Hall carry on this business with these automobiles and chauffeurs or agents?

A. How what?

Q. What was the plan? How did he use these automobiles and chauffeurs in the conduct of his business?

A. He used to take his patrons over the beach and show them his real estate holdings.

Q. How frequently was that done?

10 A. Most every Sunday during his season there, and during the week days also. I can't just say what intervals.

Q. Tell us now how Sunday was distinguished from any week day in respect to this business?

A. That was his big day, usually.

Q. Have you any idea how long Brown remained in Hall's employment down there after this accident?

A. I do not know.

20 Q. Do you know whether or not when Mr. Hall was absent away from the place that Mr. Brown used these machines to take patrons around, go after them and take them around?

A. I have seen his car out with people when Mr. Hall wasn't there.

Q. Driven by Mr. Brown?

A. I have seen Mr. Brown drive.

Q. Do you know Mr. Arader?

30 A. I do. That is, not personally. I know him when I see him. Know him by seeing him with patrons.

Q. How was he related to Mr. Hall in the business?

A. He was an agent, I believe.

Q. Do you know whether he was or not?

A. He was an agent.

Q. Have you seen Mr. Hall's car driven by Brown with patrons in it on roads outside of Avalon proper?

A. I couldn't say they were patrons. I have seen his car outside of Avalon, but I don't know whether they were patrons or not.

Q. Operated by Brown?

A. Yes.

Q. How far from Avalon have you seen the car?

A. I have seen it in Sea Isle City.

10

Q. Other places?

A. Not particularly so.

Q. How far is Sea Isle City from there?

A. About ten miles.

Cross-examination.

By Mr. Miller:

Q. And you are, I understand, located in Peermont? 20

A. No, Sea Isle City.

Q. When you say that the car was used to conduct patrons over the beach, you are referring now to Avalon, I understand?

A. Yes.

Q. And that was during the season?

A. Yes.

Q. Do you happen to know at this time whether Mr. Hall was in Avalon? 30

A. I do not.

Q. As a matter of fact, you don't know when the season ended there, do you?

A. I don't know that there is any particular time.

Q. Well, at this particular time it wouldn't be the season, as you understand it, would it?

A. Usually conducted the business as long as the good weather lasted.

Q. And this was well along toward the winter, wasn't it?

A. It was getting along. It was nice weather though, at that time.

10 LEWIS CANFIELD, SWORN.

Direct examination.

By Mr. Wescott:

Q. Where do you live, Mr. Canfield, please?

A. Avalon.

Q. How long have you lived there?

A. About twelve years.

20 Q. What is your business?

A. Real estate and insurance.

Q. Are you quite familiar with the surrounding neighborhoods or communities down there?

A. Yes, sir.

Q. Your familiarity extends how far in either direction?

A. Well, from Cape May to Ocean City, Atlantic City, and along the main road up to Philadelphia.

30 Q. Do you know Mr. Charles Hall, the defendant in this case?

A. Yes, sir.

Q. How long have you known him?

A. I guess about ten years.

Q. What is his business down there?

A. Real estate.

Q. How long has he been in the real estate business there?

A. I don't know.

Q. About how long?

A. Well, I knew that he was formerly connected with the South Jersey Realty Company, but I don't know just when he was employed there by them, that is, before he came to Avalon.

Q. How extensive were his real estate operations?

A. Quite extensive.

Q. And they extended into what communities?

A. Well, they covered Avalon, as far as I know; 10
Avalon principally.

Q. Well, any other place?

A. I knew that he owned property at Stone Harbor, but I don't know just when he disposed of that property.

Q. Did Mr. Hall have signs of considerable proportions put up around different places?

A. Yes, sir.

Q. Now, what did he use in his business as instrumentalities for getting people around to show 20
them the community or properties?

A. Automobiles.

Q. What else?

A. Automobiles principally. I don't recall his
ever using any —

Q. Did they run themselves or have chauffeurs?

A. He had chauffeurs.

Q. How many different chauffeurs did he have
while you were down there?

A. I don't know how many.

30

Q. More than one?

A. Yes.

Q. Didn't you know any of them?

A. Yes, sir.

Q. Name them.

A. Well, I knew Brown.

Q. Anybody else?

A. I think Richard, his son, was employed by him to run a car.

Q. Anybody else?

A. Marvin, his younger son, I don't know whether that was previous to the accident or not.

Q. Did you know a man by the name of Arader?

A. Yes, sir.

Q. Was he one of his agents?

10 A. Yes, sir.

Q. One of Hall's agents?

A. Yes, sir.

Q. Now, in the month of November, 1914, were Brown and Arader his agents?

A. I never knew that Brown was an agent. I thought he was just employed as a chauffeur. I didn't know he was a real estate agent.

Q. Well, was Arader an agent at that time?

A. Yes.

20 Q. And Brown was his chauffeur?

A. Yes, sir.

Q. What did Brown do?

A. He ran his car. In that line of employment.

Q. Did he take people in the car?

A. I believe so. I have seen him principally around the garage. I don't recall ever seeing him on the road with a party.

Q. Then you don't know whether he went to the depot after people and showed them properties and
30 took them around through the country?

A. I have never seen him at the depot.

The Court: Do you say Mr. Arader was one of Mr. Hall's selling agents? Did he sell lots for Mr. Hall?

A. Yes, sir.

Q. Did Brown ever sell lots for him?

A. I don't know.

Q. You don't know whether Brown had anything to do with bringing Hall's agents in contact with properties?

A. Only through driving the car, that is all.

Q. Well, did he do that?

A. Well, I don't know. I say I have never seen Mr. Brown driving parties. I have seen him around the garage there.

10

Q. Now, have you ever seen him driving people and agents around there?

A. I couldn't swear to it. I may have passed him on the road, but I don't know for sure. It happened so long ago I don't recall it.

Q. Haven't you told Mr. Cronecker here you have seen him hundreds of times doing that?

A. No, I never told Mr. Cronecker I had seen him driving the car. I had seen Brown around there, I told him, if he recalls it, but I don't think he asked me that direct question whether I had seen him driving parties around.

20

Q. Did you ever see him driving at all?

A. Yes, sir.

Q. Whose machine was he driving?

A. Mr. Hall's.

Q. Who was in the machine when he was driving?

A. Brown and myself were in the machine at the time.

Q. Anybody else?

30

A. No.

Q. Then what was Brown doing when he was driving this machine?

A. He was taking the car from Avalon over to Cape May Court House.

Q. How many times did you see him do that?

A. That was the only time.

Q. You never saw him driving that car but that once, and that was the time he went over to Cape May Court House?

A. That is the only time I can recall. I may have seen him before, but I don't recall any other time.

Q. How long was Brown in Hall's service, about?

A. Well, I couldn't tell you that.

10 Q. Was he in his employment in 1914?

A. He was at the time of this accident, if it was 1914.

Q. Well, how long did he remain in Mr. Hall's employment after the accident?

A. I don't know.

Q. About how long?

A. I couldn't tell you, sir.

Q. Well, did he remain in his employment after the accident?

20 A. I don't know how long he was employed after the accident. I don't know just when Mr. Hall discharged him.

Q. Do you know whether the car was taken to Philadelphia, Mr. Hall's car, on account of the damage done to it?

A. I don't know.

Q. After the accident?

A. I don't know when it was taken to Philadelphia.

30 Q. Don't you know that it was taken to Philadelphia and that Brown took it there?

A. Only from what I heard.

Cross-examination.

By Mr. Miller :

Q. You say that Mr. Hall had placed numerous signs around the community. I didn't understand you to mean you had ever seen any signs in Stone Harbor, did you?

A. I think I can recall seeing small signs, but not the same proportion that they were at Avalon.

Q. At the time of this accident or previous to 10 that?

A. It was about the time that Mr. Hall had his property down there.

Q. Well, wasn't that, to your knowledge, some few years previous to the time of the accident?

A. I don't know how many years previous it was.

Q. You do know that Mr. Hall had left Stone Harbor as a land operation?

A. Yes, sir.

Q. And from there went to Avalon? 20

A. Yes, sir.

Q. And this time might have been or was previous to the accident, wasn't it?

A. Oh, yes.

Q. So that when you say you saw numerous signs, you don't mean to convey to the jury the notion that it was a sign at Stone Harbor at that time?

A. I say not signs of the same proportion as they were at Avalon. They were small signs at Stone Harbor that would be on properties that he owned. 30

The Court: At the time of this accident?

A. Well, I don't now whether they were at the time of the accident. Of course, I didn't go down and see.

Re-direct examination.

By Mr. Wescott:

Q. What kind of signs were they at Stone Harbor?

A. The ordinary signs that a real estate man would put up that had property for sale, "Apply to Charles R. Hall."

Q. What kind of signs were there at Avalon?

10 A. Well, they were larger signs, just the same as one of the witnesses stated here opposite the station.

Q. When did you see those signs at Stone Harbor?

A. I don't know what year it was. I know when Mr. Hall had property there that he had signs there.

Q. Oh, give a real good, hard guess now. Make a tremendous effort.

A. You don't want me to guess, do you? I thought you wanted a direct answer.

Q. I want you to use your best judgment.

20

Mr. Miller: I object to that question.

The Court: You have no right to guess. You must state what you know from observation, what you have seen. Proceed. Do you know whether or not—you are an intelligent man and live in that neighborhood and engaged in real estate business, and you surely know whether Mr. Hall had real estate interests, real estate business at Stone Har-
30 bor at the time of this accident?

A. Well, your Honor, I don't know just when he disposed of the real estate in Stone Harbor. I know that he did have real estate interests there, but just when he disposed of them I don't know.

Q. Do you know whether he has any interests there now or not?

- A. No, I don't know that.
- Q. Are there any signs of his down there now?
- A. I haven't seen any.
- Q. When were you there the last time?
- A. In the daytime I was there last on Labor Day.
- Q. Did you see any signs there?
- A. No, sir.
- Q. Did you look?
- A. I wasn't looking for his signs.
- Q. Well, when you did see any signs down there 10
were you looking for them?
- A. No, they just came to my observation, that
was all.
- Q. Had you seen signs down there of Mr. Hall's
since you had your automobile?
- A. I don't recall. I guess it was previous to my
having my automobile.

20

CLARENCE PFEIFFER, SWORN.

Direct examination.

By Mr. Wescott:

- Q. Mr. Pfeiffer, where do you live, please?
- A. Sea Isle City.
- Q. What is your business?
- A. Contractor and builder. 30
- Q. Did you know a man by the name of Hall?
- A. Yes, sir.
- Q. In the real estate business down there?
- A. At Avalon, yes, sir.
- Q. How long have you known him?
- A. About eight or nine years.

Q. Do you know whether he had real estate interests anywhere else than Avalon?

A. Why, he did have at Stone Harbor, and he came from Stone Harbor to Avalon later.

Q. Do you know when he had real estate business in Stone Harbor?

A. No, not exactly. I don't know when he gave up his business at Stone Harbor. I don't know whether he ever did altogether or not.

Q. Do you know any of his chauffeurs?

10 A. I have met one of them, Mr. Brown.

Q. When did you meet him?

A. Well, I met him the day of the accident and I had seen him several times before that.

Q. Where had you seen him?

A. I had seen him at Avalon.

Q. What was he doing there?

A. Driving Mr. Hall's car.

Q. Did you see him anywhere else?

20 A. I may have seen him somewhere else. I am not sure. I don't know.

Q. Who was in the car with him?

A. He had some people there. I didn't know who they were.

Q. Did you ever see him outside of Avalon in the car?

A. Well, I couldn't just say when. I may have seen him. I am not sure of that, whether I did or not.

Q. Did you ever drive with Mr. Hall in his car?

30 A. Yes, sir.

Q. Outside of Avalon?

A. No, sir, it was Avalon and Peermont. Two places that connect together.

Cross-examination.

By Mr. Miller:

Q. So that from your knowledge, this machine was really working in Avalon?

A. Yes, sir.

Re-direct examination.

By Mr. Wescott:

10

Q. And wasn't working anywhere else?

A. I don't know whether it was or not. I seen it on the Shore Road that day, the day of the accident.

Q. When you saw that machine, you saw it in Avalon?

A. Yes, sir.

Q. And you never saw it anywhere else?

A. I don't know whether I did or not.

20

By the Court:

Q. Did you see it on the day of the accident?

A. Yes, sir.

Q. Where?

A. On the Shore Road, about a mile south of the Avalon Pike, on the main Shore Road.

Q. How far was it away from Mr. Hall's real estate interests?

A. Well, the Avalon Boulevard is somewhere around three or four miles long, I don't know just how long, and the accident occurred about a mile this side of the Boulevard on the main Shore Road, mile or probably a little over.

30

Q. Beyond the Avalon tract?

A. Yes, sir.

By Mr. Wescott:

Q. Who were in the car at that time?

A. At the time of the accident?

Q. Hall's car.

10 A. I got there about half an hour after the accident happened and Mr. Brown and some other strangers was working around the car, repairing the car.

Q. Did you see anybody else?

A. I seen lots of people there. Just which ones was in the car I don't know. The one lady I believe that was in the car had left before I arrived there.

20 CLARENCE MAZURIE, SWORN.

Direct examination.

By Mr. Wescott:

Q. Where do you live, please?

A. Sea Isle City.

Q. What is your business?

A. Garage business.

30 Q. Do you know Mr. Hall, the defendant in this case?

A. Know of him, yes, sir.

Q. Don't know him?

A. Know of him, yes, sir. I have done business for him.

Q. Well, do you know him?

A. Yes, sir.

- Q. How long have you known him?
A. About five or six years, I should judge.
Q. What is his business?
A. Real estate business.
Q. How does he carry it on?
A. Selling property, as much as I understand.
Q. What?
A. Selling property.
Q. Does he have any automobiles?
A. Yes, sir. 10
Q. Anybody to drive them?
A. Yes, sir.
Q. What are those automobiles used for?
A. Well, as much as I understand, taking people around, showing them the properties that he has for sale.
Q. Who took people around showing them properties?
A. His chauffeur and his son, as much as I understand. I have saw his son and his chauffeur driv- 20
ing.
Q. What was the chauffeur's name?
A. One of them I recall was Mr. Brown.
Q. How often have you seen Brown doing that?
Of course, you can't tell the number of times.
A. No. I have saw him several times driving around there with people.
Q. Where did he get these people from?
A. From the station most of the time.
Q. Where did he take them to? 30
A. Well, the different lots he had for sale on different places. I never followed him. I couldn't tell that.
Q. Did you ever see him on the roads anywhere with people?
A. Yes, sir.

Q. Where?

A. Different parts of the road, because I travel all over the county and I have saw him several places with cars, but going past them I couldn't distinguish who they were or who he had.

Q. Whereabouts did you see him?

A. I have saw him in Cape May, I have saw him near Ocean City, saw him on the Shore Road between the two places.

10 Q. With people?

A. Yes, sir.

Q. Do you know how long Brown remained in the employment of Mr. Hall?

A. No, I couldn't say that.

Q. Did you ever see Brown with Hall's machine at Sea Isle?

A. Yes, sir, stopped at my place of business.

Q. With people?

A. No, sir, alone.

20 Q. Alone? How many times have you seen that?

A. Well, twice to my knowledge.

Q. Did you see this car of Cronecker's before the accident?

A. Yes, sir, it stopped at my place of business several times.

Q. What kind of a car was it?

A. Buick car.

Q. What condition was the car in?

A. Perfect condition.

30 Q. You have had a good deal to do with cars, haven't you?

A. Yes, sir, every day; have for fourteen years.

Q. What was this car, in your judgment, worth before the accident?

A. I shouldn't think it would have deteriorated any more than a hundred or two hundred dollars,

because it was in excellent condition and hadn't been driven much.

By the Court:

Q. You say you are a practical automobile man?

A. Yes, sir.

Q. Buy and sell automobiles?

A. No, repair them. We have a complete shop and accessories and so forth.

10

By Mr. Wescott:

Q. That made the car worth how much, in your judgment?

A. I don't know the actual price of the car when it was sold, when it was new, as I didn't pay for the car. Mr. Cronecker never told me what he paid for it.

The Court: I think he said about \$1700.

20

A. I shouldn't judge it had deteriorated any more than \$200 at the most, because it has been well taken care of.

The Court: Been used eight or ten thousand miles, the witness said. How much would that depreciate it?

A. Just according to who drove the car and how they took care of it. You can drive a car eight thousand miles and drive it hard and it will be a total wreck, and drive it eight thousand miles and it will be in perfect condition. Just according to how it is used.

30

Q. You say it was in perfect condition?

A. First-class condition, yes, sir, perfect condition.

Q. Did you see it after the accident?

A. Yes, sir.

Q. Where?

A. In Sea Isle City.

Q. What condition was it in then?

A. Total wreck.

10 Q. What was it worth then?

A. Junk.

Q. Well, measure it in dollars and cents.

A. I shouldn't judge it was worth over a hundred and fifty dollars.

Q. Did you ever see Brown with Mr. Hall's car at Sea Isle more than once?

A. Yes, sir, I told you twice. There was one time he was stuck in the sand that I pulled his car out of the sand at Sea Isle City.

20 Q. Anybody with him then?

A. No, sir, he was alone.

Q. Do you know what business he was on?

A. No, sir, never asked him.

Q. Did you ever repair this car?

A. The car had stopped at my place for repairs for a certain part of the machine that we didn't have in stock.

Q. Who brought it there?

A. Mr. Brown.

30 Q. Can you recall when that was?

A. I believe it was in the summer before the accident, or the same year, practically. Just the early part of the year.

Q. Whom did you send the bill to for those repairs?

A. Well, when he ever had any repairs we always sent it to Mr. Hall.

Q. Did he pay them?

A. Several times, yes.

Q. Did he always pay them?

A. Up to this present—well, we have one bill against him at this present time.

Q. Did you see Hall's machine after the accident?

A. Yes, sir.

Q. Do you happen to know whether Hall or Brown had anything to do with that machine after the accident?

A. No, sir, I haven't saw the machine nor Mr. Brown after that accident. 10

Cross-examination.

By Mr. Miller:

Q. As a matter of fact, you don't know what the car was used for, either, do you?

A. Why, I understood that it had been used for taking people around. Mr. Hall I don't think would have any use for it any other way. 20

Q. But of your own knowledge you don't know what the car was used for, do you?

A. Yes, I do.

Q. What was it used for?

A. Used for taking people around for his own private use.

Q. Where?

A. In Avalon.

Q. Then that is where the use was confined, wasn't it, in Avalon? 30

A. That is something I can't understand, can't say.

Q. Well, that was your understanding of this particular car, wasn't it?

A. No, I couldn't answer that, simply because a car can go any place.

Q. But it was being used principally in Avalon for that purpose?

A. To the best of my knowledge.

Q. Now, this Cronecker car—you say you are a practical automobile man?

A. I am, yes, sir.

Q. How long have you been in this business?

10 A. I have been fourteen years in the business.

Q. And I understand from you that a car purchased in October of 1912, that had run from eight to ten thousand miles in November of 1914, over two years afterwards, would have depreciated only about a hundred or a hundred and fifty dollars?

A. I said a hundred and fifty to two hundred dollars. That is what I said.

Q. Are you familiar —

20 By the Court:

Q. That is the market value?

A. Just a question of what the car has been run and what care has been taken of it.

Q. Yes, but does the fact that it is two years old, the model, have anything to do with the price?

A. That is a question, too, what the people that own the car valued it at.

30 Q. No. What was that car worth in the market in your opinion?

A. At that time I couldn't tell. It is too far back. I couldn't tell. I wouldn't know what they would be bringing at that time. It is a question of how many second-handed cars are on the market.

By Mr. Miller:

Q. There were plenty of them on the market?

A. I don't know.

Q. This was a second-handed car in 1914?

A. Yes.

By the Court:

Q. How much in your opinion as an automobile man would the fact that it was a second-hand car depreciate it in value? 10

A. At this present date they depreciate very rapidly, because there are so many cars on the market, but at that date there wasn't so many cars.

Q. How much would you say a fair and honest depreciation would be in the value of the car?

A. At that time, you mean?

Q. Yes.

A. That is so long ago that I really couldn't tell you, because I can't tell you exactly if the market was overrun with cars or not at that time. Cars was higher at that date than they are at the present date. 20

Q. You mean second-hand cars?

A. Yes.

Q. Well, what would you say would be a fair and reasonable value for the car, considering the wear and tear?

A. Well, if I owned a car of that kind and drove it eight thousand mile and took good care of it, I wouldn't care to lower any more than \$200 on it, if I took good care of it and it was a good car, in perfect condition. 30

Q. In the market would that be about fair?

A. I couldn't answer the market price at that

time, because it has been too long ago. I don't know what cars were selling for at that time, second-handed cars.

By Mr. Miller:

Q. Then you don't know, as a matter of fact, what the depreciation was on this car, do you?

A. Not at that date, no.

10 Q. Let me ask you this question; how much would you give in 1914 for a 1912 Buick that had been run eight to ten thousand miles and that had sold for say \$1600?

The Court: \$1700.

Q. How much would you give for it?

A. It is a question of what condition it was in.

20 By the Court:

Q. In the condition you say this car was in?

A. Well, that is up to the buyer to buy it as cheap as he possibly could buy it.

Q. If you were in the market and needed such a car, but didn't have to buy, and the seller didn't have to sell, what would you consider a fair and reasonable value that you would be willing to pay for that car?

30 A. Well, if it was in perfect condition I shouldn't say over a couple of hundred dollars less than in the price of the car formerly, if it was in good condition. It is a question of who run it.

By Mr. Miller:

Q. And still you would buy it as cheap as you could?

A. Yes.

Q. Why?

A. That is business.

Q. An old car, too, wasn't it?

A. That's business.

10

Re-direct examination.

By Mr. Wescott:

Q. Let me ask you this question, please; running a car eight or ten thousand miles after it is purchased affects the car how, in what way, what degree?

A. Well, the bearings loosen up, and naturally if they are properly adjusted again the car can be put in practically as good condition as it was before. It is only that the models change and the body lines change. 20

Q. Running a car eight or ten thousand miles is a matter of no significance at all, is it?

A. Ten thousand miles isn't very far for a car to run, no.

Q. If the car has been run properly and properly cared for?

A. Properly lubricated and taken care of, the car should be in good condition. 30

Q. Isn't the car of more value than, if it has been run right and taken care of, than it was before it was run at all?

A. Well, the car has been run in, but it isn't practically the same as new.

Q. I know, but isn't the car of more value, of more consequence after it is limbered up and run, if it has been run right?

A. Yes, sir, naturally so.

Q. So that that doesn't impair its value?

A. No, sir, not to the owner.

Q. Considering the condition of the car?

A. That is it.

10

LESLIE CHAMPION, SWORN.

Direct examination.

By Mr. Wescott:

Q. Mr. Champion, where do you live?

A. Cape May Court House.

20

Q. What is your business?

A. I am in the automobile business.

Q. You have been in the automobile business how long?

A. Twelve or fourteen years.

Q. Did you know the Cronecker car before the accident?

A. Yes, sir.

Q. What kind of a car was it?

A. Buick.

30

Q. I mean as to condition, value?

A. Well, before the accident it was in good condition.

Q. Did you see it after the accident?

A. Yes, sir.

Q. What condition was it in then?

A. Very bad.

Q. Was there, in your opinion, any diminution in the value of that car from the time Mrs. Cronecker got it, before that accident, due to its use?

A. Oh, yes.

Q. There was some diminution in its value?

A. Yes, sir.

Q. How much?

A. Well, I couldn't exactly say about that, because I wasn't in touch with the car to know what condition it had been having in that time.

10

Q. Well, there is such a thing as running a car a day and practically ruining it, isn't there?

A. Yes, sir.

Q. And there is such a thing as running a car for a year or two and not doing it any harm at all?

A. With the exception of the wear.

By the Court:

Q. Well, this car was about two years old and had been run about eight or ten thousand miles, and there is testimony to the effect that it was in good condition. Now, how much was its market value affected by its age and use?

20

A. All cars depreciate very rapidly. You might run a brand-new car from Philadelphia down here and it would depreciate, but how much I am not able to say.

Q. You are not asked to say to the exact dollar, but approximately how much would it depreciate in value, considering the fact that it was two years old and had been used eight or ten thousand miles?

30

A. What was the cost price?

Q. \$1700.

A. I should consider it would depreciate \$300 in the time it had been used.

By Mr. Wescott:

Q. Did you examine this car after the collision?

A. Yes, sir.

Q. Make an estimate —

A. Yes, sir.

Q. — of what it would cost to put it in such condition that it could be used at all?

A. Yes, sir.

10 Q. Did you do that minutely and carefully?

A. I did as far as I could. I only saw the car a few minutes after the accident, and from what I could remember, I didn't go and examine the car the second time.

Q. Did you make a computation?

A. Well, I don't know whether I did or not. I suppose somebody else had figured, too. I don't know.

20 Q. Well, did you figure as to what it would cost to put this car in such condition that it could be used at all?

A. Yes, sir.

Q. What did you figure it to be?

A. Somewhere in the neighborhood of \$450. Not quite four hundred and fifty, I think my figures were. I could tell by looking on a list.

The Court: Well, you say that would have re-
stored it to its normal condition?

30

A. No, sir, that would put the car in running condition, in fairly good running condition, but it would never have been as good as it was before the accident.

Q. Did you know Mr. Hall?

A. No, sir, I have never had any personal acquaintance with Mr. Hall. I knew him by sight.

Q. Did you know what his business was?

A. Why, he is a real estate agent at Avalon.

Q. Did you know Mr. Brown?

A. I had met Mr. Brown several times. - At least, he had stopped in to my place several times.

Q. What was his business?

A. He was the driver for Mr. Hall. At least, that is what he told me he was.

Q. Where did you see Hall?

A. Mr. Hall?

10

Q. Yes.

A. Oh, I saw him in Avalon, saw him in Court House.

Q. Anywhere else?

A. Well, I don't know that I have anywhere else.

Q. Ever see him at Stone Harbor?

A. Well, I am not quite sure about that. I may have seen him, but I don't recall it.

Q. And when you saw him at Court House what was he doing?

A. Well, he was there in the car the one or two times I ever saw him there.

20

Q. Whose car?

A. His car.

Q. I mean Mr. Brown. Did you ever see Mr. Brown?

A. Mr. Brown was in Mr. Hall's car, yes, sir.

Q. Where did you ever see Mr. Brown?

A. I saw him in my garage.

Q. Anywhere else?

30

A. Yes, I saw him at the time of the accident. I saw him at Avalon once or twice.

Q. In the car?

A. Yes, sir.

Q. Whose car?

A. Mr. Hall's car. At least, that is who he said it was.

Q. Did you ever see him drive by in Mr. Hall's car?

A. Yes, sir.

Q. Anybody with him?

A. Well, yes, once or twice there was someone with him.

Q. Did you ever see Mr. Brown at the Court House?

10 A. Yes, sir.

Q. And was there somebody with him then?

A. I have saw him drive by once or twice with somebody and once or twice he has been at the garage without anybody.

Q. Did you know whose machine he had on those occasions?

A. Well, he said it was Mr. Hall's. I don't know.

Q. Did you know what he was doing for Mr. Hall?

20 A. Why, he said he was Mr. Hall's chauffeur. That is all I know.

Q. You saw that car on the day of the accident?

A. Yes, sir.

Q. And did you see Brown there then?

A. Yes, sir.

Q. Who was with him?

A. Well, there was so many people there I couldn't tell you who was with him exactly.

Q. Have you any idea who was with him?

30 A. No, I don't know. There was such a crowd around there that I don't know who it was with him.

Q. Didn't hear him say?

A. No, sir.

Q. Well, was Mr. Hall's car damaged?

A. Yes, sir.

Q. Do you know whether Hall's machine was taken to Philadelphia?

A. I couldn't say of my own knowledge, no, sir; only from hearsay.

Q. What was the source of the hearsay?

A. Well, he said he was going to take it to —

Mr. Miller: Just a moment. I object.

Q. Who said that? Who are you talking about when you say, "He said it"? 10

A. Mr. Brown.

Q. What did Mr. Brown tell you?

Mr. Miller: I object, your Honor. It would not hold the defendant on any theory, what Mr. Brown said.

The Court: Is this after the accident?

A. Yes, sir. 20

The Court: He cannot bind his employer by anything that was said.

Q. Did Brown tell you anything about that car before the accident, what he was going to do with it?

A. Yes, sir.

Mr. Miller: I object unless there is something to connect Mr. Hall. 30

The Court: When was it? When do you mean, before the accident? Don't say what he said to you, but we are asking now about the time.

A. Why, about two days before. I think it was

Friday of the week previous, two days before the accident.

Q. Where did you see Brown then, two days before the accident?

A. Cape May Court House.

Q. What did he have with him in Cape May Court House?

A. Had Mr. Hall's car.

Q. Anybody with him then?

10 A. I am not able to say. He was in the garage himself and I don't know who was in the car.

Q. Did Brown say anything to you about fixing the car after the accident?

A. Yes, sir.

Q. Now, where was it?

A. In my garage at Cape May Court House.

Q. How did Brown get there then?

A. He had the car.

20 Q. What was he trying to do with you after the accident?

A. He wished to know if I could straighten —

Mr. Miller: I object. I do not see that it is relevant.

The Court: No, I do not see that it is.

30 Mr. Wescott: Here was this chauffeur with this very car after the accident at this man's place trying to get him to fix the car, as Mr. Hall's car.

The Court: Well, he has said that, but he cannot prove any conversation that Brown had with this man at that time. It is not a conversation with the defendant. He had no authority to bind the defendant by anything that he might say.

- Q. Did you do anything to the car?
A. No, sir.
Q. Did you ever do any work on Hall's cars?
A. No, sir.
Q. When Hall was at your place with this car after the accident was it the same car that you saw at the accident?
A. Yes, sir.
Q. And how long was that after the accident?
A. Tuesday. Tuesday of the following week. 10
Q. That made it how many days after the accident?
A. Two days.
Q. And two days after the accident Brown had that very car at your garage?
A. Yes, sir.
Q. Trying to get you to fix it?
A. Yes, sir.
Q. Why didn't you fix it?
A. I couldn't. 20
Q. Why?
A. I hadn't the means of doing it.
Q. Do you happen to know where he took the car after that?
A. No, sir.

Cross-examination.

By Mr. Miller:

30

- Q. Les, on the question of these repairs, you think it would have cost about \$450 to fairly well restore the Cronecker car?
A. My estimation, I think, was just slightly under four fifty.
Q. Now, what has been your experience —

A. I would like to add that there might have been some little things that I had no knowledge of that would have to be put in the car that would probably cost a little more than that, but so far as I knew, the parts that were broken and missing and had to be replaced, that is as near as I could come at it.

Q. Now, as a matter of fact, this car is running yet, isn't it?

A. The Hall car?

10 Q. No, the Cronecker car.

A. I don't know.

Q. Isn't this still at Sea Isle?

A. I don't know.

Q. You don't know that?

A. No.

Q. I assume you have sold second-hand cars?

A. Yes, sir.

20 Q. What has been your experience in selling second-hand cars say two years old? Isn't there quite a depreciation?

A. Depends on the use. If it has had individual use, it is a much better car, as a rule, than if it had been hacked around and traded and sold a number of times.

Q. Yes, but isn't there a normal depreciation in the working parts of the machinery?

A. Yes, sir, always.

30 Q. In other words, eight to ten thousand miles would have some considerable effect on the bearings, wouldn't it?

A. Oh, yes.

Q. It would affect generally the working parts?

A. Yes, sir.

Q. In other words, after two years' use a car begins to gradually fall apart, doesn't it?

A. That depends on the first cost of the car. If

it is a well made car, it doesn't, of course, go to pieces near so fast.

Q. No, but they all seem to fall to pieces after two years?

A. They all depreciate very fast.

Q. And that is due to the fact that the previous years have worn out the working parts, the bearings and the parts that are in active service?

A. Depends on the car, a whole lot, about the bearings and parts. You leave one run without care and attention when it should have it — 10

Q. The care you speak of would be such care as you or a real mechanic would use in running a car?

A. Well, there are lots of individual owners of cars that gives their car much better care than others do.

Q. But it has been your experience that those that care for their cars are those that have mechanical knowledge, know how to take care of it?

A. As a rule, yes, sir.

Q. The ordinary amateur doesn't know much about taking care of his car? 20

A. No, sir.

JOHN W. YOUNG, sworn.

Direct examination.

By Mr. Wescott: 30

Q. Where do you live, Mr. Young?

A. North Wildwood.

Q. What is your business?

A. Garage business.

Q. How long have you been in it?

A. I have been in the garages—this is my fourth summer.

Q. Did you know anything about this Cronecker car?

A. My son sold the car to Mr. Cronecker.

Q. Do you personally know anything about it?

A. I know the car very well, yes, sir. I have one just like it now.

10 Q. What condition was the car in when it was sold?

A. It was all new when it was sold. Bought it right from the Philadelphia branch when it was sold to Mr. Cronecker.

Q. What was its market value then?

A. Well, between sixteen and seventeen hundred dollars. I don't remember the exact figures on the car.

Q. Did you see the car just before the accident?

20 A. Yes, sir.

Q. What condition was it in then?

A. It was in fine condition.

Q. How much had it depreciated in value in the meantime?

A. The depreciation of automobiles in my experience as a dealer, and I have handled quite a few a year, thirty to forty cars, on a well built car, car of a thousand dollar value and upwards, the depreciation is between two and three cents per running
30 mile.

The Court: This car had been run eight or ten thousand miles.

A. And a car that is a well built, good car, will depreciate in its value about two cents a mile for

the mileage it has run. If it has been abused, it will depreciate more than that.

Q. Then that would depreciate the value of this car about how much in dollars?

A. Two dollars a hundred. In the neighborhood of \$200 on eight thousand miles.

Q. Did you see the car after the accident?

A. I did, yes, sir.

Q. What was its value then?

A. Well, I wouldn't have liked to give very much for it, because any repairing of that kind—we do a great deal of repair work. I have repaired a great many wrecked cars, and it was a very difficult thing. Mr. Cronecker asked us to give an estimate on it, and we gave him ——— 10

Q. What was it worth when you saw it after the accident?

A. Well, I wouldn't have paid, taking the car in the condition it was, exceeding \$200.

Q. Well, was it worth any more than that?

A. I shouldn't think it was. As a junk car it would have brought about a hundred or a hundred and twenty-five dollars, and it left very little to build on. 20

Q. But you could repair it so it could be used to some extent?

A. We could have repaired it so it could have been used for possibly a truck. It would never have made a pleasant touring car, because you could never have got it adjusted so it would run smooth. I don't think you could. 30

Q. What would it have cost, according to your estimate, if you made any, to put that car in a usable condition?

A. Why, we made an estimate on it, and I have a copy of the estimate, if you wish to see it.

Q. Just tell us. I don't care about that. Just tell us how much.

A. \$544.

The Court: Would the car have been as good as it was before?

A. Oh, no, because it would have been almost impossible to have trued it up to the shape in which it was before, and then upholstery, on which we wouldn't have made any repairs, would have depreciated the value of the car.

Cross-examination.

By Mr. Miller:

Q. So there is a difference of about a hundred dollars between your estimate and Mr. Champion's?

20 A. Yes, sir.

Q. And Champion is a competent man?

A. I made an itemized statement of the cost all the way through of each part.

Q. What were the parts that were affected to such an extent as you describe?

A. If you allow me to look over your bill?

Q. Yes, give us a portion of that.

A. One front axle, less knuckles, \$16.20, two springs, \$4.85 each, \$9.70. One wheel, \$19.75.

30

The Court: Do we want to go all over this?

A. If you want to have these items, I can give them to you in detail.

Q. Was there any real engine trouble here?

A. Well, that would have been hard to determine

until you took it down. There was bases, the engine base was entirely of aluminum, and cracks are not observable in looking at it in that way.

Q. You are the agent, as I understand it, for this particular type of car?

A. I have been. I haven't signed up for them this year, but I have been the agent for them.

Q. Is this car running at the present time?

A. Well, it might be tuned up to run. I haven't seen the car running since it was there. 10

Q. Who has it now, do you know?

A. I think Tom Ludlam, -the postmaster over there.

Q. Sea Isle City?

A. Yes. He tried to make an exchange with me a year or two ago, but we wouldn't offer him a satisfactory —

Q. At that time the car was running?

A. Well, it was standing on its wheels, but we didn't see it run. 20

Q. Where were you at the time the exchange was attempted?

A. At his garage over there, his private garage. He didn't even run the car out.

Q. But you know that this car has been running since the accident?

A. I have heard it has been running. I have never seen it running since.

Q. What did Mr. Ludlam want in exchange?

A. Well, he was talking \$300 after it had been 30 repaired.

Q. And when was that?

A. Why, that was, I should say, two years ago.

Q. 1915?

A. 1915. It was when the new models, or the Model D45 of the Buick car came out, and that was in the 1916 models, because we are in the 1918 now.

Q. So that you have never really seen this car move, running?

A. Never saw it in motion since the accident.

GEORGE WHITTINGTON, SWORN.

Direct examination.

10

By Mr. Wescott:

Q. Where do you live, Mr. Whittington?

A. Sea Isle City.

Q. What is your business?

A. Manager for the Electric Light and Sea Isle City Garage.

Q. Do you know an automobile when you see one?

A. Once in awhile, yes.

20 Q. Know one once in awhile? That seems to imply that sometimes you don't know one when you see it?

A. Not all of them are automobiles.

Q. Well, you have seen this Cronecker car, I suppose?

A. Yes, sir.

Q. Did you tow it home from the accident?

A. Yes, sir.

Q. Could it run?

A. No, sir.

30

Q. What condition was it in then?

A. Well, practically a total wreck. Had to be taken home on the truck.

Q. Have you seen it since?

A. Yes, sir.

Q. Where?

A. At Delaney's Garage.

Q. What condition is it in now?

A. Lying there.

Q. Is it operable?

A. I don't hardly think so. They don't do it, anyhow.

Q. It is so valuable a machine it is lying idle? How long has it been there unoperated?

A. Ever since the accident. They had it repaired, but they never done anything with it. They have had it out several times, but not to use it any amount. 10

Cross-examination.

By Mr. Miller:

Q. Well, there is enough life left in it to go out? How did they get it out, tow it out?

A. I have seen them tow it, yes.

Q. Did you ever see it go out under its own power? 20

A. I wouldn't want to say that.

Q. Well, did you or didn't you?

A. Well, yes, it has been out on the street, but they haven't been able to do anything with it. If they was, the machine would be in use.

Q. It got out, didn't it, somehow?

A. Somehow.

Q. And it couldn't get out unless it had gotten out on its own power, could it?

A. Well, towed it out. 30

SARAH McCANN, SWORN.

Direct examination.

By Mr. Wescott:

Q. Mrs. McCann, where do you live, please?

A. In Avalon.

Q. Where?

A. Avalon.

10 Q. What is your business?

A. Boarding house.

Q. How long have you lived there?

A. Twenty-two years.

Q. Do you know Mr. Hall, the defendant in this case?

A. I do.

Q. Did you know one of his drivers or chauffeurs, Mr. Brown?

A. I did.

20 Q. Do you remember the Sunday of November eighth, 1914, when this accident happened?

A. I certainly do.

Q. Did you see Mr. Brown that day?

A. I certainly did.

Q. Where did you see him?

A. At my house.

Q. What was he doing there?

A. He ate his meals there.

Q. Did he board with you?

30 A. Yes, sir.

Q. Did he get his dinner there that day?

A. He did.

Q. Do you know where he went after dinner?

A. I do not.

Q. Who was with him at dinner?

A. Mr. Arader, Mr. Walter Arader, and there

were several others to dinner that day, but I know Mr. Arader was there.

The Court: Mr. Arader?

A. Arader.

Q. Was he one of Mr. Hall's agents, too?

A. He was.

Q. Did Brown and Arader board with you?

A. Mr. Arader didn't really board with me, but he 10
took his meals there when he was down at Avalon
on business for Mr. Hall.

Q. How long did Mr. Brown board with you?

A. Mr. Brown only came with me in the fall that
year, I should judge in September. He had been
boarding elsewhere through the summer.

Q. Do you know what Mr. Brown's business was
when he was boarding with you?

A. I do.

Q. What? 20

A. Mr. Hall's chauffeur.

Q. Do you know whether or not he carried people
around in Mr. Hall's machine?

A. I do.

Q. Did you see him do it?

A. I seen him start away from the house with them
in the machine.

Q. Well, on this Sunday was there a lady with him?

A. Yes, there was a lady to dinner that day with
Mr. Arader. 30

Q. With Mr. Arader?

A. Yes, sir.

Q. Do you know where that lady and Mr. Arader
and Brown went?

A. I do not.

Q. Did they leave the house together?

A. Yes, sir.

Q. Now, who paid for the lady's dinner?

A. Mr. Hall.

Q. How long after the accident did Mr. Hall pay for that lady's dinner?

A. Mr. Hall always pays his bills when I send them in. Sometimes it is a week, sometimes two or three weeks.

Q. How soon after they left your place did you hear of the accident?

10 A. Well, I didn't hear of it until evening, after supper.

Q. Did you see these people, Arader and this lady and Brown get in the car?

A. They went out of the house together and the machine went off. Of course, I have something else to do besides watch the people always.

Q. Well, did they come to your house in the machine?

A. They did.

20 Q. The three of them?

A. Yes, sir.

Q. And after they got their dinner they went out and the machine went off?

A. It did.

Q. You didn't see them get in the machine?

A. No, I can't say that.

Q. Had this lady, with these two gentlemen, been to your house before in the morning?

A. No, not until dinnertime.

30 Q. Then the three came and got their dinner?

A. Yes, sir.

Q. Came in this machine?

A. They did.

Q. And then went off?

A. Yes, sir.

Q. Do you know whether Mr. Brown carried people

around to different places for Mr. Hall in his machine?

A. Yes, I supposed he did, because he was Mr. Hall's chauffeur for that purpose.

Q. Well, did you ever see him taking people in the automobile?

A. From the house, yes. I rarely have time to walk the streets.

Q. But you have seen him leave the house with these people?

10

A. I have.

Q. Did you know what these people were doing there?

A. They usually are there to look at property that Mr. Hall has for sale.

Q. Did Mr. Arader and Mr. Brown bring people there when Mr. Hall wasn't in the place, when he was away?

A. Well, under Mr. Arader and Mr. Werkheiser's supervision, they do.

20

Q. Who is Mr. Werkheiser?

A. One of Mr. Hall's employees. He is treasurer, I think, for Mr. Hall.

Cross-examination.

By Mr. Miller :

Q. Mrs. McCann, can you recall in any way whether this lady was a young lady or old lady?

30

A. She was a young lady.

Q. Did you know her?

A. No, I did not.

Q. And Mr. Arader is a young man, isn't he?

The Court: A-r-a-d-e-r, it is, isn't it?

Mr. Miller: I think the gentleman's name is A-r-a-d-o.

A. A-r-a-d-e-r, I always called it. I so have it in my books.

Re-direct examination.

By Mr. Wescott:

10 Q. Did you have Brown's name in your books?

A. I have.

Q. And this lady's account in your book?

A. No, I don't keep the individual accounts. Mr. Hall just allows his agents to bring the people in.

Q. And then he pays the bills?

A. Yes.

Q. As he did in this case?

A. Yes, sir.

20 Re-cross examination.

By Mr. Miller:

Q. Have you any notion about how old this young lady was?

A. Indeed I couldn't tell you.

Q. I mean as near as you dare to.

A. I couldn't tell you.

Q. But she was a young lady?

30 A. I judge she was young. She wasn't gray-haired, I know that.

Q. And she was with Arader, was she?

A. Yes, sir.

Q. Did he appear to know her pretty well?

A. Well, now, I can't tell you that.

Q. Well, we want to get as much light on that as you can, you know.

A. He was cordial to her, just the same as he is to any patron of Mr. Hall's.

By the Court :

Q. Well, do you know, Madam, whether she was a patron or only a friend?

A. I do not.

10

Q. You know nothing about it?

A. No, sir.

By Mr. Miller :

Q. He seemed to know this lady pretty well, didn't he?

A. I can't tell you.

Q. You probably didn't notice that?

A. No.

20

Q. I would like to find out if you know, Mrs. McCann, whether Mr. Hall was in Avalon on this occasion?

A. He was not that Sunday.

Q. Do you happen to know where he was?

A. No, I do not.

Q. But on this particular day he was not at Avalon?

A. Well, he was not at our house.

Q. Was Mr. Werkheiser at your house?

30

A. He was.

Q. And this was on the same Sunday that the accident happened?

A. Yes, sir.

Q. You have an account there, I understand, that Mr. Hall paid from time to time?

A. I do.

Q. Of course, he has no way of knowing whose bill he is paying?

Mr. Wescott: I object to that. I guess you can't get her to testify to that.

The Court: I think the farthest she can go is that she fed the people and sent him a bill and he paid it. That is as far as you can go, isn't that so?

10

A. Yes, sir.

Q. How did Arader and Brown pay for these meals? Did they sign checks, sign dinner slips, pay the money or how was it done?

A. No. Mr. Hall trusted to their honesty.

Q. I see. So that the dinner bills paid were those recommended by these gentlemen to Mr. Hall?

A. Yes, sir.

Q. So that he knew nothing about who was dining?

20

Mr. Wescott: Do not answer that.

Re-direct examination.

By Mr. Wescott:

Q. Was it or not the habit of Brown and Arader—and what was the other fellow's name?

A. Mr. Werkheiser.

30

Q. — to bring to your boarding house from time to time people who came down to do business with Mr. Hall?

A. It was.

Q. And Mr. Hall paid the bills when they were brought down?

A. Yes, sir.

AUGUSTUS CRONECKER, recalled.

Direct examination.

By Mr. Wescott:

Q. When you were approaching that curve in the road where this accident occurred, I think you said there were three people in the machine that struck you, four people? 10

A. Four.

Q. Three or four, which was it?

A. Four.

Q. Now, who were those people?

A. Mr. Brown, the chauffeur, Ward Adams, who was also sitting on the front seat, Mr. Arader and a strange woman who I did not know.

No cross-examination.

20

PLAINTIFF RESTS.

MOTION TO NON-SUIT.

Mr. Miller: I make a formal application for a non-suit. I will renew that on a motion later. I will take up no time at this time.

30

DEFENDANT'S TESTIMONY.

CHARLES R. HALL, SWORN.

Direct examination.

By Mr. Miller:

- 10 Q. Mr. Hall, what is your business?
A. Real estate, mortgages and securities.
Q. And in 1914 where were you thus engaged?
A. Avalon and St. Petersburg.

The Court: Do you mean St. Petersburg, Florida?

- A. Yes, sir.
Q. At that time were you interested in the development of any Stone Harbor property?
20 A. No, sir.
Q. Had you been for some time previous to that?
A. I left Stone Harbor in 1909, had no interest in their development subsequent to that time further than a sale in 1912 of my own properties.
Q. So that all your energies were in the development of Avalon?
A. Absolutely.
Q. What time in 1914, in the fall or early winter, did you leave for the South?
30 A. During the month of November.
Q. Previous to leaving had you left any instructions with Mr. Brown as to what disposition was to be made of the machine?
A. Yes, sir.
Q. Just tell the jury what instructions, if any, you left at that time.

A. He was to take the machine on about a Friday, I think it was, take my family to Philadelphia in time to get the 5.42 train, then take the machine to the agents in Philadelphia to be overhauled preparatory to shipping it South.

Q. How far did he observe your directions?

A. He undertook to carry them out and got as far as Egg Harbor, had trouble with the machine, phoned to Philadelphia for instructions and was instructed to put the family on the train and bring the car to the city for repairs. 10

Q. That was at Egg Harbor?

A. That is my recollection.

The Court: What day was that?

A. As near as my memory will let me know, that would be about Friday preceding the day of this accident. This accident happened on a Sunday and that was on the previous Friday. 20

Q. Now, what was the first intimation that you received of the accident?

A. When I wrote north to inquire why the car had not reached me. My private secretary, Mr. Werkheiser, advised me that they had had an accident and that repairs were necessary to the car.

Q. Whose property was this car, Mr. Hall?

A. Belonged to me.

Q. And it was under your authority at all times?

A. Yes, sir. 30

By the Court:

Q. It was your own car? Was Brown your chauffeur?

A. Brown was my chauffeur.

Q. There has been testimony here to the effect that that car was used by Brown as your agent to cart prospective real estate purchasers around Avalon and vicinity. What have you to say about that?

A. That is correct. He is not my agent, but he is my chauffeur. He is not an agent in any sense of the word. He takes his orders from me and shows the property on the beach.

10 By Mr. Miller:

Q. Had Mr. Brown or anyone else any authority to send that machine off of the island, off of the beach?

A. No, sir.

Q. Had you ever given him such authority?

A. No, sir.

By the Court:

20 Q. Well, the question now is had he any authority on that Sunday morning —

A. Absolutely none.

Q. —to take out prospective purchasers of real estate?

A. He would have authority on that morning to take out prospective purchasers of real estate, if there were any there, at the request of Mr. Werkheiser or Mr. Arader. There were no prospective purchasers on the island on that date.

30

By Mr. Miller:

Q. Had he any authority derived from you to return even to Avalon with this car?

A. No, sir.

Q. Had he any authority from you to race on the

By the Court:

Q. Let us clear up the other question. He had authority on that Sunday morning, if he was requested by Mr. Arader to do so, to take any prospective purchaser of real estate around and show them the property?

10

A. Where I had property for sale, yes, sir, in the Borough of Avalon. I had no property for sale outside of the Borough of Avalon anywheres in Cape May County.

Q. I know, but would you limit your chauffeur on a Sunday —

A. Absolutely.

Q. —to the territorial limits of the Borough?

A. Absolutely, because we are unable to accommodate our people and we have to lay down that rule because if we didn't they would be off the island or some other place joyriding and we would be walking around with our customers. My car hasn't been off the island this year with a prospective customer.

20

Q. Not this year, but we are speaking of 1914.

A. I am doing the same business today, your Honor. That has been a hard and fast rule ever since I have been in business. My customers would be walking if I let the chauffeurs run them off the island.

30

Q. Well, suppose Mr. Arader took your man off of the island, would you regard that a violation?

A. I would fire him.

Q. Fire who?

A. Mr. Arader.

Q. There is proof in the case here, or rather, testi-

mony, to the effect that when this accident happened Mr. Arader and some woman who is supposed to have been a prospective purchaser of real estate were in the car.

A. I have run that matter out thoroughly so far as my office is concerned —

Q. That is not the question.

A. What is the question?

Q. Would you say, from your own point of view—
10 now, Mr. Arader was your agent down there?

A. Yes, sir.

Q. He had authority to tell Brown to get the machine out to take out customers?

A. That is correct.

Q. And to go with them?

A. That is correct.

Q. Well, now, you couldn't blame Brown if he went a little beyond the borough line, would you?

A. Well, I could, yes, sir.

20 Q. If Mr. Arader requested it?

A. He would have to go to Mr. Werkheiser or myself and get permission. That is oftentimes requested.

Q. I thought you said that Mr. Arader or Mr. Werkheiser had the permission?

A. Mr. Werkheiser is second in authority to me and all agents are accountable to him for their actions when I am not on the ground.

30 Q. What kind of an agent is Mr. Arader?

A. He is an agent works on a straight commission. He is a commission agent, gets a commission for any sale he may make.

Q. And he brings down customers?

A. He brings down customers.

Q. And goes to Brown, your chauffeur, and has

authority enough with Brown to get the machine out and get in it and go around?

A. Get the machine out, get in it and go around the Borough of Avalon and show property.

Q. And go to the hotel and get dinner?

A. Yes, sir.

Q. And you pay for the dinner?

A. Yes, sir. My understanding is that I did not pay for this dinner. When my bookkeeper gets here in a few minutes we will be able to tell that.

10

By Mr. Miller:

Q. When bills are sent to you from Mrs. McCann, you assume they are honest and they are paid without question?

A. I do.

Q. And you have no means of knowing who dined on you?

A. We haven't in Mrs. McCann's case. In the Hotel Avalon's case we have. They keep a record and send it to us. Our business is so light during the winter season and we know Mrs. McCann so well we wouldn't question a bill coming out of her house.

20

Q. On the Sunday in question, Mr. Hall, had Mr. Brown or anyone else any right to take that machine off of the beach?

A. No, sir.

Q. Had Mr. Brown any right to be in Avalon on that Sunday in question?

30

A. No, sir.

The Court: He has already said he had.

A. Yes, but your Honor, he had instructions to take that machine to the city on Friday.

By the Court:

Q. Yes, but you said that and I asked you the question specifically whether on that Sunday, if he was requested, and you said yes.

A. I misunderstood you, your Honor. I didn't know you meant specifically for that Sunday. At all times he had a right, but on that particular Sunday this machine was supposed to be on its way
10 South. I misunderstood you if you meant for that specific Sunday. Prior to that time he would have had the right to take Mr. Arader or Mr. Werkheiser or any other agent around the property and show them properties. To the best of my knowledge, on that Sunday, that machine was then en route to St. Petersburg to be used in the same business.

Q. Well, you knew, though, Mr. Hall, that something had happened to the machine which delayed its shipment to Florida?

20 A. Well, I think that is quite irrelevant, but as a matter of fact I didn't know it at that time, but I wouldn't stand open on that question.

Q. Where were you on Friday?

A. On Friday I was—I am unable to tell without the records whether I was in Philadelphia on that day or not.

Q. Where were you on Saturday?

A. I think I was on the train traveling southward. It is quite difficult for me to just recall whether I
30 went South on that trip with my family or did not. I am a pretty active man and this is four years ago and it is hard to remember all those facts. I am quite sure that I —

Q. Well, do you mean to say, Mr. Hall, in the face of your testimony as it is presently recorded, that if the machine was at Avalon on that Sunday morn-

ing, eighth of November, having been delayed, its shipment having been delayed for some reason, that if Mr. Werkheiser, or whatever his name is, or Mr. Arader had somebody who wanted to buy land belonging to you or in which you were interested, that if Werkheiser or Arader had requested Brown to take out the machine, from your point of view, had he the authority to do it?

A. He had, absolutely.

By Mr. Miller:

10

Q. But on this particular Sunday, Mr. Hall, Mr. Brown had no authority whatever to be in Avalon with this machine?

A. Barring the accident.

Q. Had he obeyed your instructions he would have been ——

The Court: That is a matter of argument, Mr. Miller. If I understand this witness' testimony, it is that if he had obeyed the instructions strictly, the machine would have been on its way to Florida, but not having obeyed the instructions strictly, an accident having prevented the shipment of the machine, still Mr. Hall does not say that Brown would not have had authority, if he had been properly requested by Arader or Mr. Werkheiser.

20

A. I wouldn't question his action in that case at all.

30

Q: But he had no right to leave the island? That you would question, wouldn't you?

A. Had no right to leave the island, positively.

Q. Was this a patron of yours or customer, Mr. Hall?

A. No, sir.

Q. And so far as you have learned, what sort of a ride was it?

A. So far as I have learned —

The Court: Well, do you know? This is all hearsay. You didn't see the parties, did you?

A. No, sir.

10

Cross-examination.

By Mr. Wescott:

Q. Where is Brown?

A. I don't know.

Q. Haven't you the remotest idea where he is?

A. Not the faintest.

Q. You heard of this accident right away, didn't
20 you?

A. Heard of it within, I should think, a week or two afterwards.

Q. Now, where was Brown then?

A. In Philadelphia.

Q. Whereabouts in Philadelphia?

A. Haven't the slightest idea.

Q. How do you know he was in Philadelphia?

A. Well, he was in the north. I assume he was
in Philadelphia.

30 Q. Why do you assume?

A. Because that is where I corresponded and I assume he was in that vicinity.

Q. Why do you assume he was in Philadelphia because you corresponded?

A. Because I corresponded with my office and the correspondence indicates that he was in Philadelphia. He may have been in New Jersey.

Q. What did the correspondence indicate as to Brown?

A. It didn't indicate that he had run away.

Q. Did you understand that he had run away?

A. No.

Q. Have you ever seen Brown since?

A. I don't believe I have.

Q. Did you try to find him?

A. No.

Q. Have you any idea where he is? 10

A. No.

Q. How long had Brown been in your service?

A. How long had he been in my service?

Q. Yes.

A. Oh, several months; possibly more than several months.

Q. Pretty good man, was he?

A. I considered him a fairly good man.

Q. Good enough for you to keep?

A. He was until he had that runaway accident. 20
Then he wasn't.

Q. Then did you discharge him?

A. Certainly.

Q. When after the accident did you discharge him?

A. I would have to look at my books to see. I can't recall that.

Q. And you haven't seen him since and don't know where he is?

A. I don't recall having seen him since then. 30

Q. You have succeeded in having this case put off every term for two years, haven't you?

Mr. Miller: I object.

The Court: That has nothing to do with the case.
Objection sustained.

Q. How many times have you been, since this accident happened, down in Florida?

A. How many times have I been down in Florida?

Q. Yes.

A. Several.

Q. About how many times?

A. About six or seven.

Q. And were you down in Florida when the terms of court came here in Cape May County?

10 A. I think I was.

The Court: Well, if I understood this witness, he said plainly and frankly that he had business in St. Petersburg which required him there a good part of the year. Is that not so?

A. That is correct. During the winter season, your Honor.

20 Q. And those several times were when the courts sat here?

A. They are during the winter season.

Q. Now, where are the other two men, Arader and Werkheiser?

A. Mr. Arader is in the United States Military Service in one of the camps.

Q. When did you see him last?

A. Within the last two months.

Q. How long has he been in the United States Military Service?

30 A. Possibly about a month.

Q. Well, since the happening of this accident away back in 1914 you had no difficulty in getting him, had you?

A. None at all.

Q. Or getting his testimony?

A. None at all.

Q. Now, where is Werkheiser?

A. In Philadelphia.

Q. In Philadelphia? Still in your employment?

A. Yes, sir.

Q. Did you discharge Arader?

A. No, sir.

Q. How long was he in your employment?

A. Mr. Arader is more or less of a self-appointed agent. He is a free lance. He isn't on our salary list. He is never discharged and never engaged. 10
When he gets a customer he brings them to the beach. If he sells them, he gets a commission. If he doesn't, he doesn't.

Q. Is Werkheiser in your employment?

A. Yes, sir.

Q. And he is in Philadelphia?

A. He may be here.

The Court: Arader has authority to come down with a customer and go to Brown, your chauffeur, 20 and get the car and go out and show them the property?

A. When Mr. Arader gets a customer he reports to the office, transportation is issued to him and he is permitted to go to the shore and use the car to show the property.

Q. If I understand you, Mr. Hall, your business is so great down there that if you allowed your chauffeurs to do anything else than to take the pa- 30
tron right plumb to the property and question them and then come back again, you couldn't carry on your business at all, could you?

A. Well, that is drawing it pretty tight.

By the Court:

Q. How much territory do your interests cover?

A. From Townsend's Inlet, twenty-five blocks, south, to Twenty-fifth Street, Avalon; from the Atlantic Ocean to the Inland Waterway.

Q. It takes in a radius of several miles?

A. It takes in a radius of one mile by about a mile and a half.

10 Q. Well, this accident is said to have occurred about a mile or within a mile of your property line?

A. That is incorrect.

Q. What do you say about it?

A. It occurred about four miles from my property line. In other words, your Honor, the Avalon property lays over on the island and this accident occurred on the road right outside of the Court House, north of us, and as I understand, the machine on that day went down the beach —

20 Q. Do you know the spot where the accident happened?

A. Only by the testimony given here today.

Q. Well, from what they said?

A. Yes, I know it by that testimony.

Q. How far was that away from your land?

30 A. Well, our turnpike is about three miles long and I should say Swain's Corner is possibly south of the Avalon Turnpike about a mile, so I should say that the distance would be in the neighborhood of three to four miles from Avalon proper, that is, from where we show our properties. You understand, the actual border of Avalon —

Q. Have you any interest in Stone Harbor yet?

A. No, sir, only I own property there, but none for sale. I have no property selling interests there.

Q. I mean two years ago.

A. No, sir. If it were permissible, I would like to make a very frank statement of my connection with that enterprise so it might make it clear. I could clear the atmosphere if you want the details.

By Mr. Wescott:

Q. Now, if I understand you, you have so many patrons down at Stone Harbor or Avalon, or wherever this place is, that if you didn't compel your chauffeur to take your patrons directly to the property and back again, you would have to close up shop? 10

A. You don't understand correctly.

Q. That isn't true?

A. Not the way you put it.

Q. Well, then, if a patron comes down there to look at property and happens to get Mr. Brown to take him, what are Mr. Brown's limitations as to time and space? 20

By the Court:

Q. Mr. Hall, do you mean to say as a business man of experience, that it is conceded you have, that your selling people would not have the right to show prospective purchasers of real estate the nearby, surrounding country, so that they could see what they were getting? Hasn't that something to do with it? 30

A. Absolutely, your Honor. If that agent had applied to Mr. Werkheiser or myself for permission to use the car for an hour, he might get it. If we had other customers —

Q. Don't you concede that it was within the scope

of your selling man's authority, if he had a customer that he thought he would sell real estate to, to take that customer about and show the surrounding country, show what the environment was? Hadn't that something to do with it?

10 A. The environment doesn't come as far as this main Seashore Road. We would show him our plan. I have run out to the bridge frequently, turned around at the bridge and gone back in to show the construction of the road, but we can't send our car to Cape May Court House.

Q. This car wasn't in Cape May Court House.

A. It went through Cape May Court House on this road. It went down to Stone Harbor, took a ride along the Stone Harbor Road and back over this road, intending to go back to Avalon. We couldn't give our men latitude or our chauffeurs latitude to take people on a ride of that kind.

20 Q. Oh, no, but wouldn't you say that the surrounding neighborhood in the radius of three or four miles would be quite desirable for people to see if they were thinking about buying land?

A. We haven't found that necessary. Maybe I would do more business, but I run my business without doing it. I haven't brought a person—I have done \$50,000 worth of business this season and I haven't brought a customer through Cape May Court House this year. Maybe I lost some business.

30 Q. It isn't what you did this year. This was three years ago.

A. The conditions are the same, your Honor.

By Mr. Wescott:

Q. Well, what are the limitations that you put upon your agents as to time and space when they

are dealing with patrons who propose to buy your property?

A. We have never laid down a hard and fast rule. It has always been understood that they were privileged to use the car within the Borough of Avalon.

Q. It isn't the understanding that I am after. What limitations do you put upon your agents?

A. The Borough of Avalon.

By the Court:

10

Q. Do I understand you did put a limitation or you left it to the discretion of the agent?

A. We have adopted that limitation. I have never printed it.

Q. Have the agents sometimes taken them beyond to show them the adjoining country, with your acquiescence?

A. I can't recall a case where they have, your Honor. I can't recall a case where they have. 20

By Mr. Wescott:

Q. You have been telling us about the splendid business you have done. Let me ask you—in answer to a question in the limitations you put on your agents, you say the boundaries of Avalon.

A. The Borough of Avalon I said.

Q. Do you make it known to the world or these innumerable patrons of yours, "Ladies and Gentlemen: if you come to do business with me or with any of my agents, I want you to understand that your movements are limited to the Borough of Avalon and you cannot go outside?" 30

A. I have never printed such literature.

Q. And you mean these twelve men sitting here

to believe that if your agent got hold of customers that were sufficiently interested in this community to see the community and find out something about it, that you wouldn't allow the agents to show them the community?

A. They would have no difficulty in showing it. They simply come to the office —

Q. Then your rule about the boundary of Avalon doesn't apply when people want to go out and look at
10 the country?

A. It doesn't apply where they come to the office and say, "We would like to use the machine and go as far as the end of the Turnpike," or they can go to Cape May or Pittsburg if they get permission.

By the Court:

Q. This was on Sunday?

A. Doesn't make any difference. They had no
20 customers there.

Q. Assuming that Mr. Arader had some purchaser, I don't say that he had, that he was interested in and tried to show a little unusual attention to this customer and wanted this customer to see the surrounding country, wasn't it within his sound discretion to do so?

A. Not without the consent of Mr. Werkheiser, whose expenses I paid to go to the beach on that day to supervise. I send Mr. Werkheiser to the
30 beach on Sundays, customers or no customers, to supervise. Pay his railroad fare and hotel bill for that purpose, and it was Mr. Arader's duty if he wanted to leave the island with a customer, to go to Mr. Werkheiser and say, "I want to borrow the car to go off shore with a customer to show," Cape May or Sea Isle City or Atlantic City or whatever it might be.

Q. Did Brown know that?

A. Yes, sir, positively.

Q. Arader know that?

A. Everybody knows it. It is common knowledge. Everyone of my employees knows it.

By Mr. Wescott:

Q. Where is Brown, did you say?

A. I don't know.

10

Re-direct examination.

By Mr. Miller:

Q. Was Mr. Arader ever here at Cape May Court House to respond to this trial, to your knowledge?

A. Yes, sir, he was here at the last time this case was called.

Q. And you were present also, were you not?

A. Yes, sir. I requested him to be here. I am trying to find out who the fair dame was who took the ride.

20

Re-cross examination.

By Mr. Wescott:

Q. Do you know where she is?

A. I wish I did.

Q. I believe you have already told us you don't know where Mr. Arader is and you don't know where Brown is and you don't know where this woman is?

30

A. I know where Mr. Arader is.

Q. But you do know one thing, that is to say, that your customers, when they come down here, had to keep within the walled limits of Avalon?

A. So far as I have testified they did.

Re-direct examination.

By Mr. Miller:

Q. Well, as I understand, Mr. Hall, you didn't say that your customers had to keep within the walls of the City of Avalon?

A. I didn't so intend to state.

Q. If they wished to go beyond these walls, they could go upon request, couldn't they?

10 A. They could if they got permission from the office.

Q. How many requests have you had from your patrons to go beyond, for instance, to come to Les Champion's here, to Cape May Court House?

A. I don't believe I ever had one in seven years.

Q. Your business is to sell land on the beach?

A. That is correct.

Q. And it takes some little time to show that land?

20 A. It certainly does.

Q. And by bringing people to Cape May Court House or down here by the curve, you are not going to increase your sales at Avalon, are you?

A. Not a particle.

Q. But if these people really want to get beyond the wall, they may go?

A. We would find a way to get them beyond the wall.

30 By the Court:

Q. You say Brown had specific instructions to that effect?

A. Yes, sir.

Q. Not to take anybody outside of the place?

A. Never to leave the island without my permission.

Q. And was that so with Arader?

A. Mr. Arader had nothing to do with the cars. Mr. Arader was simply an agent, and would come to the beach and had no authority to leave the beach with customers, without first going to the office and getting permission.

Q. Was he so instructed?

A. Absolutely, yes, sir, positively.

Q. Arader was so instructed?

A. Every agent is. Every agent in my employ has those instructions. 10

Q. How much territory does the borough comprise?

A. The borough itself occupies about three-fifths of the island, extends from Townsend's Inlet to Eightieth Street, and Stone Harbor extends from Eightieth Street to One hundred and twenty-seventh. However, from Thirty-seventh Street, Avalon, to Eightieth Street, is undeveloped sand dunes.

Q. Well, how much in miles? How much territory is that? 20

A. Avalon embraces about four miles of the Seven Mile Beach. The built-up portion of the town would take about two miles of those four miles.

Q. How far was this place where this accident occurred from the borough line?

A. From the borough line—by automobile from the borough line on the south in the sand dunes, about six and one-half —

Q. The nearest point? 30

A. As the bird flies, across the Bay, it would be about three to three and one-half miles.

Q. Away from the nearest —

A. From the nearest shore line of Avalon as the bird flies across the water, because we would have to go across the water.

Q. And by road how far?

A. By road to the nearest land line would be at the Inland Waterway, where the bridge crosses, three miles.

By Mr. Miller:

Q. Had you ever extended your chauffeur the authority to speed or race the car anywheres on the
10 beach or elsewhere?

A. No, sir.

Q. How long has it been, Mr. Hall, since you had any signs of any character at Stone Harbor?

A. 1912.

Q. And that was the end of your operation in Stone Harbor?

A. Yes, sir.

Recess taken until 10 A. M. Wednesday, September
20 ber 12, 1917.

Cape May Court House, Wednesday, September 12, 1917.

Trial of the cause resumed at 10 A. M.

HARRY D. WERKHEISER, SWORN.

30 Direct examination.

By Mr. Miller:

Q. Mr. Werkheiser, you are connected with the Avalon Development Company?

A. I am.

- Q. And in what capacity?
A. I don't really know. Office manager, I guess.
Q. You are not one of the officers?
A. No.
Q. Is that a company?
A. Corporation.
Q. Are you one of the stockholders?
A. Yes.
Q. Are you in actual charge of the business at Avalon of this company? 10
A. I am at times.
Q. You are familiar with the witness?

The Court: Finish that, please. He says he is at times. What do you mean by that?

A. Well, I am not in full charge. I have more authority at times, when Mr. Hall is not on the beach, than when he is.

Q. But you have knowledge of the detail business of the company? 20

A. Decidedly.

Q. I take you back to November eighth, 1914. Were you in Avalon on that occasion?

A. I was.

Q. How did you come down?

A. West Jersey and Seashore train from Camden.

Q. And was Mr. Arader on the same train?

A. I think he was. 30

Q. Was anyone with Mr. Arader at that time?

A. There was.

Q. Who was it, do you know?

A. A young lady.

Q. Did the company or Mr. Hall pay the expenses of either Mr. Arader or the young lady on that occasion?

A. They did not.

Q. Was Mr. Arader in your employ on November eighth, 1914?

A. He was not.

Q. Can you tell us when he ceased to work for you during that season?

A. October thirtieth, 1914.

Q. Where did you go, Mr. Werkheiser, after you reached the station?

10 A. In Avalon?

Q. In Avalon.

A. To the house where my family was then residing.

Q. Now, on that occasion did you see Mr. Brown, the chauffeur?

A. I did.

Q. And was Mr. Brown running the automobile of Mr. Hall's at that time?

A. He was.

20 Q. Did you make any request of Mr. Brown as to returning to Philadelphia with you in that machine?

A. When I got off the train I asked Mr. Brown—the car was supposed to go to Philadelphia and I asked him if he could run it up in the afternoon, and if he could, I would go up with him.

Q. What did he tell you?

A. Said it was impossible, that he couldn't run it as far as Philadelphia, that if he run the car over ten miles an hour it would break down anyway.

30 Q. And where did he take you?

A. Home.

Q. What instructions did you then give him?

A. I told him that if Arader and the young lady wanted to ride around the town, which is all he could possibly do with the car according to his own statement for a little while, a half hour or so that

he was at liberty to do that. I also told him that he should come for me—put the car up then and come for me at the four o'clock train.

Q. At any time did you authorize Mr. Brown to take this car from the beach?

A. I did not.

Q. Was he permitted to take this automobile from the beach---

A. He was not.

Q. —without authority?

10

By the Court:

Q. That is not the question. Was he prohibited from taking it from the beach? Was there any rule or order against his doing so?

A. I don't believe there ever was any written rule.

Q. I don't mean written.

A. There always has been an understanding that a chauffeur —

Q. Not an understanding. Was it ever said to him directly that he should not go beyond?

20

A. Not to my knowledge.

By Mr. Miller:

Q. You didn't give him authority on this occasion to leave the island, did you?

A. Absolutely not.

Q. Now, had this young lady any business with your company at all?

30

A. No.

By the Court:

Q. Mr. Werkheiser, did you limit him to the territorial limits of the island on that Sunday?

A. I think I can say yes, for the simple reason that he said that the car, if he run it over ten miles an hour, was bound to get hot and burn out the bearings, and that as long as he run it slowly around the town, that there was no danger, because he would always be near a garage, and for that reason I stated specifically that if he wanted to drive the two people around the island for a short time and he thought it wouldn't injure the car, that he should do it. I didn't state specifically, "Do not go off the island."

10 Q. Did the car belong to the company or to Mr. Hall?

A. Charles R. Hall.

Q. It was his personal property?

A. His personal property.

Q. Do I understand that you were in the employ of the company?

A. Yes. No, I am not.

20 Q. Were you then employed by the company or by Mr. Hall?

A. Well, I have always been employed by Mr. Hall, and at certain times in the last ten years I have been employed by the company, too. I can't state just this minute whether I was in the employ of the company at that time or not, but I was in the employ of Mr. Hall.

By Mr. Miller:

30 Q. Had this young lady any business at all, either with the developing company or with Mr. Hall?

A. To the best of my knowledge, absolutely none.

Cross-examination.

By Mr. Wescott:

Q. Did you talk to the young lady?

A. Very little. A little, yes.

Q. Where?

A. On the train.

By the Court:

10

Q. Well, is Mr. Arader a young man?

A. Mr. Arader was thirty-one years old on the twelfth day of June.

Q. And you say this was a young lady. What do you mean by that? Was she a young girl or a mature woman?

A. I would suppose—I never asked the young lady her age, but I would suppose she was in the neighborhood of twenty-two at that time.

20

Q. Was she a customer or only a friend?

A. As far as I know, she was neither. She was an acquaintance of Mr. Arader's.

Q. Were you introduced to her?

A. Yes.

Q. Was anything said about her being a customer?

A. No, indeed.

Re-direct examination.

By Mr. Miller:

30

Q. And she didn't buy anything, as far as you know?

A. Not to my knowledge.

Q. She didn't look at anything, as far as you know?

A. No.

By the Court:

Q. Mr. Hall in his testimony yesterday said that he gave Brown the instructions not to go beyond the borough with prospective purchasers, and that he was only permitted to go beyond the lines of the borough when he got permission from you. Now, do I understand you to say there was no such rule?

10 A. I have never seen such a rule in writing and I have never heard that particular order given verbally, although, as I stated before, it was understood that all the chauffeurs were never to take the car off the island or anywhere else, except to the train to meet customers, without authority, without permission or orders.

CHARLES R. HALL, recalled.

20

By the Court:

Q. Did I understand you to say on November eighth, 1914, you had no active real estate interests at Stone Harbor?

A. Yes, sir, I had none.

Q. Had you signs up on lots?

A. No, sir.

Q. Had you any lots for sale there?

30 A. No, sir. May I make that very clear to you?

Q. Yes.

A. When I left Stone Harbor in 1909 I was an owner of quite a considerable number of lots. I undertook to turn them into cash in the two years following, and as a means of doing it I placed signs on the lots I wanted to sell. It led to some friction

between the South Jersey Realty Company and myself. They objected to the signs and the relationship became very strained. Mr. Charles F. Bowers, of the firm of Charles E. Johnson, of Philadelphia, who had some large interests in Stone Harbor, being indirectly associated, I believe, with Mr. Risley, and who was likewise a very warm friend of mine, said to me one day, said, "Charlie, I am awfully sorry to see this fight between you and the Risleys, it isn't going to do either of you any good" — 10

Mr. Wescott: I object to this.

Q. What has all that to do with it?

A. It shows clearly when I ceased to own real estate in the town, and the reasons why.

Q. Did you own any real estate in Stone Harbor on the eighth of November?

A. I owned real estate on the eighth of November that wasn't for sale, has never been offered for sale 20 since that time nor for a year before that time. It isn't for sale today.

Q. You heard Mr. Werkheiser's testimony this morning that he knew of no express direction to Brown not to go beyond the borough limits. What have you to say to that?

A. Only that my positive instruction to Mr. Brown was that he was never to leave the island or joyride or take the car without my permission. During my absence Mr. Werkheiser has power of attorney to 30 carry on my business in every department and his constant daily association with me is such that I always assume that he is familiar with my business methods and lots of trivial matters.

Q. Did you ever tell him?

A. I can't recall that I ever specifically set forth

to him that, "You must see when you are there that the car doesn't leave the island."

Q. Did you tell Brown that?

A. I positively told Mr. Brown that.

Q. Did you tell Arader that?

A. I can't recall that I ever told Mr. Arader in just those words that statement, but Mr. Arader has from time to time come to me and asked permission to do something differently from what our custom would be with the car.

10 Q. It has been testified in the case that the car was used by Brown on the roads in other localities than at Avalon. He has been seen, Brown, with men in the machine here at the Court House, Sea Isle City, Cape May and other places. What have you to say as to that?

A. That would be without my knowledge unless I was the man. Mr. Brown drove my family, I used the car for family uses and it was in various parts of the state at various times.

20 Q. And friends?

A. And friends. If my wife had friends and wanted to go out for a ride, she was always at liberty to call on Brown to take her, if there was no business to be attended to.

Q. You say, then, the prohibition against his going beyond the borough limits only related to the —

A. Only to my business connections.

Q. Prospective purchasers?

30 A. Yes. He would have no authority to take the car himself for his own friends.

HARRY D. WERKHEISER, recalled.

Direct examination.

By Mr. Miller:

Q. Mr. Werkheiser, are you familiar with Mr. Hall's operations, land operations at Stone Harbor?

A. Yes.

10

Q. Was he operating at Stone Harbor November eighth, 1914?

A. No.

Q. Had he been for some time previous to that date?

A. No.

No cross-examination.

20

IRVING FITCH, recalled.

By the Court:

Q. Mr. Fitch, the Court wanted to ask you a question. That is the reason you were sent for. In your testimony yesterday you gave the impression, as I understand it, that Mr. Hall at the time of this accident, November eighth, 1914, had active real estate interests in Stone Harbor. Mr. Hall has said that at that time he had no active real estate interests in Stone Harbor, he had parted with them, although he owned some property up there. I simply wanted to find out what information you had, if you had any, in order that the jury might be correctly informed.

30

A. What is the question you want me to answer, as to whether or not he was actually interested in the South Jersey Realty Company or the interests at Stone Harbor?

Q. At Stone Harbor on the day of the accident?

A. So far as my knowledge is, he was not actively connected with the South Jersey Realty Company. He owned extensive property interests there and from signs he had on his property, he evidently had
10 them for sale.

Q. He says he had no signs at that time on his property in Stone Harbor.

A. He must have cleaned them off pretty soon, then.

Q. Do you know whether he had at that time?

A. I can't say on that day. I know along in that summer and during that season there were signs in Stone Harbor on his property. I went there frequently.
20

HARRY D. WERKHEISER, recalled.

Direct examination.

By Mr. Miller:

Q. I am not just familiar with your answer as to
30 what you said to Brown after he left you at your house in Avalon. Do I understand that you directed him to take these people around Avalon?

A. You are not.

Q. What is the exact truth about that?

A. I told Brownie that if Arader wanted to take the young lady for a ride around the island, which

Brownie said was the only thing the car would stand, that I had no objections to his doing it.

Q. There was no direction from you which included something in connection with the business of Mr. Hall or of the Avalon Development Company?

A. None.

By the Court:

Q. Did you tell him he should not go off the island? 10

A. No, I don't remember telling him that.

Q. If I understand you, you gave him the privilege of taking these people out riding around the island?

A. Exactly, and the inference was that he wouldn't go off the island, because he told me the car would absolutely not stand much driving, and that he couldn't go off the island.

Q. When you say the island, is Avalon separated from the mainland?

A. Oh, yes. 20

Q. That is the island?

A. That is the island, yes.

Q. You gave him permission to ride around the island?

A. Exactly.

Q. The accident occurred off on the mainland?

A. The accident occurred off on the mainland.

Q. How far from the island?

A. I haven't any idea. 30

No cross-examination.

BOTH SIDES REST.

MOTION TO DIRECT VERDICT.

Mr. Miller: If your Honor please, our motion is for a direction, because we feel that this case comes within the rule. Back as far as 1856, in the case of Maguire vs. Grant, we have the authorities which we submit. The Court enunciated this theorem, which had gradually been accepted and accentuated by a late Court of Errors case: “Where the act complained of was not done by the defendant himself, the relation of master and servant must subsist between him and those by whose instrumentality the work was done in order to render the defendant liable.” That is this case. We do not question the relation of master and servant existed, but the responsibility of a master for the tortious acts of his servants grows out, is measured by, begins and ends with his control over them. Now, the next case in order is Holler vs. Ross: “The servant of the master cannot bind the master to respond in damages to the plaintiff unless it be shown that the act which the servant did which caused the injury was an act which was expressly or by necessary implication within the line of his duty under his employment. The master is not responsible if the wrong done by the servant is done without his authority and not for the purpose of executing his orders or doing his work.” Now, there are two elements that absolutely are essential, and I may further say that under this case it is for your Honor to determine whether there are any facts which bring this case within this rule before a submission may be made to this jury. It is essential not only that the relation of master and servant existed, but that it existed at the time of the injury, and that at that time the agent was employed in the business

of the defendant. I say that in this case there is not a scintilla of testimony that anyone in that particular machine was engaged in the interests of Mr. Hall. We feel this case is one that should result in a direction. We cannot see that Mr. Hall is in any way responsible for the fact that in his absence, upon a Sunday, with a car loaded with people who had nothing to do with him or his business, that Brown, his chauffeur, should have committed this mischievous act, call it that, or wilful, as you will, in racing upon the highway, away beyond the territorial limits. 10

The Court: This case has not been free from difficulty. I was at first inclined to send it to the jury upon the theory that there might be a condition of fact from which divergent views could be drawn from the evidence; but after a careful examination of the facts I am convinced that the undisputed facts are susceptible of but one rational interpretation, and that is that the defendant's chauffeur at the time of the accident was not acting within the scope of his authority, nor was he engaged in the furtherance of his employer's business. The chauffeur, at most, was only given the privilege of taking Arader and his lady around the island. The island is separated from the mainland by an inland waterway. This accident happened on a public highway several miles from the Avalon Island. 20

The case, it seems to me, is, therefore, controlled by the law as stated in *Holler vs. Ross*, 39 *Vroom*, page 324. It is not sufficient for the plaintiff to show merely that defendant owned the automobile and that Brown was his chauffeur. These are factors, to be sure, but they must be coupled with the fact, or the 30

proof of facts and circumstances tending to prove the fact, that the chauffeur was acting within the expressed or implied scope of his authority. Here the chauffeur deliberately violated the express orders of his employer. He was using the machine in forbidden territory, and, according to the undisputed testimony, was racing on the public highway a considerable distance from Avalon and was not engaged in his employer's business.

- 10 To hold defendant liable under all the circumstances would result in extending the doctrine of respondent superior beyond its legitimate scope.

Gentlemen of the jury, you are directed to return a verdict for the defendant.

Mr. Wescott: I wish to take an exception to your Honor's ruling.

(Exception noted for plaintiff.)

- 20 Mr. Wescott: There is one other point in this case that ought to be settled. When the plaintiff rested, there was a motion made to non-suit, and there was no ruling on it.

The Court: This disposes of it.

New Jersey Court of Errors and Appeals

Caroline Cronecker,
Plaintiff-Appellant,

vs.

Charles R. Hall,
Defendant-Respondent.

Action at Law.

BRIEF FOR CRONECKER.

I.

Motion to non-suit (73) was not disposed of. Exception to a direction for the defendant was taken (108).

The motion to non-suit would not have prevailed. The plaintiff's case was made out. On the 8th day of November, 1914, plaintiff's son and others were in her auto (11) when they came to a curve in the Seashore Road (13). They met two cars coming in the opposite direction, one trying to pass the other (14). The plaintiff's car was driven to the right, out of the road, up an embankment. Defendant's car (15) crashed into and wrecked the plaintiff's car. It was admitted (14) that the driver of the defendant's car was negligent.

The remaining question was whether the driver of the defendant's car, at the time of his negligent act, was engaged in the defendant's service. The evidence on this point is as follows: The accident occurred Sunday afternoon. Defendant's auto was driven by a Mr. Brown, Hall's agent and chauffeur (15, 18, 19, 27, 28, 29, 32, 33, 34, 38, 41, 42, 44, 53, 54, 56, 57, 66, 67, 68, 69, 72). In the defendant's auto, at the time of the accident, were Brown, Adams, Arader and a woman (73). Arader was *also* one of Hall's agents (28, 32, 67). So, there were two of Hall's agents in the auto at the time of the accident. Hall had still another agent named Werkheiser (27, 69).

Hall was extensively engaged in the real estate business. The Seashore Road, on which the accident occurred, runs from Beasley's Point to Cape May, in front of the Court House (13) and is the main road. It connects with all the shore resorts between Sea Isle City and Cape May City (27). Avalon and Stone Harbor are two of these resorts.

In regard to the extent of Hall's real estate business, see pages 15, 16, 17, 26, 31, 35, 36 and 41.

Brown, Hall's agent, drove people for Hall practically all through that section of the country and showed them different parts of the general neighborhood. "I know that he drives all over the country" (17, 18, 19, 21, 22). "I have passed his car many times with people in it" (23). "Sunday was always a busy day" (28), "and I have seen his car with people in it when Hall was not there" (28), "driven by Brown." "I have seen it in Sea Isle City" (29). Hall used autos in his business to show them properties in the communities (31). Brown took me over from Avalon to Cape May Court House in Hall's machine (33). Brown was in Hall's employment at

the time of the accident (34). Pfeiffer saw Brown driving Hall's car on the day of the accident (38) and Brown had driven him to Peermont, an adjoining place. Mazurie also saw Brown driving people around (41) on different roads; saw him (Brown) with people at Cape May, near Ocean City, and at Sea Isle City (42). Champion saw Brown in Hall's car at the Court House (53) and saw him at the time of the accident (53) and saw him drive with someone in the car (54). He saw him two days before the accident at the Court House driving Hall's car, on the very road the accident occurred on, and saw him with the same car *after* the accident (56, 57). Brown even took the same car for repairs (44) to Mazurie, and the bills were sent to Hall and Hall paid them (45). *Brown took patrons of Hall out riding and showed them the country* (22).

Finally, Hall paid his patrons' bills at Mrs. McCann's boarding-house. On the Sunday in question, Brown and Arader, Hall's agents, took the woman, who was with them in the car at the time of the accident, to Mrs. McCann's for dinner, and Hall paid the bill (66, 67, 68, 69). She says, "Hall allows Brown to bring people in, and he (Hall) pays the bills," as he did in this case. It was the habit of Brown and Arader, Hall's agents, also Mr. Werkheiser, another agent of his, from time to time, to bring Hall's patrons to her house and he paid the bills (72).

So that we have these facts: (1) Hall doing extensive real estate business; (2) using automobiles to show his patrons property and the surrounding country; (3) Sunday was a busy day in Hall's business; (4) on Sunday two of Hall's agents took a lady to McCann's boarding-house in Hall's machine; (5) Hall paid the bill; (6) the same two agents, with the same lady, left McCann's place, took the main high-

way and negligently caused the accident while driving Hall's car. These two agents, with a strange woman in the auto, were following the proven practice, custom and habit of Hall in the conduct of his business. It is presumable that people are acting lawfully. From the circumstances proven in the plaintiff's case, the presumption plainly arises that Brown and Arader were bent on Hall's business when the accident occurred. Consequently, a motion to non-suit would certainly have been overruled.

II.

The learned trial Court (107) said, in answer to a motion for a direction, "This case has not been free from difficulty. I was at first inclined to send it to the jury upon the theory that there might be a condition of fact from which divergent views could be drawn from the evidence." On page 108, the learned Judge also said, according to the undisputed testimony he was racing on the public highway a considerable distance from Avalon and was not engaged in his employer's business. Concerning the last observation of the learned trial Judge, it should be said that the witness, Augustus Cronecker, in characterizing the accident, said that Brown was racing. It was simply the use of a term by the witness, and cannot exclude the other facts testified to by the same witness. Those facts show clearly that the accident happened because of a sharp curve in the road, and because one of two automobiles, both of them going at a high rate of speed, undertook to get around a curve ahead of the other. The shape of the road and the physical conditions caused one of the cars to skid and produce the accident. The facts mean that Brown and Arader were driving Hall's car too rapidly, under the cir-

cumstances. They do not mean that the two autos were really racing. The use of the term "racing" by the witness was only meant to state the fact that one auto was trying to get around a curve before the other. If the mere effort of the driver of one auto to get around a curve in the road sooner than the driver of another auto, this occurring upon a public highway, can be excused, if such efforts are negligent, on the ground that a witness characterizes it as "racing," then the use by the witness of that term would be a complete defense, no matter how negligent the conduct of the drivers of automobiles may be upon a public highway. We think the Judge carried the characterization by the witness too far. It amounts to excluding the real facts from the consideration of the jury. Of course, no principal can be said, in one sense of the term, to authorize a negligent act. This does not mean that undue speed, under such circumstances as arose in this case, will excuse the principal from the consequences of his agent's negligence. The sole question is whether the defendant's agents were engaged in the defendant's business.

On this subject there is a dispute in the evidence. It should be noted, at the outstart, that neither Brown nor Arader appeared at the trial. Only Hall and Werkheiser testified in the defendant's case. Mr. Hall (75) said that Mr. Werkheiser was his private secretary, that the car was his property and was under his authority at all times. On page 76 he said that Brown was his agent "to cart prospective real estate purchasers around Avalon and vicinity." This is in exact accord with the plaintiff's testimony. On the same page he said, "He would have authority on that morning to take out prospective purchasers of real estate, if there were any there, at the request of Mr. Werkheiser or Mr. Arader." But Mr. Arader, his agent, was in the defendant's auto at the time of

the accident. So that this testimony corroborates the plaintiff's case. In the same connection, Mr. Hall said, "There were no prospective purchasers on the island on that date." The answer to this is that Mr. Hall was in Florida and could not possibly have known anything about it. Then Mr. Hall undertakes to escape by taking the position that his agents were limited, in the use of his automobiles, to the Borough of Avalon. On page 77, he said that had Mr. Arader taken anybody off the island, he would have fired him. The answer is that he did not fire Mr. Arader, but he did fire Brown, a circumstance of much significance. Then, on page 78, in answer to the Judge trying the case, occurs this: Mr. Arader was my agent and he had authority to tell Brown to get the machine out to take out customers and to go with them himself. Then, on the same page, when the Judge asked him if he could blame Brown for going a little beyond the borough line, if Mr. Arader requested it, Hall answered that he would have to go to Mr. Werkheiser to get such permission, that Mr. Werkheiser was second in authority in Hall's absence. On the same page, he further says that Arader brought customers down, and the proof is that the lady in question was brought down that very Sunday by Arader, and on page 79, Hall says that they had authority to go to the hotel and get dinner and he paid the bills, the very thing that happened in this case. On page 80, Mr. Hall said he (meaning Brown) "At all times * * * had a right, but on that particular Sunday this machine was supposed to be on its way south. * * * Prior to that time he would have had the right to take Mr. Arader or Mr. Werkheiser or any other agent around the property and show them properties. * * * I think I was on the train traveling southward."

As the proof stands, out of Hall's mouth, a jury could draw justly the inference that Brown and

Arader were acting in accord with Hall's practice and authority, and that Hall is now simply dodging to avoid the consequences of their carelessness. On pages 80 and 81, Mr. Hall admitted that, if anyone came to Avalon to buy property, Mr. Brown, Hall's agent, would have "absolutely" the right, at Mr. Arader's request, to take prospective purchasers out in that very machine. On page 81, even the trial Judge commented on this circumstance. On page 83, Hall admitted that he discharged Brown, and that he discharged him because of the accident, a circumstance of importance, especially in view of the fact that he did not discharge Arader (85).

On page 87, Mr. Hall, in answer to the Court, said that Mr. Brown would have had the authority to take people, customers, and show them the surrounding country, if he had applied to Mr. Werkheiser. On page 88, on the same subject, Hall said that the "environment doesn't come as far as this main Seashore Road," &c., "but we can't send our car to Cape May Court House." But the proof by the plaintiff shows that this very agent, Brown, often went to the Court House, so that here is a plain question for the jury. On page 89, Hall said, "We have never laid down a hard and fast rule." On pages 89 and 90, Mr. Hall admitted that, if customers requested it, they could use his machine to go beyond the limits of Avalon, which is nonsense. Customers would make no such request. They would expect to be shown the surrounding country, if they wished to see it, in order to induce them to purchase at Avalon.

On page 93, Mr. Hall said, "Mr. Arader had nothing to do with the cars," but, on pages 81 and 79, Hall said Arader was his agent and had authority to tell Brown to get the machine out to take customers out and show them property, a circumstance which discredits Hall and makes the propriety of a jury question manifest.

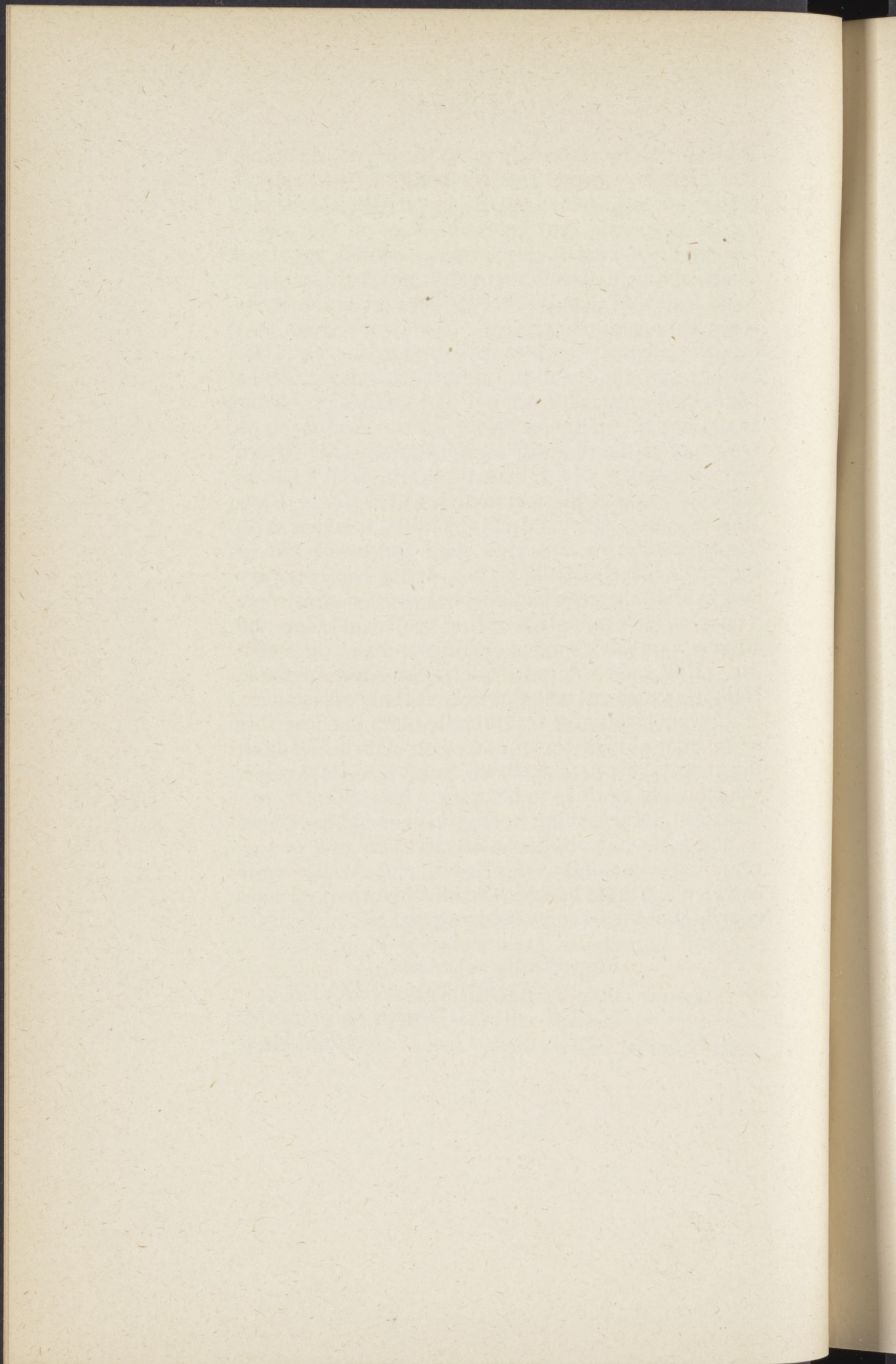
On page 95, Mr. Werkheiser says that Mr. Arader was on the train with a young lady on the Sunday in question, but that neither the company nor Mr. Hall paid the expenses of Mr. Arader and the lady. Both Mrs. McCann and Hall deny this. On page 96, Werkheiser says that Mr. Brown was driving Hall's automobile on the Sunday in question. On the same page, he says, "I told him that if Arader and the young lady wanted to ride around the town, which is all he could possibly do with the car according to his own statement for a little while, a half hour or so, that he was at liberty to do that." This comes precious near admitting the plaintiff's case, the only difficulty being that Brown and Arader, Hall's agents, got outside of the town on the main road of Cape May County. On page 97, the same witness says, in answer to the Court, "I don't believe there ever was any written rule" that prohibited Brown from taking the automobile off the beach; if there was, the witness had no knowledge of such a rule.

Then comes a most important question by the Court (97, 98): Question, "Mr. Werkheiser, did you limit him to the territorial limits of the island on that Sunday?" Answer, "I think I can say yes, for the simple reason that he said that the car, if he run it over ten miles an hour, was bound to get hot and burn out the bearings, and that as long as he run it slowly around the town, that there was no danger, because he would always be near a garage, and for that reason I stated specifically that if he wanted to drive the two people around the island for a short time and he thought it wouldn't injure the car, that he should do it. I didn't state specifically, 'Do not go off the island.' "

Add to this (104) this language of the witness: "I told Brownie that if Arader wanted to take the young lady for a ride around the island, which

Brownie said was the only thing the car would stand, that I had no objections to his doing it. * * * I don't remember telling him not to go off the island, and the *inference* was that he wouldn't go off the island, because he told me the car would absolutely not stand much driving, and that he couldn't go off the island." Now, Hall said that Werkheiser had the authority to allow Brown to use the car. Werkheiser says that he gave Brown the authority to use the car. He further says that he didn't prohibit his going off the island, but only inferred that he wouldn't go off the island because of the car's condition. Add, now, on the proof in the plaintiff's case, namely, that Brown was frequently seen taking people in Hall's car in different parts of the community, Court House, Cape May, Sea Isle City and other places, together with the circumstance that Hall paid the board bill of Brown, Arader and the visitor, and it becomes very urgent that the case should have been submitted to a jury to determine the actual truth. Arader and Brown were Hall's agents. They were using Hall's car. Hall paid the hotel bill of the three of them. Hall often took patrons throughout the country there. It was a perfectly natural thing for him to do so. It is more than absurd to suppose that Hall would limit the views of his patrons to the small place of Avalon, when he was anxious to have them buy his property. The most natural thing in the world would have been to show his patrons the attractiveness of the surrounding community. If Brown and Arader were engaged in that business when this accident happened, Hall ought to be held responsible.

Respectfully submitted,
WESCOTT & WEAVER,
*Attorneys for Plaintiff-
Appellant.*



NEW JERSEY COURT OF ERRORS AND
APPEALS.

CAROLINE CRONECKER,
Plaintiff-Appellant,

vs.

CHARLES R. HALL,
Defendant-Appellee.

AT LAW.

BRIEF FOR HALL.

The argument submitted to set aside the direction in the above is extremely unctuous and appealing, but it does not fairly state either the facts or the law.

By referring to excerpts from the main examination of plaintiff's witnesses and adroitly piecing them counsel presents a plausible story. We are of the opinion, that a careful examination of the whole case will destroy the impression thus created and sustain the direction.

HISTORY OF THE CASE.

Hall, an extensive real estate operator at Avalon, Cape May County, New Jersey, had in his employ one Brown, his chauffeur. The employment was a personal one.

After the close of the season at Avalon, Hall went South, where he had real estate operations of a similar character. Before leaving Avalon Hall gave instructions to Brown to bring the machine to Philadelphia the following Friday and ship it to St. Petersburg, Florida. Brown reached Egg Harbor, New Jersey, with the machine, when he telegraphed his employer that it was out of order. He was then instructed to proceed to the City of Philadelphia and leave the car there for repairs. Brown practiced a deception upon Hall by returning to Avalon with the car and there the following Sunday obviously kept an engagement for a joy ride, which found him racing upon the shore road in Cape May County, the following Sunday, at or near Cape May Court House, New Jersey, which joy ride resulted in the accident to Cronecker's car.

ARGUMENT.

It is urged that the direction should stand for the following reasons:

1. Brown at the time of the accident was not engaged in his master's business.
2. Brown at the time of the accident was racing upon the highway.
3. The Court determined there were no facts to go to the jury.

I.

The burden of showing the relationship of master and servant is extended to proving that at the time of the accident the servant was actually engaged in the master's business and was upon his errand.

“To render the master liable for the negligent act of the servant, the act must be done for the purpose of executing the master's orders and in doing his work, and while actually engaged in serving the master.”

Doran vs. Thomsen, 76 N. J. L. 754.

It must of necessity be admitted, at the time of the accident, that Hall had no control over the conduct of his servant; and that by the aid of deception Brown was wilfully disobeying his master's express orders. Hall, in Florida, assumed that his servant was obeying; while Brown, in Egg Harbor, hatched the scheme, which returned him to Avalon for his joy ride.

To hold Hall liable under these circumstances, which are uncontradicted, would place upon the master a burden which the decisions would not tolerate.

“The responsibility of a master for the tortious acts of his servant, grows out of, is measured by and begins and ends with his control over them.”

McGuire vs. Grant, 25 N. J. L., 356.

“The owner of an automobile is not liable for injuries resulting from its use merely because he is the owner and regardless of whether the person in charge was acting under his directions at the time of the accident.”

Danforth vs. Fisher, 71 At. Rep., 535.

II.

Brown, at the time of the accident, was racing upon the highway. Counsel for appellant attempts to avoid the force of the testimony touching this fact by stating that the characterization of the Court in this connection was not the fact but the use of a term by a witness. No clearer testimony could be presented to establish that fact than the plaintiff's own witness, a son who was in the wrecked machine.

“Well, I would say they were going at least forty or forty-five miles an hour.” (p. 15-10.)
“These folks were racing you say? Yes, sir.” (p. 23.) Again, “Well, what do you say about it? I would say they were racing.” (p. 23)
“They were both coming pretty fast down the boulevard? Yes.” (p. 23.) “There is no doubt in your mind, Mr. Cronecker, that these machines were racing? No.” (p. 24.)

The Court finds as a matter of fact that Brown was racing (p. 108).

Can it be urged in the absence of contradictory testimony that Brown was not racing? Yet counsel for appellant states that it is but the use of a term. Forty or forty-five miles an hour, at the least, we feel to be racing and we think it is a fair conclusion to urge that Brown, with a total disregard for his master's business and instructions was following his own wilful act, and was not within the line of his employment.

This principle has been laid down with clearness in our State and would seem to absorb the effort to defeat the direction in the case at bar.

Holler vs. Ross, 68 N. J. L. 324.

III.

The trial Court was extremely indulgent in permitting all testimony that would shed light upon the concrete investigation and no objection was taken to various forms of inquiry by counsel because we felt the testimony was inconsequential, we refer to that class of examinations that disclose that Hall was, previous to this accident, sending his car around the country with Brown, with people. Of course, it is attempted to show that the people in the Hall car on antecedent occasions were patrons, although on cross-examination the witness was unable to sustain that position.

An example of this character of testimony is found in the testimony of Augustus Cronecker:

“Q. What was Brown doing with these people in the automobile, standing them on their heads, driving them or showing them property or what?

A. He was taking them out for a ride.

Q. Only for a ride? Well, when he was taking them around to show them property, what was he doing then?

A. On business.

Q. He was taking them around to show them property, wasn't he, when he was doing that?

A. Yes.” (p. 19.)

Distinguished counsel, after the above struggle, would seem to have established the fact. We again urge that were the above the truth it has no application to the case at bar, which deals only with the single issue, was Brown at the time of the accident, engaged in his master's business?

Nevertheless, the cross-examination would develop as follows, (same witness) :

“Q. When you said that he was taking these people out for rides you didn’t know that at all, did you?”

A. I know that he does take them out, because we have a witness here who will testify that he had them out on business and it wasn’t in Avalon.

Q. Then the testimony you are giving is what the witness will follow up with and which you got from him; is that the idea?

A. Well, it is only natural that he told me, and it must be true. I take it for granted.

Q. That is how you know it?

A. Yes, sir.” (p. 23-10.)

Another type of testimony sought to develop the fact that Hall had business interests on the Islands of Avalon and Stone Harbor and that being so, the machine of Hall was used on the shore road to reach both places. The struggle to support this belief would proceed thus :

“Q. Does he have an extensive or a small business in real estate there?”

A. Very extensive.

Q. How long has he been in the real estate business about, in that place?

A. Why, I should say seven or eight years that I know of.

Q. And do you know in a general way where his business extends?

A. Avalon. Formerly in Stone Harbor before he came to Avalon. He was connected with Risley Brothers, I believe, at Stone Harbor.” (pp. 15-16.)

Not content with this vague statement and still intent upon establishing the joint business places as Avalon and Stone Harbor, because of the connecting shore highway upon which the accident happened, the supreme effort followed:

“Q. Did Mr. Hall have real estate business in other places than Avalon and the neighborhood there?

A. In Stone Harbor.” (p. 17.)

On cross-examination the following dialogue would occur:

“Q. Now, I want to go back to the Stone Harbor; do you know as a fact, Mr. Cronecker, that Mr. Hall was interested in real estate matters in Stone Harbor, or is it only your opinion?

A. I do not know whether he was or not at that time, but he was connected in Stone Harbor he went to Avalon.

Q. Well, is it only an impression that you have that he was interested, or did you know it as a fact?

A. I do not know.”

The importance of this testimony to counsel for appellant no doubt grows out of the fact that the accident to the Cronecker car happened on the connecting Shore Road between Avalon and Stone Harbor. The inference to be drawn was that Hall's car was going between the two places on matters of business for Hall.

While we insist that this proof if established would not take this case to the jury, yet the exact truth is contained in Hall's testimony, which is the only positive and uncontradicted story. Hall had no business whatever at Stone Harbor, at the time of the accident.

“Q. At that time were you interested in the development of any Stone Harbor property?

A. No, sir.

Q. Had you been for some time previous to that?

A. I left Stone Harbor in 1909, had no interest in their development subsequent to that time further than a sale in 1912 of my own properties.

Q. So that all your energies were in the development of Avalon?

A. Absolutely.”

The above is but a sample of the testimony attempting to prove the facts related, and which we feel are of no consequence in the solution of the present case.

By all the direct proof Brown had no authority to be upon the Shore Road, miles away from Avalon. (p. 93.) Arader had no authority whatever over the car (p. 93). Arader, a young man, had a young lady with him on this occasion. (p. 99.) Was not a customer, looked at nothing and bought nothing. (p. 99.) Hall did not pay expenses of Arader or young lady. (pp. 95, 96.) Arader was not in Hall's employ at time of accident. (p. 96.)

We feel that we are consuming too much time in discussing these several elements, which to our mind are but the result of skilful counsel's efforts to inject facts to compel a submission to the jury, and in no way determine the principle that controls.

The fact is uncontradicted that Brown was racing; the speed estimated by Cronecker, accentuates that fact; the Court found as a fact that the machine was racing.

If that is so, it was a wilful act of the servant, and cannot bind the master. This principle is put in the following language and we can attempt no improvement:

“For a wilful act done by a servant not within the line of his employment, and about which there is not a doubtful question of fact as to whether the act of the servant was or was not within the line of his duty, the Court should control the case and non-suit or direct a verdict for the defendant.

“Whether there be evidence which raises a question to go to the jury as to whether the act of the servant was within the line of his duty and employment is for the Court. If the Court so determines, then it is a question for the jury whether under the proof, the act was or was not within the line of the servant’s duty or employment.

“Where it appears, when the plaintiff rests his case, that the act of the servant was a wilful one, and was not, expressly or impliedly, within the line of the master’s duty or employment, there should be a non-suit.”

Holler vs. Ross, 68 N. J. L. 331.

The following case goes even further:

“An act done by a servant while engaged in the work of his master, but entirely disconnected therefrom, done, not as a means or for the purpose of performing that work, but solely for the accomplishment of the independent malicious or mischievous purpose of the servant, is not in any sense the act of the master; and, for injuries resulting to a third person from such an act, the servant alone is responsible.”

Evers vs. Krouse, 70 N. J. L. 653.

We append decisions from a variety of sovereignties that endorse and are in full accord with our own: *Howe vs. Leighton*, 75 At. Rep. 102 (N. H.); *Lotz vs. Hanlon*, 66 At. Rep. 525 (Pa.); *Marcus vs. Gimbel Bros.*, 8 At. Rep. 75 (Pa.); *Schell vs. Shaw*, 97 At. Rep. 685 (Pa.); *Colwell vs. Aetna Bottle Co.*, 82 At. Rep. 388 (R. I.); *Northup vs. Robinson*, 82 At. Rep. 392 (R. I.); *Pease vs. Montgomery*, 88 At. Rep. 973 (Me.); *Symington vs. Sipes*, 88 At. Rep. 134 (Md.); *Luckett vs. Reighard*, 93 At. Rep. 773 (Pa.); *Lamanna vs. Stevens*, 93 At. Rep. 962 (Del.).

In conclusion we invite a careful analysis of the entire State of the Case to bear out our views as expressed and feel confident that we have presented our opinion thereon squarely upon the evidence. We therefore urge that the direction for the defendant should stand and that the appeal be dismissed.

Respectfully submitted,

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