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Summons and Complaint

THE STATE OF NEW JERSEY

TO

WILLIAM ROSENVINGE and JENNIE H. SCOTT

(L. S.) You are summoned to answer the annexed complaint of Georgianna Cox and George Cox in an action at law in the Middlesex County Circuit Court. And take notice that unless you file your answer to said complaint with the Clerk of said Middlesex County Circuit Court, at New Brunswick, within twenty days after service upon you of this writ and the annexed complaint, the plaintiffs may proceed in the suit and judgment may be entered against you.

WITNESS, Honorable SAMUEL KALISCH, Judge of our said Middlesex County Circuit Court at New Brunswick, this twenty-eighth day of January in the year of our Lord, One Thousand Nine Hundred and Twenty-five.

JOHN A. COAN
Attorney

F. WILLIAM HILKER
Clerk

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Summons and Complaint

GEORGIANNA COX and GEORGE COX, vs. WILLIAM ROSENVINGE and JENNIE H. SCOTT, 10 _____	}	Plaintiffs. Defendants.	Action at Law COMPLAINT
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The plaintiffs, Georgianna Cox and George Cox, residing in the City of South Amboy, County of Middlesex and State of New Jersey, say:

(1) The defendant, William Rosenvinge, on October 3rd, 1924, was the owner and operator of a certain automobile bus, designated as bus No. 10, and which said bus on the day aforesaid was being used for the carriage and conveyance of passengers for hire between the City of South Amboy and the City of Perth Amboy.

(2) The said bus was proceeding from South Amboy to Perth Amboy along a public highway of the State of New Jersey known and called the Pennsylvania Roadway.

(3) The defendant, Jennie H. Scott, on the 3rd day of October, 1924, was the owner of a certain automobile truck which, at the time and place aforesaid, was being driven on the Pennsylvania Roadway leading from South Amboy to Perth Amboy.

(4) The plaintiff Georgianna Cox on the day and year aforesaid was a passenger in bus No. 10 of said William Rosenvinge and was being carried from South Amboy to Perth Amboy in said bus.

(5) Said bus No. 10 at the time and place aforesaid and while the plaintiff, Georgianna Cox, was a passenger therein, came to a stop or standstill at a point in the said Pennsylvania Roadway in the City of South Amboy, south of the most southerly overhead

Summons and Complaint

bridge of the Pennsylvania Railroad Company crossing said roadway.

(6) While bus No. 10 of the defendant, William Rosenvinge, was at a standstill on said Pennsylvania Roadway as aforesaid, the above mentioned truck of the defendant, Jennie H. Scott, proceeding along said roadway from South Amboy toward Perth Amboy, with great force and violence crashed into bus No. 10 of the defendant, William Rosenvinge. Bus No. 10 of the defendant, William Rosenvinge, at said time and place was operated by a servant of the said William Rosenvinge and was engaged in and about the business of the said William Rosenvinge.

(7) The truck of the defendant, Jennie H. Scott, operated by a servant of the said Jennie H. Scott, was then and there engaged in the business of the said Jennie H. Scott.

(8) By reason of the impact or collision of said truck of the defendant, Jennie H. Scott, with the bus of the defendant, William Rosenvinge, as aforesaid, the plaintiff, Georgianna Cox, was severely cut, bruised, wounded and contused and sustained divers injuries on and about the face, head, neck, hands, legs and body.

(9) The defendant, William Rosenvinge, was guilty of negligence in the following particulars:

(a) That said bus, on a decline in the roadway, was not properly braked or protected from moving or being pushed forward.

(b) No warning of the stopping of said bus was given by the driver thereof to vehicles coming from behind.

(c) The driver or operator of said bus did not make proper or sufficient observation of or for vehicles on said highway either in front of or behind him.

(d) That said bus was not properly guided or controlled.

(e) That proper and sufficient protection was not

Summons and Complaint

afforded to passengers on said bus from injuries or collision.

(10) The defendant Jennie H. Scott was negligent in the following particulars:

(a) That the truck of said Jennie H. Scott was driven at an improper, unlawful and reckless rate of speed.

10 (b) That the driver of said truck did not have said truck under proper and sufficient control so as to safely stop when the necessity therefore arose.

(c) That the driver of said truck did not make proper and sufficient observation for vehicles on or along said highway.

(d) That said truck was not equipped with proper and sufficient brakes to enable it to be stopped within a reasonably safe distance.

(e) That said truck was improperly, carelessly and 20 recklessly driven.

(f) That said truck was so negligently, carelessly and unskillfully operated that it ran with great force and violence into and against the bus No. 10 of the defendant, William Rosenvinge.

(11) The plaintiff, Georgianna Cox, by reason of the injuries received as aforesaid, became and was sick, sore, lame and disordered, and has suffered as a result of said injuries ever since said time and in the future will continue to so suffer.

30 (12) By reason of said injuries, the plaintiff, Georgianna Cox, has suffered and undergone great pain and torment, both of mind and body, and still suffers therefrom.

(13) As a result of said injuries, the said Georgianna Cox was confined to her bed and her home for a long time thereafter and was obliged to and did employ medical aid and assistance.

40 The plaintiff, Georgianna Cox, demands as damages the sum of five thousand (\$5,000.00) dollars.

Summons and Complaint

For a separate and distinct cause of action, the plaintiff, George Cox, further alleges:

(14) That prior to the commencement of this action and at the time hereinafter mentioned, the said Georgianna Cox was and still continues to be plaintiff's wife, and as such wife has lived and cohabited with the plaintiff, her husband, in the City of South Amboy, in the County of Middlesex and State of New Jersey. 10

(15) The plaintiff, George Cox, then was and ever since has been a householder in said City and was and ever since has been supporting and providing for his said wife; and that prior to the times hereinbefore mentioned she was in good health and fully capable of performing and actually did perform all the duties of housekeeping in their dwelling for the plaintiff, George Cox, her said husband.

(16) That in consequence of the injuries sustained by his wife, Georgianna Cox, as referred to in this complaint, the said Georgianna Cox has been unable to perform her household duties in the same manner as prior to her said injuries. 20

(17) That in consequence of said injuries plaintiff George Cox has been deprived of the services of his said wife and his comforts and happiness has been impaired, and he was forced and obliged to and did pay, lay out and expend divers large sums of money for medicines and doctors bills in endeavoring to cure his wife of the injuries received as aforesaid, and is indebted in large amounts for said purpose and will in the future be compelled to expend large amounts for said purpose. 30

The plaintiff, George Cox, demands as damages the sum of fifteen hundred (\$1500.00) dollars.

JOHN A. COAN,
Attorney of Plaintiffs.

Filed February 3, 1925

F. Wm. Hilker, Clerk. 40

Answer of Jennie H. Scott

MIDDLESEX COUNTY CIRCUIT COURT

10	GEORGIANNA COX and GEORGE COX, vs. WILLIAM ROSENVINGE and JENNIE H. SCOTT, Defendants.	}	Plaintiffs, Answer of Jennie H. Scott Defendants.
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The defendant, Jennie H. Scott, appearing herein and answering the complaint, says:

(1) This defendant has no knowledge or information concerning the allegations contained in paragraph 1 of said complaint.

20 (2) This defendant admits the allegations contained in paragraphs 2 and 3 of said complaint.

(3) This defendant has no knowledge or information concerning the allegations contained in paragraphs 4 and 5 of said complaint, except she admits the Bus came to a stop or a standstill at a point in the said Pennsylvania Roadway in the City of South Amboy, south of the southerly overhead bridge of the Pennsylvania crossing said roadway.

30 (4) This defendant admits all the allegations contained in paragraph 6 of said complaint except this defendant denies that the defendant's truck struck the Bus with great force and violence.

(5) This defendant admits all the allegations contained in paragraph 7 of the said complaint.

(6) This defendant has no knowledge or information concerning the allegations contained in paragraph 8 of said complaint and therefore denies the same.

40 (7) This defendant denies each and every allegation contained in paragraph 10 of said complaint.

Answer of Jennie H. Scott

(8) This defendant has no knowledge or information concerning the allegations contained in paragraphs 11, 12 and 13 of said complaint and leaves the plaintiffs to their proof thereof.

(9) This defendant has no knowledge or information concerning the allegations contained in paragraphs 14, 15, 16 and 17 of said complaint and therefore denies the same. 10

WHEREFORE this defendant prays the judgment of this court dismissing the complaint herein with costs.

A. C. STREITWOLF,
Attorney for the defendant,
Jennie H. Scott,
No. 391 George Street,
New Brunswick, N. J.

Filed February 21, 1925.

F. Wm. Hilker, Clerk 20

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Answer of William Rosenvinge

MIDDLESEX COUNTY CIRCUIT COURT

GEORGIANNA COX and GEORGE COX, vs. WILLIAM ROSENVINGE and JENNIE H. SCOTT, Defendants.	}	Plaintiffs, Action at Law ANSWER Defendants.
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The defendant, William Rosenvinge, residing in the City of Perth Amboy, in the County of Middlesex and State of New Jersey, says:

- (1) This defendant admits Paragraphs One (1) Two (2) Three (3) Four (4) Five (5) Six (6) and Seven (7) of the complaint.
- 20 (2) As to the statements contained in Paragraph Eight (8) of this Complaint, this defendant has not any knowledge or information thereof sufficient to form a belief.
- (3) This defendant denies the truth of the matters contained in Paragraph Nine (9) of the complaint.
- (4) This defendant admits the statements contained in Paragraph Ten (10) of the complaint.
- 30 (5) As to the statements contained in Paragraphs Eleven (11) Twelve (12) Thirteen (13) Fourteen (14) Fifteen (15) Sixteen (16) and Seventeen (17) of the complaint, this defendant has not any knowledge or information thereof sufficient to form a belief.

Answer of William Rosenvinge

FIRST DEFENSE

(1) This defendant denies every allegation in the Complaint relative to his negligence, and says that he was not negligent and that said collision was caused solely by the negligence of the defendant, Jennie H. Scott.

WALTER L. HETFIELD, JR. 10
 Attorney for Defendant,
 William Rosenvinge.

Filed February 21, 1925. F. Wm. Hilker, Clerk

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Reply

MIDDLESEX COUNTY CIRCUIT COURT

	GEORGIANNA COX and GEORGE COX,	} Plaintiffs,	Action at Law REPLY
	vs. WILLIAM ROSENVINGE and JENNIE H. SCOTT,		
10		} Defendants.	

Plaintiffs deny the first defense of the answer of defendant William Rosenvinge.

JOHN A. COAN,
Attorney of Plaintiffs.

Filed March 2, 1925. F. Wm. Hilker, Clerk.
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Judgment

The action was tried September 21, 1925, before the Court and Jury. The evidence in behalf of the plaintiffs and on behalf of the defendants having been adduced and argument of council upon a change from the amount, the Jury retired to consider its verdict. Subsequently the Jury returned into Court, answered to their names through their foreman, declare and say that they find in favor of the plaintiffs and against the defendants and assess the damages of George Cox at the sum of four hundred and fifty dollars (\$450.00), and assess the damages of Georgianna Cox at the sum of two thousand dollars (\$2000.00).
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Therefore, it is adjudged that George Cox recover of the defendants the sum of four hundred and fifty dollars (\$450.00) and his costs of suit which are taxed at the sum of sixty-five dollars and fifty cents (\$65.50), making the whole the sum of five hundred and fifteen dollars and fifty cents (\$515.50).
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Judgment

And that Georgianna Cox recover of the defendants the sum of two thousand dollars (\$2000.00) and costs of suit which are taxed at the sum of sixty-five dollars and fifty cents (\$65.50) making the whole of the sum two thousand and sixty-five dollars and fifty cents (\$2065.50).

Judgment signed September 21, 1925.

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Substitution of Attorney

MIDDLESEX COUNTY CIRCUIT COURT

10	GEORGIANNA COX and GEORGE COX	} vs. {	WILLIAM ROSENVINGE and JENNIE H. SCOTT	} ACTION AT LAW {	} CONSENT TO SUBSTITUTION OF ATTORNEY {
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I hereby consent to the substitution of William F. Vosseller as attorney for the defendant, William Rosenvinge, in my place and stead.

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WALTER L. HETFIELD, JR.,
Attorney for Defendant,
William Rosenvinge

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Notice of Appeal and Grounds

MIDDLESEX COUNTY CIRCUIT COURT

GEORGIANNA COX and GEORGE COX,	} Appellee, {	WILLIAM ROSENVINGE and JENNIE H. SCOTT,	} Appellant. {	} ACTION AT LAW. NOTICE OF APPEAL AND GROUNDS. {	} 10 {
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TO: JOHN A. COAN, Attorney for Appellee.

TAKE NOTICE, That the appellant, William Rosenvinge, one of the defendants in the above entitled cause, appeals to the Supreme Court of the State of New Jersey from the whole of the judgment entered in this cause on the following grounds: 20

(1) Because the Trial Court refused to grant a non-suit in favor of the defendant, William Rosenvinge, although such motion was duly made by counsel for said defendant at the close of plaintiff's case.

(2) Because the court refused to direct a verdict for the defendant, William Rosenvinge, at the close of the whole case, although such motion was duly made by counsel for the defendant, William Rosenvinge.

(3) Because there was no evidence of negligence of the defendant, William Rosenvinge, at the close of plaintiff's case, nor at the close of the defendant's case 30

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Notice of Appeal and Grounds

to support the judgment against the said defendant, William Rosenvinge.

WM. F. VOSSELLER,
Attorney for Defendant.

Filed November 21, 1925. F. Wm. Hilker, Clerk.

10 Service acknowledged this 13th day of November, 1925.

JOHN A. COAN,
Attorney of Plaintiffs.

Service of a copy of Notice of Appeal and Grounds hereby acknowledged this 18th day of November, 1925.

20 A. C. STREITWOLF,
Attorney for Jennie H. Scott.

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Recognizance

MIDDLESEX COUNTY CIRCUIT COURT

GEORGIANNA COX and
GEORGE COX,

vs.

WILLIAM ROSENVINGE and
JENNIE H. SCOTT

ACTION AT
LAW

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MIDDLESEX COUNTY, ss.:

Be it remembered, that on the seventeenth day of November, nineteen hundred and twenty-five, personally appeared before me, Schuyler C. Van Cleef, one of the commissioners appointed by the Supreme Court to take recognizance of bail, William Rosenvinge and National Surety Company, who jointly and severally acknowledge themselves to owe unto George Cox, the plaintiff above named, the sum of nine hundred dollars (\$900), to be made and levied of their and each of their goods and chattels, lands and tenements, hereditaments and real estate, to the use of the said George Cox, his executors, administrators and assigns, if failure be made in the following condition:

Whereas, William Rosenvinge has taken an appeal to the Supreme Court of the State of New Jersey to remove a certain judgment obtained by the said Georgianna Cox and George Cox, her husband, against the said William Rosenvinge and Jennie H. Scott in an action at law in the said Circuit Court on the verdict of a jury, as appears of record in the said Circuit Court.

Now, therefore, the condition of this recognizance is such that if the said William Rosenvinge shall prosecute the said appeal with effect, and also pay and satisfy (if the said judgment be affirmed), all the damages and costs adjudged in the former judgment, and all costs and damages to be awarded for delay of execu-

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Recognizance

tion, then this recognizance to be void, else to remain in full force.

Witness: C. Raymond Lyons.

WILLIAM ROSENVINGE, (L. S.)

10 NATIONAL SURETY COMPANY, (L. S.)

BY C. RAYMOND LYONS, (L. S.)
Attorney in fact.

Taken and acknowledged before me this seventeenth day of November, A. D. 1925.

SCHUYLER C. VAN CLEEF,
Supreme Court Commissioner.

20 Filed November 21, 1925. F. Wm. Hilker, Clerk.

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Notice of Appeal and Grounds

MIDDLESEX COUNTY CIRCUIT COURT.

GEORGIANA COX and GEORGE COX,	} Appellees.	ACTION AT LAW. NOTICE OF APPEAL AND GROUNDS.	10
vs. WILLIAM ROSENVINGE and JENNIE H. SCOTT,			
	} Appellants.		

TO: JOHN A. COAN, Attorney for Appellees.

TAKE NOTICE that the appellant, JENNIE H. SCOTT, one of the defendants in the above entitled action, hereby appeals to the Supreme Court of the State of New Jersey, from the whole of the judgment entered in this cause on the following grounds: 20

1. Upon all the exceptions taken by Jennie H. Scott in the trial of the above entitled action, among which appears of record the following:

(a) To so much of the charge wherein the Trial Judge said—"Although I have no right to direct a verdict, I have a right to say to you, for your consideration, but without controlling you, that it seems to me that all of these plaintiffs in this case, with possibly the exception of the husband of one of these women, which I will afterwards refer to, is entitled to a verdict." 30

(b) To so much of the said charge wherein the Trial Judge said—"This lady, Mrs. Cox, is entitled to a verdict; she is entitled to a verdict for the pain and suffering she endured, for her permanent injuries, for any scars there may be there; even scars, if they are a matter of actual disfigurement, you have a right and a duty to compensate for, and she is entitled to those injuries that I have al- 40

Notice of Appeal and Grounds.

ready related in the requests to charge, those items of injuries."

(c) To so much of said charge wherein the Trial Judge said—"It seems to me that this woman (meaning Mrs. Cox, the plaintiff) was very seriously injured."

10 (d) To so much of said charge wherein the Trial Judge said—"Now, if you find, as I think you will—but that is entirely up to you,—that those I have mentioned are entitled to verdicts, Mr. Adams, Mrs. Cox, Mr. Cox, and Mrs. Rice, who is responsible?"

A. C. STREITWOLF,
Attorney for Appellant, Jennie H. Scott.

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Summons and Complaint.

THE STATE OF NEW JERSEY

TO

WILLIAM ROSENVINGE and JENNIE H. SCOTT:

(L. S.) You are summoned to answer the annexed complaint of JOHN ADAMS, in an action at law in the Middlesex County Circuit Court. And take notice that unless you file your answer to said complaint with the Clerk of said Middlesex County Circuit Court, at New Brunswick, 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.

WITNESS, Honorable SAMUEL KALISCH, Judge of our said Middlesex County Circuit Court at New Brunswick, this 28th day of January, 1925.

JOHN A. COAN
Attorney

F. WILLIAM HILKER
Clerk

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Summons and Complaint

MIDDLESEX COUNTY CIRCUIT COURT

JOHN ADAMS,	}	Plaintiff	Action at Law
vs.			
WILLIAM ROSENVINGE and	}	Defendants	COMPLAINT
10 JENNIE H. SCOTT,			

The plaintiff, John Adams, residing in the Borough of Sayreville, in the County of Middlesex and State of New Jersey, says that:

(1) The defendant, William Rosenvinge, on October 3rd, 1924, was the owner and operator of a certain automobile bus designated as No. 10 and which said bus on the 3d day of October, 1924, was being driven from South Amboy to Perth Amboy along the State Highway known as the Pennsylvania Roadway.

(2) The defendant, Jennie H. Scott, on the 3d day of October, 1924, was the owner of a certain automobile truck which at the time and place aforesaid was being driven on the said Pennsylvania Roadway leading from South Amboy to Perth Amboy.

(3) The Pennsylvania Roadway is a public highway of this State.

(4) The plaintiff on the day and year aforesaid was driving with a load of vegetables and produce from South Amboy to Perth Amboy along the said Pennsylvania Roadway.

(5) When the plaintiff, on his way to Perth Amboy as aforesaid, had reached a point on said Pennsylvania Roadway, in the City of South Amboy, south of the most southerly overhead bridge of the Pennsylvania Railroad Company crossing said highway, he was stopped by employees of the New Jersey State High-

Summons and Complaint

way Department who were engaged in cleaning debris and dirt which had theretofore been washed on said highway by means of a storm.

(6) Bus No. 10 of Bill's Bus Line, owned by the defendant, William Rosenvinge, on its way to Perth Amboy from South Amboy, was stopped in the rear of plaintiff's wagon.

(7) There is a descending grade in the said Pennsylvania Roadway extending from the junction of the said Roadway with Broadway in the City of South Amboy northerly to and beyond the joint where the plaintiff and his conveyance were stopped as aforesaid.

(8) While the vehicle in which plaintiff was riding was standing on the said Pennsylvania Roadway as aforesaid, a truck of the defendant Jennie H. Scott, heavily laden, was proceeding from South Amboy toward Perth Amboy, along said Pennsylvania Roadway and with great force and violence crashed into Bus No. 10, owned by the defendant William Rosenvinge, and said Bus No. 10 was then and there pushed, propelled and allowed to proceed forward and into the rear of the wagon of the plaintiff.

(9) The said Bus No. 10 of Bill's Bus Line owned by the defendant William Rosenvinge was at said time and place operated by a servant of said William Rosenvinge, and was engaged in the business of said William Rosenvinge.

(10) The truck of the defendant Jennie H. Scott was then and there engaged in the business of said Jennie H. Scott.

(11) At the time and place aforesaid plaintiff was sitting on the seat of his wagon and when the wagon was struck by Bus No. 10 as aforesaid, the wagon was pushed forward on the horse with such force and violence that the harness and wagon were entirely broken and destroyed, the horse permanently injured and the plaintiff severely cut, wounded, bruised and injured, his

Summons and Complaint

ankle broken, and the stock of vegetables and produce scattered about and destroyed.

(12) The defendant William Rosenvinge was guilty of negligence in the following particulars:

(a) That said bus, on a decline in the roadway, was not properly braked or protected from moving or being pushed forward.

10 (b) That no warning of the stopping was given by the driver of said bus to vehicles coming from behind.

(c) That the driver or operator of said bus did not make proper or sufficient observation of or for vehicles on said highway either in front of or behind him.

(d) That said bus was not guided or controlled so as to prevent its running into and colliding with the wagon of the plaintiff.

20 (e) That said bus was permitted to run forward and into the wagon of the plaintiff although there was ample room on either side of said wagon to steer or drive said bus.

(13) The defendant, Jennie H. Scott, was negligent in the following particulars:

(a) That the truck of said Jennie H. Scott was driven at an improper, unlawful and reckless rate of speed.

30 (b) That the driver of said truck did not have said truck under proper and sufficient control so as to safely stop when the necessity therefore arose.

(c) That the driver of said truck did not make proper and sufficient observation for vehicles on or along said highway.

(d) That said truck was not equipped with proper and sufficient brakes to enable it to be stopped within a reasonably safe distance.

(e) That said truck was improperly, carelessly and recklessly driven.

40 (f) That said truck was so negligently, carelessly and unskillfully operated that it ran with great force

Summons and Complaint

and violence into and against the Bus No. 10 of the defendant William Rosenvinge and pushed and propelled said bus into and against the wagon of the plaintiff.

(14) The plaintiff by reason of said injuries, became and was sick, sore, lame and disordered and has suffered as a result of said injuries ever since said time and in the future will continue to so suffer. 10

(15) By reason of said injuries plaintiff has suffered and undergone great pain and torment, both of mind and body, and still suffers therefrom. 10

(16) By reason of said injuries plaintiff was forced and obliged to and did pay, lay out and expend a large sum of money for medicines and doctors' bills in endeavoring to be healed and cured of his injuries received as aforesaid, and is indebted in large amounts for said purposes and will in the future be compelled to expend large amounts for said purposes. 20

(17) By reason of said injuries plaintiff has been hindered and prevented from carrying on and transacting his necessary affairs and business most of the time from the date of said injuries to the present date, and in the future will be so hindered and prevented.

(18) By reason of the occurrences aforesaid, plaintiff's horse was permanently and severely injured, his harness and wagon broken and demolished and he lost a large quantity of vegetables and produce which were on said wagon at said time. 30

(19) By reason of the occurrences aforesaid plaintiff was obliged to and did pay, lay out and expend divers large sums of money in attempting to cure his said horse of the injuries so as aforesaid received.

(20) Plaintiff has a large stock of vegetables and produce, some harvested, and some still in the fields at his farm, and because of the injuries aforesaid he was unable to gather the produce in the fields or to sell or dispose of the same, and the produce already marketed, 40

Summons and Complaint

whereby and by means of which the entire crop of plaintiff's farm amounting in the whole to the sum of one thousand (\$1,000,000) dollars, was damaged, lost and destroyed.

Plaintiff demands as damages from the defendants the sum of seven thousand (\$7,000.00) dollars.

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Attorney of Plaintiff

Filed February 21, 1925.

F. Wm. Hilker, Clerk

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Answer of William Rosenvinge

MIDDLESEX COUNTY CIRCUIT COURT

JOHN ADAMS,

Plaintiff

vs.

WILLIAM ROSENVINGE and

JENNIE H. SCOTT,

Defendants

Action at Law
ANSWER

10

The defendant, William Rosenvinge, residing in the City of Perth Amboy, in the County of Middlesex and State of New Jersey, says:

(1) This defendant admits Paragraphs One (1), Two (2), Three (3) and Four (4) of the Complaint.

(2) As to the statements contained in Paragraph Five (5) of the Complaint, this defendant has not any knowledge or information thereof sufficient to form a belief.

(3) This defendant admits Paragraphs Six (6) and Seven (7) of the Complaint.

(4) This defendant admits Paragraph Eight (8) of the Complaint, except that part thereof which alleges that Bus No. 10 was propelled and allowed to proceed forward and into the rear of the wagon of the plaintiff, which this defendant denies.

(5) This defendant admits Paragraph Nine (9) of the Complaint.

(6) This defendant admits Paragraph Ten (10) of the Complaint.

(7) As to the statements contained in Paragraph Eleven (11) of the Complaint, this defendant has not any knowledge or information thereof sufficient to form a belief.

(8) This defendant denies the truth of the matters contained in Paragraph Twelve (12) of the complaint.

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Answer of William Rosenvinge

(9) This defendant admits Paragraph Thirteen (13) of the Complaint.

(10) As to the statements contained in Paragraphs Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19) and Twenty (20) of the Complaint, this defendant has not any knowledge or information thereof sufficient to form a belief.

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FIRST DEFENSE

(1) This defendant denies every allegation in the Complaint relative to his negligence, and says that he was not negligent and that said collision was caused solely by the negligence of the defendant, Jennie H. Scott.

WALTER L. HETFIELD, JR.,
Att'y for Defendant,
William Rosenvinge

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Filed February 21, 1925.

F. Wm. Hilker, Clerk

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Answer of Jennie H. Scott

MIDDLESEX COUNTY CIRCUIT COURT

JOHN ADAMS,

Plaintiff

vs.

WILLIAM ROSENVINGE and
JENNIE H. SCOTT,

Defendants

Action at Law
ANSWER OF
JENNIE H.
SCOTT

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The defendant, JENNIE H. SCOTT, appearing herein and answering the complaint, says:

(1) This defendant has no knowledge or information concerning the allegations contained in Paragraph 1 of said complaint.

(2) This defendant admits the allegations contained in Paragraphs 2 and 3 of said complaint.

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(3) This defendant has no knowledge or information concerning the allegations contained in Paragraphs 4, 5 and 6 of said complaint, and therefore denies the same.

(4) This defendant admits all the allegations contained in Paragraph 7 of the said complaint.

(5) This defendant admits all the allegations contained in Paragraph 8 of said complaint, except the defendant denies that the truck struck the Bus with great force and violence.

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(6) This defendant admits the allegations contained in Paragraph 10 of said complaint.

(7) This defendant has no knowledge or information as to the allegations contained in Paragraph 11 of said complaint and therefore denies the same.

(8) This defendant denies all the allegations contained in Paragraph 13 of the said complaint.

(9) This defendant has no knowledge or information as to the allegations contained in Paragraphs 14, 40

Answer of Jennie H. Scott

15, 16, 17, 18, 19 and 20 of the said complaint and leaves the plaintiff to his proof thereof.

WHEREFORE this defendant prays the judgment of this court dismissing the complaint herein with costs.

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A. C. STREITWOLF,
Attorney for the defendant,
Jennie H. Scott,
No. 391 George Street,
New Brunswick, N. J.

Filed February 20, 1925 F. Wm. Hilker, Clerk

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Reply

MIDDLESEX COUNTY CIRCUIT COURT

JOHN ADAMS,

Plaintiff,

vs.

WILLIAM ROSENVINGE and
JENNIE H. SCOTT,

Defendants

Action at Law
REPLY

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Plaintiff denies the first defense of the answer of defendant William Rosenvinge.

JOHN A. COAN,
Attorney of Plaintiff

Filed March 2, 1925 F. Wm. Hilker, Clerk 20

The action was tried September 21, 1925, before the Court and Jury. The evidence in behalf of the plaintiff and on behalf of the defendants having been adduced and argument of counsel upon a change from the amount, the Jury retired to consider its verdict. Subsequently the Jury returned into Court, answered to their names through their foreman, declare and say that they find in favor of the plaintiff and against the defendants and assess the damages of John Adams at the sum of five hundred dollars (\$500). 30

Therefore, it is adjudged that John Adams recover of the defendants the sum of five hundred dollars (\$500), and his costs of suit which are taxed at the sum of sixty-five dollars and fifty cents (\$65.50), making the whole the sum of five hundred and sixty-five dollars and fifty cents (\$565.50).

Judgment signed September 21, 1925 40

Rule to Show Cause

MIDDLESEX COUNTY CIRCUIT COURT

	JOHN ADAMS,							
			Plaintiff,	}	Action at Law	RULE TO SHOW	CAUSE	
	vs.							
10	WILLIAM ROSENVINGE and JENNIE H. SCOTT,		Defendants					

This matter being opened to the court by John A. Coan, Attorney for the plaintiff, upon an application for a rule to show cause why a new trial should not be granted in the above entitled cause, and sufficient reason appearing:

It is on this 25th day of September, 1925, ORDERED, that the defendants, William Rosenvinge and Jennie H. Scott, show cause before this court at the Court's Chamber in the City of New Brunswick on Saturday the tenth day of October 1925, at 10:30 o'clock in the forenoon, or as soon thereafter as the matter may be heard, why a new trial should not be granted in the above entitled cause on the ground of inadequacy of damages.

It is further ORDERED, that a copy of this order be served upon the attorneys for the said defendants within four days from the date hereof, which service may be made by mailing the same to each of said attorneys at their respective addresses.

PETER F. DALY, Judge

On motion of John A. Coan, Plaintiff's Attorney

Filed September 26, 1925 F. Wm. Hilker, Clerk
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Order of Continuance

MIDDLESEX COUNTY CIRCUIT COURT

	JOHN ADAMS,							
			Plaintiff,	}	Action at Law	ORDER OF	CONTINUANCE	
	vs.							
10	WILLIAM ROSENVINGE and JENNIE H. SCOTT,		Defendants					

A rule to show cause having been allowed in the above entitled cause returnable on the 10th day of October, 1925, and application now being made therefor:

It is on this 9th day of October, 1925, ORDERED that the hearing of the said rule to show cause be and the same is hereby continued to Saturday the 24th day of October, 1925, at the same hour and place.

PETER F. DALY, Judge

Filed November 7, 1925 F. Wm. Hilker, Clerk

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Order of Continuance

MIDDLESEX COUNTY CIRCUIT COURT

	JOHN ADAMS,		Plaintiff,		
	vs.				
10	WILLIAM ROSENVINGE and JENNIE H. SCOTT,		Defendants.	Action at Law ORDER OF CONTINUANCE	

The rule to show cause heretofore allowed in the above entitled matter having been this day argued by John A. Coan, attorney for the plaintiff, August C. Streitwolf and William F. Vosseller, attorneys for the defendants:

It is on this 24th day of October, 1925, ORDERED that the said matter be and the same is hereby continued until Saturday the 7th day of November, 1925, at the same time and place.

PETER F. DALY, Judge

Filed November 7, 1925 F. Wm. Hilker, Clerk

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Order for New Trial

MIDDLESEX COUNTY CIRCUIT COURT

	JOHN ADAMS,		Plaintiff,		
	vs.				
10	WILLIAM ROSENVINGE and JENNIE H. SCOTT,		Defendants	Action at Law ORDER FOR NEW TRIAL	10

A rule to show cause having been entered in this cause on the 25th day of September, 1925, and the cause having been argued by John A. Coan, of counsel for the plaintiff, and August C. Streitwolf, of counsel for the defendant, Jennie H. Scott, and William F. Vosseller, of counsel for the defendant William Rosenvinge, and the court having considered the same and being of the opinion that a new trial should be had on the ground of damages only:

It is thereupon on this 7th day of November, 1925, on motion of John A. Coan, ORDERED that the said rule to show cause be and the same is hereby made absolute, and that a new trial of said cause be had confined to the question of damages only.

PETER F. DALY, Judge

Filed November 7, 1925 F. Wm. Hilker, Clerk

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Substitution of Attorney

MIDDLESEX COUNTY CIRCUIT COURT

	JOHN ADAMS	}	ACTION
vs.	WILLIAM ROSENVINGE and		AT LAW
10	JENNIE H. SCOTT		CONSENT TO SUBSTITUTION OF ATTORNEY

I hereby consent to the substitution of William F. Vosseller as attorney for the defendant, William Rosenvinge, in my place and stead.

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WALTER L. HETFIELD, JR.,
Attorney for Defendant,
William Rosenvinge

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Notice of Appeal and Grounds

MIDDLESEX COUNTY CIRCUIT COURT

	JOHN ADAMS,	}	Appellee,	Action at Law NOTICE OF APPEAL AND GROUNDS	10
	vs.		WILLIAM ROSENVINGE and		
			JENNIE H. SCOTT,		

TO: JOHN A. COAN, Attorney for Appellee

TAKE NOTICE, That the appellant, William Rosenvinge, one of the defendants in the above entitled cause, appeals to the Supreme Court of the State of New Jersey from the whole of the judgment entered in this cause on the following grounds: 20

(1) Because the Trial Court refused to grant a non-suit in favor of the defendant, William Rosenvinge, although such motion was duly made by counsel for said defendant at the close of plaintiff's case.

(2) Because the court refused to direct a verdict for the defendant, William Rosenvinge, at the close of the whole case, although such motion was duly made by counsel for the defendant, William Rosenvinge.

(3) Because there was no evidence of negligence of the defendant, William Rosenvinge, at the close of the plaintiff's case, nor at the close of the defendant's case 30

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Notice of Appeal and Grounds

to support the judgment against the said defendant, William Rosenvinge.

WM. F. VOSSELLER,
Attorney for Defendant

Filed November 21, 1925 F. Wm. Hilker, Clerk

10 Service acknowledged this 13th day of November, 1925.

JOHN A. COAN,
Attorney of Plaintiffs

Service of a copy of Notice of Appeal and Grounds hereby acknowledged this 18th day of November, 1925.

20 A. C. STREITWOLF,
Attorney for Jennie H. Scott

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Recognizance

MIDDLESEX COUNTY CIRCUIT COURT

JOHN ADAMS
vs.
WILLIAM ROSENVINGE and
JENNIE H. SCOTT

ACTION
AT LAW

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MIDDLESEX COUNTY, SS.:

Be it remembered, That on the seventeenth day of November, nineteen hundred and twenty-five, personally appeared before me, Schuyler C. Van Cleef, one of the Commissioners appointed by the Supreme Court, to take recognizances of bail, William Rosenvinge and National Surety Company, who jointly and severally acknowledge themselves to owe unto John Adams, the plaintiff above named, the sum of twelve hundred dollars (\$1,200) to be made and levied of their and each of their goods and chattels, lands and tenements, hereditaments and real estate, to the use of the said John Adams, his executors, administrators and assigns, it failure be made in the following condition: 20

Whereas, William Rosenvinge has taken an appeal to the Supreme Court of the State of New Jersey to remove a certain judgment obtained by the said John Adams against the said William Rosenvinge and Jennie H. Scott in an action at law in the said Circuit Court, on the verdict of a jury, as appears of record in the said Circuit Court. 30

Now, therefore, the condition of this recognizance is such that if the said William Rosenvinge shall prosecute the said appeal with effect, and also pay and satisfy (if the said judgment be affirmed), all the damages and costs adjudged in the former judgment, and all costs and damages to be awarded for delay of execu- 40

Recognizancé

tion, then this recognizance to be void, else to remain in full force.

Witness: C. Raymond Lyons.

WILLIAM ROSENVINGE, (L. S.)

10 NATIONAL SURETY COMPANY, (L. S.)

BY C. RAYMOND LYONS, (L. S.)
Attorney in fact.

Taken and acknowledged before me this seventeenth day of November, A. D. 1925.

SCHUYLER C. VAN CLEEF,
Supreme Court Commissioner.

20 Filed November 2, 1925 F. Wm. Hilker, Clerk

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Notice of Appeal and Grounds

MIDDLESEX COUNTY CIRCUIT COURT.

JOHN ADAMS,	}	Appellee,	ACTION AT LAW.	NOTICE OF APPEAL AND GROUNDS.	10
WILLIAM ROSENVINGE and JENNIE H. SCOTT,					
vs.					

TO: JOHN A. COAN, Attorney for Appellee:

TAKE NOTICE that the appellant, JENNIE H. SCOTT, one of the defendants in the above entitled action, hereby appeals to the Supreme Court of the State of New Jersey, from the whole of the judgment entered in this cause, and from the order entered in said cause on the 7th day of November, 1925, directing a new trial on the ground of inadequacy of damages and confining the proof on a re-trial to the question of damages only, on the following grounds:

1. A new trial having been granted on the ground of inadequacy of the verdict, and granting a new trial on the question of damages only, the verdict should have been set aside in respect to the damages only, and the order should have directed the judgment to stand good in all other respects; that by virtue of the provisions of said order the appellant is entitled to a trial de novo.

2. That the power provided under rules 72 and 73 of the Practice Act of 1912 (which are rules 132 and 133 of the Supreme Court) confers the right to grant a new trial as to damages only when the only question in respect to which the verdict is wrong is the quantum of damages and that question is separable.

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Notice of Appeal and Grounds

3. That the verdict of the jury is wrong, because is was rendered upon a biased and prejudicial charge of the Trial Judge in his charge to the jury, and an order limiting the retrial of said action to one of damages only is a denial of the right of the appellant to have the question of her liability disposed of by a jury upon a fair and impartial charge by the Court.

10 4. That the verdict of the jury is wrong because it was based upon an error of the Trial Judge in charging that the violation of the traffic law, requiring ever driver, in slowing up or stopping, to signal to those behind by raising a whip or hand, and for the purpose of giving a warning, is not in itself negligence.

5. That the Trial Judge's charge was biased and prejudicial, to which exception was taken by the appellant in the following manner:

20 (a) To so much of the charge wherein the Trial Judge said—"Although I have no right to direct a verdict, I have a right to say to you, for your consideration, but without controlling you, that it seems to me that all of these plaintiffs in this case, with possibly the exception of the husband of one of these women, which I will afterwards refer to, is entitled to a verdict."

30 (b) To so much of said charge wherein the Trial Judge said—"Now, if you find, as I think you will,—but that is entirely up to you,—that those I have mentioned are entitled to verdicts, Mr. Adams, Mrs. Cox, Mr. Cox, and Mrs. Rice, who is responsible?"

A. C. STREITWOLF,
Attorney for Appellant, Jennie H. Scott.

Summons and Complaint

THE STATE OF NEW JERSEY

TO

WILLIAM ROSENVINGE and JENNIE H. SCOTT:

(L. S.) You are summoned to answer the annexed complaint of MARGARET L. RICE and JAMES J. RICE in an action at law in the Middlesex County Circuit Court. And take notice that unless you file your answer to said complaint with the Clerk of said Middlesex County Circuit Court, at New Brunswick, within twenty days after service upon you of this writ and the annexed complaint, the plaintiffs may proceed in the suit and judgment may be entered against you.

WITNESS, Honorable SAMUEL KALISCH, Judge of our said Middlesex County Circuit Court at New Brunswick, this 28th day of January in the year of our Lord, One Thousand Nine Hundred and Twenty-five.

JOHN A. COAN
Attorney

F. WILLIAM HILKER
Clerk

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Summons and Complaint

MIDDLESEX COUNTY CIRCUIT COURT

	MARGARET L. RICE and JAMES J. RICE,	} Plaintiffs,	ACTION AT LAW
	vs.		
10	WILLIAM ROSENVINGE and JENNIE H. SCOTT,	} Defendants.	COMPLAINT

The plaintiffs, Margaret L. Rice and James J. Rice, residing in the City of South Amboy, County of Middlesex and State of New Jersey, say:

(1) The defendant, William Rosenvinge, on October 3rd, 1924, was the owner and operator of a certain automobile bus, designated as bus No. 10, and which 20 said bus on the day aforesaid was being used for the carriage and conveyance of passengers for hire between the City of South Amboy and the City of Perth Amboy.

(2) The said bus was proceeding from South Amboy to Perth Amboy along a public highway of the State of New Jersey known and called the Pennsylvania Roadway.

(3) The defendant, Jennie H. Scott, on the 3rd day of October, 1924, was the owner of a certain automobile truck which, at the time and place aforesaid, was being 30 driven on the Pennsylvania Roadway leading from South Amboy to Perth Amboy.

(4) The plaintiff Margaret L. Rice on the day and year aforesaid was a passenger in bus No. 10 of said William Rosenvinge and was being carried from South Amboy to Perth Amboy in said bus.

(5) Said bus No. 10 at the time and place aforesaid and while the plaintiff, Margaret L. Rice, was a passenger therein, came to a stop or standstill at a point in the 40 said Pennsylvania Roadway in the City of South Am-

Summons and Complaint

boy, south of the most southerly overhead bridge of the Pennsylvania Railroad Company crossing said roadway.

(6) While bus No. 10 of the defendant William Rosenvinge was at a standstill on said Pennsylvania Roadway as aforesaid, the above mentioned truck of the defendant Jennie H. Scott, proceeding along said roadway from South Amboy toward Perth Amboy, with great force and violence crashed into bus No. 10 of the defendant William Rosenvinge. Bus No. 10 of the said 10 defendant, William Rosenvinge, at same time and place was operated by a servant of the said William Rosenvinge and was engaged in and about the business of the said William Rosenvinge.

(7) The truck of the defendant Jennie H. Scott operated by a servant of the said Jennie H. Scott was then and there engaged in the business of the said Jennie H. Scott.

(8) By reason of the impact or collision of said 20 truck of the defendant Jennie H. Scott with the bus of the defendant William Rosenvinge as aforesaid, the plaintiff Margaret L. Rice was severely cut, bruised, wounded and contused and sustained divers injuries on and about the face, head, neck, hands, legs and body.

(9) The defendant William Rosenvinge was guilty of negligence in the following particulars:

(a) That said bus, on a decline in the roadway, was not properly braked or protected from moving or being 30 pushed forward.

(b) No warning of the stopping of said bus was given by the driver thereof to vehicles coming from behind.

(c) The driver or operator of said bus did not make proper or sufficient observation of or for vehicles on said highway either in front of or behind him.

(d) That said bus was not properly guided or controlled.

Summons and Complaint

(c) That proper and sufficient protection was not afforded to passengers on said bus from injuries or collision.

(10) The defendant Jennie H. Scott was negligent in the following particulars:

(a) That the truck of said Jennie H. Scott was driven at an improper, unlawful and reckless rate of speed.

(b) That the driver of said truck did not have said truck under proper and sufficient control so as to safely stop when the necessity therefore arose.

(c) That the driver of said truck did not make proper and sufficient observation for vehicles on or along said highway.

(d) That said truck was not equipped with proper and sufficient brakes to enable it to be stopped within a reasonably safe distance.

(e) That said truck was improperly, carelessly and recklessly driven.

(f) That said truck was so negligently, carelessly and unskillfully operated that it ran with great force and violence into and against the bus No. 10 of the defendant William Rosenvinge.

(11) The plaintiff, Margaret L. Rice, by reason of the injuries received as aforesaid, became and was sick, sore, lame, and disordered, and has suffered as a result of said injuries ever since said time and in the future will continue to so suffer.

(12) By reason of said injuries the plaintiff, Margaret L. Rice, has suffered and undergone great pain and torment, both of mind and body, and still suffers therefrom.

(13) As a result of said injuries, the said Margaret L. Rice was confined to her bed and her home for a long time thereafter and was obliged to and did employ medical aid and assistance.

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Summons and Complaint

The plaintiff, Margaret L. Rice, demands as damages the sum of three thousand (\$3,000.00) dollars.

For a separate and distinct cause of action, the plaintiff, James J. Rice, further alleges:

(14) That prior to the commencement of this action and at the times hereinafter mentioned, the said Margaret L. Rice was and still continues to be plaintiff's wife, and as such wife has lived and cohabited with the plaintiff, her husband, in the City of South Amboy, in the County of Middlesex and State of New Jersey.

(15) The plaintiff James J. Rice then was and ever since has been a householder in said City and was and ever since has been supporting and providing for his said wife; and that prior to the times hereinbefore mentioned she was in good health and fully capable of performing and actually did perform all the duties of housekeeping in their dwelling for the plaintiff, James J. Rice, her said husband.

(16) That in consequence of the injuries sustained by his wife, Margaret L. Rice, as referred to in this complaint, the said Margaret L. Rice has been unable to perform her household duties in the same manner as prior to her said injuries.

(17) That in consequence of said injuries plaintiff James J. Rice, has been deprived of the services of his said wife and his comforts and happiness has been impaired, and he was forced and obliged to and did pay, lay out and expend divers large sums of money for medicines and doctors' bills in endeavoring to cure his wife of the injuries received as aforesaid, and is indebted in large amounts for said purpose and will in the future be compelled to expend large amounts for said purposes.

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Summons and Complaint

The plaintiff, James J. Rice, demands as damages the sum of fifteen hundred (\$1500.00) dollars.

JOHN A. COAN,
Attorney of Plaintiffs

Filed February 3, 1925 F. Wm. Hilker, Clerk

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Answer of William Rosenvinge

MIDDLESEX COUNTY CIRCUIT COURT

MARGARET L. RICE and
JAMES J. RICE,

Plaintiffs,

vs.

WILLIAM ROSENVINGE and
JENNIE H. SCOTT,

Defendants

ACTION
AT LAW
ANSWER

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The defendant, William Rosenvinge, residing in the City of Perth Amboy, in the County of Middlesex and State of New Jersey, says:

(1) This defendant admits Paragraphs One (1), Two (2), Three (3), Four (4), Five (5), Six (6) and Seven (7) of the complaint.

(2) As to the statements contained in Paragraph Eight (8) of the Complaint, this defendant has not any knowledge or information thereof sufficient to form a belief. 20

(3) This defendant denies the truth of the matters contained in Paragraph Nine (9) of the Complaint.

(4) This defendant admits Paragraph Ten (10) of the Complaint.

(5) As to the statements contained in Paragraphs Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16) and Seventeen (17) of the Complaint, this defendant has not any knowledge or information thereof sufficient to form a belief. 30

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Answer of William Rosenvinge

FIRST DEFENSE

(1) This defendant denies every allegation in the Complaint relative to his negligence, and says that he was not negligent, and that said collision was caused solely by the negligence of the defendant, Jennie H. Scott.

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WALTER L. HETFIELD, JR.,
Attorney for Defendant,
William Rosenvinge

Filed February 21, 1925

F. Wm. Hilker, Clerk

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Answer of Jennie H. Scott

MIDDLESEX COUNTY CIRCUIT COURT

MARGARET L. RICE and
JAMES J. RICE,
Plainaiffs,
vs.
WILLIAM ROSENVINGE and
JENNIE H. SCOTT,
Plaintiffs,

ACTION AT
LAW.
ANSWER TO
JENNIE H.
SCOTT.

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The defendant, Jennie H. Scott, appearing herein and answering the complaint, says:

(1) This defendant has no knowledge or information concerning the allegations contained in paragraph 1 of said complaint.

(2) This defendant admits the allegations contained in paragraphs 2 and 3 of said complaint. 20

(3) defendant has no knowledge or information concerning the allegations contained in paragraphs 4 and 5 of said complaint, except she admits the Bus came to a stop or a standstill at a point in the said Pennsylvania Roadway in the City of South Amboy, south of the southerly overhead bridge of the Pennsylvania Railroad crossing said roadway.

(4) This defendant admits all the allegations contained in paragraph 6 of said complaint except this defendant denies that the defendant's truck struck the bus with great force and violence. 30

(5) This defendant admits all the allegations contained in paragraph 7 of the said complaint.

(6) This defendant has no knowledge or information concerning the allegations contained in paragraph 8 of said complaint and therefore denies the same.

(7) This defendant denies each and every allegation contained in paragraph 10 of said complaint. 40

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Answer of Jennie H. Scott

(8) This defendant has no knowledge or information concerning the allegations contained in paragraphs 11, 12 and 13 of said complaint and leaves the plaintiffs to their proof thereof.

(9) This defendant has no knowledge or information concerning the allegations contained in paragraphs 14, 15, 16 and 17 of said complaint and therefore denies the same.

WHEREFORE this defendant prays the judgment of this court dismissing the complaint herein with costs.

A. C. STREITWOLF,
Attorney for the defendant,
Jennie H. Scott,
No. 391 George Street,
New Brunswick, N. J.

Filed February 20, 1925. F. Wm. Hilker, Clerk.

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Reply

MIDDLESEX COUNTY CIRCUIT COURT

MARGARET L. RICE and JAMES J. RICE,	Plaintiffs,	ACTION AT LAW REPLY	10
vs.			
WILLIAM ROSENVINGE and JENNIE H. SCOTT,	Defendants		

Plaintiffs deny the first defense of the answer of defendant William Rosenvinge.

JOHN A. COAN,
Attorney of Plaintiffs

Filed March 2, 1925 F. Wm. Hilker, Clerk

The action was tried September 21, 1925, before the Court and Jury. The evidence in behalf of the plaintiff and on behalf of the defendants having been adduced and argument of council upon a change from the amount, the Jury retired to consider its verdict. Subsequently the Jury returned into Court, answered to their names through their foreman, declare and say that they find in favor of the plaintiff and against the defendants and assess the damages of Margaret Rice at the sum of one hundred dollars (\$100).

Therefore, it is adjudged that Margaret Rice recover of the defendants the sum of one hundred dollars (\$100), and his costs of suit which are taxed at the sum of sixty-five dollars and fifty cents (\$65.50), making the whole sum of one hundred and sixty-five dollars and fifty cents (\$165.50).

Judgment signed September 21, 1925.

Substitution of Attorney

MIDDLESEX COUNTY CIRCUIT COURT

MARGARET RICE and JAMES J. RICE	}	ACTION AT LAW
10 vs. WILLIAM ROSENVINGE and JENNIE H. SCOTT		CONSENT TO SUBSTITUTION OF ATTORNEY

I hereby consent to the substitution of William F. Vosseller as attorney for the defendant, William Rosenvinge, in my place and stead.

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WALTER L. HETFIELD, JR.,
Attorney for Defendant,
William Rosenvinge

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Notice of Appeal and Grounds

MIDDLESEX COUNTY CIRCUIT COURT

MARGARET RICE and JAMES J. RICE,	}	Appellee	ACTION AT LAW. NOTICE OF APPEAL AND GROUNDS.	10
vs. WILLIAM ROSENVINGE and JENNIE H. SCOTT,				

TO: JOHN A. COAN, Attorney for Appellee.

TAKE NOTICE, That the appellant, William Rosenvinge, one of the defendants in the above entitled cause, appeals to the Supreme Court of the State of New Jersey from the whole of the judgment entered in this cause on the following grounds:

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(1) Because the Trial Court refused to grant a non-suit in favor of the defendant, William Rosenvinge, although such motion was duly made by counsel for said defendant at the close of plaintiff's case.

(2) Because the court refused to direct a verdict for the defendant, William Rosenvinge, at the close of the whole case, although such motion was duly made by counsel for the defendant, William Rosenvinge.

(3) Because there was no evidence of negligence of the defendant, William Rosenvinge, at the close of the plaintiff's case, nor at the close of the defendant's

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Notice of Appeal and Grounds

case to support the judgment against the said defendant, William Rosenvinge.

WM. F. VOSELLER,
Attorney for Defendant.

Filed November 21, 1925. F. Wm. Hilker, Clerk.

10 Service acknowledged this 13th day of November, 1925.

JOHN A. COAN,
Attorney of Plaintiffs.

Service of a copy of notice of Appeal and Grounds hereby acknowledge this 18th day of November, 1925.

20 A. C. STREITWOLF,
Attorney for Jennie H. Scott.

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Recognizance

MIDDLESEX COUNTY CIRCUIT COURT

MARGARET RICE and
JAMES J. RICE

vs.

WILLIAM ROSENVINGE and
JENNIE H. SCOTT

ACTION
AT LAW

10

MIDDLESEX COUNTY, SS.:

Be it remembered, That on the seventeenth day of November, nineteen hundred and twenty-five, personally appeared before me, Schuyler C. Van Cleef, one of the commissioners appointed by the Supreme Court to take recognizances of bail, William Rosenvinge and National Surety Company, who jointly and severally acknowledge themselves to owe unto Margaret Rice, the plaintiff above named, the sum of two hundred dollars (\$200), to be made and levied of their and each of their goods and chattels, lands and tenements, hereditaments and real estate, to the use of the said Margaret Rice, her executors, administrators and assigns, if failure be made in the following condition:

Whereas, William Rosenvinge has taken an appeal to the Supreme Court of the State of New Jersey to remove a certain judgment obtained by the said Margaret Rice and James J. Rice, her husband, against the said William Rosenvinge and Jennie H. Scott in an action at law in the said Circuit Court, on the verdict of a jury as appears of record in the said Circuit Court.

Now, therefore, the condition of this recognizance is such that if the said William Rosenvinge shall prosecute the said appeal with effect, and also pay and satisfy (if the said judgment be affirmed), all the damages and

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Recognizance

costs adjudged in the former judgment, and all costs and damages to be awarded for delay of execution, then this recognizance to be void, else to remain in full force.

Witness: C. Raymond Lyons

10 WILLIAM ROSENVINGE, (L. S.)

NATIONAL SURETY COMPANY, (L. S.)

BY C. RAYMOND LYONS, (L. S.)
Attorney in fact

Taken and acknowledged before me this seventeenth day of November, A. D. 1925.

20 SCHUYLER C. VAN CLEEF,
Supreme Court Commissioner

Filed November 21, 1925 F. Wm. Hilker, Clerk

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Notice of Appeal and Grounds

MIDDLESEX COUNTY CIRCUIT COURT.

MARGARET L. RICE and	}	ACTION AT LAW.	10
JAMES J. RICE,			
	Appellees,		
	vs.		
WILLIAM ROSENVINGE and	}	NOTICE OF APPEAL AND GROUNDS.	10
JENNIE H. SCOTT,			
	Appellants.		

TO: JOHN A. COAN, Attorney for Appellees.

TAKE NOTICE that the appellant, JENNIE H. SCOTT, one of the defendants in the above entitled action, hereby appeals to the Supreme Court of the State of New Jersey, from the whole of the judgment entered in this cause on the following grounds: 20

1. Upon all the exceptions taken by Jennie H. Scott in the trial of the above entitled action, among which appears of record the following:

(a) To so much of the charge wherein the Trial Judge said—"Although I have no right to direct a verdict, I have a right to say to you, for your consideration, but without controlling you, that it seems to me that all of these plaintiffs in this case, with possibly the exception of the husband of one of these women, which I will afterwards refer to, is entitled to a verdict." 30

(b) To so much of said charge wherein the Trial Judge said—"Now, if you find, as I think you will, —but that is entirely up to you,—that those I have mentioned are entitled to verdicts, Mr. Adams, Mrs. Cox, Mr. Cox, and Mrs. Rice, who is responsible?"

A. C. STREITWOLF,
Attorney for Appellant, Jennie H. Scott. 40

Order of Consolidation

NEW JERSEY SUPREME COURT

10	GEORGIANNA COX and GEORGE COX, Appellees, vs. WILLIAM ROSENVINGE and JENNIE H. SCOTT, Appellants.	}
20	MARGARET L. RICE and JAMES J. RICE, Appellees, vs. WILLIAM ROSENVINGE and JENNIE H. SCOTT, Appellants.	}
30	JOHN ADAMS, Appellee, vs. WILLIAM ROSENVINGE and JENNIE H. SCOTT, Appellants.	}

ORDER OF
 CONSOLIDA-
 TION OF
 APPEALS.

30 An appeal having been taken by the defendant, William Rosenvinge, and likewise by the defendant, Jennie H. Scott, and the jury having awarded a verdict in favor of the plaintiffs as against the defendants, in each action, and judgments having been entered in the above entitled actions in favor of the plaintiffs as against the defendants, and it now appearing to the court that upon the trial of said actions the same were consolidated and tried as one action, and that the record of the testimony taken in said
 40 cause at said trial constitutes but one individual record

Order of Consolidation

for the three distinct actions brought by the plaintiffs against the said defendants, and it being further represented to the court that the defendant, William Rosenvinge, has appealed from the said judgments, and that the said defendant, Jennie H. Scott, has likewise appealed from said judgments, and also from an order subsequently entered setting aside the verdict in the case of John Adams, and limiting a re-trial to the issue of damages only, and it being further represented to the court that the disposal of said appeals by the said respective defendants can be best and more advantageously conducted by one record constituting the entire record; it is on this day of 192 , on motion of August C. Streitwolf, Attorney for the defendant-appellant, Jennie H. Scott, by and with the consent of William F. Vosseller, Attorney for the defendant-appellant, William Rosenvinge, and by and with the consent of John A. Coan, Attorney for the plaintiffs,

ORDERED that the respective appeals taken by the defendant, William Rosenvinge, and by the defendant, Jennie H. Scott, be consolidated, and upon the hearing and for the purpose of reaching a determination of said appeals, that one record constituting the entire record shall be sufficient and in lieu of a separate and distinct record on behalf of each defendant-appellant; and in lieu of a separate and distinct record in each case.

We hereby consent to the entry of the foregoing order.

WM. F. VOSSELLER,
 Attorney for Defendant-Appellant,
 William Rosenvinge.

JOHN A. COAN,
 Attorney for Plaintiffs.

Per Curiam Opinion

NEW JERSEY SUPREME COURT

No. 65, May T., 1926.
GEORGIANNA COX et ux

vs.

WILLIAM ROSENVINGE and

10 JENNIE H. SCOTT
JOHN ADAMS

vs.

SAME.

MARGARET L. RICE et ux

vs.

SAME.

20 Appeals from Middlesex Circuit Court.

Argued before Gummere, Chief Justice, and Justices Trenchard and Minturn.

For the appellants, William F. Vosseller and A. C. Streitwolf.

For the respondents, John A. Coan.

PER CURIAM

30 The above actions were brought by the several plaintiffs to recover compensation for injuries received by them, respectively, arising out of a collision between a truck belonging to the defendant Jennie Scott, a bus owned and operated by the defendant Rosenvinge, in which Mrs. Cox and Mrs. Rice were passengers, and a horse drawn vehicle belonging to and driven by the plaintiff Adams. The cases were tried together, by 40 order of the court, and the trial resulted in verdicts

Per Curiam

against the defendants in each case. In the Cox and Rice cases judgments were entered upon the verdicts, and from those judgments the defendants severally have appealed.

In the Adams case the plaintiff applied for an obtained a rule to show cause why a new trial should not be directed for inadequacy of the verdict, and upon the return of that rule it was made absolute. The 10 defendants have appealed in this case from the judgment nisi entered on the first verdict. It is manifest from the facts stated that this latter appeal is prematurely taken. No final judgment having been entered, there is nothing before us to review. This appeal, therefore, will be dismissed.

The appeals of Rosenvinge taken from the judgments in the Cox case and the Rice case are each of them based solely upon the contention that the trial court erred in refusing to order a nonsuit or direct a 20 verdict because of the failure of proof showing that the accident was the cause of negligence on his part. Our examination of the state of the case sent up with the appeals satisfies us that the questions of his negligence and of its being the proximate cause of the accident were for the determination of the jury and not the court. We conclude, therefore, that the judgments against Rosenvinge in each of these two cases should be affirmed.

As to the appeals of Jennie Scott in these cases: 30 One of the grounds relied upon for a reversal of the judgments against her is directed at the following instruction of the trial judge to the jury: "This lady" (Mrs. Cox) "is entitled to a verdict. She is entitled to a verdict for the pain and suffering she endured, for her permanent injuries. * * * * * Then she is entitled to compensation for any permanent injury that there is. Now, as to Mrs. Rice: If you believe that she suffered any injuries, and any pain and suffering 40

Per Curiam

she endured, she is entitled to be compensated for that." This instruction was clearly erroneous, and manifestly was harmful to the defendants. It took from the jury the question of liability on the part of the defendants, or one of them. It is true that the trial judge modified this instruction to some extent in other portions of his charge; but the rule is well settled that an erroneous instruction followed or accompanied by a correct one is not cured by the latter, unless it is also expressly withdrawn, the reason being that the jury is left at liberty to adopt either of the contrary instructions. *State v. Tapack*, 78 N. J. L. 208, *Collins v. Central R. R. Co. of N. J.*, 90 N. J. L. 593.

For the reason indicated, the judgments against Mrs. Scott in these two cases will be reversed.

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30

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Notice of Appeal

NEW JERSEY SUPREME COURT

GEORGIANNA COX and
GEORGE COX,
Plaintiffs.

vs.

WILLIAM ROSENVINGE and
JENNIE H. SCOTT,
Defendants.

10

JOHN ADAMS,
Plaintiff,

vs.

WILLIAM ROSENVINGE and
JENNIE H. SCOTT,
Defendants.

On Appeal
From the
Supreme Court

20

MARGARET L. RICE and
JAMES J. RICE,
Plaintiffs.

vs.

WILLIAM ROSENVINGE and
JENNIE H. SCOTT,
Defendants.

Take notice that defendant William Rosenvinge appeals to the Court of Errors and Appeals from the whole of the judgments entered in these causes on the ground that the Supreme Court erred in affirming the judgments under review against the said defendant.

30

WM. F. VOSSELLER,
Attorney for Defendant.

To JOHN COAN,
Attorney for Plaintiffs.

40

Order of Affirmance
NEW JERSEY SUPREME COURT

10	GEORGIANNA COX and GEORGE COX, Plaintiffs-Respondents, vs. WILLIAM ROSENVINGE and JENNIE H. SCOTT, Defendants-Appellants.	ACTION AT LAW. Order of Affirm- ance As to William Rosenvinge and of Reversal As to Jennie H. Scott.
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This cause having been duly submitted on briefs at the May Term, 1926, of this court, by August C. Streitwolf and William F. Vosseller, of counsel for the appellants, and John A. Coan, of counsel for the respondents, and the court having inspected the record and judgment below, and considered the causes assigned for error on the grounds of appeal therein:

20 It is thereupon on this 19th day of November, 1926, ORDERED that the judgment of the Middlesex County Circuit Court be in all things affirmed so far as the same relates to, affects or concerns the judgment against the defendant William Rosenvinge.

It is further ORDERED that the said judgment of the Middlesex County Circuit Court be in all things reversed, set aside and for nothing holding, so far as the same relates to, affects or concerns the defendant, Jennie H. Scott.

30 It is further ORDERED that the record and proceedings be remitted to the said Middlesex County Circuit Court to be proceeded with in accordance with this judgment and the practice of said court.

It is further ORDERED that the plaintiffs are entitled to their costs in this court against the defendant, William Rosenvinge.

Entered Nov. 22, 1926. On motion of
 JOHN A. COAN,
 Attorney of Respondents

Order of Dismissal

NEW JERSEY SUPREME COURT

10	JOHN ADAMS, vs. WILLIAM ROSENVINGE and JENNIE H. SCOTT, Defendants.	Plaintiff, ACTION AT LAW. Order of Dismissal.	10
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The above cause having been tried in the Middlesex County Circuit Court, and a verdict thereon rendered in favor of the plaintiff; and it appearing that a rule to show cause why a new trial should not be directed for inadequacy of the verdict was returned, and on the hearing of said rule to show cause that the same was made absolute; and it further appearing that the defendants appealed to this court from the judgment Nisi entered on the first verdict; and the court being of the opinion that said appeal was prematurely taken:

It is therefore on this 19th day of November, 1926, on motion of John A. Coan, Attorney for the Plaintiff, ORDERED that the appeal of the defendants, William Rosenvinge and Jennie H. Scott, in the above entitled cause, be and the same is hereby dismissed with costs.

Entered Nov. 22, 1926. On Motion of
 JOHN A. COAN,
 Attorney of Plaintiff.

Order of Affirmance

NEW JERSEY SUPREME COURT

MARGARET L. RICE and JAMES J. RICE,	}	Plaintiffs-Respondents.	ACTION AT LAW.
vs.		Order of Affirmance As to William Rosenvinge and of Reversal As to Jennie H. Scott.	
WILLIAM ROSENVINGE and JENNIE H. SCOTT,		Defendants-Appellants	

10

This cause having been duly submitted on briefs at the May Term, 1926, of this court, by August C. Streitwolf and William F. Vosseller, of counsel for the appellants, and John A. Coan, of counsel for the respondents, and the court having inspected the record and judgment below, and considered the causes assigned for error on the grounds of appeal therein:

20

It is thereupon on this 19th day of November, 1926, ORDERED that the judgment of the Middlesex County Circuit Court be in all things affirmed so far as the same relates to, affects or concerns the judgment against the defendant, William Rosenvinge.

It is further ORDERED that the said judgment of the Middlesex County Circuit Court be in all things reversed, set aside and for nothing holding, so far as the same relates to, affects or concerns the defendant, Jennie H. Scott.

30

It is further ORDERED that the record and proceedings be remitted to the said Middlesex County Circuit Court to be proceeded with in accordance with this judgment and the practice of said court.

It is further ORDERED that the plaintiffs are entitled to their costs in this court against the defendant, William Rosenvinge.

Entered Nov. 22, 1926. On Motion of
JOHN A. COAN,
Attorney of Respondents.

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Testimony

MIDDLESEX COUNTY CIRCUIT COURT

SEPTEMBER TERM, 1925

GEORGIANNA COX and GEORGE COX	}	vs.	WILLIAM ROSENVINGE and JENNIE SCOTT	10
JOHN ADAMS		vs.	WILLIAM ROSENVINGE and JENNIE SCOTT	
MARGARET L. RICE and JAMES J. RICE		vs.	WILLIAM ROSENVINGE and JENNIE SCOTT	20

Transcript of stenographer's notes of evidence in the above entitled cause taken before HON. PETER F. DALY, Circuit Court Judge, and a Jury, at the Middlesex County Court House in the City of New Brunswick, New Jersey, on the 18th day of September A. D., 1925, at 10 A. M.

Appearances:

30

JOHN A. COAN, Esq.,
Counsel for the Plaintiffs.

WALTER L. HETFIELD, JR., Esq.,
WILLIAM F. VOSSELLER, Esq.,
Counsel for the Defendant, William Rosenvinge.

AUGUST C. STREITWOLF, Esq.,
Counsel for the Defendant, Jennie Scott.

40

Mrs. Cox—Direct

A jury being empanelled and found satisfactory, they were sworn.

Mr. Coan opens the case for the plaintiffs.

Mr. Vosseller opens the case for the defendant, William Rosenvinge.

Mr. Streitwolf opens the case for the defendant, Jennie Scott.

GEORGIANA COX, one of the plaintiffs, being duly sworn according to law on her oath, saith: 10

DIRECT EXAMINATION

BY MR. COAN:

Q. Mrs. Cox, you are one of the plaintiffs in this case? A. I am.

Q. You are the wife of George Cox, who sits here next to me? A. I am. 20

Q. Where do you live? A. 214 North Broadway, South Amboy.

Q. How long have you lived in South Amboy? A. About twenty-two years. I was born in South Amboy, but I was taken away from there as a child, on account of the death of my mother, but I have been there a resident now for about twenty-four years.

Q. How many children have you? A. Four.

Q. How old is the oldest? A. The oldest is in his fifteenth year. 30

Q. The youngest? A. Four years old.

Q. Mrs. Margaret Rice, do you know her? A. Yes, that is my mother-in-law.

Q. That is the mother of your husband? A. Yes.

Q. Referring to the 3rd day of October, 1924, do you remember that day? A. I do.

Q. State whether or not you and Mrs. Rice started to go any place on that day? A. We started for Perth Amboy. 40

Mrs. Cox—Direct

Q. What time was it when you started to go to Perth Amboy? A. I left the house about quarter to eleven.

Q. What means were you taking to go to Perth Amboy? A. We took the bus at the corner of Broadway and Main Street.

Q. Is that near your house? A. That is just the store from our house.

Q. What building between the corner and your house? A. One door.

Q. What bus was it, if you know? A. It was called Bill's bus.

Q. Do you remember the number of it? A. No. 10.

Q. What course was followed by that bus on its way from the corner of Main Street and Broadway toward Perth Amboy? What way did it go? A. It went down the incline to go under the bridge.

Q. Is that the road that is known as the Pennsylvania Roadway? A. It is.

Q. Runs down under the overhead crossing of the Pennsylvania Railroad Company? A. Yes, sir.

Q. Were there other passengers in the bus besides yourself and Mrs. Rice? A. There was four others.

Q. Did you get to Perth Amboy? A. I did not. We got not quite to the bridge.

Q. There are two bridges crossing the road, aren't there, Mrs. Cox? A. Yes, there is.

Q. When you say to the bridge, which bridge do you refer to? A. The first one.

Q. That is the one that is nearest to South Amboy? A. The one nearest to South Amboy.

Q. Are you familiar with that road leading from Main Street down to the bridge? Do you go over it frequently? A. Well, I can't frequently, no, I do not.

Q. It is right near your house, isn't it? A. Yes, it is.

40

Mrs. Cox—Direct

Q. What have you to say as to whether or not the overhead crossing can be seen along the roadway from Main Street and Broadway? A. Well, that I have never took notice. I don't know.

Q. Well, now, you say you didn't get quite to the bridge. What stopped? A. That is more than I know.

Q. Well, did the bus stop? A. I don't know even that.

Q. Well, did the bus stop before it got to the bridge, or did it continue going? A. It continued going, as far as I know.

Q. What were you doing in the bus? A. I was talking to my baby.

Q. You had the baby with you? A. I did.

Q. Where were you sitting? A. I was sitting on the right-hand side of the bus.

Q. That is as you went to Perth Amboy you were on the right-hand side? A. No. I was on the left-hand side of the bus going to Perth.

Q. The right-hand side as you went in? A. Yes.

Q. Where was Mrs. Rice sitting? A. Mother was sitting on the right-hand side of me.

Q. On the same side of the bus you were sitting? A. Yes.

Q. But on your right-hand side? A. On my right.

Q. Were the seats running sideways along the length of the bus, or parallel? A. They were running lengthways of the bus.

Q. Your back, as you sat there, was against the window on that side of the bus? A. Yes.

Q. Did you observe a wagon in front of you? A. I did not.

Q. Tell us what happened? A. I can't tell what happened, only that there was an awful crash together and that is all I remember.

Q. I didn't hear that. A. There was an awful crash come, and that is the last I remember.

40

Mrs. Cox—Direct

Q. Do you know what caused the crash? A. I didn't at that time.

Q. Did you see anything there? A. No, I did not.

Q. Do you know what happened to you? Did you remain in your seat? A. That is more than I can tell. I couldn't tell.

Q. What is the next thing that you can tell?

10 A. Next thing I can tell is when my husband stood there by me.

Q. Where is that? A. That is when I was in the house laying on the couch.

Q. In what house? A. In my home.

Q. Do you know what time that was? A. No, I do not.

Q. Do you remember whether or not you were at the hospital? A. No, I do not.

20 Q. Well, now, when you saw your husband standing there by you in your own house what condition were you in? A. Well, I don't know. All I know that everything seemed like a blank to me.

Q. Well, did you find that you had any injuries? A. I did.

Q. What injuries did you have? A. I could not use my right side.

Q. Anything else? A. Well, my face was cut. That had been taken care of.

30 Q. Well, were there bandages on your face? A. Yes, there was bandages on my face.

Q. How many cuts did you have on your face? A. I had one over the eye.

Q. Over which eye? A. Over my left eye.

Q. Yes? A. And there was one on my eye brow, one on my nose, and one on my cheek, and one on the chin.

Q. One over your left eye? A. One over there (indicating).

40

Mrs. Cox—Direct

Q. You say one in the eye brow? A. One in the eye brow.

Q. One on the side of the nose? A. One on the side of the nose.

Q. On the left side of the nose? A. There is one there.

Q. One on the left cheek? A. And one down here on the chin. 10

Q. On the left side of the chin? A. The chin.

Q. What have you to say, if anything, as to your arm and shoulder on the right side? A. I cannot use my arm at all hardly now.

Q. To what extent can you use it? A. Well, not very much. I can't hardly get it up to comb my hair.

Q. Which arm is that? A. That is my right arm.

Q. What other injuries? A. I had my teeth knocked out.

Q. How many teeth knocked out? A. There was 20 four in the front, and my own capped tooth, and four in the back.

Q. Were they knocked out at that time? A. No. They were not. They were all in good condition.

Q. No, but were they knocked out while you were in this bus? A. Yes, they were knocked out while I was in this bus.

Q. Actually taken out of your mouth in the bus? A. Yes. 30

Q. You say there was a capped tooth; where was that? A. That was right here (indicating).

Q. What happened to that? A. The cap was knocked off and it was broke.

Q. What was your condition before you went on the bus on that day, Mrs. Cox? A. I was perfectly all right.

Q. What has been your condition since? A. Well, I have been in terribly poor health since.

Q. Tell the Court and jury what evidences of poor 40

Mrs. Cox—Direct

health you have today. A. Well, I can't do my own work, and I have been a person to do my own work, I cannot use my arm, and tell the truth I am in an awful nervous state.

Q. The great toe on your right foot, have you anything to say about that? A. Yes, that bothers me all the time.

10 Q. How long a time was it before you were able to wear a shoe on that foot? A. I was three months before I could get a shoe on and I can't get a shoe on yet. I have got a shoe that does not fit me, it is too large for my foot.

Q. That is, you could not wear any shoe on it for three months? A. No.

Q. And since that time you have to wear a large size shoe? A. And since that time I have to wear a large size shoe.

20 Q. At first when you began to put a shoe on did anything happen to the toe? A. Certainly did, it turned all black, and my foot turned black, even around my ankle part there.

Q. Does that continue to this time? A. At times it gets very red now.

Q. Gets red now? A. Yes.

Q. That is the toe? A. Yes.

30 Q. You say you were on a couch in your own house when you first realized your condition. Now, were you put to bed? A. I was.

Q. How long did you remain in bed? A. Six weeks.

Q. And after you got up after six weeks what did you do? A. I just sat around the house, sat in a chair.

Q. For how long a time did you sit in the chair? A. Well, I sat there three or four weeks, I don't know which, around the house.

40 Q. And after that what did you do? A. Tried to do whatever I could, what little work I could do around the house.

Mrs. Cox—Direct

Q. When was the first time that you were able to go out of your house after the 3rd of October? A. The 29th of November.

Q. Did that have any effect on you? A. That certainly did. I come down to your place and I was hardly able to get home.

Q. What did you do when you got home? A. I went to bed and I stayed there for a couple of days.

10 Q. How long were you in bed then? A. I was in bed for about two days then. But I had been laying around all the time.

Q. How long were you confined to your house after that time that you were out on November 28th or 29th? A. Well, that I don't know. I didn't go again until I was called on sickness.

Q. Prior to the 3rd of October who had been accustomed to do your work? A. I got my sister-in-law to do it.

20 Q. No. Before October 3rd who did your work? A. I done my own.

Q. What did your family consist of at that time? A. Consisted of seven of us.

Q. Who were they? A. They were my four children.

Q. Yes. A. My husband and my brother-in-law and myself.

30 Q. And after October 3rd who did your work? A. Mrs. Anna Cox.

Q. That is the wife of your brother-in-law? A. Yes.

Q. Had she been a member of your household before that time? A. She was not.

Q. Why did she come to your household? A. I had to have someone to do my work.

Q. For how long a time did Mrs. Cox remain at your house? A. She remained with me from the accident till the 16th of November.

Mrs. Cox—Direct

Q. She remained there constantly during that time?

A. Constantly during that time.

Q. After the 16th of November who did your work?

A. Why, I done what I could and the heavy work that I could not do, she come back and forth and done for me.

Q. That is Mrs. Anna Cox came back? A. Yes.

10 Q. She lives in South Amboy? A. She lives in South Amboy.

Q. State whether or not she was compensated for the work that she did? Was she paid for it? A. No. The bill is in for it. She is waiting for her money.

Q. What is her bill? A. Her bill was \$3 a day.

Q. Do you know what the total of it was? A. \$135.

Q. Have you had the services of a doctor? A. I have.

Q. Are you still under the doctor's care? A. I am.

20 Q. Who was the doctor? A. Dr. Ulner.

Q. Dr. Ulner is of South Amboy? A. Yes, sir.

Q. How long have you been under Dr. Ulner's care?

A. Ever since the accident.

Q. Are you still under his care? A. I am.

Q. Did you have any other doctor? A. I did.

Q. Who was it? A. Dr. Weber.

Q. How many times did you have Dr. Weber? A. I don't know.

30 Q. Well, now, can't you give us some idea of it. Was it once or more than once? A. It was more than once, because he made quite some calls, but I don't know exactly.

Q. Was that during the same time that Dr. Ulner was taking care of you? A. After Dr. Ulner.

Q. Have you had your teeth repaired or fixed? A. No, I have not.

Q. Have you been to see a dentist in connection with it? A. I have.

40

Mrs. Cox—Direct

Q. Have you obtained estimates as to what the cost of fixing your teeth will be? A. The cost will be \$80.

Q. State whether or not that is the lowest price you were able to obtain. A. That is the lowest one I could get.

Q. After consulting how many dentists? A. After four.

Q. Do you know what Dr. Weber's charge was? 10
A. No, I do not.

Q. What is your condition now, Mrs. Cox? A. Well, my condition now is very poor.

Q. Are you able to do your household work yet? A. No, I am not.

Q. Whom do you have do the work? A. Well, some of it I have to send out, and the other I still have my sister-in-law come to do it.

Q. What do you send out? A. I send all the wash- 20
ing out.

Q. The laundry? A. The laundry.

Q. Mrs. Cox still comes to assist you in the work? A. Yes.

Q. Who does the cooking in the house? A. Well, generally my oldest son helps me, and I try to do what I can myself.

Q. Can you tell us in detail what your condition is at this time? A. Well, my shoulder is bothering me, and the right side bothers me, and I still have very 30
weak spells.

Q. How frequently do you have weak spells? A. Well, maybe two or three times a week.

Q. When you say weak spells, what do you mean by that? A. Why, I get so weak that I faint.

Q. What have you to say as to the use of your arm? A. I can't hardly use my arm for anything. As far as I can get it is like that (indicating). If I go to raise it up I can't get it down, and distress comes through here 40
(indicating).

Mrs. Cox—Direct

Q. Did you recently have an injury because of that? Did you injure a finger? A. Yes.

Q. When was that? A. That was in May.

Q. What happened? A. Why, I went to raise the window and as I went to raise the window, why, my arm give way, and the window come down.

Q. Did it come on your finger? A. Come on my hand.

Q. Are there scars on your face and forehead as a result of those cuts? A. There is.

Q. Will you step down and show them to the jury, please?

(Witness indicates to the jury.)

MR. COAN: I think you may cross-examine.

CROSS-EXAMINATION

20

BY MR. VOSSELLER:

Q. Mrs. Cox, what sort of a day as to clearness was October 3, 1924? A. Well, as far as I can remember I guess it was clear.

Q. You don't remember whether the sun was shining or not? A. No, I do not.

Q. This road where this accident happened—is it straight or curved? A. Well, it is a curved road.

Q. Does the curve start behind where you were hit? What I am trying to get at is, how far from the bus could you look behind you? How far could you see a car coming? A. Well, I don't know for I have never tried to look in back when the car is going.

Q. Well, is it much of a curve or just a gentle curve? A. Well, that is more than I know because I am not a person to be on the street.

Q. How often had you ridden in this bus to Perth Amboy? A. Well, I don't think I went to Perth Amboy over a dozen times.

Mrs. Cox—Cross

Q. Did you generally go by bus? A. When the trolleys was running I generally went by trolley.

Q. How many times have you gone by bus approximately? A. Not very many.

Q. Five or six times? A. Maybe probably that.

Q. Did you generally take this bus? A. No, I took the first bus that come along.

Q. They were all run by the same man? A. I don't know that.

Q. When the accident happened was the car or the bus in which you were riding, was that going or was it stopped? A. I couldn't tell you. I don't know. It come so quick I don't know.

Q. Well, can you tell whether you were moving fast or slow? A. Well, I don't even know that.

Q. Did you see a wagon ahead of you? A. No, I did not.

Q. You didn't hear the truck that hit you from behind? A. I felt it.

Q. But you didn't hear it? A. No.

Q. Or see it? A. No.

CROSS-EXAMINATION

BY MR. STREITWOLF:

Q. You say you got on this bus at the corner of Broadway and Main Street. Did you get on while it was on Broadway or did you get on while it was on Main Street? A. Broadway and Main Street, there is a corner right there.

Q. What part did you get on? Had the bus gone around Broadway into Main Street? A. No, the bus was going down.

Q. Before the bus had turned into Main Street it had stopped at that corner and you had gotten on, is that right? Before it had turned into Main Street? A. Well, it was on Main Street.

Mrs. Cox—Cross

Q. This bus came through Broadway going in the direction of Perth Amboy, and Broadway is at right angles to Main Street, is it not? I don't want to confuse you. Assuming that this is Main Street you got on the bus while the bus was still in Broadway?

A. No, I got on the bus on Main Street.

Q. It had gone around the corner? A. No, it had
10 not.

Q. On which corner of Main Street did you get on, the one nearest to Perth Amboy, or the one closer to—

A. I got on the left-hand corner.

Q. The left-hand corner of Broadway and Main?

A. Of Broadway and Main.

Q. On Main Street? A. Yes.

Q. At that time the bus was headed down Main Street? A. Yes.

Q. Is Dr. Ulner in court today? A. Yes.

20 Q. Have you ever been troubled with rheumatism?
A. No.

Q. Neuritis? A. No.

Q. Are you troubled with neuritis now? A. Not as far as I know of.

Q. Are you troubled with pain in your shoulder at night, while you are resting, or trying to get your sleep? A. I am troubled with my shoulder all along.

30 Q. More so at night than at other times? A. Well,
I don't know. It pains me all times. I don't see I have any relief.

Q. Constantly? A. All the time.

Q. You say you had no such pain prior to the accident? A. I did.

Q. Is the arm or shoulder in any way swollen?
A. At times it is swollen terribly.

Q. Is it at the present moment? A. It is.

40 MR. STREITWOLF: Will there be any objection to having this witness submit to a medical examination by Mrs. Dr. Long, at the noon recess, so that I can see

Mrs. Cox—Cross

if there is anything swollen there in that shoulder? I think the case will go on after recess and I am certain this woman will not be inconvenienced by a slight examination.

THE COURT: There will not be any objection. The jury can tell themselves.

MR. STREITWOLF: I was going to save that embarrassment.

10 THE COURT: Go on with the case. That will be taken care of. Any objection, Mr. Coan?

MR. COAN: No, sir.

Q. Now, Mrs. Cox, I understand you were six weeks in bed. Is that right? A. That is right.

Q. And you were three or four weeks in a chair. Is that right? A. Yes.

Q. Your memory as to what happened in your condition was a little better last March than it is today, was it not? A. Well, I don't know whether it is or not. 20

Q. You would not say it is no better? No, I would not.

Q. Mrs. Cox, I ask you if that is your signature (showing paper to witness)? A. Yes.

Q. You recognize your signature? A. Yes.

Q. Did you not swear on March 5th, 1925, on your oath, in answer to the fourth interrogatory: "Were you confined in your bed by reason of the injury complained of, and if so for how long?" Did you not answer: "Yes, from October 3rd to October 25th, and in a chair for two weeks longer?" Did you not swear to that? A. Yes. 30

Q. Did you not swear in answer to the sixth interrogatory: "Were you confined in your house by reason of the injury complained of, and if so, for how long?" And did you not answer: "Yes, in bed for three weeks, in chair for two weeks, and confined to house thereafter until November 28th; was out on November 28th, and 40

Mrs. Cox—Cross

again confined to the house until February 3rd?" Did you not so swear?

THE COURT: It is not denied, is it?

MR. COAN: No, sir.

Q. When you testified there that you were confined to your bed three weeks, and to a chair two weeks, how do you reconcile your testimony this morning that you were confined to your bed for six weeks and in the chair 10 four or five weeks? Can you answer that?

MR. STREITWOLF: I will take on the record no answer.

THE COURT: Maybe she does not understand it.

Q. I am asking you, Mrs. Cox, to explain the difference in what you swore to on March the 5th and what you swear to today. On March 5th you said you were confined to your bed three weeks and in your chair for two weeks, and you testified this morning that you 20 were confined in bed six weeks and in a chair for four or five weeks. I ask you to reconcile those inconsistent two statements.

MR. STREITWOLF: I will take "no answer." The stenographer will mark on the record "no answer."

Q. Now, Mrs. Cox, when Mr. Coan asked you about the pay to your sister-in-law, Mrs. Anna Cox, you said that she was waiting for her money. May I ask if you have made an arrangement with her that her pay is 30 predicated upon your obtaining a verdict here this morning? A. No.

Q. Isn't she a married woman? A. She is.

Q. Has she children? A. No.

Q. Is she a housekeeper? A. She is.

Q. Where does she live from your home, what is the distance? A. Well, I could not tell you the distance, but she is on the opposite side of the town.

Q. Did she give you a bill for this \$135? Did she 40 render you a bill for \$135? A. She did.

Mrs. Cox—Cross

Q. Have you it here? A. I guess Mr. Coan has it.

MR. STREITWOLF: Have you the bill, Mr. Coan?

MR. COAN: I am just going to look. I don't know whether I have or not. Here it is.

Q. When did you receive this bill that Mr. Coan produces? Was it handed to you? A. It was handed to my husband.

Q. In your presence? A. Well, that I don't know. 10

Q. When was it handed to your husband? A. I don't even know that.

Q. Have you any objection to stating your age on the record? A. No, not at all.

Q. How old are you? A. Thirty-six.

Q. Before this accident happened had you consulted a dentist for any tooth trouble? A. No. My teeth were all fixed and in good condition.

Q. Did you ever wear a plate? A. Yes.

Q. You did wear a plate? A. Yes. 20

Q. On the upper or lower? A. In the upper.

Q. These teeth that were knocked out—were they upper or lower? A. They were the upper teeth.

Q. Front? A. Yes.

Q. Although prior to the accident you did wear a plate for upper teeth? A. Yes.

Q. What dentist did you see after the accident? A. Berlew.

Q. Is he in South Amboy? A. Yes, he is in South 30 Amboy.

Q. Who else? A. Burdell.

Q. He is a dentist? A. He is a dentist of Perth Amboy.

Q. Who else? A. I don't know the other names.

Q. You don't know the other names? A. No.

Q. Where are they from, South Amboy? A. Perth Amboy.

Q. Who went with you? A. I went myself.

Q. You don't remember their names? A. No. 40

Mrs. Cox—Cross

Q. Can you give me their addresses? A. No, I don't think I can.

Q. What did Dr. Berlew tell you it would cost to fix your teeth? A. \$120.

Q. What did the other doctor tell you? A. He told me \$80. No, Berlew said \$80 and Burdell said \$120.

Q. But you have never had the work done? A. I have never had the work done.

Q. Is that the cost for a plate and recapping one tooth? A. That is the cost for fixing the upper teeth. That is put a new plate and fix the upper teeth.

Q. Four teeth were knocked out? A. Yes.

Q. Were they part of the teeth that were attached to the plate, that were knocked out? A. No. My own teeth.

Q. You say two were broken or loosened? A. No. Two or three was broke.

Q. There was one tooth capped? A. The capped tooth was broke off.

Q. How long were you at the hospital in South Amboy, do you remember? A. I do not.

Q. You were there a few hours, were you not? A. I don't know.

Q. May I ask you showed the jury a scar over the forehead, indicating the left forehead, if I recall it correctly. Have you any other scars? A. One is on the nose and one is on my face.

Q. Show me the scar on the nose. A. Right there (indicating).

Q. The scar on the cheek, is there one there? A. I don't know whether there is one there or not.

Q. How about the chin? A. There is a small one there.

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Mrs. Cox—Cross

Q. Would you mind coming down here and letting the jury see these other scars? You showed them the one on the forehead.

(Witness indicates to the jury).

Q. Is the dentist in court, or either of them? A. No.

REDIRECT EXAMINATION

BY MR. COAN:

Q. At what corner of Main Street and Broadway was it that you got on the bus? A. On the left corner.

Q. Which corner do you mean by that? A. Right there where Sexton's store is.

Q. Right at the corner of Sexton's store? A. Yes.

Q. That is right where the trolley turns around the corner at the right? A. Yes.

MR. COAN: That is all.

JOHN ADAMS. A witness produced on behalf of the plaintiffs, being duly sworn according to law on his oath, saith:

DIRECT EXAMINATION

BY MR. COAN:

(James Sabo sworn as interpreter).

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

Q. Is it South Amboy or is it Sayreville? A. Sayreville.

Q. What do you do? A. Farming.

Q. How big a farm have you got? A. Twenty-two acres; twenty-one and three-tenths acres.

Q. You are one of the plaintiffs in these cases? You are bringing a suit here? A. He is one suing but he does not know who he is suing.

Q. What were you doing on the 3rd of October last? A. His wife had gone out for orders the day be-

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John Adams—Direct

fore that, and he was to deliver the orders that she had received, to the customers.

Q. What were you doing on the 3rd of October, on this day? A. He had helped, him and his wife had gathered up the vegetables out on the farm, and he was to deliver them in Perth Amboy.

Q. How were you to deliver them in Perth Amboy?
10 How were you taking them to Perth Amboy? A. Horse and wagon.

Q. How many horses? A. One.

Q. How far had you gotten toward Perth Amboy? How far did you get toward Perth Amboy? A. He has gone as far as the Pennsylvania bridge when he was stopped.

Q. Who stopped you? A. State Highway foreman.

Q. Why were you stopped, if you know? What were they doing there? A. The day before there was
20 a shower, and the shower has washed down a lot of sand on the road and the highway men were there to clean it away, and the foreman was there to guide the traffic. While the traffic was going one way he was stopping the traffic from the opposite direction, and he had halted Mr. Adams.

Q. Now, Mr. Adams, where were you sitting on your wagon when you were stopped? A. He was sitting on the seat of the wagon.

Q. Where were your feet? A. Why, his foot was
30 resting on that foot rest that is on the wagon in front.

Q. Was there anything ahead of you going in the same direction that you were? A. Why, there was nobody going ahead of him at the time when he was stopped.

Q. Was there anybody ahead of you at the time that you were stopped? A. There was nothing on the road. There was dirt on the road that the highway men was cleaning away and the foreman stopped him, and
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John Adams—Direct

there was not anybody ahead of him before he got there.

Q. When you were stopped there did anything come down behind you? A. A bus.

Q. Do you know what bus that was? A. Bill's bus No. 10.

Q. Did Bill's bus stopped? A. Bill's bus stopped between eight, ten feet away from my wagon. 10

Q. How long did you remain there after the bus stopped? A. For about three minutes or so.

Q. And then what happened? A. He did not see anything, all he knew that he was struck.

Q. What struck you? A. The bus.

Q. When the bus hit your wagon what happened? A. The horse had fallen to the sidewalk and the harness has broke and the shaft come up and hit him.

Q. Hit who? A. Mr. Adams.

Q. What was the result of the shaft coming up and
20 striking you? A. He does not remember whether he went off the wagon, or they took him off the wagon.

Q. Well, was there anything wrong with you after that? A. Why, it seemed that when he is trying to get up and he couldn't get up, and by that time the State Highway men had lifted his horse up and he hung on to the horse to try to get up.

Q. What if anything was wrong with you? Did you have any injury? A. He claims his ankle was
30 broken. He tried to get up and he couldn't get up.

Q. Did you have any other injuries besides the ankle? A. Only the other injury I had was my elbow but at the time I didn't think that it would amount to anything.

Q. Did it bother you later? A. It still bothers me at times.

Q. Did you speak to the doctor about it? A. Sure.

Q. Who was your doctor? A. Dr. Meecham.

Q. What have you to say about your harness, the 40

John Adams—Direct

harness that was on your horse that day? A. The harness before I left the farm was in very good condition, and after the accident it was all in two pieces.

Q. Did you have the harness repaired? A. I did not have the harness repaired.

Q. Why didn't you have it repaired? A. For the price that the harness to be fixed I could have bought a new one for it.

10 Q. How much did you pay for the harness when you bought it? A. I paid \$25 for the harness that was in the accident.

Q. How long before the accident? A. About a year and a half.

Q. What about your wagon? A. The back of the wagon was broken all to pieces, and the front, the shaft was all broken, the back could not be used at all.

Q. Did you have the wagon repaired? A. No.

20 Q. How much did you pay for the wagon? A. I paid \$50 for the wagon.

Q. How long before the accident? A. Five months before the accident.

Q. Did you ascertain from a blacksmith or wheelwright how much it would cost to fix the wagon? A. I don't ask him.

Q. What have you to say about your horse? A. Why, I could not use the horse after the accident, for when you hitch the horse up to the wagon it seemed 30 that the back of the horse would go to pull, it would just cave right in, so he feared that he might get stopped along the road some place so he shot the horse.

Q. How much did you pay for the horse? A. \$35.

Q. How long before the accident? A. In between three weeks or a month.

Q. You had some vegetables on the wagon, I understand, is that so? A. I had vegetables on the wagon.

Q. What was the value of the vegetables which you 40 had on the wagon?

John Adams—Direct

MR. STREITWOLF: That is a conclusion. I think I am entitled to a description of the vegetable matter.

THE COURT: If you want to take up time with such a trifle as that, yes.

Q. What did you have on the wagon? A. There was turnips, corn, tomatoes, pepper, apples, soup greens, carrots and horse radishes.

Q. What was the value of them? A. The load was 10 between twenty-five and thirty dollars.

Q. Did you get anything at all for it? A. I did not get a cent's worth out of the whole load.

Q. Now, state whether or not you had other vegetables at your farm, either harvested, or in the fields. A. I had vegetables that was picked, ready to take, and there was vegetables on the farm that was to be harvested.

Q. What kind of vegetables were they that were 20 picked, ready to be harvested? Was that the same as you had on the wagon? A. Same vegetables as I had on the wagon.

Q. What kind were in the field yet that had not been harvested? A. I had on the farm beans, tomatoes, potatoes, horse corn and sweet corn, lettuce, pepper and cabbage.

Q. Were you able to harvest that?

MR. STREITWOLF: I object, first that the answer 30 calls for a conclusion. Secondly, that if he was unable to it would not be consequently as a result of this accident. On the third reason, a case reported in 31 New Jersey Law, 661, holds that damages to a person and damage to property are two distinct causes of action.

THE COURT: I do not understand that last point. What do you mean?

MR. STREITWOLF: They might be separate and distinct counts.

John Adams—Direct

THE COURT: Aren't there separate and distinct counts?

MR. STREITWOLF: No. I think my objection goes to the merits. He asked if he could, as the result of this accident, harvest those crops. A farmer might be unable to, but he might, by the employment of labor, and that might be an element of damage but to say that he cannot do it I say is not consequential.

10 MR. COAN: That all depends on the facts of the case.

THE COURT: I will allow the question and you may take an exception.

(Question repeated by stenographer).

A. My wife was taking care of me and she could not harvest it. When she went to the market to get a man to work on the farm, they would not come out to work, so he froze, all the crop that was left on the farm.

20 Q. What became of the things that were harvested and picked and not sold?

THE COURT: Have you included that?

MR. COAN: Yes, sir.

THE COURT: Where?

MR. COAN: In the twentieth paragraph. (Reading).

THE COURT: Go on.

MR. STREITWOLF: I offer the same objection.

30 A. All that wasn't harvested was spoiled.

Q. What was the reasonable value of the material that was harvested, and that which was still in the fields at that time? A. The crop come between \$650 and \$700, that was spoiled by the frost, and what was not sold was spoiled also.

Q. After you were injured on this roadway where were you taken? A. They took me to the hospital.

Q. What hospital was it? A. South Amboy.

Q. How long did you remain in the hospital?

40 A. About four hours for they could not get a doctor

John Adams—Direct

for there was an operation in the hospital at the time.

Q. Did you go home that day? A. I went home that day.

Q. How long did you remain at home after that?

A. I am always at home.

Q. Were you in bed? A. I was in bed two weeks.

Q. And then what did you do after the two weeks?

A. I walked on crutches for two months.

10 Q. How long before you were able to do any more work? A. About six or seven weeks after the accident the only thing I could do was look around after the chickens and around the house to mind the cow and the horse.

Q. Did you have any pain from your ankle or your elbow? A. While I was in bed I could not even turn for one reason that the knee was in plaster and it pained me so much.

20 Q. Did you have pain from the elbow? A. It still pains me once in a while.

Q. Is the ankle all right now? A. It is fair.

MR. COAN: Cross-examine.

CROSS-EXAMINATION

BY MR. VOSSELLER:

Q. What do you mean by fair, when you say your ankle is fair? A. Not very good condition.

30 Q. This wagon that you were driving this day—did it have a top or not? A. Yes.

Q. Was it open front and back? A. It was open on both ends.

Q. Is the road straight where you were hit by this truck or this bus? A. The road is straight where the bus has struck my wagon, but just before where I was standing it starts in to making a bend.

John Adams—Cross

Q. How far can you see behind you from where your wagon was standing? A. I could see as far the corner. I don't know what corner it is.

Q. Approximately how many feet? A. Around two hundred feet, or two hundred and fifty.

Q. Did you hear the bus come up behind you and stop? A. I heard the bus come up and stop.

10 Q. Did you look behind to see what was behind you? A. I don't look since that. I looked back when I seen the bus stop and then I did not pay any more attention.

Q. How long after the bus stopped were you run into? A. The bus, while I was standing there, I was truck a few minutes later.

Q. Can you tell me about how many minutes you were standing, and the bus was standing, before you were struck? A. In between four and five minutes.

20 Q. Do you know what made the bus hit your wagon? A. I do not know why, or how the bus hit my wagon.

Q. The bus was standing still? A. The bus was standing still.

Q. And was how many feet behind your wagon? A. Between eight and ten foot.

Q. Why do you sue Jennie Scott? A. The reason I am suing Jennie Scott is that the truck, that gentleman hit the bus and the bus had hit my wagon.

30 Q. So that when your wagon was hit, it wasn't the bus of itself that hit you, but because of another truck that ran into that? Is that the idea you want to impart? A. That is the reason I am suing him, because the bus was standing and the truck come up and hit it, and the bus hit me.

John Adams—Cross

CROSS-EXAMINATION

BY MR. STREITWOLF:

Q. You said that the bus and you were standing four or five minutes. Do you mean you were there four or five minutes, or the bus and you were there four or five minutes before the bus struck you? A. Why, I stood there three minutes and then the bus followed 10 about two minutes after, and then the accident come right after that.

Q. In other words, you were there three minutes before the bus arrived? A. I was there about three minutes, but I had no watch to time myself while I was standing there before the bus arrived.

Q. And then the bus arrived and how soon after that did the accident happen? A. When the bus arrived it wasn't long after the accident had come.

Q. You said just a moment ago, if I recall the in- 20 terpreter correctly, shortly after the bus arrived the accident happened. Tell me what you meant by shortly after the bus arrived the accident happened, referring to time. A. In between two and three minutes after the bus had stopped the accident had happened.

Q. What did you mean then when you said before that it was four and five minutes after you stopped? A. I didn't take out my watch to see.

Q. When you testified that you were standing there 30 three minutes before the bus arrived, is it not true that you are simply guessing at your time? A. I just made a guess that it was three minutes after I had stopped that the bus has arrived.

Q. And that is likewise true as to your former answer as to how long the bus had stood there before the accident happened? A. The bus had arrived two minutes after I was standing.

Q. You are just guessing at that time? A. I am just guessing at the time for I had no watch on me. 40

John Adams—Cross

Q. You say you still have trouble using your elbow?
A. My elbow still bothers me.

Q. Is it swollen? A. It is not swelled up, but the bones bother me.

Q. What part of the elbow? Please show it to the jury.

(Witness indicates to the jury).

10 Q. Have you the harness in court? A. The harness is not in court. We was waiting for someone to come to see the damages that there was on the harness and the wagon; the wagon is still at home, but the harness, I have small children and they have pulled it apart.

MR. STREITWOLF: I move to strike it out as not responsive.

THE COURT: It is not responsive.

20 Q. You testified that you paid \$25 for the harness about one and one-half years ago. A. Yes. I paid about \$25 for the harness a year and a half ago.

Q. Is this your signature? (Showing paper to witness). A. He don't know if he did sign it or not.

Q. Is that your signature (showing paper to witness)? A. Yes.

30 Q. You testified in interrogatories, under the ninth question that was propounded as to your damages, that you placed \$50 on the harness. Why did you ask \$50 damage for the harness when you only paid \$25 for it? A. Why, it is the wagon that he established at \$50, not the harness.

MR. STREITWOLF: I will offer the interrogatories and the answers to the interrogatories.

MR. COAN: I object to it at this time.

THE COURT: You cannot offer them under cross-examination of the plaintiff. But, there being no objection, it is admitted.

(Interrogatories entered in evidence and marked Exhibit D-1).

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John Adams—Cross

(Answers entered in evidence and marked Exhibit D-2).

Q. How soon after the accident did you shoot the horse? A. I waited for the horse to become better but I seen that he was just the same, and in about three weeks' time I had shot him.

Q. Did you have more than this one horse? A. I had one extra horse beside this one.

10 Q. You testified that you paid \$35 for the horse. In answer to the ninth interrogatory you placed a valuation of \$50 on the horse. How do you justify asking \$50 for the horse, in the ninth interrogatory, when you only paid \$35 for it? A. The reason I asked \$50 for the horse is for the trouble, \$15 was extra for breaking the horse in to the farm work, and that made it a trouble of \$15 which I had paid to the \$35.

20 Q. In relation to these vegetables that were not harvested, or still growing upon the farm, I want you to enumerate what vegetables were not harvested. A. There was everything I had what was on the farm.

Q. Did we have any frost in the year 1924 before October 3rd? A. There was no frost until October 3rd.

30 Q. You testified that the value of the harvested and unharvested crop was \$650 to \$700. On February 8th, when you swore to your deposition you placed a valuation of \$600 on these vegetables. How do you now justify the increase of fifty or one hundred dollars? A. That was my first estimation on the crop that was still out in the field, but my second estimation was that I had overlooked the hay that was still out in the field, the second crop, which amounted in between fifty and one hundred dollars.

Q. So that on February 28th, four months after the accident, you placed a valuation which at this late day you say was wrong? A. The reason he had set that his price was that he figured he would get some-

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John Adams—Cross

body to cut his hay for him, but he could not get any help.

Q. After the accident did you not go to the police court? A. I did not go but my wife was.

Q. Weren't you in front of the police court? A. I was not.

MR. STREITWOLF: That is all.

10 BY MR. VOSELLER:

Q. Is there a grade downhill where this accident happened? A. Sure.

Q. Is it a sharp grade, steep grade or is it a very gradual grade? A. Sharp, sliding.

Q. Where does the hill start?

THE COURT: Aren't there other witnesses you will get this from?

MR. VOSELLER: Perhaps so. I will withdraw it.

20 BY THE COURT:

Q. When you stopped your horse and wagon what did you do? A. I wait for the signal, sit on the wagon and wait for the signals when the road boss give me the signal.

Q. When you stopped your horse and wagon you looked for signals, as you say, in front of you. Did you do anything as to looking behind? A. I don't look behind since that bus has been behind me. And after I don't look back, just I look forward.

30 Q. You say it was about two minutes after you stopped when the bus came behind you? A. Yes.

Q. About two minutes? A. About two minutes.

Q. Did you look behind you just as soon as you stopped? A. I don't look any more back.

Q. Well, you did just as soon as you stopped and saw this bus? A. Yes.

Q. What distance was there between the rear of your wagon and the bus? A. Between eight and ten foot.

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John Adams—Cross

Q. Indicate eight or ten feet in this court room.

A. From them gentlemen (indicating).

THE COURT: Is it agreed that is about twelve feet?

MR. COAN: I think that is about right.

Q. This bus came within twelve feet of the rear of your wagon before it stopped, is that right? A. Yes.

Q. And that was about two minutes after you stopped when he got within twelve feet of your wagon, is that right? A. Yes. 10

Q. You understand that? A. Yes.

Q. And then it was how many minutes after that when you were struck? A. Four or five minutes later. The whole thing waiting there. About two or three minutes after the bus has stopped.

Q. Now, will you start to think, when I tell you, and then tell me after that when you think there has been as much as two minutes from the time you started to think. Do you understand what I mean? I want to see what you mean by two minutes. I want him to start as soon as I tell him, and then to say that is two minutes; when he thinks it is two minutes. Now, start. A. Around two minutes. 20

MR. STREITWOLF: It was about forty seconds.

Q. Who worked your farm beside yourself? A. My wife, and my neighbor helped me out.

Q. Why weren't you able to get your wife and your neighbor, or either of them, or someone else, to put on the market the crop that was on the farm? A. My wife took care of me and at that time our child was between five and six months old, and she couldn't do very much on the farm, or to go to the town with the vegetables. 30

Q. Why didn't you hire somebody to do it? A. The men at that time you couldn't get nobody to come on the farm for no less than ninety or one hundred dollars, and he couldn't afford to pay that. At that time his neighbor was also harvesting and had own business, 40

John Adams—Cross

so he couldn't give his time to cover over and help him.

Q. What do you mean by ninety or one hundred dollars, ninety or one hundred dollars for what? For how long and for what? A. For one month.

Q. Well, why didn't you pay ninety or one hundred dollars? A. I don't have money to pay and hire some man. My stuff was on the farm yet.

10 THE COURT: That is all I have.

BY MR. VOSSELLER:

Q. What made this bus run into you? A. The bus struck me for the truck has struck the bus.

Q. Whose truck? A. I do not know the man's name of the truck.

Q. Did you see the truck that day? A. I have seen the truck when the truck was try to get away.

BY MR. STREITWOLF:

Q. What do you mean by trying to get away?

20 A. The truck tried to sneak away.

Q. Don't you know that the driver was arrested right there on the spot? A. The driver was arrested on the other side of the bridge. The road boss got hold of him and after the cop went after him, about one minute later.

Q. Do you mean to say that the truck went under the bridge, when you say the other side of the bridge?

30 A. The truck went under the bridge and went on the other side of the bridge, and that is where the road boss and the cop had caught the driver. The bus driver is get his number and his license number:

Q. If you were first and the bus was second and the truck was third in the position, facing this passageway under the bridge, was it possible for the truck to have cleared and gone under the bridge? A. There was room for the truck to around.

Q. Directly after this accident you were helped by State troopers? A. There was a motorcycle police that
40 helped him.

John Adams—Cross

Q. You had a great deal of pain with your ankle and you had a great deal of pain with your elbow? A. His ankle was paining and he couldn't stand up, and at that time he didn't realize that his elbow hurted him.

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

DIRECT EXAMINATION

BY MR. COAN:

Q. Doctor, you are a practicing physician in South Amboy? A. Yes, sir.

Q. And have been for several years? A. Yes, sir.

Q. You attended John Adams? A. Yes, sir.

Q. That is around October 3, 1924? A. Yes.

Q. What did you find wrong with him, doctor? 20
A. A fracture of the right ankle.

Q. Were there any other injuries? A. I found none.

Q. Did he complain afterwards of trouble with the elbow? A. A long time afterward, several weeks at least.

Q. What have you to say as to whether or not that fracture of the ankle is entirely healed at this time?

A. It is.

MR. COAN. Cross-examine. 30

MR. VOSSELLER: No questions.

MR. STREITWOLF: No questions.

BY MR. COAN:

Q. What was your bill for services? A. \$35.

ELMER H. EULNER, a witness produced on behalf of the plaintiffs, being duly sworn according to law on his oath, saith: 40

Elmer H. Eulner—Direct

DIRECT EXAMINATION

BY MR. COAN:

Q. Doctor, you are a practicing physician in South Amboy? A. I am.

Q. Have been for several years? A. Seventeen.

Q. You are the physician who attended Mrs. Georgian Cox? A. I did.

Q. During what time was she under your care?

A. From October 3rd up to the present date.

Q. She still is under your care? A. Still is.

Q. Doctor, when did you first see Mrs. Cox on October 3rd? A. October 3rd about one P. M.

Q. Where? A. At her home.

Q. What did you find to be the matter with her?

A. She had a laceration over the left eye brow, one close to the bridge of the nose, one at the left cheek, and one at the left side of the chin. She had a contusion about the right shoulder that extended down the right arm, the right hip and right leg, including the ankle.

Q. What would you say as to the back muscles?

A. Strained.

Q. How far did that extend? A. The whole back. In addition to that, badly shocked.

Q. For how long a time was she in bed after that?

A. Continuously for about three weeks. Intermittently for the next three.

Q. Was there anything wrong with the foot, doctor?

A. Foot was considerably swollen and discolored and tender on pressure; lost function.

Q. What is her condition now, doctor? A. According to examination she complains of considerable pain in the right shoulder and right foot. There is some evidence of bruise still at the right hip.

Q. Is that condition permanent or will it heal up?

A. That is a question that would be rather difficult to

Elmer H. Eulner—Direct

answer. Having been no bones broken, it is questionable whether it is going to be permanent, but it will be considerable time.

Q. How frequently do you see Mrs. Cox? A. I should judge for the past six months I have seen her perhaps once in two or three weeks.

Q. And prior to that how often did you see her?

A. The first six weeks I saw her almost daily. Occasional interruption to my visits. Following that perhaps twice in a week.

Q. What is your bill for services, doctor? A. I don't recall of having totaled the bill up.

Q. Can you give us some estimate as to what it will be? A. I should judge that I made an approximation of sixty visits.

Q. At how much per visit? A. Two dollars. And perhaps a dozen or fifteen at the office at \$1.50.

Q. That is in addition to the visits to the house?

A. Yes.

Q. Did you furnish some medicines? A. Yes.

Q. Was that included in the price you mentioned?

A. All included.

MR. COAN: You may cross-examine.

MR. VOSSELLER: No questions.

CROSS-EXAMINATION

BY MR. STREITWOLF:

Q. Doctor, you testified she complains of some trouble at the hip. Do you mean the hip or the shoulder? A. I don't believe I said she complained of pain in the hip. I think you misunderstood me.

Q. She complains of trouble with the arm and shoulder? A. Shoulder principally.

Q. When did she first complain of that condition?

A. From the time that the accident happened.

Q. And as a result of your examination what did

Elmer H. Eulner—Cross

the condition of the arm and shoulder disclose?
A. Contused, bruised, swollen, discolored.

Q. Muscular? A. So far as I could tell by examination. Muscular and possibly ligamentous as well.

Q. What did you do in the way of treatment of that condition? A. Absolute rest in bed, and the application of external remedies.

10 Q. When did you examine that shoulder and arm last? A. I think possibly within the last three or four weeks.

Q. Did you observe anything from that examination? A. Only that she complained of pain.

Q. Does it disclose any symptoms? A. Only subjective.

Q. In what respect, to the touch? A. Yes, pain on touch, and of course she tells me.

20 Q. When you say subjective, it is only when you put your finger to it and you ask her the question?
A. Yes, sir.

Q. And as she replies affirmatively or negatively you could not dispute it, isn't that the fact? A. Not at all.

Q. A person who is very nervous, and has a shock, is apt to have the result of neuritis, is that true?
A. Neuritis is not so apt to result from shock as it is from injury. A traumatic neuritis. She might have a neurasthenia from shock.

30 Q. Would not this condition that she has there be due to neuritis? A. Yes.

Q. People have neuritis who haven't had shocks and haven't been in accidents, too? A. Oh, yes.

Q. Particularly a highly nervous person is apt to be afflicted with neuritis, more than one who is not nervous? It is a nervous condition, isn't it, doctor?
A. No, not neuritis. Neurasthenia is.

40 Q. Well, neurasthenia. A. That is different. Neuritis is a pain.

Elmer H. Eulner—Re-Direct

Q. What is neurasthenia? A. Neurasthenia is purely a nerve weakness.

Q. I am referring to a condition of pain. A. That is a neuritis that involves the nerves.

Q. I ask you if neuritis is not only present in a nervous person? A. No.

Q. But is generally present with a nervous person?
A. No.

10 Q. What is the proximate cause of neuritis? A. Neuritis may be due to a rheumatic condition; it may be due to an injury, or infection. Not necessarily in a nervous person.

Q. You would not say that the pain she complains of is not neuritis? A. I would not.

RE-DIRECT EXAMINATION

BY MR. COAN: 20

Q. Doctor, did you know Mrs. Cox before this accident? A. Yes, sir.

Q. Had she been a patient of yours? A. I don't believe I had seen Mrs. Cox for a year.

Q. You had treated her before that? A. Yes.

Q. Any of those conditions present at that time?
A. No.

ADJOURNED UNTIL TWO P. M. 30
AFTERNOON SESSION TWO P. M.

RE-DIRECT EXAMINATION (CONTINUED)

BY MR. COAN:

Q. You also treated Mrs. Rice? A. I did.

Q. On the 3rd of October? A. On the 3rd of October.

Q. What did you find the matter with Mrs. Rice?
A. Lacerated and contused hand and shock. 40

Elmer H. Eulner—Re-Direct

Q. You didn't examine Mrs. Rice's knees? A. I did not.

Q. What have you to say as to the extent, whether they are permanent or temporary, the injuries to Mrs. Rice? A. The scar in the palm of the hand is permanent, causing some little contracture.

MR. COAN: Cross-examine.

10 MR. VOSELLER: No questions.

RE-CROSS EXAMINATION

BY MR. STREITWOLF:

Q. Did you treat her at the hospital? A. No. At her home. At the home of her daughter-in-law.

Q. How soon after the accident? A. I saw her?

Q. Yes. A. Immediately after I took care of her daughter-in-law. I was called to the house about one-
20 fifteen.

MR. STREITWOLF: That is all.

MR. COAN: That is all.

MR. STREITWOLF: By permission of Mr. Coan, and my associate counsel for the defense, the defendant, Jennie R. Scott, will not call Mr. Raymond Wilson for the purpose of offering in evidence a map and testifying to levels and grades.

30 RAYMOND WILSON, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith:

DIRECT EXAMINATION

BY MR. STREITWOLF:

Q. Mr. Wilson, you are a civil engineer?

MR. COAN: Qualifications are admitted.

Q. Have you at my request called at what is known
40 as Pennsylvania Highway and made measurements as

Raymond Wilson—Direct

produced a drawing as a result showing points from the railroad bridge, being a railroad bridge referred to in the testimony? A. I have.

Q. And continuing to a point to Broadway in South Amboy? A. I have.

Q. Will you produce that map?

(Witness produces map.)

MR. STREITWOLF: I offer the map in evidence. 10

MR. COAN: I have no objection.

(Map entered in evidence and marked Exhibit D-3.)

Q. Now, Mr. Wilson, directing your attention to this map, will you point out to where Broadway, South Amboy, intercepts that highway which you have disclosed upon that map? A. The intersection of Broadway and Main Street is at the extreme upper left-hand corner of the map. The two parallel pencil lines extending in a diagonal direction across the map represent the two sides of the paved highway leading on down in a
20 northerly direction to the bridge, under the tracks of the Pennsylvania Railroad.

Q. As I visualize the map, do I understand from this point marked here "3," to the point marked here as being "wall," does the grade ascend? A. The grade is a descending grade from a point 750 feet back from the railroad bridge, the grade is a descending grade all the way to the bridge. From the bridge to a point
30 about 150 feet southerly therefrom the grade is not as steep as it is from this 150-foot point on up the hill. The majority of the hill is on a grade of five and one-half feet in one hundred, and the lower end flattens out. In the first fifty feet there is a difference of one and one-tenth, and in the next hundred the difference of four and one-tenth.

Q. The point I make, Mr. Wilson, is that as I stand here and witness your drawing, it would give me the impression that the grade ascends after point "3" marked on the map. Is that what you meant to dis-
40

Raymond Wilson—Direct

close, or not? A. No. This plan we are looking at is a plan, and not a profile. If it was a profile the line would still continue in a diagonal direction.

Q. At what point does the grade cease to descend?

A. The grade does not cease to descend until we get all the way to the bridge. There it is virtually flat. But from the bridge southerly it is all an up-grade.

10 Q. You said the relative percentage of that level or grade was five and one-half feet to one hundred feet?

A. Yes.

Q. Have you had any experience with road construction? A. I have.

Q. Are you at the present time the engineer for the Borough of Highland Park? A. I am.

20 Q. What have you to say in reference to a five and one-half per cent. grade? Is that considered an abnormal grade in road construction? A. It is a little unusual for ordinary road construction. The effort is to keep at least to four feet in one hundred as a minimum. And more than four feet is only used in exceptional cases where conditions would not justify a lesser grade.

Q. So that relatively speaking this was a steeper grade than is usually found in road construction. A. It is.

30 Q. And the lines that you have indicated on that map show the course in which the road extends until it reaches the railroad bridge? A. Yes. The lines that are shown on the map are plotted to scale, and it is a straight course of several hundred feet, and then we begin to curve to the left, and it is on a curve to the left all the way down until we get to the bridge approach.

Q. How many feet from the bridge to the corner of that bridge known as the Pennsylvania Highway? A. 784 feet.

Q. The width of the highway—did you take it?

40 A. The width of the paved section is twenty-seven feet,

Raymond Wilson—Direct

except that the bridge approach, and through the bridge, where it narrows to twenty-one feet.

Q. What is the condition of this pavement, will you describe it? A. The pavement is a smooth concrete surface extending from the curb on the east side, that is the lower side, as we look at it, to a Belgian block gutter on that side.

10 Q. That condition of the pavement exists from Broadway, the extreme upper end, to the railroad bridge? A. And beyond.

CROSS-EXAMINATION

BY MR. COAN:

Q. When did you make the map, Mr. Wilson?

A. Today.

20 Q. There is a paved sidewalk on the easterly side of that road, is there not? A. There is on the lower side of this line a paved sidewalk of some four and one-half feet in width.

Q. That extends down to and beyond that bridge?

A. The sidewalk extends from the top of the hill through and beyond the bridge.

Q. This grade of five feet to the one hundred, that is not half as steep a grade as you have on the Highland Park hill here at the Albany Street bridge, is it?

30 A. No. That grade on the Albany Street bridge is between eight and nine as I recall it.

Q. So that the percentage of grade here is not nearly as great as it is over in Highland Park there?

A. No. This is longer.

Q. What? A. This is longer than the Highland Park.

Q. It is longer and not so great a percentage?

A. Not so great a percentage.

40 Q. From what point, or could you tell from your measurement from what point you could see the over-

Raymond Wilson—Cross

head bridge? As a matter of fact you can see it all the way from the corner of Broadway? A. That is my observation, yes, coming in on this highway from the corner I believe that one can see the bridge.

Q. And see the pavement all the way to the bridge?
A. The pavement?

Q. Yes. A. No, I think not, because there is a place
10 in here where the pavement is in a little bit of a cup, and although one could possibly see the top of an automobile, it would be impossible to see the pavement, the pavement being lower than the cut on the side.

Q. Well, before you get halfway down the hill you can see the pavement all the way to the bridge, can't you? A. No. I would say that one would have to be down about to the end of the word "pavement," on the map, before you would be able to see all the way through.

20 Q. How far away is that from the bridge? A. About three hundred feet.

MR. COAN: That is all I have.

PLAINTIFFS' CASE (CONTINUED)

MARGARET L. RICE, one of the plaintiffs, being duly sworn according to law on her oath, saith:

30 DIRECT EXAMINATION

BY MR. COAN:

Q. You are one of the plaintiffs, Mrs. Rice, suing here today? A. Yes.

Q. You were in this bus on October 3, 1924? A. Yes.

Q. Were you injured? A. Yes, sir.

Q. What injuries did you receive? A. My hands and knees.

40

Margaret L. Rice—Direct

Q. Let me see if there is any mark on your hand. Where is it?

(The witness indicates.)

Q. Will you stand down here and show the jury?
(The witness indicates to the jury.)

Q. What was the matter with your knees? A. They were all black and blue and my leg was hurt and my knees all hurt, numb, and I can't hardly walk on them. 10

Q. Were you laid up after the accident? A. Very near a month.

Q. Were you to the hospital? A. Yes.

Q. Was Mrs. Cox to the hospital? A. Yes.

Q. Were you both taken home the same day?
A. Yes.

Q. Did you have any expenses, any bills? A. I didn't make any out. Of course, I have a good many.

Q. What bills have you as the result of this accident? A. Doctor bills. 20

Q. How much is the doctor's bill? A. It has not been made out yet.

Q. Did you pay anything to the hospital? A. I have not yet.

Q. How much is the bill? A. I think it is two dollars.

Q. Is the doctor's bill ten dollars? A. I don't know. It is not made out yet. I just came here, you know, from Philadelphia. 30

MR. COAN: You may cross-examine.

CROSS-EXAMINATION

Q. You were riding on the bus? A. Yes, sir.

Q. Did you see the wagon ahead of the bus? A. No, sir; I did not.

Q. Did you see the truck that hit the bus? A. No, sir; I did not.

40

Margaret L. Rice—Cross

Q. Was the bus stopped when it was struck?

A. That I could not say.

Q. What were you doing? A. Looking right out the window.

Q. Which window? A. Mr. Welch got in and I was noticing him getting in.

Q. The back window or the side window? A. The side. I sit right in the middle of the bus.

Q. Was your back to the end of the bus that was hit or were you facing the end that was hit? A. I was sitting right this way looking right out that way (indicating).

Q. Which side were you on? A. Left-hand side, when I got on the bus, the left-hand side of the bus going toward the front.

Q. You didn't see anything? A. No, sir; I didn't see nothing.

Q. You don't know whether it was moving or not? A. No, sir; I did not. Mr. Welch just got in and I was noticing him, and I was looking out the window.

Q. The bus stopped when Mr. Welch got in? A. That I couldn't say.

Q. It didn't stop when Mr. Welch got on? A. Oh, when Mr. Welch got on, yes.

Q. How soon after Mr. Welch got on did the accident happen? A. Very soon. I couldn't say just how many minutes, but very soon.

Q. Had the bus started up? A. That I couldn't say.

MR. VOSSELLER: That is all.

MR. STREITWOLF: No questions.

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

Menzel—Direct

DIRECT EXAMINATION

BY MR. COAN:

Q. Mr. Menzel, where are you employed? A. I was employed by the State Highway.

Q. Were you employed by the State Highway on the 3rd of August of last year? A. Yes, sir.

Q. Where were you working for the State Highway at that time? A. At South Amboy.

Q. Near the overhead bridge of the Pennsylvania Railroad? A. Yes, sir.

Q. On the road leading to Perth Amboy? A. Yes, sir.

Q. What were you doing there? A. Shoveling.

Q. Well, what were you shoveling? A. Sand and stuff.

Q. Was there sand on the cement roadway?

A. Well, there was a whole lot up there when we started.

Q. There had been a shower before that, that washed the sand over on the roadway; is that it?

A. Yes, sir.

Q. And you were cleaning that up? A. Yes, sir.

Q. Do you know Mr. Adams, the man who was on the stand here this morning, who was driving the horse and wagon? A. No, sir; I do not know him.

Q. Did you see the horse and wagon down there? A. Yes, sir.

Q. Did it stop? A. Yes, sir.

Q. There was one man on it, was there? A. Yes, sir.

Q. You don't know whether this is the same man or not? A. No, sir; I do not.

Q. Did you see the bus come along? A. Yes, sir.

Q. Did the bus stop? A. Yes.

Q. How far behind the wagon did the bus stop? A. Well, I should judge about eight or ten feet, or something like that, maybe twelve feet.

Menzel—Direct

Q. How far would you say that eight or ten feet was from where you are sitting? A. Well, I should say about ten feet from here to where that gentleman is sitting there.

THE COURT: Indicating the other side of the counsel table.

10 Q. Now, Mr. Menzel, at what point were you working then? A. We were working on the western side of the road, on the left side coming down the hill.

Q. Well, with reference to the wagon and the bus where were you working? A. Right across from it.

Q. Opposite which one? A. On the western side.

Q. Yes, but which were you opposite—the wagon or the bus? A. That didn't make much difference where we was, because it was that distance from that side of the road over to that side of the road and there must have been fifty or sixty feet anyhow.

20 BY THE COURT:

Q. You were on the left-hand side looking toward Perth Amboy, weren't you? A. Yes, sir; looking towards Perth Amboy, yet.

Q. Right-hand looking towards Perth Amboy? A. No.

Q. And they were going towards Perth Amboy, weren't they? A. Yes, sir.

BY MR. COAN:

30 Q. Which side of the road were you on? A. On the left-hand side going down the hill.

Q. On the left-hand side going down the hill? A. Yes, sir.

Q. Where was the bus and the wagon? A. On the right-hand side going down.

Q. Well, were you directly opposite the bus and the wagon? A. Very near it; yes, sir.

Q. That is, you were not as far as the overhead bridge, were you? A. What?

40

Menzel—Direct

Q. You were on the South Amboy side of the overhead bridge? A. No, not on the South Amboy side, on the other side.

Q. Were you on the side nearer to Perth Amboy?

A. Oh, I know now what you mean. That is right, on the South Amboy side.

Q. On the South Amboy side of the overhead bridge? A. Yes.

10 Q. How far away from the bridge were you? About? I don't care about the inches. A. A couple of hundred feet.

Q. Was it between the point where you were working and the bridge that the sand had washed on the road? A. Well, there was a whole lot of it when we first came there, but then where we worked, then we took it off, we had thrown it up on the bank to clear to the road.

20 Q. Was traffic going in both direction at that place at the same time? A. Well, now, that I don't know. A good many times, and a good many times there wasn't.

Q. On that morning I am talking about now. Isn't it a fact that the traffic was only permitted to go from where you were working at the bridge in one direction at a time? A. When we started to work; yes, sir.

Q. And at this time, at eleven o'clock? A. Well, that I don't know.

30 Q. But that had been so earlier in the morning. What did the wagon and the bus stop for? A. Well, that I couldn't tell you.

Q. Did you see this Scott truck that had the lumber on it? A. Yes, sir.

Q. Where was the truck when you first saw it? A. When it hit the bus.

Q. You first saw it when it hit the bus? A. Yes, sir.

Q. How long had the bus been there before it was struck by the truck? A. That I don't know.

40

Menzel—Direct

Q. Oh, well, was it there as long as you could count two, or ten, or twenty? A. Well, it might have been there for three or four or five minutes, something like that. Same as I suppose, like the wagon. We had seen it and then we kept working. We didn't watch it how long it stayed there.

Q. In what part of the bus did the truck strike?

10 A. The rear end.

Q. What part of the truck struck the rear end of the bus? A. The right side of the truck; I don't know whether the truck hit the bus, but the lumber on it.

Q. Well, was it the front part of the load or the rear part of the load or where? A. It started to hit the bus about from the middle on.

Q. That is, when the truck came down the hill the front part of the truck cleared the bus; is that right?

A. Yes, sir.

20 Q. From the middle on it hit the bus? A. Yes, sir.

Q. What happened then? A. Well, what happened then we all looked and went over there and that is all I can tell you.

Q. Well, where did the truck go? A. The truck kept on going.

Q. Didn't stop at all? A. No, sir.

Q. Who was it picked up Adams, the man who was driving the horse and wagon, do you know? A. That I don't know.

30 Q. Where did you go in the bus? A. We went over to the bus; yes, sir.

Q. There were some people injured in the bus, weren't there? A. There was.

Q. Who took them out? A. A man, Watson Barber.

Q. Anybody else? A. That I don't know.

Q. What did you do there after the injury? A. I picked up a pepper and ate that and went to shoveling again.

40

Menzel—Direct

Q. That was a pepper out of the wagon? A. Yes, sir.

CROSS-EXAMINATION

BY MR. VOSSELLER:

Q. This bus and wagon were on the right-hand side of the road? A. Yes, sir.

Q. Was there anything between the bus and the wagon, and the left-hand side of the road to prevent this lumber wagon from going around? A. I don't know, sir; I don't think there was anything there.

Q. You don't think? A. No, sir; because the truck kept right on going.

Q. How far behind the bus was the truck when you first saw it? I mean approximately. A. Well, the way it was coming down the hill I don't think it was over ten or fifteen feet behind the bus when I happened to look up and seen it.

Q. So that if the truck had wanted to it could have gone around to the left of the bus and the wagon? There was room? A. Oh, there was lots of room.

Q. Anything to prevent it? A. No, sir; there was nothing there to prevent it from going around.

CROSS-EXAMINATION

BY MR. STREITWOLF:

Q. The first you knew anything about this affair was when you heard the noise resulting from the collision, is that not true? A. What do you mean?

Q. When the truck crashed into the bus it made a noise, didn't it? A. I think it did; yes, sir.

Q. Did it? A. You bet it did.

Q. That directed your attention to the cause of the noise? A. Yes, sir.

40

Menzel—Cross

Q. Before that you were shoveling, weren't you?
A. Shoveling; yes, sir.

Q. And you were shoveling the sand out of this highway? A. Yes.

Q. How far did the sand extend in the highway that you were removing? A. At the time that that accident happened?

10 Q. First tell me how much the sand extended into the highway and we will bring it down to the time of the accident. A. Where we was working it was off of the highway. We was taking it off of the bank, what we had shoveled up to clear the road.

Q. You had shoveled it out of there? A. Out of there because we had to clear the road.

Q. You had already shoveled it out of the highway when the accident happened? A. Yes, sir.

20 Q. What was the occasion then, if the sand was removed, for anyone on behalf of the highway to stop traffic so that there was only one way traffic going through this bridge at the time of the accident? A. Well, we shoveled up from where we was working then, because we had no truck there. And then we had a truck there and we took it off the top.

30 Q. If you had removed the sand from the highway what was the occasion for the highway foreman, or someone of the party there with a flag stopping traffic, so that it was only one way traffic going through this bridge while you people were working? A. That I don't know.

Q. If they were stopping traffic there so that there was only one way traffic, it was for the protection of the men that were working in the road, was it not? A. Well, I suppose something.

40 Q. If, as a matter of fact, at that particular time they were stopping traffic, so that there was only one way traffic, would that change your answer and would you say that they were still working in the road?

Menzel—Cross

A. Well, I don't know whether anybody was working in the road at the same time or not.

Q. But the fact that traffic was being stopped so that there was only one way traffic through the bridge, or under the railroad bridge, that would lead you to believe that you were still working in the road, would it not? A. Well, there was lots of dirt there yet to be removed.

10 Q. That dirt was in the roadway, was it not?
A. Some of it.

Q. How many feet from the entrance of that bridge was it that this wagon stopped, referring to the horse's head? How many feet from the horse's head to the bridge was this wagon stopping? A. Well, it might have been a couple of hundred feet, and it might have been a little more or a little less.

Q. You don't know? A. Not exactly; no, sir.

20 Q. How many feet from the entrance to that bridge were you working when the accident happened?
A. Very near the same.

Q. You say after the accident the truck kept right on going. When did the truck stop? This side of the bridge or the other side of the bridge? A. They caught up with him on the other side of the bridge.

Q. On the other side of the bridge? A. Yes, sir.

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

30 Q. How many feet on the other side of the bridge from the bridge was it that the truck stopped? A. That I couldn't tell you.

Q. You were asked how long a time was it after the bus stopped that the accident happened? A. That I couldn't tell you exactly.

Q. You don't know? A. No, sir.

Q. In fact, you were digging there and you paid no attention to it? A. Not much; no, sir.

40 Q. How many men were on this truck, one or two or three or four? A. I don't know.

Menzel—Cross

Q. You don't know? A. No.

Q. Did you appear at the police court and testify?
A. No, sir.

Q. You testified that the center part of the truck,
where the lumber was loaded, first struck the bus?

A. What?

10 Q. You testified that the center part of the truck
where the lumber was placed, first struck the rear end
of the bus? A. Yes.

Q. You also testified that your attention was first
called to it when the collision occurred, is that right?
A. Yes.

Q. After the collision occurred the truck was prac-
tically on an angle of forty-five degrees after the smash,
was it not? A. I don't know what you mean.

20 Q. Well, I will try to explain it this way: Assuming
this is the bus, at the time of the accident wasn't this
the position of the truck, and that the position of the
bus, this being the bus (indicating)? A. Yes.

Q. Isn't that right? A. Something like that; yes,
sir.

MR. STREITWOLF: That is all.

BY MR. VOSSELLER:

Q. How fast was the truck going when you first saw
it? A. I couldn't tell you that.

30 Q. Was it going fast or slow? A. Coming down a
good clip.

Q. Had the bus been standing any length of time
before it was hit? I mean a minute or a half a minute.

A. It had been standing longer than a minute.

Q. Longer than a minute? A. Yes, sir.

MR. VOSSELLER: That is all.

MR. COAN: That is all.

Agnes Spencer—Direct

AGNES SPENCER, a witness produced on behalf
of the plaintiffs, being duly sworn according to law on
her oath, saith:

DIRECT EXAMINATION

BY MR. COAN:

Q. Mrs. Spencer, you live in South Amboy. A. Yes. 10

Q. On the 3rd of October last were you on your way
to Perth Amboy in the bus we are talking about?
A. Yes.

Q. Where had you gotten on? A. David Street and
Broadway.

Q. Did you observe Mrs. Cox and Mrs. Rice get on
the bus? A. Yes.

Q. Where did they get on? A. They got on at the
corner of Tice's store.

20 Q. That is the corner of Main Street and Broad-
way? A. Yes.

Q. Called Sexton's corner? A. Yes, that corner.

Q. Where were you sitting on the bus? A. The
right-hand going down I call that I think.

Q. That is on the right-hand side of the bus as you
were going towards Perth? A. Yes.

Q. With your back toward the bay? A. Yes, I
think that is right.

30 Q. Do you remember the bus stopping? A. No, I
don't.

Q. Did you see the wagon ahead of you? A. No,
I didn't.

Q. Didn't you see the men working on the road?
A. I didn't notice. I was sitting looking out of the
window on the other side. I wasn't looking around
me at all.

Q. What first attracted your attention there?
A. Why, the crash. 40

Agnes Spencer—Direct

Q. When the crash came did you look to see what caused it? A. No, I didn't. I was on the floor.

Q. You were on the floor? A. Yes, sir.

Q. Did you see the truck at any time? A. It was under the bridge when I seen it.

Q. That is the overhead bridge down below? A. Yes.

10 Q. How far away was that bridge from the place where the bus was struck? A. I don't know exactly, no.

Q. Look at the end of the wall down there. Was it farther away than that? A. It might be about there.

Q. How long was that after the actual impact of collision? A. Well, all I know I picked myself up and I got out of the bus and I didn't know what happened for the time being, and I heard the baby crying and I went into the bus again and took the baby and took
20 care of it until I got to the hospital. Further than that I don't remember.

MR. COAN: Cross-examine.

CROSS-EXAMINATION

BY MR. VOSSELLER:

Q. Was the bus stopping and starting frequently? A. No, I can't remember.

30 Q. I mean from the time you got on was it stopping and starting? A. Well, picking up the people along.

Q. Do you remember how many stops between Sexton's corner and the bridge? A. I think Mr. Welch got in after they did.

Q. How long before the accident? A. A few minutes.

Q. Did you see this wagon that was hit? A. No, I didn't.

40 Q. You didn't even see it after the accident? A. The vegetable wagon?

Agnes Spencer—Cross

Q. Yes. A. No, I didn't. I didn't know the lumber wagon had hit us until I got out of the bus and asked what it was.

Q. You didn't see the lumber wagon go past? A. First I seen of the lumber wagon was under the bridge. It was gone.

MR. VOSSELLER: That is all.

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

DIRECT EXAMINATION

BY MR. COAN:

Q. Mr. Stillwagon, what is your business? A. Foreman of the State Highway.

Q. Were you at this work on the Pennsylvania road- way on October 3rd last? A. As near as I can remember; yes, sir. 20

Q. Did you see the vegetable wagon and the truck there? A. I saw them after the accident.

Q. Do you know where you were at the time of the accident? A. I really couldn't say; no, sir; I couldn't.

Q. But you were somewheres around the road there? A. Yes, sir; I was somewheres there because I heard the crash.

Q. When you heard the crash what did you do? A. Of course I went over and saw what trouble there was. 30

Q. Then what did you do? A. Well, by the time I got there my nephew Watson Barber helped take the ladies out and put in some automobile and went in the hospital with them.

Q. At that time was the highway opened for traffic? A. Not to my knowledge. It was open one way for traffic. 40

Harvey Stillwagon—Direct

Q. What prevented the traffic both ways in the highway? A. The sand washed in on us.

Q. There had been a storm shortly before that? A. Yes, sir.

Q. Was the traffic being directed there? A. Well, now it is so long ago that I can't surely remember, but if there was traffic there, there was another foreman from
10 Asbury Park was directing the traffic, because we always double up, account to get it out of the way as quick as possible.

Q. On this particular day the traffic was only going in one way, was it? A. Yes, sir.

Q. And there was dirt how high on the other side of that passageway? A. Well, of course there was dirt all the way across, and then we shoveled it over and made it easier to get a right-of-way through as quick as possible.

20 Q. The part that wasn't open—which part of the road was that? A. On the left-hand side going to Perth Amboy.

Q. That was not opened? A. Yes, sir.

Q. And the part that was opened was on the right-hand side going to Perth Amboy? A. Yes, sir.

Q. How high was that sand on the left-hand side of the part that was opened? A. Well, sometimes we chucked it up as high as eight or ten feet, on a bad storm.

30 Q. Well, I mean on this day. A. Well, that is quite a while ago to remember.

Q. I know. You have some recollection of clearing off that road that morning. A. Well, I should judge it was about in the neighborhood of three to four feet on an average.

Q. That extended how far towards South Amboy from the overhead bridge. A. That same depth?

Q. No. The sand. I don't care what the depth
40 was. A. No. It was sloping on each end and it was

Harvey Stillwagon—Direct

higher in the center. I should judge there was sand in the neighborhood of one hundred feet on that road.

Q. One hundred feet from the bridge towards South Amboy? A. Well, there was under the bridge.

Q. The question is how far did it extend toward South Amboy from the bridge? A. I should judge around sixty feet.

Q. Sixty feet? A. As near as I could judge. 10

CROSS-EXAMINATION

BY MR. VOSSELLER:

Q. Could a car pass to the left of where this bus and wagon were standing on that morning? A. Oh, yes, because they wasn't down to the sand. Yes.

Q. They were not down to the sand when the accident occurred? A. No, sir; not quite down to it.

Q. So that the truck, assuming that the truck hit
20 the bus, if it had wanted to it could have gone to the left and got around? A. It did go around, went right on through the bridge on the other side.

MR. VOSSELLER: That is all.

MR. STREITWOLF: That is all.

DAVID QUINLAN, a witness produced on behalf of the plaintiffs, being duly sworn according to the law on his oath, saith: 30

DIRECT EXAMINATION

BY MR. COAN:

Q. You are a sergeant of police at South Amboy? A. Yes, sir.

Q. You were on October 3rd last? A. Yes, sir.

Q. Were you on duty that day? A. Yes, sir.

Q. Where? About eleven o'clock in the morning?

A. All over town, riding a motorcycle. 40

David Quinlan—Direct

Q. Do you remember where you were about eleven o'clock or in that neighborhood? A. Around eleven o'clock I would be about one block away from where the accident happened.

Q. Where was that? A. That would be stationed about on Main Street and Stevens Avenue.

Q. That is taking care of the school children?

10 A. That is taking care of the school children.

Q. While you were there, in consequence of some information that you received, where did you go? A. I went down to the accident near the State bridge.

Q. How did you go down? A. On the motorcycle.

Q. Didn't take you long to get there, did it? A. Not long.

Q. When you got there what did you find? A. I found there was a wagon pushed on the sidewalk, and the horse was broken loose from the wagon, and the
20 bus was pushed up on the sidewalk, and there was some man helping to take a lady out of the bus. So then I stopped my motorcycle there and I helped to take these two women out of the bus. In the meantime I got a car, I think with only just a driver in it, a five or six-passenger car, put the two women in the car and then to the South Amboy Hospital.

Q. When you say the two women you mean Mrs. Cox and Mrs. Rice? A. Yes, sir.

30 Q. Mrs. Spencer also went to the hospital with the baby? A. I think she went behind or ahead of me.

Q. Not in the same car? A. Not in the same car.

Q. What was Mrs. Cox's condition at that time, Mr. Quinlan? Was she conscious or otherwise? A. She was unconscious.

Q. Did you remain at the hospital until she was taken back to her house? A. Well, I left her there after I got her in the hospital and I came back and went down to see it there were any more people hurt,
40 or anything.

David Quinlan—Direct

Q. Yes. A. And after that I went back to the hospital again and got a car and put the two women in it and took them home.

Q. Was she still unconscious? A. Yes, sir.

Q. Did you see the Scott truck at any time? A. Well, it wasn't at the accident when I got there. It was past the accident.

Q. How far beyond the accident was it? A. It was 10 under the bridge, on the opposite side of the bridge.

Q. The overhead bridge? A. The overhead bridge.

Q. Did you go up to the truck? A. Yes, sir.

Q. You placed the driver of the truck under arrest, didn't you? A. Yes, sir.

Q. Took him to the City Hall in South Amboy, police headquarters? A. Yes, sir.

MR. COAN: I think you may cross-examine.

MR. VOSSELLER: That is all.

20

CROSS-EXAMINATION

BY MR. STREITWOLF:

Q. Were there any other officers around there that day? A. Not to my knowledge.

Q. Are you the officer that had an altercation with Scott in reference to the brakes, in which the remark was made that the brakes were no good? Did you make that remark to him? A. No, sir; not I.

Q. You would not say there was no other officer around there? A. Well, I wouldn't say. Not to my knowledge there wasn't. I was the only one, I think.

Q. If Mr. Scott testifies that he was directed by an officer to go down and report to the police station, and make his turn below the bridge, on account of the pitch of the grade, would you say that that was not true? A. I don't understand that.

(Question repeated by stenographer.)

Q. (Continued) And in doing so proceeded with 40

30

David Quinlan—Cross

the truck under the bridge and turned around and reported at the police station, would you say his testimony is untrue? A. I would according to my knowledge. My knowledge of this truck is after the accident the people were taken to the hospital, taken home, the driver of the truck and the driver of the bus were talking to one another on the opposite side of the
10 bridge from where the accident happened. So I told the truck driver then to turn his truck around and follow me on the motorcycle.

Q. Did you know that the position after the collision of the truck and the bus blocked the whole highway and it was necessary for the truck to move in order to clear traffic? You didn't know that, did you? A. The truck block the highway.

Q. You were how many feet away from this accident when the collision happened? A. Oh, I didn't see
20 the accident. I could say I was 600 feet.

Q. Six hundred feet. How many feet from the corner of Broadway were you? A. That is what I mean, 600 feet from the corner of Broadway. easy.

Q. The surveyor has testified 750 feet. Who told you about this accident? A. Well, that is so long ago and we have so many accidents, I have some days two or three, and have them quite often.

Q. How were you notified, by telephone? A. No.
30 I think it was a passing autoist notifies me.

Q. That is only a surmise on your part? A. I am quite sure that is so.

Q. Then from the time this information reached you by a passing autoist, until you got there, several minutes must have elapsed? A. Oh, no, not more than one minute.

Q. If the traffic was blocked how could the passing motorist get through to notify you?

MR. COAN: That is not the question counsel asked.

40 Q. Let me put it this way: Assuming that the traf-

David Quinlan—Cross

fic was blocked as the result of this collision, you can't say how many minutes it was blocked before that automobile would clear and pass, could you? A. No. I understood you to ask me how long it took me to get from where I was to the accident.

THE COURT: That is what you did ask.

MR. STREITWOLF: I will withdraw that previous question. 10

Q. I ask you now you don't know how long that traffic was blocked? A. Oh, no.

Q. What was the character of this automobile that informed you? Was it a touring car? A. Oh, yes, a touring car.

Q. When this gentleman appeared at police headquarters were you there? A. I think I just brought him there and left him there.

Q. He exhibited his license, didn't he? A. Yes, sir.

Q. Did you appear there at the hearing? A. No, sir. 20

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

DIRECT EXAMINATION

BY MR. COAN:

Q. You are the husband of Georgiana Cox, Mr. Cox?

A. Yes, sir.

Q. What time did you learn of this accident? 30

A. About twenty minutes after twelve.

Q. What time did you get home? A. About ten minutes of one.

Q. Where was your wife then? A. Lying on the couch.

Q. Did she recognize you when you came in?

A. Not when I first went in she didn't.

Q. How soon afterwards? A. About quarter after
one. 40

George Cox—Direct

Q. What expenses have you had in consequence of this accident? A. Did you want an itemized amount of it?

Q. Give us the different items and amounts.
A. Housekeeping and nurse, \$135; washing and ironing, \$25; druggist, \$3; extra light and fuel, \$35; one doctor, \$96; clothing, \$59; extra merchandise, \$65.05; 10 teeth, \$80; balance of doctor bill to date, \$41.50; hospital and doctor at hospital, \$10; total, \$409.55.

Q. Do you know what the doctor bill of your mother is? A. No, I do not. Dr. Eulner hasn't given me that.

MR. COAN: Cross-examine.

CROSS-EXAMINATION

BY MR. STREITWOLF:

20 Q. How did you arrive at that valuation of \$59 for clothing? A. Why, because the clothing was damaged.

Q. I ask you how you reach that conclusion.

A. Just exactly what I paid for them.

Q. That clothing had reference to what garments?

A. A coat, a pair of corsets, stockings, underwear and such as that.

Q. Figured on cost? A. Just exactly what they cost me.

30 Q. You didn't figure the period of time they had been used, depreciation? A. Absolutely not.

Q. All of that clothing you refer to became worthless? A. Worthless; yes, sir.

MR. STREITWOLF: That is all.

MR. COAN: Plaintiff rests.

MOTION FOR NON-SUIT

MR. VOSSELLER: It seems to me we are entitled 40 in this case to a non-suit as to the bus driver. I there-

Motion for Non-Suit

fore ask the Court to grant a non-suit to us in the three cases. There is nothing to connect the bus, or any negligence of the bus driver, with this case. Where any direct testimony is given at all it shows the bus was standing and had been standing for some time; that the truck hit the bus, and that the bus, by virtue of being stopped there, was necessarily impelled against the wagon that was ahead of it. It seems to me we are 10 clearly entitled at this time to a non-suit.

THE COURT: I will hear what you have to say.

(Mr. Coan replies to the motion).

THE COURT: The motion is denied and you may take an exception.

DEFENDANT SCOTT'S CASE 20

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

DIRECT EXAMINATION

BY MR. STREITWOLF:

Q. Mr. Danser, what is your business? A. Garage 30 owner.

Q. Where do you do business? A. Cranbury.

Q. New Jersey. A. New Jersey.

Q. Do you know Mr. and Mrs. Scott? A. Through business relations.

Q. They live at Cranbury? A. Well, I should say about two miles or two miles and a half this side, towards New Brunswick.

Q. Do you know a certain G. M. C. truck that Mrs. 40

Arthur Danser—Direct

Scott owns that is used by her in connection with her lumber business? A. I do.

Q. Did you do any work on this truck on August 25, 1924? A. Relined the brakes on it.

Q. Did you test the brakes. A. I did.

Q. Foot brake and emergency brake? A. I did.

Q. And you relined them on that date? A. Yes, sir.

10 Q. And after your work was finished did you test them? A. Always test them. They were tested as soon as the job was done.

Q. And with what result? A. Found to be working O. K.

MR. STREITWOLF: Cross-examine.

MR. COAN: No questions.

MR. VOSSELLER: No questions.

JENNIE SCOTT, one of the defendants, being duly
20 sworn according to law on her oath, saith:

DIRECT EXAMINATION

BY MR. STREITWOLF:

Q. Mrs. Scott, where do you live? A. Cranbury.

Q. You are the defendant in this case? A. I am.

Q. What is your husband's name? A. Harvey R.

30 Q. You own this truck in question that caused this collision? A. I do.

Q. On that particular day your husband was driving this truck? A. Yes, sir.

Q. You also at that time were the owner of a small lumber business at Cranbury? A. Yes, sir.

Q. And at that place of business you sawed lumber? A. Yes.

Q. And sold it undressed. Now, on this particular day this truck was conveying undressed, sawed lumber from your place of business at Cranbury to where?
40 A. Perth Amboy.

Jennie Scott—Direct

Q. And your husband was driving this truck?

A. Yes, sir.

Q. And you assume that agency without any question? A. Yes.

Q. You and your husband also live on a farm at Cranbury? A. Yes, sir.

Q. How long have you lived there? A. It will be five years the first of March. 10

Q. How long have you lived in this country? A. Most of my life.

Q. In addition to running this lumber business you run the farm? A. Yes, sir.

MR. STREITWOLF: Cross-examine.

MR. COAN: No questions.

HARVEY R. SCOTT, a witness produced on behalf of the defendant, being duly sworn according to law on his oath, saith: 20

DIRECT EXAMINATION

BY MR. STREITWOLF:

Q. Mr. Scott, you are the husband of Jennie R. Scott, the preceding witness? A. I am.

Q. And you were the gentlman driving this truck on the day in question? A. Yes, sir.

Q. How much did this truck weigh, light? A. Three 30 ton and a half.

Q. What is the name of the truck? A. G. M. C.

Q. Made by the General Motors Corporation? A. Yes.

Q. On this particular day what cargo did you have on the truck? A. I had on two by sixes, eight foot.

Q. Approximately what was the weight of the cargo? A. Around as near as we could figure was about seven ton and a half. 40

Harvey Scott—Direct

Q. I am talking about the cargo. A. About four tons.

Q. And the truck itself was three and one-half tons?
A. Three and one-half tons.

Q. Making an aggregate weight of seven and one-half tons? A. Yes.

Q. Who was with you on the truck on that day?
10 A. William Conover, or Stanley his name is.

Q. Is he in your employ any longer? A. No.

Q. How long has he been out of your employ?
A. Since about the first of April.

Q. Just describe as nearly as you can recall just what happened as you reached, or were about to reach the point of Broadway, South Amboy. Do you know where Broadway is, where the New Brunswick trolley turns to the right leaving Main Street at that point?
A. Yes.

20 Q. Or as you are approaching it. Describe in your own words just what happened? A. Well, when we went to cross Broadway going down to Perth Amboy, the hill, as we approached the top of the hill we placed our truck in second gear, and the bus was starting down ahead of us, and we trailed the bus on down the hill until we got part of the way down and there, why, we had this accident.

Q. From the point that you first trailed the bus what was the relative distance from the rear of the bus to the front part of your truck? A. Well, I would say
30 about forty-five to fifty feet.

Q. And as you proceeded down the Pennsylvania Highway, what changes, if any, and to what degree, was made between the distance of the truck and the bus? A. How is that?

Q. What was the change in the distance as you went down? As you proceeded down Pennsylvania Highway, what changes, if any, occurred in the relative distance
40

Harvey Scott—Direct

between you? A. Why, the bus kept going a little bit farther away from us, and farther away from us.

Q. In other words, instead of your gaining on the bus, the bus was gradually getting further ahead of you? A. Yes, because we was in second gear.

Q. At what speed is your car governed? A. Thirteen miles.

Q. That is maximum capacity? A. Yes.

Q. Has it a governor on it? A. Yes.

Q. Limits the speed to thirteen and one-half miles an hour? A. Yes, sir.

Q. Do all the G. M. C. trucks have that governor on?

MR. COAN: I object.

THE COURT: Objection sustained.

Q. Was this put on specially at your request, or was it on when you bought it? A. Came with it.

Q. Now, tell us in your words just what happened preceding the accident. A. Well, we were watching
20 the bus all the way down ahead of us, and it came to a sudden stop, and I saw it the minute it stopped and I applied my brakes and saw I wasn't going to hold it; the colored man that was over alongside of me he grabbed the emergency and he pulled that, and I still saw it wasn't going to hold, the wheels were sliding, so I drew out to my left and the rear of my truck hit the bus.

Q. Now, when you first saw that the truck had
30 stopped, how many feet was the rear end of the truck to the front part of the bus? A. The rear end of the—

Q. The rear end of the bus to the first part of your truck. A. I would say about forty-five or fifty feet.

Q. At that point? A. Yes, when I first saw it.

THE COURT: That is not the answer. That is not understood. He said when he first saw the bus he was about forty to fifty feet in the rear of it, and the bus was going faster than he was and the gap between them
40 was increasing.

Harvey Scott—Direct

MR. STREITWOLF: That is what I understood him to say.

BY THE COURT:

Q. Now, you are asked what the distance between the rear of the bus and the front of your truck when the bus actually stopped. A. Well, I would say it was maybe by that time it was sixty or seventy feet ahead
10 of us.

BY MR. STREITWOLF:

Q. How many feet had you been able to bring this bus to a complete stop after applying the brakes?
A. This truck, do you mean?

Q. I mean the truck, yes. A. Well, at ordinary times, why, I never have any trouble at all stopping, just put your foot on the foot brake, never had to use the emergency.

Q. Within how many feet from the application of
20 brakes to the final stop would you proceed? A. The length of it, fifteen feet I would say.

Q. When you first saw this bus stop did you apply your brakes? A. I did.

Q. What else did you do? A. I pulled to the left when I saw I wasn't going to get stopped, the wheels seemed to be sliding, and the man was with me he pulled the emergency, and still it kept on sliding and I saw that I was going to run into the bus, so I pulled
30 out, I thought I would miss it, but I was unfortunate not to do it.

Q. What part of the truck struck the bus, and what part of it? A. The rear end of the right-hand side.

Q. Of your truck struck what? A. Hit the rear end of the left-hand side of the bus.

Q. Preceding that impact had your engine stalled?
A. Yes.

Q. What caused it to stall? A. We jammed the brakes so hard that we stalled the engine and locked
40

Harvey Scott—Direct

the emergency fast, so we had quite a job getting it loose.

Q. As a result of that impact did it throw the bus ahead of you? A. Well, I couldn't say because I was—I couldn't look behind or sideways. I was just attending—

Q. After the accident what position was the truck in relation to the bus? A. Well, about catcornered. 10

Q. Do you know what a right angle is? A. Yes.

Q. Do you know how many degrees to a right angle?
A. Yes.

Q. How many? A. Forty-five.

Q. You were in a position of forty-five degrees from the bus, at an angle of forty-five degrees? Explain it here with two books, if you will. This is the bus and this is your truck (indicating).

MR. COAN: Let the witness state them, please.

Q. This is Perth Amboy. Now, what position were
20 you after the accident was over? A. About like that (indicating). Maybe a little possibly further around than that.

Q. Which is the front of the bus? A. This end here (indicating).

Q. Which is the front of the truck? A. Here (indicating).

Q. Where is the railroad bridge from these points?
A. Down here (indicating). 30

Q. What happened next after the accident?
A. Why, a trooper came along, or an officer in uniform and told me to get in that truck and unblock the traffic. And we got in the truck and went to take the emergency—we first turned our engine over and got that going, then we got in the truck and took it out of second gear, and we went to take off the emergency and we couldn't get it off at first, but finally we rattled around there until we got it off.

Q. What had happened to the emergency? A. I 40

Harvey Scott—Direct

don't know. It got stuck. We jammed it on so hard that the dog got locked underneath.

Q. What do you mean by the dog? A. That is the ratchet that holds it from falling off. Then we drove down to the other side of the bridge and stopped.

Q. Before that what had the officer said to you?

A. Why, the officer said to me, he said, your brakes were no good. I said there is the truck, you try them.

10 Q. What else did he say to you? Why did you go down, instead of up, when you left the accident?

A. Why, he told me to go down under the bridge and turn around and come back to the police station.

Q. Did you do that? A. I did.

Q. Before that accident happened, and at the time the truck came to a complete stop, did the driver of the bus give any signal by raising a whip or a hand, or by any other device, that he was about to stop?

20 A. Nothing.

Q. How soon after the accident happened were you ordered to report to police headquarters; how many minutes had transpired? A. Well, I know we were at the police station before twelve o'clock, but I just can't recall that.

Q. Do you know what time the accident happened?

A. About eleven o'clock.

30 Q. Was there anything that you did, or that you could have done on this occasion that could have averted this accident?

MR. COAN: I object.

THE COURT: Objection sustained.

MR. STREITWOLF: Prays exception.

THE COURT: What do you mean, allow you an exception, Mr. Streitwolf? What a man could have done?

MR. STREITWOLF: Was there anything he could have done to have avoided it?

40 THE COURT: That is entirely improper. You can ask him what he did do, and it is entirely and exclusive-

Harvey Scott—Direct

ly within the province of the jury to determine what he could have done.

MR. STREITWOLF: I have already asked him what he did do.

THE COURT: That is all you can ask him.

Q. At what point preceding the collision, and referring to the time when the bus stopped, did the driver apply the emergency brake? At what period of time, at what point? A. Why, as soon as he saw that I could not take the truck out.

Q. Could you, with your hands on the wheel, observe him pulling the emergency brake? A. Yes, sir.

Q. What position is the emergency brake to you? Is that a right-hand drive? A. Left-hand.

Q. Where is the emergency brake? A. Right there to my right.

Q. And it was between you and the driver? A. Yes.

MR. COAN: He was the driver. 20

Q. I mean between you and the gentleman that was with you. A. Yes.

Q. What was his name, Conover? A. Conover.

Q. Did you see Conover apply the emergency brake? A. I did. Or felt him.

Q. Did you take your hands off the wheel? A. No, sir.

Q. What did you do about the foot brake? A. I had my foot on it all the time, pushing as hard as I could push, and the wheels were sliding. 30

Q. Were you asked on that occasion to exhibit your driver's license? A. Yes.

MR. COAN: I object to that. That is not material in this case.

MR. STREITWOLF: The law requires him to carry it.

Q. Did this officer who directed you to go to police headquarters first ask you for your driver's license?

MR. COAN: I object. 40

Harvey Scott—Direct

THE COURT: What difference does it make whether he did or not?

Q. Did you see Officer Quinlan here this morning?

A. Well, I really—

Q. Did you see him here this morning? A. I saw him here, yes.

Q. Would you say whether or not that was the officer with whom you had your conversation? A. I would not.

Q. After this accident happened was there traffic in back of you? A. Yes. That is the reason why I had to go under the bridge.

Q. In other words, you could not, from the position of your car, very well have gotten out of that situation and have gone back to police headquarters, except gone around in the way you did?

MR. COAN: I object.

20 THE COURT: He can say that as a matter of physical fact.

MR. COAN: The thing is that Mr. Streitwolf is saying it.

THE COURT: That is true but at the same time he has already testified to that. He said that his car and the other car became buckled. The officer came along and told him he would have to go to the police station, and besides that he was blocking the traffic, or the traffic was being blocked, and he finally separated the cars, and in order to turn he had to go down and under the bridge. That has already been testified to.

Q. How long have you been driving, Scott?

A. About fourteen or fifteen years.

Q. Did you ever have any accident before?

MR. COAN: I object.

A. Never.

THE COURT: Objection sustained.

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Harvey Scott—Direct

Q. How long has your wife owned this truck?

A. About three years.

Q. Before this accident had you driven this truck?

A. Yes.

Q. Many times? A. Always, yes.

CROSS-EXAMINATION

BY MR. VOSSELLER:

Q. You say that the minute that you saw this bus stop you applied your emergency brake and your foot brake, and that you were in second gear all the time, and that you were sixty or seventy feet from the bus when you applied your brake, is that right? A. Well, as near as I could judge, yes.

Q. But you were plenty far off to ordinarily stop the car, is that the idea? A. Yes.

Q. You saw this bus stop? A. Yes.

Q. You knew it was stopped, didn't you? A. Sure.

Q. How wide was this load you had on this truck? A. Eight foot.

Q. And it was what kind of lumber? A. Undressed lumber.

Q. Do you mean to tell me that your car and your wheels were slipping, with your car in second gear and your foot and emergency brake on? A. I do.

Q. What made it slip? A. I couldn't tell you.

Q. There was no dirt on this road at that point, was there? A. I couldn't tell you that.

Q. Wasn't it a cement road? A. Yes, it was a hard road.

Q. Where you first applied your brakes? A. Yes, it was a hard road.

Q. Perfectly hard road, twenty-seven feet wide, isn't that a fact? A. Not at that point.

Q. Well, it is twenty-one feet, isn't it? A. Well, I don't know just what you mean.

40

Harvey Scott—Cross

Q. It is plenty wide for two cars to pass, isn't it?
A. No, it wasn't then.

Q. Where you applied your brakes it was wide enough for two cars to pass? A. Well, it might have been just right there, but I hadn't time enough to apply my brakes and get around the bus, where it became a one-way street.

10 Q. When you first saw this bus had stopped ahead of you, which you say was sixty or seventy feet distant from you, you had plenty of room then to get to the left-hand side of the road, didn't you? The road is twenty-seven feet wide there, isn't it? A. Not without pulling out and running in the sand bank I didn't.

Q. Do you mean to tell me that there was a sand bank where you first applied your brakes on the left side of the road? A. I don't remember about that.

20 Q. There are a lot of things you don't remember.
THE COURT: That comment is entirely uncalled for.

Q. You did go by this bus and this wagon eventually, did you not? A. After—

Q. After the accident happened? A. After the accident happened.

30 Q. And they were still in the road, weren't they? A. I think, if I remember right, they moved the wagon up on the sidewalk and shoved the two wheels of the bus up on the sidewalk.

Q. You mean your car did that, don't you, when you hit? A. No. I can't tell you about that. I just don't remember because I was excited and I just don't remember.

Q. Was there a bank of sand right opposite, directly opposite where the wagon and the bus stood? A. If I remember right.

Q. I mean on the road now. A. That is what made it become a one-way street.

40 Q. Then it was a one-way street? A. Yes.

Harvey Scott—Cross

Q. You say that you can ordinarily stop this car in fifteen feet? A. Yes.

Q. You were going down in second gear. How fast were you going? A. I suppose eight or nine miles an hour.

Q. You were going eight or nine miles an hour and you could see this bus that was stopped seventy feet ahead of you, or sixty feet, sixty or seventy feet, and still you could not stop in that distance, with the emergency brake and the foot brake? A. Yes, sir. 10

CROSS-EXAMINATION

BY MR. COAN:

Q. How many police officers did you see around there that day? A. Well, I don't know how many I saw, whether it was all the same man, or whether it was different ones at different times. 20

Q. Well, wasn't it the police officer who took you to the police station, who told you your brakes were out of order? A. Yes, sir.

Q. That was Quinlan, you heard him testify here today, didn't you? A. Yes.

Q. He told you your brakes were out of order? A. Yes.

Q. Now, isn't it a fact that he, in the presence of the driver of the bus, asked you what was the matter with your car, or the driver of the bus asked you what was the matter with your car, and you said the brakes would not hold? A. No, absolutely not. 30

Q. Well, it is a fact that brakes would not hold, isn't it? A. How is that?

Q. Isn't it a fact the brakes would not hold? A. No, sir.

Q. Why didn't you stop? A. Because the wheels slid.

Q. The brakes were not holding? A. They were 40

Harvey Scott—Cross

holding, absolutely. I said to the policeman, if you don't think the brakes hold, you get out there; there is the truck, and go over it.

Q. The policeman does not happen to be an automobile expert. Do you mean to tell this Court and jury that you were driving on the highways of this State a truck in such condition that you could not stop it in
10 twenty-five feet, or seventy feet? A. Well, I done all I could do.

Q. Isn't it a fact you didn't stop that truck? A. I locked the brakes.

Q. Isn't it a fact you didn't stop the truck? A. Yes.

Q. Why didn't you turn out and run into the sand bank instead of risking life in the bus? A. I done all I could do.

Q. Was there anything to prevent you pulling into
20 that sand bank that was on the road? A. I done all I could do.

Q. Was there anything to prevent you from running into that sand bank that was on the road? A. Well, I tried to right there.

Q. You had seventy feet behind you to do that, didn't you? A. I didn't realize I was going into the bus.

Q. Why didn't you realize you were going into the
30 bus? A. Because I couldn't realize it. I thought I was going to stop every minute.

Q. You started at a point sixty feet behind that bus to put on your brake, didn't you? A. Yes, sir.

Q. How far behind the bus were you when the colored fellow put on the emergency brake? A. Well, I suppose it was in maybe forty, or thirty-five.

Q. And you saw at forty or forty-five feet away that your foot brake and your emergency brake were not holding? A. Yes, sir.

40

Harvey Scott—Cross

Q. And didn't you have space in that distance to pull out to the sand bank. A. I did not.

Q. Why not? A. I couldn't. I did get out as far as I could get.

Q. Do you mean to tell me you can't operate a car so that you can turn away from behind a vehicle in forty feet? A. When you are handling a truck you are not handling a car. 10

Q. I don't care whether it is a truck or a locomotive. Are you driving on the highways of this State a vehicle that is so far out of your control that you can't turn it out in forty feet, when you can't stop it? A. I turned it out as quick as I could.

Q. But you didn't turn it out quick enough to stop hitting that vehicle in front of you, did you? A. No.

Q. Where was the bus when you first saw it? A. At the top of the hill.

Q. Oh, well, now, didn't you see it before it was at
20 the top of the hill? A. Yes, sir.

Q. Didn't it come all the way down Main Street in front of you? A. No, sir.

Q. It didn't turn out of Broadway into Main street, did it? A. Couldn't tell you nothing about that. When I first saw the bus it was just approaching the top of the hill.

Q. Was it on Main Street? A. That is coming in from Parlin? 30

Q. Yes. A. Going down under the railroad is where I first saw it, going down the grade.

Q. Did you see it when it stopped to pick up Mrs. Cox and Mrs. Rice? A. No, sir.

Q. Did you see it stop at any time between that and the time you collided with it? A. No, sir.

Q. Don't you know that halfway down that hill it stopped and picked up Mr. Welch, who is here in the court room today?

MR. STREITWOLF: There is no proof of that. 40

Harvey Scott—Cross

MR. COAN: I am asking him.

THE COURT: He is being asked that now.

A. I did not.

Q. Do you say that bus didn't stop from the time it left Broadway and Main Street until you ran into it?

A. I never saw it stop.

Q. Do you say it didn't stop? A. No, I wouldn't say it didn't.

Q. It was right in front of you all the way down the hill, wasn't it? A. I don't remember it stopping.

Q. Well, now, I want to know what you saw about it. You were driving your truck behind that bus, and I want to know, and I want a direct answer as to whether it stopped or whether it did not stop? A. I did not see it stop.

Q. Will you say it didn't stop? A. No.

Q. Why, you said you were coming down and it was increasing the distance between you all the way down the street, on your direct examination. You said you were first forty feet behind it, or forty-five to fifty feet behind it, and that then later you were sixty to seventy feet behind it. A. The bus was going on faster than I was.

Q. Isn't it a fact that the bus stopped between Main Street and the point where you ran into it? A. I couldn't tell you.

Q. And picked up Mr. Welch, a passenger? A. I couldn't tell you. I don't remember seeing it stop.

Q. Will you say it didn't stop? A. I don't remember seeing it stop.

Q. Isn't it a fact that you weren't paying a bit of attention to what was going on ahead? A. Absolutely not.

Q. And that is why you ran into the bus? A. No, sir.

Q. Why is it you didn't see it stop and pick Mr. Welch up? A. I couldn't tell you.

Harvey Scott—Cross

Q. You won't say it didn't stop, will you? A. I wouldn't say it did or didn't, because I don't know. I am not going to lie.

Q. And you were going about eight miles an hour? A. Yes, sir.

Q. Down a hill that has about four foot grade in on hundred, that is right, isn't it? A. I don't know how much grade is there.

Q. And you couldn't stop in seventy feet? 10

THE COURT: He has already said he did not, or he could not.

Q. You say you stalled your engine? A. Yes, sir.

Q. Do you want to tell this Court and jury that the reason you pulled on through that street there, to that bridge, do you mean to tell this Court and jury that the the reason you did that was because the policeman told you to?

A. Yes, sir; I do. 20

Q. Isn't it a fact that Zientk, the driver of the bus, asked you to come and help him get the people out of that bus that were injured, and you said you didn't have time, you were in a hurry? A. Absolutely no.

MR. COAN: Stand up, Zientk.

Q. Didn't you say that to this man when he asked you to help to get the people out of the bus? A. No, sir.

Q. Didn't he ask you to help to get the injured out? 30
A. No, sir.

Q. Did you help the injured out of the bus? A. No, sir.

Q. Did you help the man who was driving the wagon? A. I didn't help no one.

Q. You didn't help a soul that you injured? A. I was too scared.

Q. You were not too scared to drive that truck afterward, though, were you, that you could not stop 40

Harvey Scott—Cross

in seventy feet? Were you, Mr. Scott? A. I did drive it afterwards, I went on.

Q. Although you were too scared to help the people that were injured there through you? A. I didn't.

Q. You weren't too scared to drive your truck? A. I never even thought to get a witness.

10 Q. What witnesses could you possibly have had? Haven't the witnesses here told just exactly what happened? A. Well, I might have had some too.

Q. Haven't they told just what happened? Please answer my question. A. Yes.

Q. And what they have told is exactly the truth, isn't it? A. No.

Q. And it is just the same as what you tell, isn't it?

THE COURT: Oh, no, it is not.

A. No, it is not.

MR. STREITWOLF: That is an unfair question.

20 THE COURT: The jury will know what differences there are. For instance, you would conclude from what he said that he attempted to go, after the collision, with the idea of running away. He denies that absolutely.

Q. You say your engine was stalled after the collision? A. Yes, sir.

Q. Who cranked the car? A. I don't remember. I think—I don't know whether I did or the man who was with me.

30 Q. Was it still in second gear when you cranked it? A. No.

Q. When did you take it out of gear? A. When we went to start the engine.

Q. Who took it out of gear? A. I did.

MR. COAN: I think that is all.

THE COURT: Any questions Judge?

MR. VOSELLER: No.

Harvey Scott—Cross

REDIRECT EXAMINATION

BY MR. STREITWOLF:

Q. Did you take the names of any witnesses?

MR. COAN: I object.

THE COURT: That is not rebuttal. However, I will allow it.

A. No. I was too frightened to take anything. 10

THE COURT: That is rebuttal. That is all right. He said no, that he was too frightened to take anything.

MR. STREITWOLF: That is all.

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

DIRECT EXAMINATION

BY MR. STREITWOLF: 20

Q. Mr. Conover, where do you live? A. Jamesburg.

Q. On October 3, 1924, you were working for Mrs. Scott? A. Yes, sir.

Q. At this lumber mill that she conducted at Cranbury? A. Yes, sir.

Q. On that day did you accompany Mr. Scott on the truck that was proceeding in the direction of Perth Amboy? A. Yes, sir.

Q. You remember this collision? A. Yes, sir. 30

Q. And you were on the truck at the time of the collision? A. Yes, sir.

Q. Who was driving the truck? A. Scott.

Q. Do you know the highway near the Pennsylvania bridge? A. Yes, sir.

Q. Now, commencing at the point where Broadway intercepts the highway, tell me what you saw in relation to the bus and this truck and the details of this accident? A. Well, when I first saw the bus it was on

Stanley Conover—Direct

top of the hill, and we started down behind it and gradually it kept getting away from us.

Q. Talk a little louder. A. It kept getting away from us, and I saw down the railroad men was working and we was following it, and all at once it stopped.

Q. What stopped? A. The bus.

Q. How many feet were you away from it when you first saw the bus had stopped? A. Around about forty or forty-five feet.

Q. Yes. A. And Mr. Scott put on the foot brake and I had the emergency brake, and he turned his truck to the left, and the back part of it skidded up into the bus.

Q. Had you driven on this truck with Scott before? A. Rode on it? Yes, sir.

Q. Do you know the different parts of a car? A. Yes, sir.

Q. What did Scott do, if anything, before he descended this incline with reference to the gears? A. I didn't understand what you said.

Q. What if anything did Scott do just as he started to go down this hill? A. He put the truck in second gear.

Q. When did he take it out? A. Oh, he didn't take it out. The motor stalled and we left it in. When we started the truck to go back to the police station then is when we took it out.

Q. Did you say forty or forty-five feet that you saw the bus was away from the truck? A. Around about forty or forty-five feet.

Q. Commencing there just tell what you did when saw that the bus had stopped, what did you do? A. I pulled the emergency brake back.

Q. Then what happened? What did Scott do then? A. He pushed the foot brake in as far as he could get it, and the back part was sliding around when he pulled it to the left.

Stanley Conover—Direct

Q. What direction was the car turned or headed after that was done? What did Scott do at the wheel, that is what I want to know? What direction was he headed after he applied the foot break, and you the emergency brake? A. Oh, he was heading across the road to the left.

Q. Go on. A. Well, and then they told us to get out of the way, we was blocking traffic.

Q. We haven't got to the accident yet. Go on and tell what happened. Did he clear the bus? A. The back end hit it.

Q. Back end of what? A. Back end of his truck.

Q. Hit what? A. Hit the left-hand end of the bus.

Q. And as a result of that impact what happened? Was the bus advanced forward? A. Yes, it was shoved up against the sidewalk.

Q. At any time during this period did the engine become stalled, and if so, at what period? A. It did become stalled.

Q. What? A. It did become stalled.

Q. Do you know when it became stalled? A. When we put the brakes on.

Q. And after the accident explain the position of the truck and the bus. This is the bus and this is the truck, and you are going down this hill now. Explain to this jury the relative position of the truck and the bus after the accident was over. A. Why, they were something like this, set something like this (indicating).

Q. Which is the truck? A. This here one (indicating).

Q. Where is the bridge? A. The bridge is right down through here somewhere.

Q. See if I can make it clear to you.

MR. COAN: I object. I think he knows what he is talking about.

Q. This ledge here all the way down we will assume is Pennsylvania Avenue, or Pennsylvania high-

Stanley Conover—Direct

way; your testimony was that the truck was forty-five or fifty feet behind the bus when the bus first stopped. There I have shown forty-five feet for illustration. After the accident what was the position of the two cars?

A. Position like I had before, like this (indicating): the noses of the trucks was up to the curbs. The bus was that way, and the truck was this way (indicating).

10 Q. The nose of the bus was headed to the curb? A. Yes. Both of them.

Q. Both of them? A. Yes, sir.

Q. Where is the rear of the truck? A. Up against the bus, the back of the bus.

Q. Which is the rear of the truck here? A. This is.

Q. And this is the front part? A. Yes.

Q. Where is the head of the bus? A. That there (indicating).

20 Q. You have it at a 120 degree angle. A. I don't know how to make no angle.

Q. As a result of the relative position of the truck and the bus was the traffic blocked until the truck was removed? A. Yes, sir.

Q. It was blocked? A. Yes, sir.

Q. Did anybody come up, and if so, who came up and directed you? A. The cop.

30 Q. What did he say? A. He told us to take that truck right out and turn it around and go to police headquarters.

Q. In turning around to police headquarters which way did you go? A. We had to go down under the bridge and down to the road bends around going to Amboy, we turned around there.

Q. Did you go to police headquarters? A. Yes, sir.

Q. At what point did the cop tell you to go to police headquarters? Where you were under the bridge or this side of the bridge? Where you were

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Stanley Conover—Direct

stalled, or after you had left? A. After we had left, I think.

Q. Do you remember seeing this officer in court this morning? A. I think I do.

Q. Could you say whether or not he was the officer, or don't you remember? A. I don't remember whether he is the one or not.

Q. Was this officer in uniform that directed you? 10
A. Yes, sir.

Q. Was he the first one that came up to you? A. No. The driver of the bus was the first one.

Q. What did he say?

MR. COAN: I object.

Q. Was there some words between the driver of the bus and Mr. Scott?

MR. COAN: I object to that.

A. Yes, sir.

Q. Did Scott show his license to the driver? 20

MR. COAN: I object.

A. The driver took it.

MR. COAN: What difference does it make?

MR. STREITWOLF: The State law requires him to have it.

THE COURT: Scott?

MR. STREITWOLF: Oh, yes, the driver has to have his driver's license.

THE COURT: There is no testimony about it, is there? 30

MR. STREITWOLF: I want to show he was complying with the law, that is all.

THE COURT: It is assumed that you were complying with the law, unless it is charged that you were not.

Q. Did you go to police headquarters? A. Yes, sir.

MR. STREITWOLF: That is all. Cross-examine.

ADJOURNED UNTIL MONDAY, SEPTEMBER 21ST,

1925, AT 10 A. M.

40

Testimony

MIDDLESEX COUNTY CIRCUIT COURT

SEPTEMBER TERM, 1925

10	GEORGIANA COX and GEORGE COX vs. WILLIAM ROSENVINGE and JENNIE SCOTT
20	JOHN ADAMS vs. WILLIAM ROSENVINGE and JENNIE SCOTT <hr/> MARGARET L. RICE and JAMES J. RICE vs. WILLIAM ROSENVINGE and JENNIE SCOTT

Transcript of stenographer's notes of evidence in the above entitled cause taken before HON. PETER F. DALY, Circuit Court Judge, and a Jury, at the Middlesex County Court House in the City of New Brunswick, New Jersey, on the 21st day of September, A. D. 1925.

STANLEY CONOVER, resumed.

MR. STREITWOLF: I would like the privilege of asking just one more question of this witness.

THE COURT: All right.

DIRECT EXAMINATION (CONTINUED)

BY MR. STREITWOLF:

Q. At any time preceding the collision did you observe that the driver of the bus indicated by his hand or by a whip that he was to stop? A. No, sir.

Q. As you were trailing the truck, or the bus, did that in any way obstruct your view as to the wagon

Stanley Conover—Direct

preceding the bus? Do you understand that question?

A. I don't know what you mean.

Q. You testified you were trailing a bus down this grade? A. Yes, sir.

Q. Did that obscure your view as to what was in front of the bus? A. Yes, sir.

CROSS-EXAMINATION

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BY MR. VOSSELLER:

Q. I understood you to say that when you first saw this bus that the bus was stopped? A. No, sir.

Q. I mean when you were forty or fifty or sixty feet behind it, the bus was stopped? A. We was about forty or fifty feet, about forty-five or fifty feet behind it when it was stopped.

Q. So that you knew the bus was stopped? A. We was about forty-five or fifty feet behind the bus when we stopped.

Q. You could see that it was stopped? A. Yes, sir; we seen it was stopped.

Q. And that is when you applied your brakes? A. Yes, sir.

Q. After you hit this bus you didn't stop at all, did you, until you got beyond the Pennsylvania Railroad bridge? A. Yes, sir; we stopped.

Q. Didn't you go right on around the bus and the wagon and go right on through without stopping there? A. The officer told us to go down there.

Q. That is not the question. Didn't you, after you hit the bus, didn't you go right on around it without stopping at all and continue beyond the railroad bridge? A. No, we stopped on this side of the railroad bridge first.

Q. But you had gone around the wagon and around the bus before you stopped? A. Yes, we were right around the side of it.

40

Stanley Conover—Cross

Q. Mr. Scott said it was sixty to seventy feet—he was sixty or seventy feet from the bus when he saw it had stopped. Is that true?

THE COURT: You cannot ask one witness to characterize the testimony of another.

Q. Are you mistaken then when you say you were only forty or fifty feet? A. I don't think it was sixty or seventy feet.

10 Q. Could you have stopped any more quickly had a hand or whip been shown by the bus driver? A. Yes, sir.

Q. Why? A. We would have had more show.

Q. If it was stopped forty feet from you? A. We would have knowed he was going to stop. We didn't know he was going to stop before.

Q. How fast was the bus going just before it stopped? A. Oh, I don't know just about how fast it was.

MR. COAN: I object. I do not think this witness has shown any familiarity that enables him to testify as to the speed of cars.

THE COURT: He says he does not know.

BY THE COURT:

Q. When your truck and the bus came together what happened? A. It shoved the bus up in the wagon.

Q. Shoved the bus up in the wagon? A. Yes, sir.

30 Q. What wagon? The wagon in front? A. Yes, sir.

Q. Yes, but what was the effect between the bus and your truck? What happened to them? A. Well, we hit the back of it.

Q. Hit the back of it? A. Yes, sir.

Q. Then what happened to the truck? A. To our truck?

Q. Yes. A. Well, we stalled the motor and it was crossways the road there.

Q. How near were you to the bus after you hit it? 40 A. We was right alongside of it.

Stanley Conover—Cross

Q. Well, were you touching it? A. No, sir; we wasn't touching it then.

Q. Then you didn't buckle it? Do you understand what I mean? A. No.

Q. When you hit the bus did your truck and the bus get mixed together? A. No, sir; we just hit it and shoved it away from us.

CROSS-EXAMINATION

10

BY MR. COAN:

Q. Where was the bus when you first saw it? A. Going down the hill.

Q. Well, had it crossed Broadway yet? Do you know where Broadway is in South Amboy, where the trolley turns to the right off Main Street? A. Yes, sir.

Q. Had the bus crossed Broadway yet? A. Yes, it was up on top, just going over the hill when I saw it.

20

Q. Had it crossed Broadway yet? A. Yes, sir.

Q. You had come right down that street that the trolley runs on, Main Street, the macadam pavement or the Warrenite pavement? A. Yes, sir.

Q. Isn't it a fact that the bus was in front of you all the way down that street? Didn't you see it in front of you down that street? A. No, sir.

Q. From the time that you first saw the bus until it stopped down behind the vegetable wagon, did the bus make any stop? A. For passengers?

30

Q. For any purpose. A. Stopped behind the wagon.

Q. Is that the only stop? A. Only stop I see him make.

Q. You didn't see him stop to pick up any passengers? A. No, sir.

Q. You didn't see an old gentleman get on the bus? A. No, sir.

Q. How far ahead of you was the bus when you

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Stanley Conover—Cross

first saw it? A. We was right up behind the bus when we first saw it going over the hill.

Q. That does not mean much. How far were you? Were you as close as I am to you? A. Yes, sir.

Q. Do you mean to say that you were as close as I am to you when you first saw that? A. We were right behind it when we come out of that line to come down.

10 Q. You say the bus came out of that street that the trolley turns in, do you? A. It stayed right along that street.

Q. Did you say that it came out of that street? A. I think it did. I am not sure.

Q. And the first thing you saw of that bus it was as close as I am to you? A. Yes, sir. We started down the hill together.

Q. Where was it that the truck was put in second speed? A. On top of the hill.

20 Q. Why was it put in second speed, do you know? A. Why, to help hold the load back, to keep it from going so fast.

Q. As a matter of fact you were coasting down that hill, weren't you? A. No, sir.

Q. Now, you say the bus was about as far as I am from you when you first saw it? A. Yes, sir.

Q. How far was it when you saw that it was stopped down by the vegetable wagon? A. Around about forty-five or fifty feet.

30 Q. What do you mean by forty-five to fifty feet? Point out in this room if you can that distance. A. About from here over to the wall there (indicating).

Q. So that all the bus gained in the distance from the top of the hill down to where the vegetable wagon was stopped, was the distance from where I sit over to the window there? A. Yes, sir.

Q. Your truck was running about eight miles an hour? A. Right around that.

40

Stanley Conover—Cross

Q. When was it that your engine stalled? A. Right after we hit the bus.

Q. So that it was the hitting of the bus that caused the engine to stall, wasn't it? A. No. The brakes. We had them on.

Q. Why do you say that? A. The brakes and the bump could cause the stalling.

Q. Weren't the brakes just put on at the time you hit the bus? A. No, sir; we had them on. 10

Q. What effect did the putting on the brakes have to stalling the engine? Conover, you know as a matter of fact that it was the collision with that bus that stalled the engine, don't you? A. I don't know what stalled the engine. I guess the brakes did.

Q. How many policemen did you see around there? A. One I remember seeing.

Q. Was he on foot or on a motorcycle? A. On a motorcycle. 20

Q. You saw Quinlan here on Friday?

MR. COAN: Stand up, Officer Quinlan, will you?

Q. This is the only one you saw there, wasn't it? A. I don't know whether he is the one or not.

Q. Well, you saw him there, didn't you? A. Him?

Q. Yes. A. I am not sure whether it was him or not.

Q. Isn't he the man that took you to the police station? A. I couldn't say.

Q. But the policeman who took you to the police station was the only policeman that you saw around there, that is true, isn't it? A. Yes, sir. 30

Q. And there was nobody there in the nature of a State trooper, other than that one man, was there? A. No, sir.

Q. Then you say that this one policeman that you saw there is the man who told Mr. Scott to pull away from the bus and go down to the Pennsylvania bridge, is that what you say? A. He told us to pull the truck down along the curb and stop. 40

Stanley Conover—Cross

Q. Yes, but where he told you that was down the other side of the Pennsylvania bridge, wasn't it, at the roadway leading down to the Pennsylvania Station?
A. No, sir.

Q. As a matter of fact, wasn't the truck beyond the overhead bridge before Officer Quinlan ever spoke to Scott? A. No, sir. He told us to go down there.

10 Q. What did you do after the collision between the truck and the bus? A. Well, I stood behind the truck down there.

Q. Did you hear the conversation between the driver of the truck and the driver of the bus?
A. Yes, sir.

Q. The bus driver asked Mr. Scott to help him take the passengers out, didn't he? A. No, sir.

20 Q. What did he say? He came down and he asked him for his license, and he pulled that out of his pocket, and the bus driver jerked the license out of his hand and started up the street.

Q. As a matter of fact didn't Scott pull a whole lot of papers out of his pocket and hand them over to the bus driver? A. No. He had the papers in his hand and snatched the papers out.

Q. As a matter of fact the driver's license wasn't among them at all, was it, and it was up at the City Hall in Perth Amboy at police headquarters that he produced the license? A. The bus driver took it up.

30 Q. Took what up? A. He took Scott's license away from him and started up the street with it.

Q. That was when he was going to the hospital with the injured people, wasn't it? A. No, sir.

Q. Didn't he get in another car and go up the street with them? A. He came down and got the license first.

Q. Right after he got the license didn't someone say to him then you had better get those people to the hospital? A. I didn't hear that.

40

Stanley Conover—Cross

Q. You were right there, weren't you? A. No, I was down under the bridge then, and the bus—

Q. Up to that time the policeman hadn't arrived at all, had he? A. Yes, sir.

Q. Do you mean to say that the bus driver was getting the license after the policeman arrived? A. He came down and got him.

Q. Was it after the policeman arrived or before the 10 policeman arrived that the bus driver asked for the license and got it? A. I couldn't say for sure whether it was after or before.

Q. Didn't you just say that you were down beyond the bridge when he got the license? A. Yes, we were parked down there.

Q. Past the highway bridge? A. Yes, sir.

Q. So that you were down past the highway bridge before the policeman got there, weren't you? A. The 20 policeman told us to go down there.

Q. How could the policeman tell you to go down there if he wasn't there yet? A. He was on a motorcycle. He told us to pull down there to a curb.

Q. That was when you were beyond the bridge. He told you to go down farther, where the road leads to the Pennsylvania Station, and turn around, didn't he?
A. Yes, sir.

Q. But at the time he told you that you were already down beyond the overhead bridge, weren't you? 30
A. No, sir; I don't think we were.

Q. Haven't you just said that you didn't know whether the policeman was there or not, and the bus driver asked for the license? A. He wasn't down where we was then.

Q. Had he been talking to you before that? A. He told us to pull the truck down there.

Q. Before that? A. Before the bus driver got the license.

40

Stanley Conover—Cross

Q. Before the bus driver asked for the license he told you to pull the truck down there? A. Yes, sir.

Q. You want this Court and jury to understand that the policeman came there and told you to go off in the opposite direction, and didn't ask for the driver's license, and sent you off toward Perth Amboy without your driver's license, is that it? A. He told us to pull
10 along the curb there and wait.

Q. Answer the question. Without asking for the driver's license, the policeman didn't ask for the driver's license, did he? A. No, sir.

Q. Isn't it a matter of fact that the bus driver had the license before the policeman got down to the scene of the accident at all? A. No, sir.

Q. Now, you could see that bus all the way down that hill, couldn't you? A. Yes, sir.

Q. In other words, from the time you first saw it
20 until it got all the way down the hill to where it stopped, it was in your plain view? A. Yes, sir.

Q. You saw the wagon down there, didn't you? A. No, I didn't see nothing.

Q. Couldn't you see the wagon as you came down the hill before the bus got up to it? A. No, sir; I don't remember seeing it.

Q. That was a perfectly nice, clear day, wasn't it? A. Yes, sir.

Q. Just as nice a day as today? A. I believe it was.
30

Q. And the pavement, until you got down to where the sand was, was perfectly dry? A. Yes, sir.

Q. Now, how far away were you from the bus when you grabbed the hand brake? A. I couldn't say just how far when I grabbed the brake.

Q. What is that? A. I don't know just how far it was when I grabbed the brake.

Q. Did you grab the hand brake right away just as soon as you saw the bus stop? A. No, sir.

Q. Well, how far did you go after you saw the bus
40

Stanley Conover—Cross

stop before you grabbed the hand brake? A. Well, I was waiting for Mr. Scott to stop, and I seen his foot brake wouldn't hold.

Q. How far did you go before you saw that the foot brake wouldn't hold? A. About ten feet.

Q. So that you were thirty to thirty-five feet behind the bus at the time you grabbed the hand brake? A. Yes, sir. 10

Q. What is your idea of thirty to thirty-five feet measured in this room? Show us. A. About from here to that water thing over there.

Q. Over to the water cooler near the door? A. There where the cop is standing.

Q. With foot brake and hand brake both being worked, you could not stop that bus within that distance, and it going eight miles an hour? A. The wheels slid.

Q. Whether the wheels slipped or not, you didn't
20 stop the truck, did you? A. No, we didn't stop the truck.

MR. COAN: I think that is all.

RE-DIRECT EXAMINATION

BY MR. STREITWOLF:

Q. After the collision did the truck come to a complete stop? A. Alongside of the bus. 30

Q. To a complete stop? A. Yes, sir; it was stopped.

Q. At what time did you release the emergency brake, before or after the collision? A. After the collision.

Q. Was any difficulty experienced in releasing that? A. Yes, sir. The dogs was locked.

Q. What was the trouble? A. One of the dogs was locked.

Q. What did you do and what did Scott do in your efforts to release it? A. We knocked it back. 40

Stanley Conover—Re-direct

Q. How long did it take you to do it? A. About a couple of minutes, I think.

Q. So that you did not follow in front of the bus and the wagon directly after the collision, did you?

A. No, sir.

Q. That is what you said on your direct examination, or your cross-examination by Judge Vosseller. Did you mean that, or didn't you mean it? That directly
10 after the collision you went around to the bus and around the wagon, is that correct? A. We stopped right aside of it.

Q. It was after you had released the brakes and had started your motor and was proceeding under the bridge that you passed the truck?

MR. VOSELLER: That is leading.

MR. STREITWOLF: I will withdraw it.

Q. When did you pass the truck and the wagon?

20 A. Well, when we took our brakes off.

Q. Was it before or after you were ordered to go down under the bridge? A. It was afterwards.

Q. The time you passed the truck and the bus had the policeman already talked to you? A. When we passed the bus?

Q. Yes. A. Yes, sir.

RE-CROSS EXAMINATION

30

BY MR. COAN:

Q. Who released the emergency brake? A. Me and Scott.

Q. Did you both do it, or did one of you do it? A. He took the brake off and I hit one of them rods there under the truck.

Q. What? A. He took the brake off and I pounded them rods under the truck.

Q. Did you get under the truck to do that? A. No.
40 All I had to do was just bend down there.

Stanley Conover—Re-cross

Q. Where were you when you did that? A. Up by the wagon and the bus.

Q. Sitting up in the seat? A. No. On the ground.

Q. Well, you said you were up on the wagon. That is what I wanted to find out? A. I stayed up by the wagon.

Q. What did you pound these rods with? A. With a hammer.

Q. Where did you get the hammer from? A. Out
of the truck. 10

Q. Who cranked the truck? A. Scott cranked it.

MR. COAN: That is all.

MR. STREITWOLF: That is all.

That is the defendant's case.

DEFENDANT ROSENVINGE'S CASE

CHARLES CONNOLLY, a witness produced on be- 20
half of the defendant, being duly sworn according to law on his oath, saith:

DIRECT EXAMINATION

BY MR. VOSELLER:

Q. Mr. Connolly, did you see the accident that happened between the truck of Scott's and the bus on October 3rd? A. Yes, sir.

Q. Where were you? A. I was standing on the
overhead bridge. 30

Q. Standing on the overhead bridge? A. Yes, sir.

Q. How far from the place where the accident happened, is that, about? A. That is about sixty feet.

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

Q. What stopped the wagon? A. Flagman on the highway.

Q. And why, do you know, if you know? A. Well,
there was one-way traffic. 40

Charles Connolly—Direct

Q. Because of what? A. There was a truck coming through in under the bridge.

Q. But the road is ordinarily cement there, isn't it, and a good road? A. Yes, sir.

Q. What caused them to make it a one-way street?
A. Why, they had a washout there a day or so before that, and they was cleaning the dirt out.

10 Q. You saw the wagon stop? A. Yes, sir.

Q. You saw the bus come down? A. Yes, sir.

Q. How far behind the wagon was the bus? A. The bus was about eight foot when it stopped.

Q. Did you see the truck of Scott? A. Yes, sir.

How soon after the bus stopped did you see the truck come down? A. Why, right immediately.

Q. Well, immediately? A. Within a minute or two.

Q. Was the truck stopped an appreciable length of time before the Scott truck came along? A. Why, it
20 stopped about a minute.

Q. When the bus stopped was the truck in your sight? A. Yes, sir.

Q. And about how far distant from the bus? A. I should judge about forty-five or fifty feet.

Q. Then it could not have been stopped a minute before the truck hit it, could it? A. No, not before it hit it.

Q. What happened after the truck hit the bus? Did the truck stop? A. No, sir.

30 Q. Where did it go? A. It went right crossways of the road and hit the truck coming up the hill.

Q. And hit the truck? A. Yes, sir. That truck stopped it.

Q. It hit the bus and the truck coming in the opposite direction? A. Yes, sir.

Q. Where did it stop? A. Stopped the opposite side of the bridge.

40 Q. That is beyond the bridge? A. Yes, sir.

Charles Connolly—Direct

Q. Towards Perth Amboy? A. No the Perth Amboy side.

Q. Was the truck going fast when it came down the hill? A. I should judge about eight or ten miles an hour.

Q. You are quite positive that the truck didn't stop after it hit the bus at all, but went on through under the railroad? A. Yes, sir. 10

Q. You stood on a position where you could see?
A. Stood right there and seen it.

Q. When the truck hit the bus what did the bus do?
A. The bus run down into the wagon.

CROSS-EXAMINATION

BY MR. STREITWOLF:

Q. By whom were you employed at that time?
A. Pennsylvania Railroad Company. 20

Q. For whom are you employed now? A. Pennsylvania Railroad Company.

Q. Do you know the driver of this bus? A. I wasn't acquainted with him at the time; no, sir.

Q. Acquainted with him since? A. I just met him here Friday and today.

Q. When was your statement first taken. A. The same day of the accident, the third day of October.

Q. Who did you give it to? A. I give it to the bus
driver. 30

Q. Do you know any of these parties who are suing?
A. No, sir; not acquainted with a one of them.

Q. You say that this truck collided with a truck coming in the opposite direction? A. Yes, sir.

Q. Do you mean a head-on collision? A. No. They hit sideways.

Q. Was that opposite the bus or was it opposite the wagon? A. It was opposite the wagon.

Q. Do you mean that? A. Yes, sir. 40

Charles Connolly—Cross

Q. How wide is that street there? A. That street must be around twenty-seven feet.

Q. Were you in court Friday? A. Yes, sir, I was here Friday.

Q. What truck was this that collided with you? A. I didn't know. It looked to me as if it was a Mack truck.

10 Q. What letters were on there that indicated the ownership of that truck? A. Well, now, I didn't notice any because I see it from the rear end.

Q. You say it was not a head-on collision? A. No, sir.

Q. This truck coming in the opposite direction—did it pass the Scott truck to the left or to the right? A. Passed him to the right.

Q. And what part of the Scott truck collided with this other truck? A. The front part of the timbers that he had on his truck.

20 Q. What is that? A. The front part of the timbers that he had on his truck.

Q. The front part of the timbers that he had on his truck? A. Yes, sir.

Q. Collided with what part of the truck coming in the opposite direction? A. Pretty near the rear end.

Q. Pretty near the rear end? A. Yes, sir.

30 Q. Did you say it happened opposite the wagon, or opposite the truck? A. Opposite the wagon.

Q. At that point along that highway is there a painted mark indicating the center of the road, like there is on some highways? You have seen those markings, haven't you? A. There is a ridge down through there.

Q. There is a ridge all in the center? A. Yes, sir.

Q. Just preceding the collision what part of the left-hand side of the wagon—or what was the distance between the left-hand side of the wagon to the center marking of that highway, the relative distance?

40

Charles Connolly—Cross

A. Well, I couldn't say just exactly, but there was eight foot anyway.

Q. Eight foot? A. Yes, sir.

Q. Did the truck coming in the opposite direction, that collided with the Scott truck, did it stop? A. Why, it stopped just for a second until they loosened Scott's truck from his truck, and then the other one proceeded on up the hill.

Q. Loosened the Scott truck from a truck coming in the opposite direction? A. Yes, sir.

Q. They had jammed together, had they? A. They had jammed together.

Q. What part of these respective trucks jammed together? Just give us an intelligent version of that. A. The front end of Scott's timbers was fastened in the front end of the span.

Q. The front end of Scott's timbers had jammed in what? A. In the rear end of this other fellows truck, where the standard is.

Q. Did this timber project over the side of the truck? A. Yes, sir; he had them piled crosswise, instead of lengthwise on his truck.

Q. And there was a projection of the timber on each side of the truck? A. Yes, sir. It extended over about a foot and a half on each side of his truck, or more.

Q. And it was that timber that you say collided with the rear end of the truck coming in the opposite direction? A. Yes, sir.

CROSS-EXAMINATION

BY MR. COAN:

Q. You say you are employed by the Pennsylvania Railroad Company, Mr. Connolly? A. Yes, sir.

Q. Were you working on this overhead bridge on that day? A. Yes, sir.

40

Charles Connolly—Cross

Q. Now, how far up the road was the bus when you first saw it? A. I saw it when it approached the hill coming down.

Q. Well, how far up the hill was that? A. Well, now, I couldn't say just exactly. Somewheres around three or four hundred feet.

Q. How many? A. Three or four hundred feet.

10 Q. How long after you saw the bus was it that you saw the truck? A. I saw the truck about a minute after I saw the bus coming down the hill, I saw the truck approaching the top of the hill.

Q. Which would you say was traveling the faster, the bus or the truck? A. The truck.

Q. The truck was traveling faster than the bus? A. Yes, sir.

Q. How fast did you say the truck was traveling?

A. The truck was traveling about eight or nine miles
20 an hour.

Q. The bus was traveling less than that? A. Yes, sir; it was following the wagon.

BY THE COURT:

Q. Following the wagon? A. Yes, sir.

BY MR. COAN:

Q. Where was the wagon at the time you first saw the bus? A. The wagon was down, well, near to the bottom of the hill, about two hundred feet from where I stood.

30 Q. You don't know who had this other truck that you say he collided with? A. No, I do not. I think it was a Perth Amboy hardware company, but I am not sure.

Q. Where do you live? A. I live in Oldbridge at the present time.

Q. Where did you live at that time? A. South Amboy.

MR. COAN: I think that is all I have.

40 MR. VOSSELLER: That is all.

Charles Connolly—Cross

BY THE COURT:

Q. I think you said at the time that the truck started it was about eight or ten feet, or was it ten or twelve feet behind the wagon; A. That is the bus?

Q. The bus I mean? A. Yes, sir.

Q. How many feet behind the wagon was it? A. About eight or ten feet.

Q. When the truck hit the bus how far did it drive the bus? A. Why, I should judge about eighteen or
10 twenty feet.

Q. The wagon was about eight to ten feet ahead of the bus? A. Yes, sir.

Q. Then when the bus struck the wagon it drove that wagon about ten feet ahead of it, is that right? A. No; about eight foot.

Q. About eight foot? A. Yes, sir.

Q. Did you notice whether anything was done by anybody on the bus to stop the motion of the bus which
20 resulted from the truck pushing it? A. No, sir; I did not.

Q. You saw the bus stop, did you? A. Yes, sir.

Q. Did you see the driver of the bus do anything before he stopped the bus? A. I did not.

Q. Were you looking at it all the time? A. I was watching the truck coming down behind the bus.

Q. Do you say that the bus followed this horse and wagon? A. Yes, sir.

Q. For what distance did it follow the horse and
30 wagon? A. About thirty feet.

Q. In other words, the horse and wagon was in motion and the bus kept in motion? A. Until the flag was put onto them.

Q. And the bus was following the wagon before there was any warning given to either of them to stop, is that right? A. Well, the bus was about forty or forty-five feet behind the wagon when the warning was first given to the man driving the wagon.
40

Charles Connolly—Cross

Q. How far was it behind the wagon when it stopped? A. About eight or ten foot.

Q. About eight or ten feet? A. Yes, sir.

Q. You are positive of that? A. Yes, sir.

Q. How did it come that you were specially looking at this at the time? A. Well, they were working down in under there, and there was quite a lot of traffic, and I was just watching the traffic, because I was one of
10 the assistant foremen, and I wasn't supposed to do no labor. I was having charge of the gang at that time.

THE COURT: That is all I have.

BY MR. COAN:

Q. Was the horse knocked down? A. Yes, sir.

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

DIRECT EXAMINATION

BY MR. VOSSELLER:

Q. What is your business? A. Bus driver.

Q. Were you driving the bus on October 3rd that was in this accident? A. Yes, sir.

Q. Just tell the Court and jury what happened.

A. Why, on this day I was going down that hill. Some
30 time before that, a day or so, there was a washout over the road. The State had men working there cleaning it up, and at the time they made a one-way drive, a one-way traffic, and there was a wagon ahead of me stopped.

Q. Why? A. On account of this washout. I came down in back of this wagon and of course I had to stop, I couldn't pass, and I stopped there about two minutes and I was wrecked up.

40

John Zientk—Direct

Q. When you stopped what did you do? Before you stopped what did you do? A. What did I do?

Q. Yes. A. I didn't do nothing. I stopped.

Q. Did you see a flagman ahead? A. No, sir; I did not.

Q. How far behind this wagon were you when you stopped? A. About eight feet.

Q. How long had you stopped before you were run
10 into? A. Two minutes, about two minutes.

BY THE COURT.

Q. You don't mean that, do you? A. Yes, sir.

Q. As much as two minutes? A. About two minutes.

BY MR. VOSSELLER.

Q. Was there anything behind you at the time you stopped? A. No, sir.

Q. How do you know? A. I looked in the mirror coming down the hill and nothing followed me down
20 that hill.

Q. Where did this truck hit you? A. Hit the left rear end of my bus.

Q. What part of the truck hit you? A. I don't know what part of the truck hit me, but I know the lumber came through the side of it, knocking the sides apart.

Q. Where were you standing on the road?
A. Right-hand side of it.

Q. How near the edge of the road? A. Right up
30 against it.

Q. After the truck hit you did it stop? A. No, sir. Stopped after he got the other side of it, shoving everything up on the sand.

Q. How far beyond you was the truck when he stopped? A. About one hundred feet.

Q. When the truck hit your car what did your bus do? A. What did it do?

Q. Yes. A. Shoved me up against the wagon, and
40 shoved the wagon, both of us.

John Zientk—Direct

Q. How far were you moved by this truck from the impact? A. Why, I was shoved about fifteen feet.

Q. What was there on the other side of the road that made you stop there? A. Men working.

Q. Was there anything on the road at that spot where you stopped? A. Cars passing by.

Q. No, but outside of the cars was there any dirt, or had that been removed? A. That is what they were shoveling, dirt.

Q. How deep was this dirt? A. Oh, I couldn't say how deep it was. I haven't got the least idea how deep it was.

CROSS-EXAMINATION

BY MR. STREITWOLF:

Q. When you asked Scott for his license he produced it, did he not? A. What he had, yes, what he did give me.

Q. He gave you the license, did he not? A. No, sir.

Q. What did he give you? A. A lot of two or three years that he had before that, of licenses. I didn't have any of his licenses. Any license of that year, 1924.

Q. Didn't you go up to police headquarters? A. Did I go up to police headquarters? After I came back from the hospital.

Q. Did you know his license was inspected and reviewed up there? A. No, sir.

Q. Didn't you and Scott have an altercation about the return of that license, and didn't you refuse to give it back to him? A. Yes, sir; I did.

Q. If it was an old license, why did you withhold it? A. Because I wanted to get them people to the hospital. They were hurt. One of them was unconscious.

40

John Zientk—Cross

CROSS-EXAMINATION

BY MR. COAN:

Q. Who was unconscious? A. Mrs. Scott.

Q. Do I understand that you were given licenses, but not the 1924 license? A. That is it. I wanted the 1924 license.

Q. Did you see his 1924 license at all? A. After I came back from the hospital.

Q. Where was it then? A. Down in the City Hall.

Q. That is at police headquarters? A. Yes, sir.

Q. When you say that Scott passed beyond your post, did he go as far as the overhead bridge? A. He went the other side of it.

Q. Had Officer Quinlan, or any other officer been on the scene up to that time, until after he went beyond the bridge, had any other officer been there? A. When he got the other side of the bridge they were, yes.

Q. Did any officer tell him to pull up from your bus and go beyond the bridge? A. No, sir.

Q. Were you in a conversation with Scott in the presence of Officer Quinlan, after Quinlan got there? A. Yes, sir.

Q. Did Scott at that time say to you, in response to a question from you as to why he ran into you, that his brakes wouldn't hold? A. That is just what he said to me. I asked him why he didn't stop, and he said his brakes wouldn't hold.

Q. State whether or not you asked Scott to assist you in getting the injured people out of the bus? A. I did ask them and he told me that he didn't have time, that he had to get that stuff delivered, he wanted to get it delivered. I told him to wait until I got back.

Q. Was that at the time that you got those license cards which you speak of from him? A. That is when I had them.

40

John Zientk—Cross

Q. As you stood there behind the wagon what did you do? A. Why, I stood behind it.

Q. Is that all you did? A. Couldn't do anything else. I couldn't go by.

Q. Well, did you make any observation to see what was coming along the road? A. Traffic was going up past me.

10 Q. In the opposite direction? A. Yes, sir.

Q. What observation did you make to see what was coming behind you? A. Looked in the mirror.

Q. When did you look in the mirror? A. Coming down right before I stopped.

Q. That was the last time you looked in the mirror, wasn't it? A. That is before I stopped.

Q. Was your bus braked? Did you put the brake on when you stopped? A. Sure. Certainly.

Q. What brakes? A. Emergency brake.

20 Q. That is the hand brake? A. Yes, sir.

Q. And with the hand brake on you were driven ahead, as you say, some fifteen feet? A. About that.

Q. What was the first intimation you had that this truck was coming down the hill behind you and going

to run into you? A. None at all.

Q. Until it struck you? A. That is all.

Q. That is you didn't see it coming behind you at all? A. No, sir.

30 Q. Of course, you didn't do anything to avoid it striking you then? A. Couldn't.

MR. COAN: I think that is all I have.

BY THE COURT:

Q. How far were you behind the wagon when the wagon stopped? A. That I couldn't say. The wagon was stopped when I noticed it coming down the hill.

Q. How far were you away when you first noticed them? A. A couple of hundred feet.

40 Q. Why did you get within eight or ten feet of the wagon, as close as that? A. Always do.

John Zientk—Cross

Q. I am asking you why you did it? A. Well, I couldn't go by.

Q. I know you couldn't go by, but why did you get so close to the wagon? You were a couple of hundred feet away when you saw this horse and wagon. The horse and wagon was stopped, and you went that couple of hundred feet until you got within eight or ten feet of the wagon and then you stopped. That is your story? 10

A. Yes, sir.

Q. Now, then, when you stopped what warning, if any, did you give to those behind you that you were going to stop? A. I didn't give any. I didn't think it was necessary. There was nothing followed me.

Q. Simply because you can't see anything in the mirror, you don't live up to the statutory regulation that when you are about to stop you are to give a warning to those behind, in some way, by throwing out your hand or otherwise? Don't you do that in driving a 20 bus? A. Sure, coming around a corner.

Q. Why didn't you do it that way? A. I didn't think it was necessary when it was a one-way drive.

Q. There was a horse and wagon in front of you but eight or ten feet in front of you, and you say that you didn't think it was necessary to give warning to anybody behind, so as not to hit him and drive into that horse and wagon? Why did you get so close to the horse and wagon? I want to know that if you can tell 30 me. A. Why did I get so close to it?

Q. Yes. The horse and wagon, according to your story, was stock still when you were two hundred feet away, and you followed that horse and wagon up until you got within eight or ten feet of it. Why did you get so close? A. I don't know. I thought I was far enough behind it when I was eight feet behind it.

Q. If you had stopped twenty-five feet behind it, and this truck had run into you, you would never have touched the wagon, would you? A. I don't know. 40

John Zientk—Cross

Q. Yes, but you say you were only driven about fifteen feet? A. Yes.

Q. Now, if instead of eight or ten feet behind that wagon, you had stopped say thirty feet behind it, and this truck only drove you fifteen feet, you would never have touched the horse and wagon, would you? A. No.

BY MR. COAN:

10 Q. There isn't any hill there where the wagon was stopped, is there? A. No, sir.

Q. The hill is beyond it? A. Yes, sir.

Q. So that where the wagon was stopped and where you were stopped and where your bus was struck is perfectly level ground? A. Almost.

Q. The road was perfectly dry on that day? A. Yes, sir.

Q. Up to that point? A. Yes, sir.

20 RE-DIRECT EXAMINATION

BY MR. STREITWOLF:

Q. There is a great deal of traffic through that highway, is there not? A. Yes, at times.

Q. In other words, most of the traffic that goes over the Amboy bridge goes through that highway? A. Most of it. At that time it did.

30 Q. This pavement is a smooth surface? A. I don't know what it is.

Q. You drove over it many times? A. Yes, it is concrete, as near as I can tell to it.

BY MR. VOSSELLER:

Q. What was the condition of the right side of that road? A. What is it?

Q. What was the condition of the right side of that road as to the bank or depression? A. Sidewalk?

Q. Was it level? A. The sidewalk do you mean?

40 Q. No. I say what is the condition of the right

John Zientk—Re-direct

hand side of the road? Is there a ditch there or is it level? A. Railroad.

Q. Railroad on the side of the road? A. Over the other side of it, yes, before you get to the end of the bridge.

Q. You were stopped pointing towards Perth Amboy, weren't you? A. Yes.

10 Q. To your immediate right what was the condition of the side of the road? Is it level or is it high or low? A. Only the sidewalk and a rail alongside of it.

Q. Sidewalk? A. Yes.

MR. VOSSELLER: That is our case.

PLAINTIFFS' REBUTTAL TESTIMONY

DAVID QUINLAN, a witness produced on behalf of the plaintiffs, in rebuttal, being duly sworn according to law on his oath, saith: 20

DIRECT EXAMINATION

BY MR. COAN:

Q. Was there any other officer at this accident while you were there on that day? A. No, sir.

Q. You were on a motorcycle? A. Yes, sir.

30 Q. You are the man who asked Scott and Conover to the police headquarters in South Amboy? A. Yes, sir.

Q. Did you tell Scott to pull his truck up from the point where he was near the rear of the bus to a point beyond the overhead bridge? A. No, sir. When I got there the first thing I did was stop behind the bus. I parked my motorcycle behind the bus, went in the bus and helped to take the women out, and the truck wasn't in sight then. The truck was on the other side of the bridge. I didn't talk to Scott until the second

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David Quinlan—Direct

time I got back from the hospital. I had made trips to the hospital before I had talked to Scott at all.

Q. After you got back from the hospital were you present when Zientk, the witness who was just on the stand, asked Scott a question as to why he ran into him? A. Yes, sir.

Q. Did Scott say in reply to that, that his brakes would not hold? A. That is the words he said; yes, sir.

Q. Where you present before you went to the hospital when Zientk asked Scott to help him get the women out of the bus? A. Yes, sir.

Q. Did Scott say in reply to that, that he didn't have time?

MR. STREITWOLF: I object. That is too leading.

THE COURT: It has to be leading. This is contradiction. The witness was asked specifically whether he said so and so, or so and so, and he said he did not.

20 This witness is being asked specifically whether he did or not. A matter of a specific contradiction must be leading.

MR. STREITWOLF: My recollection is that there was no foundation laid for this question.

MR. COAN: I think there was. I asked Scott those questions.

(Questions repeated by stenographer.)

Q. (Continued) That he wanted to or had to deliver this material? A. He said that he had to deliver this stuff and he didn't have time.

CROSS-EXAMINATION

BY MR. STREITWOLF:

Q. Mr. Quinlan, you say when you got down there you found Scott the other side of the railroad? A. Sir?

Q. You found Scott the other side of the railroad when you got down there? You first attended to those 40 who were injured in the bus, is that right? A. Yes, sir.

David Quinlan—Cross

Q. And after that you went for Scott, is that right? A. Sir?

Q. After you attended to the injured in the bus?

A. Yes, sir.

Q. You went for Scott? A. Yes, sir.

Q. And you found Scott the other side of the bridge? A. Yes, sir. The first time I met Scott he was standing near the bus, with the bus driver, and the truck was on the opposite side of the bridge.

Q. You were having an altercation with the driver about the license, wasn't that the subject matter of the discussion? A. First I guess it was before helping to get the passengers out of the bus.

Q. You found Scott in a very nervous condition, didn't you? A. Well, I couldn't say.

MR. STREITWOLF: That is all.

MR. COAN: That is all. That is our case.

Mr. STREITWOLF: I would like to recall Mr. Scott for just a question or two, your Honor.

HARVEY R. SCOTT, recalled.

DIRECT EXAMINATION

BY MR. STREITWOLF:

Q. Scott, after you collided with the bus as you have described, did you come in contact with a truck coming in the opposite direction? A. No, sir.

Q. Did you have any difficulty of any character with any other truck after this collision at that point?

A. No, sir.

Q. How old are you, Scott? A. Forty.

Q. How long have you lived in this County?

MR. COAN: I object.

MR. STREITWOLF: This is a serious charge. I would like the privilege of going into this thing, to ac-

Harvey R. Scott—Direct

cause a man of attempting to run away in an accident.

A. All my life.

MR. COAN: I move to strike that out.

THE COURT: No, I will allow it. Pedigree to a certain extent is always admissible.

Q. Did your father live in this County?

MR. COAN: I object.

10 THE COURT: Objection sustained. We are not trying it on his personality. Except in a general way it is not material.

Q. Mrs. Scott, the defendant in this case, is your wife? A. She is.

Q. Have you any children?

MR. COAN: I object.

THE COURT: Objection sustained. That has nothing at all to do with the proper determination of this case.

20 Q. Did you do anything on that day to run away from that accident?

MR. COAN: I object. It calls for a conclusion.

THE COURT: Well, he says he did not run away. He said that before. It is not rebuttal.

Q. Did you say to the driver of this bus, whose name I cannot recall, in the presence of Officer Quinlan, in answer to a request by the driver to aid the injured persons, that you didn't have time, that you wanted to get your stuff delivered?

30 MR. COAN: I object.

THE COURT: Objection sustained. Because he was already asked that question when he was on the stand before, and he said he did not do anything of the kind. You cannot bring him on now so that he may say it for the last time before the jury.

MR. STREITWOLF: I was not sure that he was asked that before.

40 THE COURT: I am telling the jury, and the jury will remember that he was asked that question, and

Harvey R. Scott—Direct

denied that he ever said anything of the kind, that he could not stay there because he was in a hurry to get his load delivered.

MR. STREITWOLF: That is all.

MR. VOSELLER: No questions.

MOTION FOR DIRECTION OF A VERDICT

MR. VOSELLER: I would like to make a motion at this time for a direction of a verdict in regard to the defendant William Rosenvinge on the ground that the plaintiff has shown no negligence and there is nothing in this case upon which the said defendant can be held. 10

THE COURT: The jury may agree with you but as a matter of law I find this to be a question of fact for the jury to pass upon. The motion is denied and you may take an exception.

MR. VOSELLER: I would like to have one. 20

(Mr. Streitwolf sums up the case for the defendant Jennie Scott.)

(Mr. Vosseller sums up the case for the defendant William Rosenvinge.)

(Mr. Coan sums up the case for the plaintiffs.)

ADJOURNED UNTIL 1:30 P. M.

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Charge to Jury

MIDDLESEX COUNTY CIRCUIT COURT

SEPTEMBER TERM, 1925

GEORGIANNA COX and
GEORGE COX, et. als.

vs.

10 WILLIAM ROSENVINGE and
JENNIE SCOTT.

Court's Charge to the Jury, by HON. PETER F. DALY, Circuit Court Judge, as follows:

Gentlemen of the Jury:

In this case I have been requested to charge, by counsel for the Plaintiff Georgianna Cox and George Cox, the following, which I will charge:

20 "1. The defendant William Rosenvinge, under the circumstances of this case, was a common carrier of passengers."

That is true.

"2. The defendant Rosenvinge owed to the plaintiff, Mrs. Cox and Mrs. Rice a high degree of care for their safety."

That is true.

30 "3. The defendant Rosenvinge, as a common carrier of passengers, is liable for any injury caused to a passenger, caused by any danger which is known or ought to be known to him or his servants, or which could have been reasonably anticipated by them even if the danger arose from the acts and conduct of strangers."

That is true.

40 "4. The defendant Rosenvinge is responsible to his passengers for the improper act of other persons, if such improper act could have reasonably been foreseen or anticipated."

Charge to Jury

That is true.

"5. Refused.

"6. Refused.

"7. It is the duty of a person operating a motor vehicle to use reasonable care to so regulate the speed at which he runs it as not to jeopardize the safety of other persons lawfully and properly on the highway."

That is true.

"8. The plaintiff in this case was lawfully and properly on the highway."

That is true.

"9. I change and read this way, in this case I am adding the word 'if': In this case, if the plaintiff is entitled to a verdict then the plaintiff is entitled to such verdict as will compensate her for the pain and injury suffered and endured, for disfigurement and scars and for any permanent injuries which you may find she has sustained, as well as for any pain and suffering which she may have in the future, arising from the injury which is not of a permanent character."

"10. The plaintiff husband is entitled to be compensated not only for all the expenditures made by him in the care and treatment of his wife, which you find were reasonable and proper, but also for the expenses he was put to in having performed the work which was customarily done by his wife, and in addition to this, to be compensated for the loss of companionship and fellowship in the marital relations."

That is true.

"11. Carriers of passengers are bound to exercise the utmost care in maintaining order and guarding those they transport against violence from whatever source arising which might be reasonably anticipated or naturally expected to occur."

That is true.

I am also requested in the case of John Adams, plaintiff, against William Rosenvinge, and Jennie H.

Charge to Jury

Scott, defendants, to charge the following, which I will charge:

"1. Refused.

"2. No driver of a car has any right to operate the same so that it will run into or collide with a vehicle on the road in full view."

That is true, he has no right to do it, but, if he does do it, it is still a question for the jury as to whether or not it was done as the result of his negligence.

"3. The defendant Rosenvinge owed the duty to the plaintiff to so guide and control his car as to prevent it from running into or colliding with the wagon of the plaintiff."

That is true, upon the basis that he was required to so handle the car as an ordinarily prudent person would be required to do.

"4. I refuse.

I have also been requested to charge the jury that the traffic law, among other provisions, requires that every driver, in slowing up or stopping, shall signal those behind by raising a whip or hand. The traffic act applies to horse drawn vehicles, as well as to these automobiles, and that is why it includes a whip there as well as a hand.

As to these traffic regulations it must always be remembered by the jury that the violation of a traffic ordinance as to speed, as to giving a warning, as to the side of the road to be on, and all of those things, is not in itself negligence. It may, from the facts and circumstances surrounding the particular happening, be negligence, in the judgment of the jury, but, the violation of one of these traffic laws is an element or factor to be considered by the jury in determining whether or not there is negligence. You can see that for yourselves. It may be that under certain circumstances a man might be on the left hand side of the road and yet that would not be a negligent act. A man

Charge to Jury

might be in such a situation that there would not be anything required, from the standpoint of ordinary prudence, that he should give warning, and the mere fact that the law says that he shall give warning, under certain circumstance, is to be applied to such circumstances, where a reasonably prudent person would do that which the traffic act says he should do under those circumstances.

In this case it is entirely within the province of the jury to say whether these plaintiffs, or any of them, are entitled to a verdict. The Court, from the evidence in this case, has no right to direct you to give a verdict for these plaintiffs, because, as stated, that is within your province. If, for example, you found that from the facts and circumstances as related to you, this was an unavoidable accident, you could not hold anyone responsible for an unavoidable accident. We use this word accident rather loosely. The exact definition of the word accident means something that is unavoidable, but we use that word in connection with the happening of just such a thing as happened in this case, this collision, in that it was not a happening that was intended by anybody. No one in this case intended to injure another; but, if that collision which resulted in the injuries to these different plaintiffs, was the result of negligence, then, whoever is responsible for that negligence is responsible to the people who were injured by the negligence. Although I have no right to direct a verdict, I have a right to say to you, for your consideration, but without controlling you, that it seems to me that all of these plaintiffs in this case, with possibly the exception of the husband of these women, which I will afterwards refer to, is entitled to a verdict. What did any of those plaintiffs fail to do, that they could have done, to have avoided this accident? Were they to any degree in fault? It does not seem to me there is any evidence to that effect. The man driving the

Charge to Jury

horse and wagon, he had a right to be there, as I have already charged you, right where he was; he had gotten a warning to stop, and he stopped; in the first place, he had a right to be on that road; he was there lawfully, and he had the duty of stopping. That man did what was his duty under the circumstances, because of the making of repairs to this road, as a result of some sand bank falling in on the road. It was a one-way street; it was so narrow, as the result of this bank falling in, and the repairs that were necessary, or cleaning up that was necessary to give it a width that was sufficient width for but one-way traffic, and they evidently had somebody there who, when a car was coming one way, would put up a red flag or other warning to show cars that were coming in an opposite direction, to wait until such time as the passageway was clear for them; and that is what this driver of this horse and wagon did; where was he at fault? He had a right to be there, as stated; it was his duty to stop, as stated; and he was run into, and, if he was run into through the negligence of another, then that man is lawfully entitled to a verdict; and, if he is lawfully entitled to a verdict, what is he entitled to? The man is entitled to be reasonably and adequately compensated for the injury to his property, to the horse, which, as I remember the testimony, had to be shot, to the harness on the horse, to the wagon, to the vegetables that were in the wagon at the time, that were absolutely destroyed through being thrown around, so that they were no longer of value to him; and also he is entitled to be compensated for whatever you find that he necessarily lost because of the injuries that were done to him, and which caused his inability, from a reasonable standpoint, to take care of the fruit, vegetables, and the like, that were on his farm, some of which had already been harvested, and some of which were still in the ground. As to that item, you cannot simply bulk it,

Charge to Jury

gentlemen; he must prove to you what was his real loss. He had a duty, for example, of getting somebody else, if he could, to take his place during his disability. Did he do it? He said no, he did not do it. And why didn't he do it? He said that he didn't have the money to do it, that he could not do it. Well, you have got to take his case, in such a particular as that, according to this man as he stands on his own feet financially. If this man is telling the truth in that respect, that he was laid up through illness, that his wife's time was engaged in nursing him, and that he was financially unable to get somebody else to do it, because of the cost of that, or because of an utter lack of financial ability, utter lack of money. What was that worth? It is pretty hard to tell what that was worth. He has bulked it. They did not go into any cross-examination to find out how many quarts of this, or how many bushels of that might have resulted; you have got to take this testimony and conservatively and sanely pass upon what was the value of the stock on the ground, or in the ground, which was lost to him necessarily because of his disability, regardless of the efforts that he reasonably put forth to see that it was converted into money. He was also laid up, as he testifies to, and he also had this injury, and he is entitled to be compensated for that physical injury, and also for the pain and suffering that the man endured. In figuring pain and suffering and in figuring physical injury you have a very difficult task, gentlemen. You must do it fairly and adequately also, but not as a matter of punishment, because, as before suggested to you, nobody intended this injury and, therefore, in figuring in dollars and in cents what is a fair compensation for injuries resulting from the negligence of another, you will apply your own rich, good common sense, and clean hearts, in determining what is fair from the standpoint of mere money, without regard to punishment.

Charge to Jury

This lady, Mrs. Adams, is entitled to a verdict; she is entitled to a verdict for the pain and suffering she endured, for her permanent injuries, for any scars there may be there; even scars, if they are a matter of actual disfigurement, you have a right and a duty to compensate for, and she is entitled to those injuries that I have already related in the requests to charge, those items of injuries. It seems to me that this woman was very seriously injured, and if you find that not only was she injured, as already has been detailed, but also that there is a permanent and continuing injury, and find that exists as a matter of reasonable certainty, from the evidence in this case, then she is entitled to compensation for any permanent injury that there is. Her husband, who is also a plaintiff, if he is entitled to a verdict, is entitled to a verdict that will reimburse him for the expenses that he reasonably and properly incurred in the reasonable and proper treatment of the injuries of his wife, and is entitled to be compensated for any loss that he suffered, in dollars and cents, as the result of the loss of the services of his wife; and he is entitled to be compensated for anything that you may find that he actually and substantially suffered, from the standpoint of a loss of the marital or marriage relations. There is no specific evidence along that line of loss, but, at the same time, you are to consider it; she was laid up this time; but, not to guess at it.

Now, as to Mrs. Rice: Mrs. Rice fortunately was not injured to the degree that Mrs. Cox was, or anything like the extent, but still at the same time the woman suffered shock, as she claims, and if you believe that any injuries she suffered, and any pain and suffering she endured, she is entitled to be compensated for that. Her husband was put to the expense of a few dollars. I do not know whether that is waived or not.

MR. COAN: I do not insist on it.

Charge to Jury

THE COURT: Her husband has waived that, so you can ignore the husband, in the case of Mrs. Rice. But, in the case of Mrs. Cox, that is a different proposition: you are to consider what he is entitled to.

Now, if you find, as I think you will,—but that is entirely up to you,—that those I have mentioned are entitled to verdicts, Mr. Adams, Mrs. Cox, Mr. Cox, and Mrs. Rice, who is responsible? This bus stopped how far from the wagon? There is varying testimony as to that. The bus driver himself says that he stopped within ten or twelve feet of the wagon. Did he give any warning before he stopped, as required by this traffic law? He says no, he did not, he was looking through the mirror and did not see anything behind him. This horse and wagon of the plaintiff Adams had stopped when the bus was as far as two hundred feet behind, according to the driver of Rosenvinge's car. Therefore, the bus had plenty of notice of the stopping of the horse and wagon. The fact that he did not give this warning, as I have already explained to you, that is the statutory warning, the warning referred to in the traffic act, is not in itself negligence. You are to determine whether an ordinarily prudent person—exercising ordinary care? No. So far as the occupants of the bus were concerned, a high degree of care, because they were paid passengers; and that was the duty that he owed to the passengers of his bus, to exercise a high degree of care. So far as the horse and wagon in front of him was concerned, ordinary care, the care of an ordinarily prudent person. So far as the passengers of his bus were concerned, he had the duty, from the standpoint of an ordinarily prudent person, to exercise a high degree of care. Did he? If he did, if he exercised that high degree of care, which you feel that an ordinarily prudent driver of a bus, under the time, place and circumstances, would have exercised, then he is not guilty of negligence, and the owner

Charge to Jury

of that bus, Rosenvinge, is not responsible. When we come to the truck, he had a duty of ordinary care, from the standpoint of an ordinarily prudent person, to the occupants of the bus, although the occupants of the bus are not suing him; and to Adams, the owner and driver of the horse and wagon. Was there a lack of ordinary care and prudence upon the part of the driver of this truck? That is for you to pass on. If there was, either through an act of commission or omission that an ordinarily prudent person would not be guilty of, then he is responsible. He is responsible for any injuries resulting from such act of omission or commission. Suppose you find from all the evidence in the case that they were both guilty of negligence, both the driver of the bus and the driver of the lumber truck, then it would be your duty to find verdicts against both of them. If you find that this accident was the result of the combined negligence of the bus driver and the driver of the truck, then your verdict would be one sum against both, because in these tort cases, where it is the result of joint tort, you cannot say we consider this man was guilty to a degree of one-third, and this man was guilty to a degree of two-thirds. You cannot do that. If these people are entitled to verdicts, then, if you find that this accident was the result of the sole and exclusive negligence of the driver of the bus, then your verdict would be against the driver of the bus, that is the owner of the bus, Rosenvinge. If you find that it was the result of the sole and exclusive negligence of the driver of the lumber wagon, then your verdict shall be against the driver of the lumber wagon alone. If you find that these plaintiffs are entitled to verdicts, or any of them entitled to verdicts, and that the reason they are was because of the combined negligence of both the driver of the bus and the driver of the lumber wagon, then your verdict shall be

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Charge to Jury

one sum, that is, they shall not be divided, but shall be against both the defendants.

It has been called to my attention that I said the driver of the truck, that he was responsible; you know what I meant by that, as far as your verdict is concerned, the owner of the truck is responsible for anything that the driver is responsible for, in his case. It will also be remembered that so far as each plaintiff is concerned, that each plaintiff is entitled to a separate verdict, if they are entitled to any verdict at all.

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You may take the case.

MR. STREITWOLF: I want to except to so much of Your Honor's charge that says that this woman, referring to Mrs. Cox, was very seriously injured.

MR. STREITWOLF: I want to except to so much of Your Honor's charge that gave expression to the Court's opinion that the defendants were entitled to a verdict.

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THE COURT: What I did was that so far as the injured was concerned, that it seemed so to me.

MR. STREITWOLF: Yes, you qualified it. Expression of opinion, I said.

MR. STREITWOLF: I also want to except to so much of Your Honor's charge which says, if you find, as I think you will, that Mrs. Cox, Mr. Cox, Mr. Adams and Mrs. Rice, or any of them, are entitled to a verdict.

THE COURT: It will be a question for you to pass upon as to whose negligence caused the injuries to them.

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MR. STREITWOLF: I also want to except to Your Honor's charge which says that the failure to give notice, as the traffic act requires, was not in itself negligence.

THE COURT: I did not say that. I said the failure to give notice is not in itself negligence. I did not say that it was not in this case negligence. I said the violation of any provision of the traffic act is not in itself

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Charge to Jury

negligence, but you are to determine whether under the time, place and circumstances, it was negligence.

MR. VOSSELLER: The only exception I wish to take is to that part of the charge, I did not get all of it, now, if you find, as I think you will,—it is the same thing as Mr. Streitwolf just said. I take exception to that on behalf of the defendant Rosenvinge.

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MR. COAN: I want to except to the Court's refusal to charge such requests as were refused, the fifth and sixth in the Cox matter: and the twelfth, thirteenth and ninth, as modified, as I have it here.

MR. COAN: I want to except the Court's language, whatever it was, as to an unavoidable accident; under the circumstances of this case it could not have been found to be an unavoidable accident, from any view-point

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* * *

PLAINTIFF'S REQUESTS TO CHARGE

(1)

"The plaintiff is entitled to recover from these defendants."

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(2)

"No driver of a car has any right to operate the same so that it will run into or collide with a vehicle on the road in full view."

(3)

"The defendant Rosenvinge owed the duty to the plaintiff to so guide and control his car as to prevent it from running into or colliding with the wagon of the plaintiff."

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Plaintiff's Request to Charge

(4)

"The defendant Scott was guilty of negligence in permitting her truck to run into and strike the bus and push the bus forward on the wagon of the plaintiff."

* * *

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PLAINTIFF'S REQUESTS TO CHARGE

The Plaintiffs, Georgianna Cox and George Cox, respectfully request the Court to charge the jury:

(1)

"Defendant, William Rosenvinge, under the circumstances of this case, was a common carrier of passengers."

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(2)

"The defendant Rosenvinge owed to the plaintiffs Mrs. Cox and Mrs. Rice, a high degree of care for their safety."

(3)

"The defendant Rosenvinge, as a common carrier of passengers, is liable for any injury caused to a passenger, caused by any danger which is known or ought to be known to him or his servants or which could have been reasonably anticipated by them even if the danger arose from the acts and conduct of strangers."

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(4)

"The defendant Rosenvinge is responsible to his passengers for the improper act of other persons, if such improper act could have reasonably been foreseen or anticipated."

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Plaintiff's Request to Charge

(5)

"The defendant Scott through her agent or servant should have had his car under such control as to enable him to bring it to a stop before colliding with the standing bus."

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(6)

"Reasonable care in the operation of the truck of the defendant Scott required that her truck should have been under such control as to enable it to have been stopped before colliding with the bus, if the bus was in open view of the truck."

(7)

20 "It is the duty of a person operating a motor vehicle to use reasonable care to so regulate the speed at which he runs it as not to jeopardize the safety of other persons lawfully and properly on the highway."

(8)

"The plaintiff in this case was lawfully and properly upon the highway."

(9)

30 "In this case if the plaintiff is entitled to a verdict then the plaintiff is entitled to such verdict as will compensate her for the pain and injury suffered and endured for disfigurement and scars and for any permanent injuries which you may find she has sustained, as well as for any pain and suffering which she may have in the future arising from the injury which is not of a permanent character."

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Plaintiff's Request to Charge

(10)

"The plaintiff husband is entitled to be compensated not only for all the expenditures made by him in the care and treatment of his wife, but also for the expenses he was put to in having performed the work which was customarily done by his wife and in addition to this to compensation for the loss of companionship and fellowship in the marital relations."

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(11)

"Carriers of passengers are bound to exercise the utmost care in maintaining order and guarding those they transport against violence from whatever source arising which might be reasonably anticipated or naturally expected to occur."

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29 OCT. 1. 1927

LaRoe Press, Printers, Perth Amboy, N. J.

New Jersey Court of Errors and Appeals

GEORGIANNA COX and GEORGE
COX,
Plaintiffs,

vs.

WILLIAM ROSENVINGE and JEN-
NIE H. SCOTT,
Defendants.

JOHN ADAMS,
Plaintiff,

vs.

WILLIAM ROSENVINGE and JEN-
NIE H. SCOTT,
Defendants.

On Appeal.

MARGARET L. RICE and JAMES
J. RICE,
Plaintiffs,

vs.

WILLIAM ROSENVINGE and JEN-
NIE H. SCOTT,
Defendants.

BRIEF.

Statement.

The above-entitled causes, arising out of the same transaction, were tried together at the Circuit. An appeal was taken to the Supreme Court in all three cases. The appeal was dismissed in the Adams case, the judgment was reversed in the Cox and Rice cases against Jennie H. Scott, and in the same two cases, was affirmed against the defendant, William Rosenvinge. For

the purposes of the appeal in the Supreme Court, the cases were consolidated, and the appeal in this court has been taken in the consolidated cases.

Facts.

The plaintiffs, Georgianna Cox and Margaret L. Rice, on October 3, 1924, were passengers between South Amboy and Perth Amboy, in a bus operated by the defendant, William Rosenvinge, a common carrier, and driven by one, John Zientk. Adams, the plaintiff in the other suit, was driving a horse attached to a wagon to Perth Amboy from South Amboy. Both Adams and the bus were using the State Highway between the named cities, the horse-drawn vehicle preceding, by some distance, the bus.

A day or two prior to October 3, 1924, a large quantity of loose sand had been washed in a storm across the pavement of the State Highway near the outskirts of the City of South Amboy. On the day in question, workmen of the State Highway Department were engaged in removing this sand. The easterly side of the roadway had been cleared off and traffic in both directions was being maintained on this side. An employee of the State Highway Department was regulating the traffic and directing the movement of the vehicles proceeding in either direction.

Adams, driving his horse attached to the wagon, was stopped by this employee of the State Highway Department. The bus of the defendant, Rosenvinge, proceeding toward Perth Amboy, as was Adams, stopped behind Adams' wagon and within eight or twelve feet thereof.

The truck of the defendant, Scott, driven by her husband and loaded with lumber, was also following the bus of the defendant, Rosenvinge. There is a descending grade in the State Highway leading to a point nearer South Amboy, than the place of stoppage of the Adams wagon, and the part of the highway on which the wagon of Adams and the bus of Rosenvinge were stopped, was practically level.

The Scott truck came down the hill and crashed into the bus and pushed the bus forward and against the wagon of Adams. Adams sustained personal injuries, mainly consisting of a broken ankle and a bruised elbow; his horse was injured so that it had to be shot; the wagon and harness were damaged to such degree as to make them worthless, and the produce with which the wagon was loaded, was scattered all over the vicinity so that no part thereof was recovered.

The plaintiffs, Georgianna Cox and Margaret Rice, passengers in the bus, received personal injuries. The husband of the plaintiff, Georgianna Cox, joined in her suit, alleging his necessary expenses, and loss of consortium.

The occurrence happened about 11 o'clock in the morning, of October 3, 1924. Verdicts were entered for the sum of \$500 in favor of the plaintiff, Adams; for the sum of \$2,000 in favor of the plaintiff, Georgianna Cox, and in the sum of \$450 for the plaintiff, George Cox, and in the sum of \$100 for the plaintiff, Margaret Rice. The judgments entered on such verdicts in favor of Georgianna Cox, George Cox and Margaret Rice were reversed so far as the defendant, Scott, was concerned, and affirmed as against the defendant, Rosenvinge. The appeal from the Adams' judgment was dismissed.

The defendant, Rosenvinge, has appealed to this court from the judgment of the Supreme Court in all three cases. The ground of appeal alleged in this court is that "the Supreme Court erred in affirming the judgments under review against the said defendant." The grounds of appeal in the Supreme Court on behalf of the defendant, Rosenvinge, were the same in all three cases. They were:

- (1) Refusal to grant non-suit to the defendant, Rosenvinge.
- (2) Refusal to direct a verdict for the defendant, Rosenvinge; and
- (3) That there was no evidence of negligence against the defendant, Rosenvinge.

POINT I.

No appeal lies in the Adams case.

In the Adams case, the plaintiff applied for and was allowed a rule to show cause (State of Case, p. 30). On the hearing of that rule to show cause, the trial court made the rule absolute, confining the new trial to the question of damages only (State of Case, p. 33). The Supreme Court dismissed the appeal on the ground that there was no final judgment entered and there was nothing before the court to review (Opinion, State of Case, p. 60A).

That this action was correct there can be no question.

Jaudel v. Schoelzke, 112 Atlantic Rep. 328; 95 N. J. Law, 171.

In the last named case, Justice Kalisch in discussing the question as to whether or not an

appeal had been properly taken, stated at page 173:

"The fundamental question seems to be this: Has the order quashing the writ of attachment the quality of a final judgment? If it has that quality, then it is appealable directly from the Circuit Court to this court."

In the case of *Van Hoogenstyn v. Delaware, Lackawanna and Western Railroad Company*, 90 N. J. Law, page 189, the question before the court was an appeal from the refusal of allowance by a Justice of the Supreme Court of a writ of *habeas corpus cum causa* from the Court of Common Pleas to the Supreme Court.

Justice Swayze, speaking for this court, said:

"It is equally unnecessary to cite authorities for the proposition that an appeal cannot be effective until final judgment. The appeal in this case is taken under the supplement of 1912 to the Practice Act. Section 25 permits an appeal where the appellant would formerly have been entitled to a writ of error. That there could be no relief by writ of error until after final judgment is elementary learning. Courts of law do not permit the intolerable delay and expense that would arise if interlocutory appeals were permitted from every order that might be incidental to the progress of the cause; by its very terms the writ of error required a return only if judgment be given."

It therefore seems to be the necessary conclusion that the judgment of the Supreme Court in dismissing the appeal in the Adams case, must be affirmed.

POINT II.

The liability of the defendant Rosenvinge was a jury question.

The grounds of appeal of the defendant Rosenvinge all raised the question of the propriety of submitting to the jury, the case against the defendant Rosenvinge.

Rosenvinge was a common carrier. To his passengers he owed a high degree of care.

"A jitney bus owner, who undertakes to carry for hire, all persons who apply for passage, is a common carrier of passengers; as such, he owes them a high degree of care for their safety."

Schott v. Weiss, 92 N. J. Law, 494;

Holtzman v. Hudson & Manhattan Railroad, 128 Atlantic Reporter, 623.

The passenger had a right to rely on the performance of that duty by Rosenvinge. The driver of the plaintiff did nothing except to stop his car and stand there idly. He made no observation to see what was coming; he did not use the brakes with which the bus was provided for the purpose of stopping the motion of the bus after it was struck by the truck; he did not attempt to turn out to avoid the wagon; in fact he did nothing.

"Q Did you notice whether anything was done by anybody on the bus to stop the motion of the bus which resulted from the truck pushing it? A No, sir; I did not.

Q You saw the bus stop, did you? A Yes, sir.

Q Did you see the driver of the bus do anything before he stopped the bus? A I did not" (Connolly, p. 161, l. 19).

The driver of the bus, in his examination (State of Case, p. 163), testified and showed conclusively that he did nothing.

"Q When you stopped what did you do? Before you stopped what did you do? A What did I do?

Q Yes. A I didn't do nothing. I stopped.

Q Did you see a flagman ahead? A No, sir; I did not.

Q How far behind this wagon were you when you stopped? A About eight feet.

Q How long had you stopped before you were run into? A Two minutes, about two minutes.

By the Court.

Q You don't mean that, do you? A Yes, sir.

Q As much as two minutes? A About two minutes.

By Mr. Vosseller.

Q Was there anything behind you at the time you stopped? A No, sir.

Q How do you know? A I looked in the mirror coming down the hill and nothing followed me down that hill.

Q Where did this truck hit you? A Hit the left rear end of my bus."

Page 166 on cross examination:

"Q As you stood there behind the wagon what did you do? A Why, I stood behind it.

Q Is that all you did? A Couldn't do anything else. I couldn't go by.

Q Well, did you make any observation to see what was coming along the road? A Traffic was going up past me.

Q In the opposite direction? A Yes, sir.

Q What observation did you make to see what was coming behind you? A Looked in the mirror.

Q When did you look in the mirror? A Coming down right before I stopped.

Q That was the last time you looked in the mirror, wasn't it? A That is before I stopped.

Q Was your bus braked? Did you put the brake on when you stopped? A Sure. Certainly.

Q What brakes? A Emergency brake.

Q That is the hand brake? A Yes, sir.

Q And with the hand brake on you were driven ahead, as you say, some fifteen feet? A About that.

Q What was the first intimation you had that this truck was coming down the hill behind you and going to run into you? A None at all.

Q Until it struck you? A That is all.

Q That is, you didn't see it coming behind you at all? A No, sir.

Q Of course, you didn't do anything to avoid it striking you, then? A Couldn't."

And on page 167, under question by the Court, line 11:

"Q Now, then, when you stopped what warning, if any, did you give to those behind you that you were going to stop? A I didn't give any. I didn't think it was necessary. There was nothing followed me."

That the driver could have seen the truck coming down behind him if he had made observation is manifest from the testimony of the witness Connolly at page 156, lines 15 to 30:

"Q Did you see the truck of Scott? A Yes, sir.

Q How soon after the bus stopped did you see the truck come down? A Why, right immediately.

Q Well, immediately? A Within a minute or two.

Q Was the truck stopped an appreciable length of time before the Scott truck came along? A Why, it stopped about a minute.

Q When the bus stopped was the truck in your sight? A Yes, sir.

Q And about how far distant from the bus? A I should judge about forty-five or fifty feet.

Q Then it could not have been stopped a minute before the truck hit it, could it? A No, not before it hit it."

What was the duty of the defendant Rosenvinge to the plaintiffs? Generally speaking, the legal duty of the defendant is well settled:

"A common carrier of passengers must use a high degree of care to protect them from danger that foresight can anticipate.

By foresight is meant not foreknowledge absolute, nor that exactly such an accident as has happened was expected or apprehended, but rather that the characteristics of the accident are such that it can be classified among events that, without due care, are likely to occur, and that due care would prevent."

Hansen v. North Jersey Street Railway Co., 64 N. J. Law, page 686;

Rivers v. P. R. R., 83 N. J. Law, page 513 at page 515.

In the *Hansen* case, this Court said:

"The case is barren of proof that the motorman performed any active duty for the plaintiff's protection. Whether the case called for such activity, and whether, if it had been exerted, it might have been efficacious, are disputed or disputable questions of fact" (p. 698).

A case similar in some measure to the case at bar is that of *Brackney v. Public Service Corporation*, 77 N. J. Law, page 1. There the motorman of the trolley car, at the top of a grade, shut off his power and allowed the car to drift. As he approached the wagon which was on the tracks in front of him, he rang his bell; the driver turned away from the tracks but for some reason the rear wheels of the wagon

skidded and did not leave the rails. When the motorman discovered this condition of the wheels, he put on his brake but did not reverse his power; as he was too close to the wagon to stop his car in that way; the brake failed to bring the car to a stop in time and a collision followed.

Chief Justice Gummere, speaking for the Supreme Court, said:

"It was clearly a question for the jury whether a motorman, who approaches a wagon traveling on the tracks in front of him so close that he will be unable to prevent a collision in case the wheels of the wagon skid when the driver attempts to leave the tracks, operates his car in a careless manner. The trial judge rightly refused to take this question from the jury, and his action in doing so affords no ground for reversal."

But whether or not negligence had been made out by the plaintiffs at the time they rested is a matter of little concern. The reason for this is well expressed by Justice Garrison in this court, in the case of *Van Cott v. North Jersey Street Railway Company*, 72 N. J. Law 229, at page 230. He said:

"The matter, however, will not be pursued, for the reason that if there was such failure in the plaintiff's proofs at the time the non-suit was denied, such proofs was afterward supplied by the defendant."

No matter what may be said of the condition of the proofs at the close of the plaintiffs' case, the testimony of Zientk, the driver of the bus, and of Connolly, hereinbefore cited, conclusively shows negligence or failure to perform any active duty for the plaintiffs' protection.

Justice Garrison, in the Supreme Court, in the case of *Bostwick v. Willett*, 72 N. J. Law, page 21, says:

"The mere refusal to direct a non-suit for failure of proofs in the plaintiff's case affords no ground for the reversal of a judgment against the defendant if by reason of testimony that came in after the refusal of the motion to non-suit a case calling for the verdict of the jury was ultimately presented. Hence strict practice would require that the trial court should refuse to seal such a bill of exceptions if further testimony was to be offered, leaving the defendant in such case to renew his motion when all the testimony was in or to prefer his request for binding instructions in some other form. After some vacillation and apparently for the convenience of the bar, the practice arose of sealing a bill of exceptions to the refusal to non-suit at the close of the plaintiff's case and of permitting the defendant under such a bill to attack the judgment when other testimony had afterwards come in, provided that all of such after-received testimony that was in any way germane to the error assigned was brought up by the defendant as part of such bill of exceptions. Such is now the established rule (citing cases).

Under the rule thus established, if there were defects in the plaintiff's proofs upon which the motion to non-suit was founded, the reviewing court will consider all of the testimony brought up by such bill of exceptions and sustain the action of the trial court if the defective proofs were supplied by the testimony produced by either party during the subsequent progress of the trial.

In the light of this practice the refusal of the trial court to grant the defendant's motion was not reversible error."

To the same effect is *Mandsley v. Richardson & Boynton Company*, 101 N. J. Law, page 561.

The Supreme Court stated the same rule in this way:

"Although it is true that the burden of proving the charge made in the complaint rests upon the plaintiffs, it does not follow as a necessary result that a failure on his or her part to produce such proof will justify a jury in returning a verdict for the defendants; for, although the plaintiffs' proofs may not show any negligence on the part of the defendants or their agent, yet, if on the defendants' own case facts are introduced which demonstrate the existence of such carelessness, the plaintiffs are entitled to recover, notwithstanding the failure of proof in their opening case."

Hotchkiss v. Walter, et al., 132 Atlantic Reporter, page 242.

"Carriers of passengers are bound to exercise care in maintaining order and guarding those they transport against violence from whatever source arising, which might be reasonably anticipated or naturally expected to occur."

Partridge v. Woodland Steamboat Co., 66 N. J. Law, page 290.

"A common carrier of passengers is under obligation to use a high degree of care and diligence in protecting passengers against insult or violence by fellow passengers, whether actual or reasonably to be anticipated, and for failure in the performance of its duty in this regard, may be held liable in damages. In affording such protection the servants of the carrier may, in a proper case, eject the offending passenger from the conveyance, and may further, in case of necessity, call for and utilize the assistance of such passengers as are willing to aid."

Frazier v. Public Service Railway Co., 97 N. J. Law, 37.

This case was afterwards affirmed by the Court of Errors and Appeals, 123 Atlantic Reporter, page 867.

In the case of *Strobert v. Pinn*, 2 Miscellaneous Reports, page 1019, the Supreme Court said:

"This story that he did not see the Ford car until it was just about to collide with him, although it must have been in plain sight as he approached the intersection of the two streets, and that he did not see either Miss Strobert or her mother until he had actually run them down, fully justifies the conclusion that he was guilty of reckless driving, as the jury evidently found."

So with the bus driver in this case. If he did not see the lumber truck coming when it was in plain view of him; if he did not attempt to arrest the forward motion of his bus by using the foot brake, which was available for that purpose; if he made no effort to turn the bus to one side to avoid hitting the wagon in front of him; if he made no effort to signal or warn the truck which was coming behind him, then certainly it was for the jury to determine whether or not such failure and such conduct manifested negligence.

The driver of the bus says he did nothing; he made no observation when the observation would have been effective; he put on no brakes other than the hand brake which he says he had set when the bus stopped; he made no effort to warn the truck that was coming from behind of his presence; he did not turn out to avoid the wagon that was in front and under all these circumstances it is submitted that the court would have erred had the case been taken from the jury.

"If there was any testimony tending to prove negligence of the defendant, the plain-

tiff was entitled to have the case submitted to the jury and the granting of a non-suit would have been error, unless it appeared on the plaintiff's case, by conclusive evidence upon which the minds of reasonable men could not reasonably differ, that the plaintiff's decedent was guilty of negligence, whereby the injury was caused. Contributory negligence is a defence and the burden of establishing it is upon the defendant. In the light of the testimony of the present case, we think the question of decedent's alleged negligence was clearly one for the jury to settle, and, therefore, it would have been improper for the trial judge to have directed a verdict for defendant on that ground."

Rhodehouse v. Director-General, 95 N. J. Law, 355.

In the cases at bar, there was evidence, considerable evidence, of the defendants' negligence, and quoting Mr. Justice Kalisch in the *Rhodehouse* case, "to have non-suited or to have directed verdict would have been improper."

The judgments should be affirmed.

Respectfully submitted,

JOHN A. COAN,
Attorney for Plaintiffs

29 OCT. T. 1927

New Jersey Court of Errors and Appeals

GEORGIANNA COX and GEORGE COX,

vs.

WILLIAM ROSENVINGE and
JENNIE H. SCOTT.

JOHN ADAMS,

vs.

WILLIAM ROSENVINGE and
JENNIE H. SCOTT.

MARGARET L. RICE and
JAMES J. RICE,

vs.

WILLIAM ROSENVINGE and
JENNIE H. SCOTT.

On Appeal
from
Supreme Court.

BRIEF FOR DEFENDANT-APPELLANT WILLIAM ROSENVINGE.

Facts.

On October 3rd, 1924, the Plaintiffs, Cox and Rice, were passengers in a public bus owned by defendant, Rosenvinge, driven by one John Beintk.

The bus, just before the accident, had been proceeding from South to Perth Amboy over a highway known as Pennsylvania Roadway. The day before the accident there had been a storm causing

the sand along the highway to wash over and accumulate on the cement driveway or road, and workmen of the State Highway Department were removing it. They had made the street, temporarily, a one-way street, and the foreman of the road gang was directing traffic.

The plaintiff, Adams, was driving a horse and wagon over the highway toward Perth Amboy and upon arriving at a point near the Pennsylvania Railroad Bridge, was stopped to let traffic pass in the opposite direction. The defendant's bus (Rosenvinge), which was traveling in the same direction as the Adams wagon, stopped between eight and twelve feet in the rear of the wagon.

The defendant, Scott, was driving a truck loaded with lumber and was proceeding in the same direction as the wagon of the plaintiff Adams, and bus of the defendant, Rosenvinge.

Both the wagon and bus were standing still on the highway when the accident occurred, the cause of which was the crashing of the truck, loaded with lumber, against the bus of the defendant, Rosenvinge, which in turn was pushed into the wagon of the plaintiff, Adams, causing the damage to Adams.

The plaintiffs, Cox and Rice, were injured while in the bus due to the impact of the moving lumber truck with the standing bus.

The accident occurred at about eleven o'clock in the morning of October 3, 1924.

At the close of the plaintiff's case a motion for a non-suit was made as to the defendant, Rosenvinge, on the ground that no negligence had been shown or proven against him. The motion was refused and exception allowed (Case, pp. 120-121, lines 40-10).

At the close of the case a motion for a direction of a verdict was made as to the defendant, Rosen-

vinge, and it also was refused and exception taken (Case, p. 173, lines 10-20).

It is to be noted that in the Cox and Rice cases the defendant, Rosenvinge, was subject to the rules of negligence as applied to a common carrier.

In the Cox case there was a verdict for Georgianna Cox for \$2,000 and for George Cox for \$450. In the Adams case there was a verdict for Adams for \$500, and the Circuit Court allowed on plaintiff's rule a new trial as to damages only. In the Rice case there was a verdict for \$100. The cases were taken on appeal to the Supreme Court, and the judgments against Rosenvinge were affirmed, the judgments against Rice were reversed, and the appeal in the Adams case was dismissed because prematurely taken, no final judgment having been entered. The Adams case was subsequently settled. The judgments of the Supreme Court affirming the judgments of the Middlesex Circuit as to Rosenvinge were appealed to this Court, and those judgments are the judgments now under review.

The Supreme Court opinion, orders of affirmance and of dismissal, and notice of appeal are found in the case at pages 60 to 60-f.

Law.

That a common carrier of persons is bound to use such a high degree of care as is consistent with the nature, character and mode of conveyance adopted, is too well established to need citation of authority.

It is also a well established principle of law that the liability of a common carrier is bottomed on negligence which must be proved or inferred from proven facts.

There is very little variation between the facts as detailed by the witnesses for the plaintiffs and defendant Rosenvinge.

For the plaintiff, the testimony of John Adams is a clear statement of the accident as it occurred, and is found on page 84 of the case.

He says:

"I heard the bus come up and stop. I looked back when I saw the bus stop and then I did not pay any more attention. I was struck a few minutes later. The bus was between eight and ten feet behind the wagon."

Again:

"That is the reason I am suing Scott, because the bus was standing and the truck came up and hit it, and the bus hit me."

This brings us to the question for decision.

1. Was there any negligence proven in the case of the plaintiffs, Cox and Rice, as against the defendant, Rosenvinge?

2. Was there any circumstance proven from which his negligence could be inferred?

The statement of the plaintiff, Adams, is corroborated by the plaintiff's witness, August Menzel (Case, p. 103, lines 30-40).

The same statement is again corroborated by defendant Rosenvinge's witness, Charles Connolly (Case, p. 156, lines 10-40).

It is admitted that if facts are supplied by defendant's case to make a jury question, a direction of a verdict will not be granted, although at the close of plaintiff's case, a non-suit should have been granted, and the question is, was the situation cured in this case?

The testimony of the driver of the truck, Harvey Scott, is:

Case, page 124, reading from line 38:

"The bus kept going a little bit, farther away from us, farther away from us."

Case, p. 125, lines 4-5:

"In other words, instead of your gaining on the bus, the bus was gradually getting farther ahead of you." "Yes, because we was in second gear."

Again (Case, p. 125, lines 20-30):

"Well, we were watching the bus all the way down ahead of us, and it came to a sudden stop and I saw I wasn't going to hold it; the colored man that was over along side of me, he grabbed the emergency and he pulled that and I still saw I wasn't going to hold, the wheels were sliding, so I drove out to my left and the rear of my truck hit the bus."

Again (Case, p. 125, line 34): He says when he saw the bus had stopped his truck was forty-five or fifty feet from the rear end of the bus. This statement was afterwards, in answer to a question by court, corrected, and the distance was given as sixty or seventy feet, as the distance from the rear end of the bus where he saw it was standing still (Case, p. 126, lines 1-10).

Again the evidence of Harvey Scott on page 132 of the case, lines 1-12:

"You say you can ordinarily stop this car in fifteen feet?" "Yes." "You were going down in second gear. How fast were you going?" "I suppose eight or nine miles an hour."

"You were going eight or nine miles an hour and you could see this bus that was stopped seventy feet ahead of you, or sixty feet, sixty or seventy feet, and still you could not stop in that distance, with the emergency brake and foot brake?" "Yes, sir."

From a reading of the whole case it seems very much of a problem as to how this accident could

have been avoided by the defendant, Rosenvinge. He must use the public roads. He is allowed by law to do so. He has no exclusive rights thereon. Neither could he control or be charged with the control of other vehicles on the highway. Bearing in mind the high degree of care which the law imposes upon him what could he have done that would have prevented this accident?

This case is not in the same category as a railroad owning its right of way and rolling stock, and having an exclusive right on its own roadway, while both railway company and bus are chargeable with a high degree of care that rule must be applied with relation to the varying conditions under which the different carriers must operate.

If there had been involved in this case the question of whether the bus was flimsily made, or constructed in an unsafe manner or any other question of structure, it is readily seen that that would make it a jury question as to care.

It is submitted that in the case of Cox and Rice the motion of non-suit and direction of a verdict should have been granted by the trial court.

The uncontradicted testimony is that the bus was stopped eight to ten feet behind Adams' wagon, and the accident was caused by the impact of the truck driving the bus against the wagon of Adams.

The court evidently reasoned that it was for the jury to say whether it was the act of an ordinarily prudent man who had a right to use the highway in common with the travelling public to stop his car eight to ten feet behind another vehicle, which was stationary. If that is the theory—and no other can be discovered by reading the case, it is an exceedingly dangerous thing to stop anywhere along or on the highway, and subjects the operator of a vehicle to use that degree of care

never before, so far as can be discovered, decided by the courts.

* In other words, must the driver of a car, in order to be free from negligence, assume that the driver of another vehicle, coming from the rear, is going to run into him in broad daylight, and accordingly, stop his car far enough away from a standing vehicle so as to preclude the possibility of being pushed into it?

As said before, no cases can be found placing such a burden of care upon a user of the highway.

Negligence is a fact which must be shown. It will not be presumed. There is always a presumption against negligence. There was no negligence shown on the part of Rosenvinge. His bus stopped because it was obliged to stop, and Scott, the truck driver, saw the bus when it stopped far enough ahead of him to have stopped. Yet he ran into the bus. The only presumptions of fact which the law recognizes are immediate inferences from the facts proved. Proof of a collision does not make out a case of negligence. To establish a case of negligence and fix the liability of the defendant it is incumbent upon the plaintiff to prove some fact which is more consistent with negligence than with the absence of it. When the plaintiff's evidence is equally consistent with the absence as with the existence of negligence on the part of the defendant the plaintiff must fail. A probability is not sufficient.

McCombe vs. Public Service R'w'y Co.,
95 N. J. L. 187, 189 (Errors and Appeals, 1920, Black, J.);

Alvine vs. Public Service R'w'y Co., 97
N. J. L. 526, 527 (Errors and Appeals,
1922, Black, J.);

Olsen vs. Erie R.R. Co., 99 N. J. L. 485,
488 (Errors and Appeals, 1923, Clark,
J.);

Ryan vs. Public Service R'w'y Co., 101
N. J. L. 361, 362 (Errors and Appeals,
1925, Black, J.).

As to the bus, to quote the language of Mr. Justice Minturn speaking for the Supreme Court in *Powers vs. Standard Oil Co.*, 98 N. J. L. 730, 735 (Supreme Court, 1923), " * * * its impotence for harm or damage, as an innocuous immobile instrumentality, must be manifest, since in both situations it simply presented a patent condition, and not an operating efficient or proximate cause, which can be said to contain by its activity, that potentiality for harm or damage, which furnishes the test upon which the rule of liability in this character of tort feausance is predicated."

It is respectfully submitted that there was no negligence shown nor was there any testimony by which the jury could have inferred negligence in the case of the defendant, Rosenvinge, whereby a jury question was presented and the motion to direct a verdict in his favor should have been granted, and that the judgments of the Supreme Court should, therefore, be reversed.

Respectfully submitted,

WM. F. VOSSELLER,
Attorney and Counsel for Defendant,
William Rosenvinge.

October Term, 1927.

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