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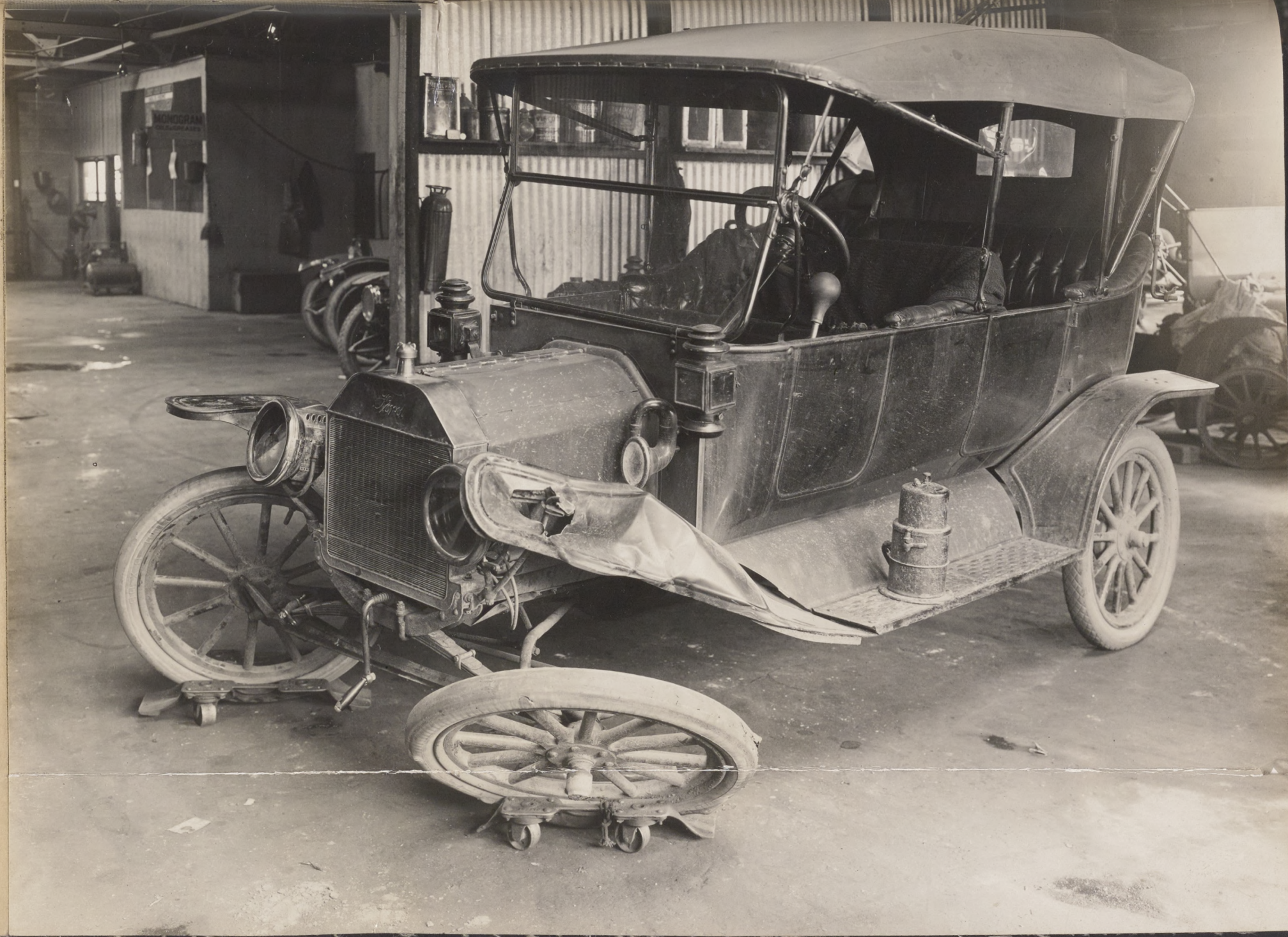
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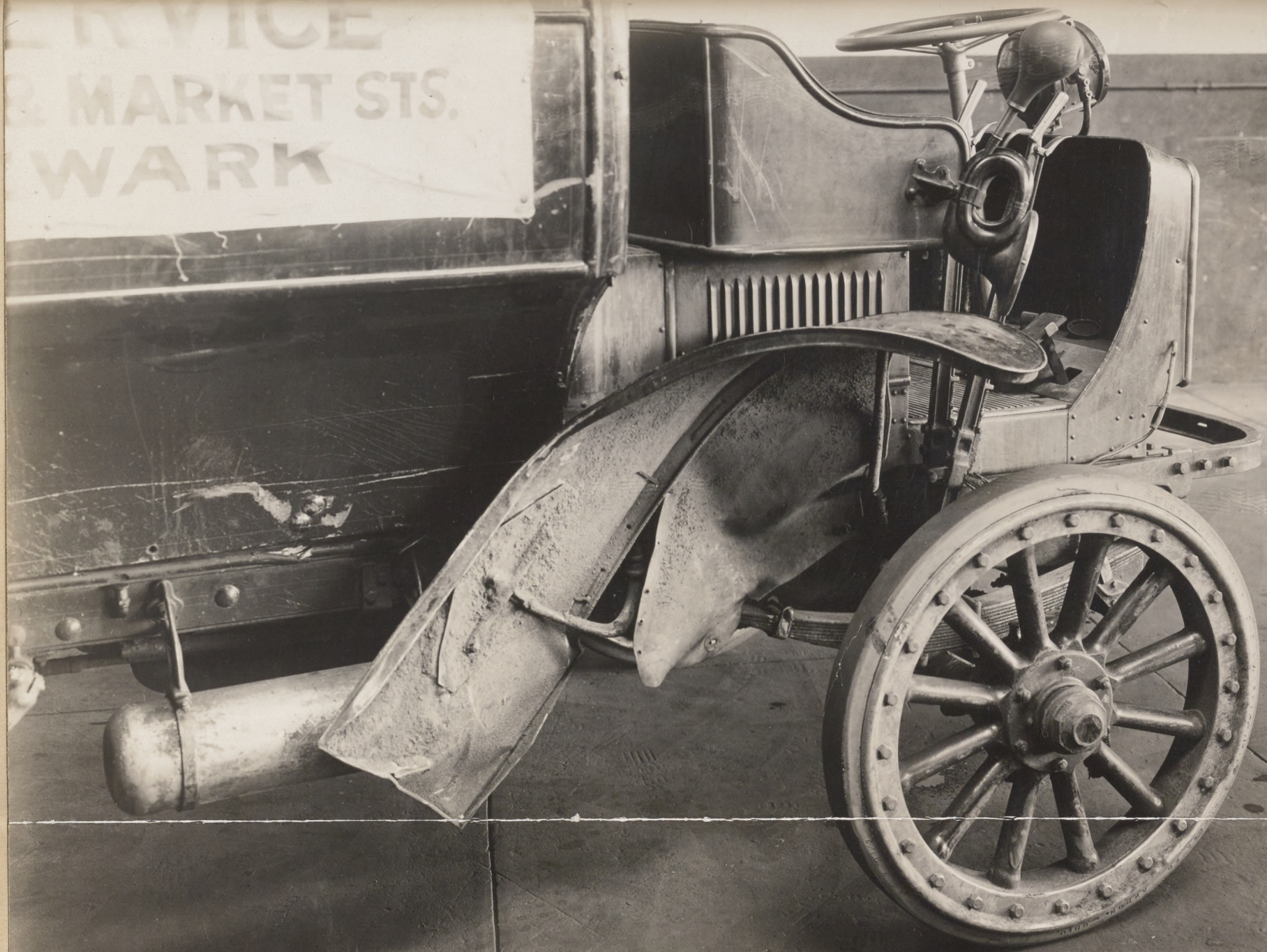
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UNIVERSAL AUTO BUS SERVICE  
MAIN & DAY STS. TO BROAD & MARKET STS.  
ORANGE FARE 10 NEWARK

58703

# INDEX.

	PAGE.
Summons .....	1
Complaint .....	2
Answer .....	4
Reply .....	6
Interrogatories .....	7
Answers to Interrogatories.....	8
Motion for Non-suit.....	56
Motion to Direct Verdict.....	99
Charge to Jury.....	100
Exceptions to Charge.....	110
Plaintiff's Requests to Charge.....	114
Defendant's Requests to Charge.....	115
Postea .....	116
Rule Entering Judgment.....	117
Notice of Appeal.....	118
Consent Extending Time.....	119
Grounds of Appeal .....	120

## TESTIMONY FOR PLAINTIFF.

Edwin Wille,	
direct examination.....	11
cross " .....	14
Walter S. Ottmann,	
direct examination.....	23
Emma H. McGall,	
direct examination.....	25
cross " .....	28
Mary L. Twining,	
direct examination.....	33
cross " .....	37
Alice E. Larue,	
direct examination.....	42
cross " .....	46
Mabel M. Young,	
direct examination.....	51
cross " .....	54

Albert H. Hassinger,	
direct examination.....	55
cross           “ .....	56

TESTIMONY FOR DEFENDANT.

William A. Traud,	
direct examination.....	57, 59
cross           “ .....	69
re-direct     “ .....	84
Samuel H. Solodan,	
direct examination.....	58
cross           “ .....	58
Natalie Schwarz,	
direct examination.....	87
cross           “ .....	89
John A. Byron,	
direct examination.....	92
Michael J. Robinson,	
direct examination.....	97
cross           “ .....	97
Lawrence Maude,	
direct examination.....	98
cross           “ .....	98

PLAINTIFF'S EXHIBITS.

	OFFERED.
P. 1—Photograph .....	25
P. 2—Photograph .....	25
P. 3—Photograph .....	25
P. 4—Photograph .....	25
P. 5—Photograph .....	25
P. 6—Photograph .....	25

DEFENDANT'S EXHIBITS.

	OFFERED.	PRINTED.
D. 1—Diagram .....	58	
D. 2—Photograph .....	64	
D. 3—Photograph .....	64	
D. 4—Traffic Ordinance .....	99	123

*Summons.*

**Summons.**

Filed April 20, 1915.

The State of New Jersey to William A.  
(L. s.) Traud: You are summoned to answer  
the annexed complaint of Grace W. Er- 10  
win, administratrix of the estate of Frank C.  
Young, deceased, in an action at law in the Su-  
preme Court, and take notice that unless you file  
your answer to said complaint with the clerk of  
the Supreme Court at Trenton within twenty  
days after 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, William S. Gummere, Chief Justice 20  
of the Supreme Court at Trenton, this fourteenth  
day of April, nineteen hundred and fifteen.

WM. C. GEBHARDT,  
*Clerk.*

LUM, TAMBLYN & COLYER,  
*Attorneys of Plaintiff.*

30

40

*Complaint.*

**Complaint.**

**New Jersey Supreme Court.**

ESSEX COUNTY.

10

GRACE W. ERWIN, administratrix  
of the estate of Frank C.  
Young, deceased,

*Plaintiff,*

*vs.*

WILLIAM A. TRAUD,

*Defendant.*

*Action at  
Law.*

*Complaint.*

20

Grace W. Erwin, administratrix of the estate of Frank C. Young, deceased, residing at No. 134 Watson avenue in the City of Newark and State of New Jersey, says that:

1. The defendant on November 20th, 1914, was the owner of and drove and operated a motor vehicle or automobile upon and along Park avenue, a public and common street or highway in the City of Newark and County of Essex and State of New Jersey, and did so carelessly, negligently and improperly operate and run said motor vehicle or automobile upon said public highway as to lose the proper control thereof.

2. At the time and place aforesaid one, Frank C. Young, was a passenger upon an automobile bus being operated between the cities of Newark and Orange in the said County of Essex, being a passenger upon said automobile bus for the purpose of being safely and securely carried

40

*Complaint.*

from Newark aforesaid to the City of East Orange.

3. Because of said carelessness and negligence the said automobile, owned and operated by the defendant, ran into and collided with the automobile bus upon which the said Frank C. Young was a passenger, causing the said automobile bus to upset and overturn, whereby and by reason thereof the said Frank C. Young sustained injuries from and on account of which he died on the 20th day of November, 1914, and within twenty-four calendar months from the commencement of this action. 10

4. On December 4th, 1914, the surrogate of Essex County granted letters of administration of the estate of the said Frank C. Young to Grace W. Erwin, the plaintiff herein, who accepted the same and qualified as administratrix thereof. 20

5. Said decedent left surviving him a widow and an infant daughter, who, by the death of the decedent, suffered great pecuniary injury.

Plaintiff demands \$25,000 damages.

LUM, TAMBLYN & COLYER,  
*Attorneys for plaintiff.*

A true copy, 30

WILLIAM C. GEBHARDT,  
*Clerk.*

*Answer.*

**Answer.**

Filed May 5, 1915.

NEW JERSEY SUPREME COURT.

10	GRACE W. ERWIN, administratrix of the estate of Frank C. Young, deceased,	} <i>Plaintiff,</i>	} <i>Action at Law.</i>
	<i>vs.</i>		
	WILLIAM A. TRAUD,	} <i>Defendant.</i>	} <i>Answer.</i>

20 Defendant, William A. Traud, residing at Newark, in the County of Essex and State of New Jersey, says:

1. He admits that on November 20, 1914, he was the owner of and drove and operated a motor vehicle upon and across Park avenue, in the City of Newark, County of Essex and State of New Jersey; but he denies that he carelessly, negligently and improperly operated and ran said motor vehicle upon said Park avenue; and  
30 denies that he operated said motor vehicle in such manner as to lose the proper control thereof and denies that he did lose control thereof.

2. As to the allegation in paragraph 2 of the complaint, that one Frank C. Young was a passenger upon an automobile bus being operated between the cities of Newark and Orange, in the County of Essex, at the time and place aforesaid, defendant has no knowledge or information sufficient to form a belief, except at the time  
40 aforesaid there was some person who was riding

*Answer.*

on an automobile bus and who was injured when the bus overturned.

3. Defendant denies that because of carelessness and negligence, the automobile owned and operated by him ran into and collided with the automobile bus on which the said Frank C. Young was a passenger, and denies that by reason of any carelessness or negligence on his part, the automobile bus aforesaid was upset and overturned; and as to the statement in paragraph 3 of the complaint, that said Frank C. Young sustained injuries by reason of the upsetting and overturning of said automobile bus, and that the said injuries caused his death, defendant has no knowledge or information sufficient to form a belief, except that he has heard that a passenger on said bus was injured at the time, and died. 10 20

4. Defendant has no knowledge or information sufficient to form a belief that on December 4, 1914, the surrogate of Essex County granted letters of administration of the estate of said Frank C. Young to Grace W. Erwin.

5. Defendant has no knowledge or information sufficient to form a belief as to the allegation in paragraph 5, that the said Frank C. Young left him surviving a widow and an infant daughter. 30

#### DEFENSE.

Defendant says, that on November 20, 1914, he was driving a lightweight motor vehicle across Park avenue in the City of Newark, and that the said vehicle was absolutely under the control of the defendant, and that an automobile bus driven by some person unknown to the defendant, ran into the vehicle being driven by defendant and 40

*Reply.*

careened over and finally upset, and some person was thrown out of the said automobile bus; and that the collision was caused entirely by the carelessness of the driver of the automobile bus.

FRANK E. BRADNER,  
*Attorney of Defendant.*

10

**Reply.**

Filed May 10, 1915.

The plaintiff in the above entitled cause by way of reply to the defendant's answer says:

The plaintiff denies all of the allegations contained in the fifth paragraph of the defendant's answer except as alleged in the plaintiff's complaint.

20

LUM, TAMBLYN & COLYER,  
*Attorneys for the Plaintiff.*

30

40

*Interrogatories.***Interrogatories.**

To Frank E. Bradner, Esquire, attorney for defendant, or to whom it may concern:

Sir:—We hereby demand that within ten days from the date of service hereof, upon you, you serve or cause to be served upon us written answers under oath to the following interrogatories propounded to the defendant in the above entitled cause by the plaintiff: 10

1st Interrogatory: Who was driving or operating your car at the time of the accident alleged in the complaint?

2nd Interrogatory: What was the make and model of your car?

3rd Interrogatory: Who else, if any one, was in the car at that time and where were they seated? 20

4th Interrogatory: When did you first see the auto bus of the Universal Auto Bus Service?

5th Interrogatory: On what side of the road was it when you first saw it?

6th Interrogatory: How far away was it when you first saw it?

7th Interrogatory: At what rate of speed were you travelling just prior to the happening of the accident? 30

8th Interrogatory: How fast were you travelling when you first saw the auto bus?

9th Interrogatory: In what direction were you going?

10th Interrogatory: What part of your car struck the auto bus and what part of the auto bus did it strike? 40

*Answers to Interrogatories.*

11th Interrogatory: Relevant to its position, what effect, if any, did the collision have upon your car?

12th Interrogatory: In what position relative to the roadway, was your car immediately after the happening of the accident?

10 13th Interrogatory: How far did your car go after the collision and in what direction?

14th Interrogatory: Just exactly where was your car when it came to a stop after the accident had occurred?

15th Interrogatory: Was your car driven by you or your agent away from the scene of the accident under its own power?

Yours &c.,

20 LUM, TAMBLYN & COLYER,  
*Attorneys for Plaintiff.*

**Answers to Interrogatories.**

To Lum, Tamblyn & Colyer, Esquires, attorneys of plaintiff:

Gentlemen:—

30 The following are the answers under oath, of the defendant to the several interrogatories served upon me on the tenth day of July, 1915. The answers are stated in the numerical order of the interrogatories, and without repeating the interrogatory:

1st. I was driving the automobile.

2nd. Model "T" 1914 Ford.

3rd. A lady was with me, and she was seated  
40 at my right.

*Answers to Interrogatories.*

- 4th. At the moment the accident happened.
- 5th. On the south side of Park avenue.
- 6th. Unable to answer, as I did not see the bus until it struck my car.
- 7th. I was travelling at low gear, and don't know at what rate of speed. 10
- 8th. The answer to this is the same as answer to 7th.
- 9th. South.
- 10th. My car did not strike the automobile bus, the automobile bus struck my car.
- 11th. The collision damaged my car on the left side, and threw it around in a westerly direction.
- 12th. Standing in a somewhat westerly direction. 20
- 13th. I cannot say that my car went any appreciable distance; it was merely shoved around towards the west.
- 14th. This interrogatory is answered by the answers to 12 and 13.
- 15th. My car was hauled away at my request.

Yours truly,

FRANK E. BRADNER, 30  
*Attorney of Defendant.*

*Answers to Interrogatories.*

STATE OF NEW JERSEY, }  
 COUNTY OF ESSEX, } ss.

10 WILLIAM A. TRAUD, being duly sworn according to law upon his oath says: I have read the interrogatories served upon my attorney in the above stated cause, and also the foregoing answers thereto. The said answers are true.

W. A. TRAUD.

Sworn and subscribed before me this fourteenth day of July, A. D., 1915, at Newark, N. J.

FREDERIC R. PILCH,  
*Master in Chancery of New Jersey.*

20

30

40

*Edwin Wille, direct.*

NEW JERSEY SUPREME COURT.

GRACE W. ERWIN, administratrix  
of the estate of Frank C.  
Young, deceased,

*vs.*

WILLIAM A. TRAUD.

10

Transcript of shorthand notes of testimony and so forth, taken in the above stated cause, upon the trial thereof, at the Court House, Newark, New Jersey, Monday, April 24, 1916.

Before Hon. Willard W. Cutler, *Judge*, and a jury.

20

For plaintiff appear Messrs. Lum, Tamblyn & Colyer, by Ralph Lum, Esq.

For defendant appears Frank E. Bradner, Esq. Jury impanelled and sworn.

Adjourned to Tuesday, April 25, 1916.

SECOND DAY.

Tuesday, April 25, 1916.

Met pursuant to adjournment.

30

Present, counsel as before stated.

Mr. Lum opened for plaintiff.

Mr. Bradner opened for defendant.

EDWIN WILLE, sworn in behalf of plaintiff.

*Direct examination* by Mr. Lum.

Q How old are you, Edwin? A Twelve.

Q You go to school? A Yes, sir.

40

*Edwin Wille, direct.*

Q Where? A Garfield.

Q Where do you live? A 341 North Seventh street.

Q Do you remember being up in the neighborhood of Fifth street on November 20, 1914?

A Yes, sir.

10 Q Do you remember seeing an accident down there? A Yes, sir.

Q Where were you at the time? A I was about in the middle of the block coming out of No. 7 truck house between Sixth street and Fifth.

Q Coming out of No. 7 truck house? A Yes, sir.

Q What had you been doing? A I was delivering my papers.

20 Q You have a paper route? A Yes, sir.

Q Were you on the sidewalk or in the street?

A About in the middle of the road.

Q Which road? A Park avenue.

Q Which way were you looking? A Down towards Fifth street.

Q Did you see any automobile? A Yes, sir.

Q Did you see an accident down there? A Yes, sir.

30 Q About what time of the day was it as near as you can fix it for us? A Somewheres around five o'clock.

Q What kind of a day was it? A I don't remember.

Q What were the conditions for seeing—how far could you see? A About a block and a half.

Q You think you could see a block and a half?

A Yes, sir.

40 Q You say you saw the accident? A Yes, sir.

*Edwin Wille, direct.*

Q What kind of automobiles were in the street? A I know one was a Ford, but I don't know what the bus was.

Q You don't know what the bus was, but it was a bus? A Yes, sir.

Q For carrying passengers? A Yes, sir.

Q You knew that somebody was hurt there? A Yes, sir.

Q Did you see the two cars come together? A Yes, sir.

Q In what position did they come together as near as you can fix it? A I can't remember what position they came together.

Q Just tell us, then, in your own way just what you saw. A The big bus was coming down Park avenue and it slowed up and then there was another was coming over Fifth street and they both kind of slowed up. Then they started together and the bus kind of go towards the wrong side of the street where it was hit.

Q When you first saw the bus on which side of the street was it? A The right side.

Q Then you say you saw it turn which way? A Turn up towards the wrong side of the street.

Q Towards the south side of the street? A Yes.

Q Then where did the cars come together? A Right about a little ways from the curb.

Q On the south side, that is the west side? A The side nearest Orange street.

Q What happened to the bus? A The bus fell over.

Q Which way? A Towards Orange street.

Q On its side? A Yes, sir.

10

20

30

40

*Edwin Wille, cross.*

Q Did you notice the position of the cars or what did you do? A Kept right on going, didn't stop.

*Cross examination by Mr. Bradner.*

10 Q How old did you say you were? A Twelve years old.

Q Do you go to school? A Yes, sir.

Q Were you going to school this time? A This happened after school. I went to school that day.

Q And you delivered newspapers after school? A Yes, sir.

20 Q No. 7 truck house is on the north side of Park avenue. Do you know which is north? A The side nearest Bloomfield avenue. The truck house is, it was on the side nearest Bloomfield avenue.

Q You don't know which is north, do you? A No, sir.

Q Nor south? A No, sir.

30 Q If you were going over from Orange to Bloomfield? A I was coming from the truck house on the side nearest Bloomfield avenue and going over to the side down at the corner of the street nearest Orange.

Q Then you came out of the truck house. That is on the side that looks toward Orange street? A What did you say?

Q The truck house faces toward Orange street? A Yes, sir.

Q Is that about half-way between Fourth street and Fifth street? A From the truck house?

40 Q Yes. A The truck house is on the corner of Sixth street and Park avenue.

*Edwin Wille, cross.*

Q You came out of the truck house and came towards Fifth street? A Yes, sir.

Q And walked in the roadway? A I was crossing the street. I was kind of going down right on an angle to the corner of Fifth street and Park avenue and I was about in the middle of the street when I seen it.

10

Q How far away from Fifth street were you? A About two-thirds of the way.

Q Then you were nearer Fifth street than you were Sixth street? A Yes, sir.

Q Did you look back of you at all? A I was late and I was in a hurry and I was kind of walking fast.

Q You were running, weren't you? A No, sir.

Q Don't you remember it was raining? A No.

20

Q You don't remember that? A No.

Q Drizzling a little bit? A I don't remember.

Q Did you notice that the bus had all the curtains down? A No.

Q You don't remember that? A No, sir.

Q Did you go over to see the people there after the accident? A I just stopped for a minute and then I went right on.

30

Q Did the crowd come there, crowd of people? A Yes, the crowd gathered right around.

Q How many? A I can't tell you.

Q Did you see a policeman there? A Later when I came back I did.

Q Do you remember seeing anybody there, anybody you knew? A No.

Q Did you see anybody in the car when you first went up to where the accident occurred? A No, sir.

40

*Edwin Wille, cross.*

Q Didn't see anybody? A No, sir.

Q Did you see how many people were in the Ford car? A Two, I think.

Q Don't you know? A I would not say positive.

10 Q How big a Ford car was it, how many passengers? A I don't remember.

Q Only one seat, wasn't there? A I don't remember.

Q Where was the bus when you first saw it? A It was just coming over the canal bridge.

Q Where is the canal bridge? A It is just a little bit past Fourth street.

20 Q Is the canal bridge between Fourth street and Fifth street? A No, sir, the canal bridge is between the entrance to the park and Fourth street.

Q It is further down town than Fourth street? A Yes, sir, just a little.

Q How did you know it was a bus? A I used to see it every day.

Q Did it come up there every day? A Yes, sir, it used to run around Park avenue.

Q And did you know the driver of it? A No, sir.

30 Q Did you know Mr. Young, who was in it? A No, sir.

Q Didn't know any of the people who were in the bus? A No, sir.

Q Did you talk to anybody that day? A Yes, sir.

Q Who? A Woman came out of the bus and asked me to go up and get the taxicab to bring her home.

40 Q A woman got out of the bus? A Yes, sir, right after it fell, for I came down there and she asked me to get a taxicab to take her home.

*Edwin Wille, cross.*

Q What was her name? A I don't know.

Q Is she here? A Not that I know of. I don't even remember what she looked like.

Q You haven't seen her since? A Yes, sir, I seen her since but I didn't know her.

Q You haven't talked to her since? A No, sir. 10

Q When you went home did you tell anybody what you had seen? A Told my mother.

Q Tell anybody else? A No, sir.

Q Did you ever tell anybody else? A Yes, sir.

Q Who? A My father.

Q When did you tell your father? A That night.

Q Did you tell anybody else about it? A Yes, sir. 20

Q Who? A Boy friend of mine.

Q Only three people you have ever told about it? A Yes, sir.

Q Who told you to come here? A Mr. Lum.

Q You haven't seen anybody but Mr. Lum?

A And a young man that works for Mr. Lum.

Q Do you know Mrs. Young? A No, sir.

Q Or Mrs. Erwin? You haven't talked to anybody but Mr. Lum and the young man from his office? A There is a few men in his office I have talked to about it. 30

Q So that the bus was crossing the canal bridge when you first saw it? A It was across the bridge.

Q And coming towards you? A Yes, sir.

Q Where were you then when you first saw it? A I was coming out of the fire house.

Q Just coming out of the fire house? A No, sir, I came out because the entrance which I came in is on Sixth street. 40

*Edwin Wille, cross.*

Q Then when you came out on Sixth street you couldn't see anything on Park avenue? A No, I was outside. I was on the sidewalk then on Park avenue.

Q You were on the sidewalk in front of the fire house when you saw the bus? A When I first seen it.

Q You had seen it every night for how many nights? A I don't know.

Q A good many nights? A Yes, sir.

Q You didn't take any particular notice of the bus, did you? A No.

Q You were used to seeing it. How do you know it was the same bus? A I seen the sign on the side and it is the only bus.

Q When you looked down Park avenue and saw it, could you see the sign on the side? A No, sir, when it was turned over I seen the side.

Q When you looked down first and saw it, did you know it was the same bus that came up every night? A Yes, sir.

Q How did you know it? A Because the other bus that ran there is a bigger bus and it always turned over Fifth street.

Q There was a bus that always turned over Fifth street? A Didn't always. Once in awhile it turned over Fourth.

Q Which way would it go on Fifth street, towards Orange or towards Bloomfield avenue? A Towards Orange street.

Q And this bus didn't turn over on Fifth street? A Once in awhile it turned over on Fifth, but mostly turned over on Fourth.

Q You mean turn over in Fourth street from Park avenue? A Yes, sir.

Q And sometimes turned into Fifth street from Park avenue. That is when it was coming

*Edwin Wille, cross.*

down town to Newark, you mean? A When it was going down town it turned over Fourth street and when it came back it came over Fourth street.

Q Where did it go in Newark, do you know?

A No, sir.

Q Did you know? A No, sir.

10

Q Did you ever see it go through Fourth street into Park avenue? A Yes, sir.

Q You didn't see it go over Fourth street on this night, did you? A No, sir.

Q You don't know where it came from? A No.

Q You were on the sidewalk when you first saw it? A Yes, sir.

Q Any trees along there? A Yes, sir.

20

Q How close to the curbstone was the bus when you first saw it? A I can't tell you.

Q Could you see whether it was going pretty close to the curbstone? A I don't remember now.

Q Was it right in the center of the street?

A I don't remember.

Q You don't know where it was in the street, do you? A Yes, sir, I know it was on the right side but I can't tell you whether it was in the middle or near the curb.

30

Q How do you know it was on the right side if you don't know whether it was in the middle of the street or near the curbstone? A I don't remember whether it was on the curbstone but I saw that it was on the right side of the street.

Q Why, what difference would it make whether that was on the right side or the left side? A You get arrested if it is on the left side of the street.

40

*Edwin Wille, cross.*

Q Who told you that? A Because the policeman always stopped them if they go on the right hand side. There is bushes in the middle of the street.

Q There are bushes in the middle of the street? A Yes, sir. There isn't any from Sixth street up as far as the park.

Q Are there bushes between Fourth street and Sixth street? A No, sir.

Q That is all open, Park avenue there, isn't it? A Yes, sir.

Q Nothing in the middle of the street. You say it was on the right side of the street? A Yes, sir.

Q What makes you say that? A Because I seen it there.

Q How near to the curbstone was it? A I don't remember.

Q How near to the center of the street was it? A I don't remember.

Q How do you make out it was on the right side of the street? A Because I seen it there. I don't know whether it was in the middle or near the curbstone, but I know it was on the right side.

Q What fixes it in your mind that it was on the right side? A Because I seen it there.

Q It came on up Seventh street and up Park avenue after you saw it? A Yes, sir, it came towards Seventh street. It was coming from down town.

Q And coming right up Park avenue towards you? A Yes, sir.

Q Up as far as Fifth street? A Not quite to the crossing.

Q Then turned to the left, did it? A It kind of slowed up and then turned to the left.

*Edwin Wille, cross.*

Q The bus slowed up when it got up to Fifth street and then turned to the left? A Yes.

Q Which way was the Ford machine coming?  
A Coming over Fifth street from Bloomfield avenue.

Q When did you first see that? A I seen that when it was just near the— 10

Q Curbstone? A No, sir.

*By the Court.*

Q Crossing? A Just where Fifth street runs into Park avenue.

*By Mr. Bradner.*

Q It was just coming into Park avenue when you first saw it? A Yes, sir.

Q And going slow? A Yes, sir. 20

Q Going very slow? A I don't remember. It was just going just like as if it just started off or something like that.

Q Didn't you think the Ford machine was going to stop right there it was going so slow?

A Yes, sir, it looked as if both was going to stop.

Q That is what you thought, the bus was going to stop and the Ford was going to stop. Which started up first, could you tell? A I can't remember which started up first. 30

Q But the bus started and turned to the left?  
A Yes, sir.

Q And then the Ford came along? A Yes, sir.

Q Could you see which part of the Ford machine was struck? A Yes, sir. I don't know whether it was the Ford struck or whether the bus was struck. 40

*Edwin Wille, cross.*

Q Did you see the Ford machine after it was struck? A Yes, sir.

Q Was it twisted around to the right? A It looked as if it was down around on Fifth street.

Q Had it gotten part way across Park avenue? A Yes, sir.

10 Q It was past the center of Park avenue? A I don't remember. I know it started across.

Q And then when it was struck it was part around towards Sixth street? A Yes, sir.

Q Where was the bus then? A It was laying in the gutter.

Q In the gutter on—. A On the side nearest Orange street.

Q The bus was away over in the gutter? A The top of the bus hadn't hit the gutter, but pretty near it.

20 Q In the gutter past Fifth street towards Sixth on Park avenue? A Yes, sir.

Q Up towards Sixth street? A Yes, sir.

Q Sure about that? A It was laying between Fifth street and Sixth street a little way in from Fifth.

Q The top of the bus was pretty close to the curbstone, wasn't it? A Yes, sir.

Q Laying over on its left side? A Yes, sir.

30 Q Did you see that the Ford car was standing out there then? The Ford car wasn't turned over, was it? A No, sir.

Q Could you see what was damaged on the Ford car? A After awhile when I came back I seen that the wheel was damaged.

Q The mud guard on the left side, wasn't it? A The side that hit the bus. The side—

Q It was on the—the left? A The left side.

Q The left side of the car? A The mud guard was damaged and the wheels.

40

*Walter S. Ottmann, direct.*

Q And that wheel, what part of the wheel?

A The mud guard.

Q Were the headlights on the Ford burning?

A I never did remember whether there was lights on either one of them.

Q Did you notice whether the lamps were broken on the Ford? A I can't tell you. 10

Q Nothing in the Ford was broken that you could see? A I don't remember.

Q What was broken on the bus? A I don't remember.

Q But you did notice the name on the side of it? A Yes, sir.

Q But you didn't notice whether the curtains were down? A No, sir.

*By Mr. Lum.*

Q You say you saw the car on Fifth street after you came back? A Yes, sir. 20

Q I show you what purports to be a photograph. Will you tell us whether or not that represents its condition as you then saw it? A I can remember this here part of the wheel was like that.

Q And that is the way the car looked as near as you can recall it? A Yes, sir.

*By the Court.*

30

Q This "here part." You put your finger on what?

*Mr. Lum.* Indicating the front left wheel.  
Photograph marked P. 1 for identification.

WALTER S. OTTMANN, sworn in behalf of plaintiff.

*Direct examination by Mr. Lum.*

Q What is your business? A Photographer. 40

*Walter S. Ottmann, direct.*

Q How long have you been in that business?

A About ten years.

Q By whom are you employed? A Commercial Photo Company.

Q Do you remember going uptown to take some photographs the 21st of November, 1914?

10 A Yes, sir.

Q You were instructed to take photographs of certain cars and conditions? A Yes.

Q I show you the photograph just referred to by the last witness, P. 1 for identification. Do you recognize it? A I do.

Q Who took it? A Myself.

Q Where was the car when you took it? A Inside the garage.

20 Q The garage was where? A Park avenue near the bridge.

Q Near Fifth street? A And near Fifth street.

Q Will you tell us whether or not that photograph is a fair representation of the conditions? A Absolutely, just as it was.

Q Did you take a photograph of the auto bus? A I did.

30 Q Where was that? A Auto Car Company, on Washington street.

Q You took it the same day as that other? A No, a few days before that, day or so.

Q Is that a fair representation of the conditions at the time? A For the bus, yes.

Q I show you this. Is that a fair representation of the bus at the time? A Yes.

Q It was taken on the same day as the other one? A Yes.

40 Q I show you photograph. Did you take that? A I did.

*Emma H. McGall, direct.*

Q What does that represent? A That represents Park avenue looking toward the west.

Q Is that a fair representation of the place as you found it? A As I found the street.

Q Where did you stand when you took it? A I was on the right hand side on Park avenue looking towards the west. 10

Photographs marked P. 2 for identification to P. 6 for identification inclusive.

Q I show you photograph P. 5 for identification. Do you recognize that? A I do.

Q Who took it? A Myself.

Q Is that a fair representation of the condition? A As it was that day.

Q Where did you stand when you took it? A I was on Fifth street looking south.

Q I show you P. 6 for identification. Did you take it? A I did. 20

Q Is that a fair representation of the conditions? A Just as they were that day.

Q Where did you stand when you took it? A I was on the bridge looking east on Park avenue.

*Mr. Lum.* I offer photographs P. 1 for identification to P. 6 for identification in evidence.

Admitted in evidence by striking out the words "for identification." 30

EMMA H. MCGALL, sworn in behalf of plaintiff.

*Direct examination by Mr. Lum.*

Q Where do you live, Mrs. McGall? A 68 Wheeler street, West Orange.

Q Do you recall the accident in November, 1914? A I do. 40

*Emma H. McGall, direct.*

Q Where were you at the time? A In the automobile bus.

Q About what time of day was it? A Shortly after five o'clock.

Q Where had you taken the bus from? A At Bamberger's corner, the corner of Market and Halsey streets.

Q About what time did you leave Newark? A I think the bus was scheduled to leave about five.

Q Did it run directly up to where the accident happened? A Directly, yes.

Q In what part of the bus were you sitting? A On the left hand side towards the door end.

Q That is towards the rear? A That is towards the rear.

Q And the left hand side would be towards Orange street, wouldn't it? A Well, the left hand side going towards Orange.

Q Did you see a Ford car there? A Where?

Q At all that day? A At the scene of the accident?

Q Yes. A I saw the car approaching when it was quite near.

Q Give us an idea of about how near? A Well, as I recall, it seemed very near because I heard exclamations of alarm in the car and closed my eyes and it seemed a few seconds perhaps when the accident happened.

Q You say you heard exclamations of alarm. In which car—

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

*The Court.* I think that is not responsive.

Q What directed your attention to the Ford car? A The exclamations of alarm in the car.

*Emma H. McGall, direct.*

Q Which car? A In the bus that I was in.

*Mr. Bradner.* I do not think the witness ought to say "exclamations of alarm."

*Mr. Lum.* Strike out "alarm." I consent to that.

*The Court.* Strike that out.

10

Q Was there a man injured as a result of the accident? A There was.

Q Had you observed where he was sitting?  
A He was sitting on the outside of the bus with the driver.

Q He was a man whom you learned was Mr. Young? A Yes.

Q Will you tell us how far you could see at the time of the accident? A As I recall I could see as we came along the canal. I saw the lights but I don't recall more than that.

20

Q Could you see 100 feet or a block or two blocks away? A I don't remember.

Q Do you remember whether it was dark or dusk or what? Can you give any idea at all? A It was dusk.

Q Do you remember anything about the speed of the Ford when you saw it? A I don't remember.

30

Q You said you shut your eyes? A Yes.

Q Could you tell from the impact where your car was hit? A No, I couldn't.

Q You can't give us no idea at all of it? A I knew afterwards but I didn't know at the time.

Q How did you know afterwards? A Because I saw.

Q What did you see? A That the bus had been struck toward the front.

Q On the side? A In the side.

40

*Emma H. McGall, cross.*

Q What happened to the bus when it was struck? A It was overturned.

*Cross examination by Mr. Bradner.*

Q Did you know Mr. Young? A I did not.

Q Or Mrs. Young? A No, I did not.

10 Q Did you know any of the passengers in the bus? A I knew none of them at the time.

Q You took the bus at Market and Washington streets? A Washington street is the corner where Bamberger's store is.

Q That is the wide street? A Yes.

Q Not Halsey street, was it the street nearer Broad street? A In 1914, I don't recall that the new street was built.

20 Q It was at a corner of Market street before the new street was built? A Yes.

Q What time did you take the bus? A As I remember, the bus was scheduled to start five o'clock at that time.

Q Are you familiar with the route the bus took? A No, I wasn't because it was the only time I took the bus from Newark.

Q That was the first time you took that bus? A Yes, from Newark.

30 Q I show you Exhibit P. 4. Is that a picture of the bus as you remember it? A It is.

Q And you were sitting on the left hand side of it inside? A Yes.

Q I am showing the witness a picture of the bus, Exhibit P. 4. There was a front seat where the driver sat with Mr. Young? A Yes, sir.

Q The driver, of course, was at the wheel and Mr. Young at his left? A Yes.

40 Q Was there anybody else on that seat? A No.

*Emma H. McGall, cross.*

Q The seats inside run alongside of the car?  
A Yes.

Q And where were you sitting inside the car?  
A On the left hand side towards the rear of the car.

Q Way back? A Yes, sir.

Q Were the windows closed? A The win- 10  
dows were closed except the one at my back, which had a broken pane.

Q Were the shades down? A The shade was down at my back to keep the cold air from coming in.

Q Otherwise you could see through the glass?  
A Yes, sir. I don't recall just how much.

Q Was there a glass partition between the passengers and the front seat? A There was.

Q And that was all closed up? A It wasn't 20  
closed because I could see the driver and the passengers.

Q Could you hear their conversation? A I could not.

Q You could see what they were doing? A I could see them.

Q Were they smoking? A I don't remember.

Q Wasn't your attention directed to the fact that they were both smoking, the driver and the 30  
passenger? A It was not.

Q You don't remember that? A I don't remember that.

Q You saw the Ford car as you were coming along the canal? A I did not.

Q I understood you to say so, "as we came along the canal I saw the lights." A I didn't mean the lights of the car. I meant of the city.

Q You didn't mean the lights of the Ford car?  
A I did not. 40

*Emma H. McGall, cross.*

Q You went up what street from Newark, from Bamberger's? A I don't remember the names.

Q You went uptown, went north on Washington or Halsey streets? A Yes.

10 Q And then when you turned left, what street did you take? A I don't remember what street.

Q Was it Central avenue? A I don't remember the streets there.

Q You don't remember whether it was Orange street? A No, I don't remember.

Q Do you remember what street you turned into to go to Park avenue? A I don't remember.

20 Q When you came along the canal? A I remember that, yes.

Q And for some distance along the canal? A I don't remember how far.

Q On which side of the canal? A Why, I don't remember.

Q Did you notice it was the canal, what called your attention to it? A The lights. I don't remember if I saw the water but it is just my impression.

30 Q Did you cross the canal? A That I don't remember.

Q You don't remember going across the bridge? A I don't remember that.

Q How near were you across it if you did cross it? A I don't remember just that.

Q But as you came along to whatever street it was alongside of the canal you could see the lights down to the city? A Yes.

40 Q So you evidently were going north and you were looking east when you saw the lights down in the city? A Yes.

*Emma H. McGall, cross.*

Q You don't know which side of the canal you were on? A I don't remember that.

Q Do you remember when you got to Park avenue? A I don't just remember that.

Q When did you first see the Ford car? A When it was quite close.

Q And the bus was then pretty close to Fifth street, wasn't it, where the accident happened? A It was. 10

Q How close to the curbstone, which was on your left, was the bus when you first saw the Ford car? A I don't know.

Q You didn't notice? A I didn't notice.

Q The shade was down on that side, wasn't it? A The shade was down in back of me.

Q So you couldn't look out that side? A I think not. 20

Q You saw the Ford car, I presume, some little time, some appreciable time, before the bus turned over, didn't you? A A very short period.

Q It was coming south? A Coming south.

Q When you first saw it? A I don't know.

Q You can't judge that? A No.

Q You could see the headlights on it? A If there were headlights, but I don't recall. 30

Q What was it about the car that attracted your attention? A It was the approach and the closeness.

Q It was getting so close to the crossing? A Yes.

Q Of course, you saw it through the glass? A Yes.

Q The front window or the side window? A The window facing the north.

Q On that side? A On that side. 40

*Emma H. McGall, cross.*

Q And you didn't know whereabouts in Park avenue your bus was? A I do not.

Q You don't know which side of the street it was? A No, I don't.

Q Didn't you observe that at all? A No, I did not.

10 Q You could have seen that, if you wanted to look you could have seen which side of the street you were on? A If I had been observing.

Q Had observed it at all? A Yes.

Q When the bus was struck did it turn over immediately? A It seems to me that it was pushed some.

Q Pushed a little before it turned over? A It seems so to me. I can't say positively.

20 Q Did it careen and appear to go along on just the wheels on one side? A I am not positive.

Q Get all the way across Fifth street, the cross street before it turned over? A It turned over on the south side of the avenue.

Q And laid pretty close to the curb? A Quite close.

Q And the people, of course, all tumbled over one another? A Yes.

30 Q On the left side of the bus? A On the left side of the bus.

Q You were not injured, were you? A Not seriously. I was slightly hurt.

Q After the bus fell over, did it slide along any on its side? A I don't recall.

Q You were too much excited to notice that? A More dazed than excited.

40 Q Did you notice about how fast the Ford car was going? A I did not.

*Mary L. Twining, direct.*

Q It was not going fast enough to attract your attention on account of its speed? A I hadn't been looking out.

Q Well, then, what attracted your attention? Was it the exclamations that you heard? A That was it.

Q Did you hear Mr. Young say anything? A No, I did not. 10

Q Did you hear the driver say anything? A I did not.

Q How close was the bus to the south curb on Park avenue at the time it was struck? A I don't know.

Q Was it on the south side of Park avenue when it was struck? A I don't know.

Q Were you helped out of the bus? A Yes, I was helped out. 20

Q Who helped you? A A man in uniform. Whether it was—

Q A policeman? A I am not sure. It might have been a policeman or fireman.

Q Is that the gentleman sitting there (indicating)? A I don't recall.

Q As you were helped out of the bus, did you hear anything said by the driver of the car? A I did not.

Q Nor by Mr. Traud? A No, I did not. 30

MARY L. TWINING, sworn in behalf of plaintiff.

*Direct examination by Mr. Lum.*

Q Where do you live? A 221 Springfield avenue, East Orange.

Q Do you remember an accident that happened in November, 1914? A I certainly do. Never shall forget it. 40

*Mary L. Twining, direct.*

Q Where were you at the time? A I was on the left hand side of the car in the center, about the middle woman in the center car.

Q On which side, on the right or left? A Left hand side.

10 Q By the car you refer to the bus that was in the accident? A Yes.

Q Where had you taken the bus? A At Bamberger's, right at the crossing. I guess that is Halsey street.

Q About what time? A As soon after five, about five o'clock.

Q About what time was it when the accident happened? A Well, I should think about half-past five as far as I can remember. We were half way home, we were on Park avenue.

20 Q Did you run directly from Bamberger's up to Park avenue? A Yes, never stopped.

Q And it was the length of time then it would have taken you to come up there? A I should think about half an hour. I don't know exactly.

30 Q Tell us the condition of light at the time. How far could you see? A Well, I was talking to a friend and was very much interested about the theatre, and we had stopped for a moment after we turned and we seemed almost in the middle of the street and I looked up Fifth street and I saw this Ford car coming.

Q How far away was it? A It was about from that wall to that wall, about that distance, I should think, when I saw it (indicating).

Q Indicating 100 feet? A From one wall to the other, about that distance, and, of course, I saw it because I was on this side and the car was coming right straight forward.

40 Q Did you have any difficulty at all in seeing it? A No, not at all.

*Mary L. Twining, direct.*

Q Plenty of light for you to see it that far?

A Plenty of light.

Q Could you have seen further if need be?

A Yes, but after I was looking so at this car which was coming toward us and I knew there was no escape.

Q At what speed was it coming? A As fast 10  
as it could go. I think the driver tried to swerve, I think he tried to get over to the gutter and I think we were right to the center when he saw this car and I think he was trying to get to the gutter.

Q Was your bus struck? A It was, certainly was.

Q By what? A By the Ford car.

Q What part of your bus did the Ford car strike? A What do you call that? 20

Q The mud guard. A Yes, right up where the two drivers sat, the driver and the gentleman that was killed.

Q That gentleman that was killed you learned later was Mr. Young? A Yes.

Q He was sitting alongside of the driver? A He was.

Q I show you Exhibits P. 3 and P. 4, indicating the bus. Does the mark on the side there indicate the position you have fixed where the bus was struck? A I should think just about that because it was this top of the car that came over and struck his head right here. 30

Q The top of which car struck whose head?

A Struck the man that was killed, struck him on the head.

Q The top of the bus? A I am not sure which it was, but one of these fell over on him and killed him. 40

*Mary L. Twining, direct.*

Q Did you see what the Ford car did when it hit the auto, just stop or what did it do? A No, I was hurt too badly to see anything of that kind. My back was cut and I was in an awful condition.

Q You say you were hurt? A I just escaped death. I have been sick three or four times. I have had the doctor, my back was cut by glass, my head was cut in three places. I was taken to the hospital.

*Mr. Bradner.* We are not interested in that.

Q You have brought no suit? A No, I thought I would escape all this.

Q Do you know whether or not there were any lights on either the bus or the Ford? A I don't. I didn't notice the Ford. I didn't notice about the lights. I could see what happened without any light. It was half-past five and it wasn't so very dark that you could not see anything that happened.

Q With reference to a block, could you see as far as that, could you see as far away as a block? A Almost. I am very far-sighted. Perhaps that is why.

Q When the bus was struck, you say it was overturned? A Yes.

Q Could you tell us whether it lay on its side with reference to Fifth street, was it towards West Orange or towards the Newark side of Fifth street? A It was towards the left side.

Q On the left hand side of the street? A Toward on the west side. I was on the side that went over. That is why I was hurt so badly.

Q That was near the curb? The top of the bus was near the curb on the left hand side of Orange street going to West Orange, that is correct? A Yes.

*Mary L. Twining, cross.*

Q Now, I want you to tell us with reference to Fifth street, whether it was past Fifth street towards West Orange or whether it was approaching Fifth street on the Newark side of Fifth street? A I should judge we had just got across the street, but I am not positive of that. I think we had just got across.

10

*Cross examination by Mr. Bradner.*

Q Have you ridden in the bus before? A Yes, but not that bus. I got in the wrong bus. I live in East Orange and that was the Orange bus I got in. I should have taken the other bus but then I was in a hurry to get home and I thought I would remain in there and walk the distance across North Maple. I never was in that bus before and I will never go in one again.

20

Q You didn't know the driver of the bus? A No, didn't know him at all.

Q Didn't know anybody in the bus? A There was a lady that sat opposite me who lived near me. I was talking to her quite a little. That was all.

Q Was this at Halsey street that you took it, at Market and Halsey? A Yes, right near Bamberger's.

Q You went north on Halsey street, did you, turned up Central avenue? A You see I was very much interested until I seen this other car. I don't remember much because I was talking to the daughter of this lady and I was more interested in her.

30

Q You didn't notice where you were going and how fast you were going? A No, sir, I didn't notice that. We were going at a pretty good speed like most of them go. They go pretty quickly but nothing out of the way.

40

*Mary L. Twining, cross.*

Q This bus was going pretty quickly? A Yes, but not out of the way.

Q You say like most of them go? A Yes, most of them go about that gait. The others went about like that.

10 Q Did you notice what street you turned towards when you went over Park avenue? A No, I noticed it when this happened. We were near Fifth street.

Q You did not notice? A No.

Q You don't know whether you went over Third street or Fourth street or where? A I should think it was Fourth. I am not very well acquainted because I haven't lived here very long.

20 Q That runs alongside the canal? A Yes.

Q You crossed the canal bridge before you turned over to Park avenue? A I don't know whether it was a bridge or not. I was so interested with this party telling me about some place she had seen.

Q When you got into Park avenue do you remember getting into Park avenue? A Yes, I remember that.

30 Q Just as you got into Park avenue you remember that? A Yes.

Q And the bus turned to go towards Orange and Park avenue? A Yes.

Q Where did it turn? How close to the south side of the street? A I should think it was almost in the center of the street.

Q Almost in the center? A Yes.

Q To the left of the center or to the right of the center? A About to the left of the center.

40 Q Did it keep on to the left of the center all the way up to Fifth street? A Yes.

*Mary L. Twining, cross.*

Q You know that? A I am pretty sure, yes, as far as I remember.

Q When you got pretty close to Fifth street you saw the Ford car coming? A Yes.

Q Was it south on Fifth street? A Yes. I should think about from there to there it was and we just had time— 10

Q Never mind that. You explained it about the length of this room? A Yes.

Q You mean that it was that far in Fifth street towards the crosswalk when you first saw it? A Yes.

Q Where was the bus then, how close to Fifth street? A We were this side of the crossing on Fifth street. We were just going to cross Fifth street.

Q You were just going to cross Fifth street? 20  
A We were just going to cross Fifth street, yes.

Q The Ford car had not yet reached Park avenue? A Not quite. It was just about to reach it, I should think.

Q Just about to reach Park avenue? A Yes, about this distance across.

Q It was the whole length of this room away from you? A Yes. 30

Q How wide is Park avenue there, if you know? A Well, it is a pretty wide avenue, Park avenue is.

Q Then you mean it happened way over on the south side of Park avenue towards Orange street? A Yes, I think so.

Q Then you were probably further to the left of the center than you realized? A Well, I can't tell you about that because I was too excited. 40

*Mary L. Twining, cross.*

Q Isn't it a fact, when this driver turned up Park avenue he turned south to the curb and went along on that left side? A I can't be positive that he was close to the curb or in the center of the street.

10 Q He was to the left of the center? A He was to the left of the center. He wasn't to the right because we would have been struck sooner if he had been to the right.

Q If he had been on the right you would have been struck sooner? A Yes.

Q Did you know it was wrong to be on the left hand side of the road?

*Mr. Lum.* I object.

*Mr. Bradner.* I will pass it for the moment.

20 Q The bus was struck on the right hand side?

A Yes.

Q You felt the impact as it was struck? A Yes.

Q Did it turn over immediately? A Yes.

Q Went right straight over? A Yes.

Q It didn't careen? A No, because I went on my back, so it must have went straight over and I couldn't get up.

30 Q Went over on its side? A Yes.

Q Did it slide along on its side? A Yes.

Q All the way across Fifth street? A Yes. Oh, I don't know how far, I can't tell you how far because I had glass in my coat for months after, taken out of my coat where it struck him.

Q Sliding along on the pavement? A On the curb.

40 Q When it stopped it was pretty close to Fifth street on Park avenue? A On the west side.

*Mary L. Twining, cross.*

Q On Fifth street? A I should think so from the way I should judge, that is all.

Q Do you say you haven't brought any action for damages? A No.

Q Have you been settled with? A I got \$60 from the other company for my doctor's bill, my first doctor's bill, but I have had three since then. 10

Q The bus company settled with you? A The bus company gave me \$60 to pay my first doctor's bill and I have had two or three since to pay myself.

Q Who was the bus company? A I don't know who they were. I never was in the bus before; that is, the Orange bus.

Q Who paid you? Oh, the lawyer.

Q What lawyer? A I don't know who he was; he came to the house. 20

Q Whose check was it you got, what check did you get? A I got \$60, five dollar bills.

Q Whereabouts, what lawyer's office? A No lawyer's office, he came to the house and gave it to me.

Q Who? A The lawyer.

Q Who was the lawyer? A I don't know.

*Mr. Lum.* I object to it. 30

*Witness.* I don't know who he is. I never learned.

*Mr. Lum.* I think we have gone as far as is material. It is certainly the full length of the right to go into it. It is only for the purpose of showing any interest of the witness.

Q You were going at a pretty good speed, you say, the bus? A Not out of the way. Not 40

*Alice E. Larue, direct*

any faster than they always go. They always go that same speed.

Q Same speed when you went by Park avenue? A Yes.

Q You were going the same speed when the bus was struck? A Yes, just about the same.

10 Q It hadn't slackened up at all? A No. I felt as if he was trying to get out of the way. Of course, I may be mistaken. I don't know. I think that is why he went over to the left.

Q The Ford car didn't slack up at all? A Not at all.

Q That kept right on? A Yes, sir, on at a terrible gait.

20 Q Going very fast? A Very fast. I just had time to say one word from that distance until we was struck. I said, "The Lord have mercy on us," and we all went over and the women in front fell on top of me and all the women that were on that side were very much hurt.

Q All the way of the length of this room? A Yes, and I only had time to say two words before we were struck.

30 ALICE E. LARUE, sworn in behalf of the plaintiff.

*Direct examination by Mr. Lum.*

Q Mrs. Larue, where do you live? A 251 Park avenue, Orange.

Q How long have you lived there? A Five years.

Q Do you remember an accident which happened in Newark, 1914? A Yes, I do.

40 Q Where were you at the time? A I was in front, the second on the side that was hit, the second one.

*Alice E. Larue, direct*

Q You were in the bus? A Yes.

Q Where had you taken the bus? A At Halsey and Market, at Bamberger's.

Q What time? A I should judge it was scheduled to leave around five o'clock.

Q About what time did the accident happen?  
A I should judge it must have been five and 10  
half-past the time it took us to get up there.

Q The length of time it took you to get up to Park avenue? A Yes.

Q Had you run directly right up there? A Yes, right direct.

Q What was the condition of light at the time of the accident? A It was just commencing to get dark about that time.

Q How far could you see? A I could see as we came along the canal. I sat looking out this way and I could see the lights all around. 20

Q You were sitting with your back towards Bloomfield avenue? A No, I sat looking out this way. I was the second one and I sat looking out.

Q Which way were you looking? A I was looking toward Bloomfield, the way the Ford was coming.

Q What part of the road was your bus in as near as you can place it? A As we came along the canal? 30

Q No, as you came on Park avenue? A Well, we came out, we were towards the left center, I should say. We were not over in the right as much because there was a machine came over the bridge and we couldn't get over.

Q There was a machine that came over the bridge? A There was a machine that came over the bridge and we could not get over to the right side. If you came out of the street here you have to stay on the left side until that ma- 40

*Alice E. Larue, direct*

chine came out and it tooted its horn and we stayed over on that side.

Q You think you were about in the middle?  
A About in the middle. We were not on the right. Back about in the center, I should say.

10 Q You say as you came over the bridge you were looking towards Bloomfield? A We didn't come over the bridge, along the canal. The bridge is right over the canal.

Q But Fourth street you came over? A Fourth street we came over.

Q As you were looking towards Bloomfield, did you see the Ford? A Yes, I saw the Ford coming.

20 Q How far away was it when you first saw it? A There is an open lot there and I could see it coming about a half a block, I should judge, the Ford.

Q I show you Exhibit P. 5, representing Fifth street looking south of the bridge on Park avenue. Do you recognize the location? A Yes, I do.

Q And is this the lot that you have indicated?  
A This is the lot. That is what I said. We could always see the Ford coming if they were looking.

30 Q Anybody could? A Anybody could see it in the bus.

Q You were how far away from Park avenue when you first saw it? A It was way up here, some place, half a block on the hill.

Q Indicate half a block on Fifth street.

*By the Court.*

40 Q Where was the bus at that time? A The bus, we were coming along the canal when I saw the Ford coming.

*Alice E. Larue, direct*

*By Mr. Lum.*

Q Did you notice whether or not there were any lights on either the bus or the Ford? A I know there was lights on the bus because they said, "Put the lights out." They were afraid they would catch fire from the gasoline when the machine was turned over. Somebody said: I don't know who. 10

Q I show you Exhibit P. 6. Just glance at that and see if you recognize the conditions. A That is the bridge. There is the street we came up.

Q Where was the Ford? A Well, the Ford was over here, I said about half a block in there.

Q Do you know where the bus was struck by the Ford? A Right where I said it was struck. The Ford climbed up half on the wheel. 20

Q The Ford climbed up over the wheel? I show you Exhibit P. 3 and P. 4. Do they represent the spot that you indicate? A Yes, that is just where I sat.

Q You were sitting right under that? A Right over.

Q Right over that? A Exactly.

Q And then what happened to the bus? A It toppled over, fell over on its side. 30

Q Do you know whether it slid along a little ways? A I believe it did. I can't say for sure, but I have an idea it did.

Q And the top of the bus was near the curb on the left? A Yes, it was right at the curb.

Q It rested right at the curb? A Yes.

Q Will you tell us whether the bus as it lay on its side to the left was on Fifth street or to the east of Fifth street? A It was towards West Orange. 40

*Alice E. Larue, cross.*

Q Had it entirely cleared Fifth street? A I think it was about, I think so.

Q Can you give us any idea of the rate at which the Ford was going? A They both put on speed to get by, they seemed as if they could pass one another.

10 Q That is the way it appeared to you? A That is the way it appeared to me.

Q Where was Mr. Young sitting? A He sat on the left, on the other side of me. The driver was right in front of me.

Q He sat alongside of the driver? A Yes, he sat alongside.

*By the Court.*

20 Q How soon after the bus was struck did it fall over? A As soon as it hit it it toppled over.

*Cross examination by Mr. Bradner.*

30 Q You went up what street when you left Halsey street? A We went up along that hill school, that hill there, isn't that Franklin school? A I don't know what it is. That is the route they always take, because I have taken that bus before to Orange and then it goes up Central avenue and continues and goes along the canal.

Q You turned over Fourth street to Park avenue? A Yes.

Q How often had you taken the bus before? A I had been on, I guess, I don't believe, over two or three times. I usually go in the car, but I was in a hurry that night.

40 Q Did you know Mr. Young? A No, I didn't know him.

*Alice E. Larue, cross.*

Q Hadn't seen him before? A Hadn't seen him before.

Q Did you notice there was a passenger sitting in the front seat this time? A Yes, I noticed that.

Q Was he smoking? A I can't say. I don't remember. 10

Q Was the driver smoking? A I don't remember.

Q As you went along Fourth street, alongside of the canal, you could see up to Fifth street? A I could see, yes, sir. There was an open lot there.

Q How far were you on Park avenue from Fourth street when you saw the Ford car coming from— A I was right in, just a little ways in, don't you know. I don't just know how far to tell you. 20

Q You hadn't reached Park avenue? A No, we had reached Park avenue when I could see it.

Q There is a garage on the corner there? A Yes, there is.

Q You hadn't come to the garage yet? A I don't remember, really.

Q You could have seen it, if you were back of the garage, you couldn't have seen Fifth street? A I don't remember much about the garage. 30

Q You were further still about 100 feet from Park avenue? A No, we were not very far. I don't know how far to tell you.

Q The machine could be plainly seen? A Oh, I could see it. I could see other machines on the right of Park avenue, too.

Q The Ford machine was coming south on Fifth street? A Yes, sir, it was.

Q And it was some distance? A It was half a block when I saw it. 40

*Alice E. Larue, cross.*

Q Half a block from Park avenue? A Yes.

Q And you were a little distance from Park avenue down Fourth street? A Fourth street.

Q When you turned into Fourth street you turned right up to the left of the curve? A No, we didn't. We kept on the left but toward the center. There was a machine and we couldn't get over.

*Mr. Bradner.* I move to strike that out. I did not ask her about that.

*The Court.* That will be stricken out.

Q I don't know whether you want to say it or not. Please answer the question directly. You turned into the left when you got into Park avenue? A Oh, yes.

20 Q You didn't go quite to the center of the street when the turn was made. A No, not right in the center, left of the center I would call it. We were not at the curb.

Q Left of the center. Is there anything there in the center of the street? A No, not that I remember. I don't think there is any flower bed.

Q When you turned did you see a car coming towards you on the same side of the street? A What do you mean, on Park avenue was there any other car?

Q Yes. A There was a car coming up towards West Orange.

Q Did you see a car coming towards you facing you? A No, I didn't.

Q There was a car coming up on the right hand side? A On the right hand.

Q Where was that when you first saw it? A Just coming over the bridge.

40

*Alice E. Larue, cross.*

Q 100 feet away? A I don't know just how far to judge.

Q Coming over the canal bridge? A Coming over the canal bridge.

Q Just started to come over? A Yes, they were coming over.

Q That went on? A That went on, yes. 10

Q And was out of sight before this accident happened? A I don't remember. It must have been because I didn't see it.

Q It went beyond Fifth street? A Yes, I guess it did.

Q That didn't hit the Ford car? A No, it couldn't because they were further ahead.

Q And the Ford car was about a half block from Park avenue? A Yes, I should judge it was when I seen it.

Q And the other automobile was coming across the bridge a whole block from Fifth street? A Well, I don't know, really I don't remember. 20

Q You don't know? A I don't remember. I know we couldn't get on the right side on account of them.

Q If the Ford was coming across the bridge and was more than a block from Fifth street and the other car was a half block from Park avenue, they passed each other, didn't they? A No, they didn't. He couldn't. He was too far back of the other machine. 30

Q The Ford car was too far back? A This car on Park avenue would have been by long before the Ford came.

Q You think that went on back? A I know it did.

Q Before the Ford car got there? A The Ford car was too far away. 40

*Alice E. Larue, cross.*

Q And the Ford car was about a half a block back? A I suppose about a half a block.

Q You don't know? A I don't remember exactly.

Q Mrs. Twining said the length of this room. A That would be a half block on Fifth street.

10 Q So when you first saw the Ford car was about the length of this room from Park avenue?

A Yes.

Q While it was going that distance the other automobile crossed the bridge and went all the way up from Fourth street to Fifth street and had gotten across? A It had gone.

Q And the Ford car was coming how fast? A I don't remember.

20 Q It wasn't going very fast? A I don't remember.

Q It must have been crawling along to get there in that time? A I don't remember how fast it was going then.

*By the Court.*

Q Was this other car going rapidly? A The Ford?

Q No, the car that was coming across the bridge. A Yes, that was going pretty fast.

30 *By Mr. Bradner.*

Q You continued on Park avenue to the left of the center? A Yes.

Q No doubt about that? A Yes, we did.

Q And when you got up to Fifth street the two cars collided? A Yes, they both put on speed, thinking they would get by and that is how it happened.

40 Q When you got close to Fifth street they both put on speed? A That is the way I thought of it.

*Mabel M. Young, direct.*

Q Then you were conscious that the bus put on speed? A No, first the bus slowed up a little bit and then I suppose he put speed on and the Ford people put speed on thinking we would get by.

Q They both hesitated and then went ahead?

A That is the way I thought.

10

MABEL M. YOUNG, sworn in behalf of plaintiff.

*Direct examination by Mr. Lum.*

Q Where do you live, Mrs. Young? A I am living with my mother now, 134 Watson avenue, West Orange.

Q What was your husband's name? A Frank C. Young.

20

Q When were you married? A May 26, 1910.

Q By whom was your husband employed? A The Firemen's Insurance Company, Broad and Market streets.

Q Did you know what salary he was receiving? A \$1,500 a year.

Q Whom did you have in your family? A I have one little girl, Grace.

Q Is that the little girl here? A Yes, she is five years old.

30

Q When was your husband killed? A November 20, 1914.

Q At that time where were you living? A 66 Burchard avenue.

Q Did your husband make you any personal allowance? A Yes, he used to give me \$5 weekly for my own personal use.

Q What was done with reference to the balance? A The bills were given to me and I

40

*Mabel M. Young, direct.*

would get Mr. Young to make the checks out and I paid them myself and Mr. Young provided the money.

Q For paying them? A Yes.

Q How much would they amount to on an average? A I should say about \$17 or \$18 a week, the average of all the little bills.

Q That was all provided by your husband? A Yes, and then he would provide the child's clothes, too.

Q The clothing for your little girl? A Yes.

Q How about doctor's bills and those expenses for the little girl? A Yes, he paid all those.

Q What was your husband's condition of health at the time? A He was in perfect health.

Q Had he ever been to the doctor? A Not since we were married.

Q What were his habits? A Very good habits. Home every night with me. Never drank, he smoked. That was about all. Very good fellow.

Q You didn't see the accident, did you? A No, I did not.

Q Where were you on the day the accident happened? A I was waiting for him to come home. I waited until ten o'clock.

Q That night? A That night before I knew of the accident.

Q What happened then? Did you get worried? A The officer came to my house and he asked me if Mr. Young lived there. I said, "Yes." I said, "I am anxious. I wish he would hurry because he very seldom leaves me alone." He said, "There was some kind of a message for Mr. Young down to the Fifth Pre-

*Mabel M. Young, direct.*

inct," and I said, "If Mr. Young comes home will he have to go down or will you come back," so he didn't say any more. I sat by the window and I was watching for him. Finally the officer came back again and he told me I had better go to headquarters, there was a serious accident and I would have to go down to Mullin's morgue, and I said, "I have a little sick child upstairs and I won't leave her alone." He wanted to know if he could do anything. I said if he would go over to my mother-in-law and get somebody to help me, but he said perhaps he could not find the place and it would be quicker if I went and he would stay until I returned home. I went across lots that I never knew of before and then finally came to the door. They had gone to bed and I knocked on the door, knocked on the door, and it seemed forever for them to get dressed. So finally when I went back I waited until my brother-in-law came over and I went to the garage and asked the man if I could take a machine and have him take me down to Mullin's morgue. He said he would gladly loan me a machine, so he had some fellow take me down and on the way down, why, the tire gave out and then they had to fix that, and then when we got down there they advised me I had better not see Mr. Young, he was in a terrible condition. I told them to go ahead. They asked me if they should take the case and bring him up and I said, "Yes." They told me to come down in the morning. I broke down, of course, and on the way home the machine gave out again, the tire gave way and we had to go home on the rim of the car all the way. It took, I don't know how long.

Q Did you go down the next morning? A Yes.

*Mabel M. Young, cross.*

Q Can you tell us whether you recognized Mr. Young in the morgue? A Yes, I recognized Mr. Young in the morgue.

Q He was then dead? A That is the first I realized he was dead. When they said he was seriously injured I didn't know he was dead.

10 Q What was your husband's age at the time?  
A Twenty-eight years old.

Q What is your age? A Twenty-five.

Q Now? A Yes, I am twenty-five now.

Q Twenty-eight when he was killed? A Yes, twenty-eight when he was killed.

Q You are twenty-five now or then? A Twenty-five now.

Q This accident was in 1914? A I was twenty-three then.

20 *Cross examination by Mr. Bradner.*

Q When you were married did your husband receive \$1,500? A No, he did not.

Q And you had been married— A I was married four and a half years when the accident happened.

Q And his salary had been increased during that time? A Yes, it had been increased.

30 Q Was he working in the same place? A Yes, the same place.

Q All the time? A Yes.

Q And at the time you were married did he have any money saved up? A Yes, he did. He was a very saving fellow.

Q Did he save anything out of his salary? A Yes, we managed to keep a building and loan.

40 Q How much did he save out of his salary?  
A That was \$5 every month and I know he just bought a home and it took everything we could scrape together to get our home.

*Albert H. Hassinger, direct.*

Q You were still paying on that? A We hadn't paid anything off after we got it any more than that. We hadn't had it a year before the accident happened. We haven't had time to save anything to pay off on the house.

Q You mean on the house? A Yes.

Q You were not paying off on that? A We 10  
were going to try to.

Q Did he save \$5 a month out of his salary?  
A Yes.

Interrogatories and answers read to the jury by Mr. Lum.

*Mr. Lum.* It is admitted that the mortality tables, if sworn to, would show an expectancy of life, of this life of thirty-six and seventy-three one-hundredths years. That doesn't mean he would live that long, but that is the assumption. 20

*Mr. Bradner.* According to those tables. I don't admit the tables would be competent evidence even if they were here.

*Mr. Lum.* But that the tables would show that.

*Mr. Bradner.* Yes.

*The Court.* Is this thirty-six and a half years the expectancy of life at the time of the accident? 30

*Mr. Lum.* Yes, sir.

ALBERT H. HASSINGER, sworn in behalf of plaintiff.

*Direct examination by Mr. Lum.*

Q Mr. Hassinger, you are secretary of the Firemen's Insurance Company of this city? A I am. 40

*Motion for Non-suit.*

Q Did you know Frank C. Young, who was killed some time ago? A I do know that he was.

Q At the time of his death by whom was he employed? A Firemen's Insurance Company.

Q What was his yearly wage? A As near  
10 as I can remember \$1,500.

*Cross examination by Mr. Bradner.*

Q You have no memorandum about that, have you? A I know that it was absolutely \$1,400. I know that positively and to the best of my knowledge and belief it was \$1,500.

Q At the time of his death? A Yes, that is, it was some time before his death, perhaps a year or more, but it was \$1,400 and I think we  
20 raised him \$100 the next year.

## PLAINTIFF RESTS.

*Mr. Bradner.* I wish to make a motion for non-suit in this case. My ground is that the evidence in this case shows that the negligence of the driver of the bus was the sole, proximate cause of this injury, which, of course, eliminates the defendant entirely. It wasn't shown that he was negligent.  
30

The ordinance of the City of Newark requires a person driving a motor vehicle or any other vehicle to proceed on the right hand side of the road.

\* \* \* \* \*

I respectfully contend there is nothing to go to the jury. It is a pure question of law on this evidence which shows there was no negligence on the part of this defendant and contributory negligence on the part of  
40 the driver of the bus.

*William A. Traud, direct.*

*The Court.* I think there is a question for the jury as it stands now and I shall refuse your motion.

Counsel for defendant prays an exception to the ruling of the Court.

Exception noted as ground of appeal.

10

WILLIAM A. TRAUD, sworn in his own behalf.

*Direct examination* by Mr. Bradner.

Q Mr. Traud, you are the defendant in this suit? A Yes, sir.

Q How old are you? A Twenty-eight.

Q Are you married? A No, single.

Q You were driving the Ford car on this occasion when this accident happened? A Yes, sir.

20

Q It was your car? A Yes.

Q Was there anybody with you? A A young lady riding with me.

Q What was her name? A Miss Schwarz.

Q Is she here? A She is present.

Q About what time in the afternoon did this accident happen? A About 5:20.

Q You came over? A I came from Bloomfield avenue.

Q South on Fifth street? A South.

30

Q Have you got a diagram? A I have a plan here.

Q Who made it? A John B. Bracken, civil engineer.

Q Is he here? A Yes, Mr. Solodan, his assistant, is here.

(Witness withdrawn.)

40

*Samuel H. Solodan, direct—cross.*

SAMUEL H. SOLODAN, sworn in behalf of defendant.

*Direct examination by Mr. Bradner.*

Q You are employed by Mr. Bracken? A I am.

10 Q Are you a civil engineer? A I am studying to be one.

Q Do you know anything about the making of this diagram? A I made it.

Q Made it yourself? A Yes, sir.

Q Who made the measurements on the road? A I did.

Q Under Mr. Bracken's supervision? A Yes, he was away at the time. He was on his honeymoon and I took charge of that work.

20 Q You did the work? A Yes, sir.

*Mr. Bradner.* I offer it in evidence.

*Cross examination by Mr. Lum.*

Q What experience have you had in work of this kind? A I have been in the business for four years.

Q You are not a civil engineer? A No, sir.

30 Q You merely carry a chain? A No, I have done surveying, taken charge of the work personally.

Q Did you personally go over the ground? A Yes, sir.

Q Go over the ground? A Yes, sir.

*Mr. Lum.* No objection.

Marked Ex. D-1.

*By Mr. Bradner.*

40 Q Will you explain this diagram? A Yes. This is really the north but commonly speaking Park

*William A. Traud, direct.*

avenue going this direction is straight west, this direction here. This is south and this is north although the meridian line is not in that direction. Park avenue is 100 feet wide between the property lines, 59.20 feet wide between the curbline and that is an exceptionally even street.

*Mr. Lum.* I object to this. It is the condition in which it was in November, 1914. 10

A The trees and telegraph poles are exactly as shown here. I didn't consider it necessary to put the measurements down. This street is 60 feet wide between the street lines and 30 feet wide between curbs and the bridge is down here.

Q What is the distance from Fifth street to Fourth street? A It is a 200 foot lot.

Q What is the distance from the canal bridge, from the lower side of the canal bridge to Fifth street? A I would have to scale that off. 20

*By the Court.*

Q What is the scale of your map? A  $\frac{1}{8}$  of an inch to a foot.

*By Mr. Bradner.*

Q The other side of the canal bridge to the east side of Fifth street? A 296 feet. 30

WILLIAM A. TRAUD resumes the stand.

*Direct examination by Mr. Bradner.*

Q Do you know about what rate of speed you were going then on Fifth street? A I imagine about three or four miles an hour. I was riding in low gear with my car. I had stopped and started up in low gear and I hadn't changed my gear to high. 40

*William A. Traud, direct.*

Q When you got to Park avenue what did you do? A I had to stop to leave a touring car pass by and then I started up again and all I saw was the car, was bright lights.

Q Which way was the touring car coming?

A It was coming towards Orange.

10 Q Had that reached the crossing before you did? A That was there before I did.

Q After that had gone by what did you do?

A I started to cross Park avenue.

Q State whether or not you came to a full stop? A I don't think I hardly stopped but I had to go into low gear. The car was running very slow and practically stopped and then I started to cross the street and I looked toward Orange to see if any cars were coming that way and I didn't see any, and the first thing I knew I heard this young lady holler. I had to turn there. I knew there wasn't anything coming from my right so I tried to turn to the right and with that the bus hit us, threw my car around and part of the bus hit me in the arm and we got out. I didn't know there was anybody in the bus. It looked to me like a delivery car. After I had gotten out of the car the ladies began to scream and the firemen came over and started taking them out.

30 Q Can you indicate on the map just about where the collision occurred? A It happens right about here. I imagine my car was about 15—we were practically entering the street when this car swerved around us and threw my car aside and after the accident was over I took particular notice that my left front wheel just rested on the edge of this manhole and I had to measure that manhole. I don't know how far it is from the curb but I had him put this man-

40

*William A. Traud, direct.*

hole in here. That (indicating) is a manhole, that black mark—yes, that black spot there.

Q Where were you on Fifth street, west side of it or the east side of it coming south? A I was coming on the west side of it nearest this curb.

Q Will you indicate just again where about the collision occurred? A It happened right about at this point. 10

Q Mark just where the collision occurred? A About here.

*The Court.* Indicated with a pencil X.

Q What called your attention to the bus? A When the young lady hollered that is the first I heard.

Q And then it was right on you? A Right on top of us. I saw it out of the corner of my eye and it was about 2 or 3 feet away. 20

Q How fast were you going then? A About three or four miles an hour.

Q Had you changed your gear? A I hadn't changed my gear.

Q And what happened to the bus when you were struck? A It seemed to climb over my car, the axle of my car, and that is what threw it over. It swerved to the right—I suppose struck my car with the front wheel—swerved to the right and he, having a tight grip on the wheel, brought it back to the left and that is what upset it. He swung so quickly around and between that and rising up over my car upset it. 30

Q I believe I stated to the jury that the car careened. Was I right about that? A It did, yes.

Q In careening, let us explain what you mean by that. A It careened in a circle. It seemed to circle around, then fall and then slide. 40

*William A. Traud, direct.*

Q When it finally landed where did it lay?  
A It laid about 40 feet from the west curb of Fifth street, right about 40 feet, about in here, just about even with the house, in line of this building.

Q Mark that.

10 *The Court.* Mark that with an O.

Q After the collision what was the position of your car? A It laid almost, the front of it was almost west, about due west.

Q Facing due west? A Yes.

Q Where was it? A It laid about across this position here.

Q Across the manhole? A Yes, almost turned to Orange.

20 *By the Court.*

Q You mean it had been swung around in an angle of about 45 degrees? A Yes.

*By Mr. Bradner.*

Q But the bus went on? A The bus went by me, yes, before it fell.

30 Q How close to the south line of Park avenue was the bus when you first saw it? A Well, I didn't see it until it was practically on top of me. It was about 2 or 3 feet. Then it was about the position that I pointed out, the extent where it was. There were a couple of marks on the tires.

*The Court.* No, that would not be competent.

40 Q After the accident did you examine the ground going east on Park avenue on the south side? A I got out and looked around my car to see if all my lights were burning and all the

*William A. Traud, direct.*

oil lamps were burning. Then I was attracted by the screams of the ladies in the bus and I see the road, I had it well taken care of.

Q Were there any marks on the road in the course of that accident before the accident? A Before it struck me, yes.

Q Where were they? A It showed about 10 or 12 feet of black marks, there were about 15 feet from my car and it showed as if he applied his brakes and this car simply slid and they came over a little bit at an angle and I imagine 15 feet away from me only they were about 8 or 10 feet from the curb at this point, they were about 4 or 5 feet from the curb when the inside tire; that is, the two tires, the first tire was about 4 feet and the second tire was about 10 feet. 10

Q And that showed by what marks? A By black tire marks, drag marks. 20

Q Did you notice what kind of tires were on this bus? A No, I didn't. I think they were solid.

Q What became of your car? A You mean after the accident?

Q Yes. A An officer came there and I gave him my license cards, told him who I was and my car stood right in the entrance of Fifth street. He says, "You will have to move that," so I asked him who should I have to move it and he said "Get a local garage man." I went to the garage and got a man. I went over to the station house. 30

Q Have you had any photographs taken of your car after the the accident? A I had some photographs there.

Q Were you present when they were taken? A Yes. 40

*William A. Traud, direct.*

Q Who took them. A They were taken by Mr. Breidenbach.

Q One of the police commissioners? A Yes.

Q Can you say whether that is a correct representation of the car at the time? A That is exactly.

10 Q How soon after the accident was it taken?

A About four days, I think, about four or five days.

Q In the meantime, had anything been done to the car? A Nothing.

*Mr. Bradner.* I offer that.

*Mr. Lum.* No objection.

Marked Ex. D 2.

20 Q You have another one taken at the same time, same view? A Yes, sir.

*Mr. Bradner.* I offer this in evidence.

*Mr. Lum.* No objection.

Marked Ex. D 3.

RECESS.

WILLIAM A. TRAUD resumes the stand.

*Direct examination* (continued) by Mr. Bradner.

30 Q D. 2 represents what? A That is my car from the corner view of it.

Q Where was it when the picture was taken?

A That was in our garage.

Q D 3 represents what? A That is a picture from the side taken in the same place.

Q Was your axle broken? A The axle was broken. It was bent.

40 Q Bent in what direction? A It was bent as though the wheel was just twisted right down to the ground.

*William A. Traud, direct.*

Q Was it bent up or down? A It was bent down.

*By the Court.*

Q Which axle was bent? A The front.

Q Whereabouts was the axle bent? A At the steering knuckle, right extreme outside where the wheel fastens to the axle. 10

Q In a Ford how is that axle fastened? A It has an over and under bearing construction with the pivot in between it and the axle goes through the centre pivot.

Q Where was it bent with reference to that?

A Just beyond this forked bearing.

Q Between that and the wheel? A No, between that and the centre of the car.

*By Mr. Bradner.*

20

Q Between the left wheel and the center of the car? A Yes, sir.

Q Was the wheel broken? A No, the wheel wasn't broken.

Q What was broken in the car besides the mudguard? A There was really nothing broken outside of the mudguard. The horn was loose at the side at my arm and the strut rods that hold the front axle in position were bent way in, just showed the impression of a tire, a big tire on the wheel. The axle was bent down and all the steering mechanism was all bent out of shape on one side and the mudguard was pulled right off. 30

Q As I understand it, then, the axle was bent down? A The outside of the axle was bent, was bent right over just as though you put excessive weight on a car and it wouldn't stand it and the wheels just dropped out. 40

*William A. Traud, direct.*

Q Do you understand the mechanism of the car? A Why, sure. We build them and repair them.

Q You have knowledge of the manufacture of an automobile? A I managed the garage and machine shop.

10 Q How long have you been working on cars? A About ten years.

Q Would you be able to give any information as to what caused the damage to this axle without having any special knowledge of the conditions there?

*Mr. Lum.* I object to that.

Q Just by seeing it? A Yes.

20 *Mr. Lum.* I don't see how that could be material.

*The Court.* If he is an expert why only those things in reference to what took place at that time.

A From the photographs of it and from my car it appeared to me as though this bus had—

*The Court.* That is not answering the question. You are asked as an expert.

30 Q From the condition of the car itself how was that axle struck in order to bend it in the way it was bent? A It was hit from the inside of the wheel; that is, the side between the wheel and the frame of the car. It was struck there by something and then it appeared to come up on top of it and bend it down. The axle wasn't strong enough to hold it.

40 Q There was some testimony that your car seemed to climb on the bus? A It struck it first.

*William A. Traud, direct.*

Q Have you any recollection of what position your car took when the accident occurred? A When my car was hit it was going west over Fifth street toward Orange street.

Q You mean south? A South, due south, and as soon as this car hit me it turned my bus right around and I had turned my wheel to get out of his way and that left my wheel projecting beyond the mud guard and it caught with his wheel, locked with my wheel and turned right over my wheel. 10

*By the Court.*

Q How high is your axle from the ground? A I can tell you exactly. The wheels are 30 by 3. It is about 16 inches.

Q How high was the axle of the bus from the ground? A That I don't know. 20

*By Mr. Bradner.*

Q Did you see the bus after the accident and examine it? A Yes, I have pictures taken of it.

Q You have some pictures? A I have some pictures here.

Q Did you take them yourself? A No.

Q Who took them? A A man by the name of Chalmers, real estate man. 30

Q Were you present when they were taken? A No, I wasn't.

Q I show you Exhibit P 2, picture of the bus, with the right mudguard crushed in. Did you see that that way? A I only saw the car lay on its side, the inside.

Q You didn't see it after it had been stood up? A No. 40

*William A. Traud, direct.*

Q Were you conscious of whether your car was climbing up on the bus or not? A Am I conscious?

Q Were you conscious? At that time? A Surely.

10 Q What was it doing? A Why, I saw the whole accident at the time. It was right at my side where I sat. I sat on the left hand side and this all happened within 2 feet of me. And what you can see in an accident when it happens.

Q You were on the left hand side of the car? A Yes, surely, the driver was on the left hand side.

Q Then I was mistaken. It is a left hand drive? A Surely, all Fords are left hand drives.

20 Q Were you present when they were taken? A No, I wasn't.

Q You were on the left hand side of the car? A I was exactly where the car struck us.

Q You felt the impact right there? A Something hit me on the arm. As my car was thrown around it threw my arm with it.

Q Did you see the wheel of the bus, where that was? A You mean the middle of the axle?

30 Q Yes. A No, I couldn't see that.

Q Well, there is the bus and there is your car. Can you tell us whether the bus was up on your car or your car was up on the bus? A I can tell you my car never left the ground.

Q How do you know that? A Because you couldn't feel it raise. That is the only way I had to see it.

Q Then you didn't feel your car ride up at all? A No, sir.

*William A. Traud, cross.*

*Cross examination by Mr. Lum.*

Q What is your business? A Machinist and garage.

Q By whom are you employed? A Alexander Traud & Sons.

Q Are you a member of the concern? A No. 10

Q Employee? A Employee.

Q Where had you been on this day in question? A At Morris Herrmann's, color people. They were at the end of Mt. Prospect avenue.

Q What had you been up there for? A I had been up there on business.

Q Been there alone? A Yes.

Q Started out alone? A Yes.

Q At the time of the accident you were accompanied by Natalie Schwarz? A Yes, sir. 20

Q You had never known her before? A Surely, I had known her a long time.

Q How long had you known her before the accident? A About three years.

Q Where had you met her? A I met her, I was introduced to her at a dance.

Q Do you think it was a dance. Where was the dance? A At Krueger's.

Q Who introduced you? A A young lady by the name of— 30

Q Can't think of the lady's name. Who introduced you? A Yes, I can think of it if you give me time—Miss Hagerty.

Q Where does Miss Hagerty live? A I don't know where she lives now.

Q Where did she live at the time? A On Littleton avenue.

Q What was her first name? A Dorothy, I think it is Dot they called her.

Q You called her Dot? A Yes. 40

*William A. Traud, cross.*

Q Where had you met Miss Hagerty on the day in question?

*Mr. Bradner.* I object. What possible difference can it make? The young lady was with him and we will produce her as a witness.

10 *The Court.* That is not the question. You are going back to a rather remote time, who introduced him.

Q On the day in question where was it that you had met Miss Schwarz? A At her place of employment, corner of Park avenue and Bloomfield avenue, Telephone Company.

Q She was going out from the Telephone Company? A Yes.

Q You stopped your car? A Certainly.

20 Q Talked to her awhile and then she got in? A I didn't talk to her for awhile. I went there purposely to meet her.

Q Where did she live at the time? A 365 Littleton avenue.

Q You were proceeding to drive her home, were you? A Yes.

Q Talking with her as you went along? A Once in awhile, yes.

30 Q Only once in a while. As you came along to Park avenue you saw an automobile coming down from the left, here? A Yes.

Q What kind of a car was it? A It was a touring car. I don't know what make.

Q What color? A I don't remember the color. It was dark.

Q Dark color? A The night was dark. You couldn't tell the color.

40 Q How far away was the touring car when you saw it? A It was about approaching Fifth street.

*William A. Traud, cross.*

Q How far away from Fifth street? A It was just about approaching it.

Q Was the front wheel at this street? A It was further. It might have been, it might have been 2 feet away, 3 feet away.

Q How far away were you down on Fifth street? A I was practically at the street at the same time. 10

Q You mean to say you hadn't looked whether this touring car was coming along until it was right at Fifth street? A I couldn't see if I didn't look up.

Q The first time you saw this touring car was when this touring car was at the corner of Park avenue and Fifth street? A I said when it was coming down the hill.

Q I just asked you a moment ago when you first saw it and you said at Fifth street? A Yes. 20

Q Is that a fact? A Yes, that is when I first paid attention to it.

Q You mean to say you were not looking up Park avenue for vehicles? A Certainly I was.

Q Although you were looking up Park avenue for vehicles you didn't see that touring car until it was right at Fifth street? A Yes, sir. 30

Q Why didn't you see it before? A Because I was looking at a bus that was coming across the bridge.

Q What kind of a bus? A I had made up my mind to let that car go by and I didn't have to look at it any more.

Q You didn't see the bus in question? A I saw another touring car with very bright lights just entering the bridge. 40

*William A. Traud, cross.*

Q You looked to the east of Park avenue and saw a bus as far up as the bridge, did you? A From Newark I think it is east.

Q What other vehicles did you see on Park avenue? A That is all.

10 Q Did you see the automobile that you ran into? A No.

Q Didn't see it at all? A No.

Q Only you saw a touring car right close to Fifth avenue and another one way down by the bridge? A I see a touring car right close to Fifth street and another one at the bridge just about coming over the bridge.

Q But you didn't see the auto bus in question? A No, sir.

20 Q Why didn't you see it? A I suppose probably the bright lights from this other car dazed me or else it wasn't there.

Q You don't mean it would drop down from heaven, do you? A I don't mean it would drop down from heaven but I don't know whether how fast it came, whether it came faster than this car that was coming over the bridge.

30 Q Where were you when you saw this car that was coming across the bridge? A I was about to start my car across Fifth street, to go across.

Q When you and the auto bus came together where was the car that you saw formerly coming over the bridge? A I didn't see that any more.

Q Then you did look as you came up Park avenue, you looked to the left for vehicles? A I did.

40 Q As a matter of fact, vehicles coming along, going that way, going towards West Orange would come to you before you would come to

*William A. Traud, cross.*

vehicles coming away from West Orange? A Yes.

Q And you did look? A Yes.

Q Perfectly open field, nothing to hide your view? A Nothing.

Q And there is no reason why you could not have seen all these vehicles between Fourth street and Fifth street? A No. 10

Q If you looked? A I did look.

Q And didn't see the auto bus at all until just as you were on it? A No.

Q And you haven't any other reason to know why you didn't see it? A No, sir.

Q You slowed up to let this touring car go by, you say? A Yes.

Q You were then in on Fifth street? A Yes.

Q Running in what gear? A In low gear. 20

Q Going three miles an hour, you say? A About three miles an hour.

Q And going at that rate your brakes were all right? A Brakes were good.

Q You could stop then within 2 or 3 or 4 feet? A I did stop.

Q You mean when you and the bus came together you stopped? A Yes.

Q But if you had observed the bus you could have stopped your car within 2 or 3 feet? A If I had seen it I could have. 30

Q If you seen it you could have stopped within 2 or 3 feet? A Yes.

Q How long do you usually run in low gear? A Until I get a chance to get the car going fast enough that I can change my gear.

Q How many feet do you have to go before getting your speed is sufficient to shift a gear? A It all depends how you control your gas. If you speed up your motor quickly you can make the 40

*William A. Traud, cross.*

change very quickly ordinarily, I should imagine it would take about 25 feet.

Q From whereabouts in on Fifth street were you when you stopped and shifted your gear?

A I didn't shift my gear.

10 Q You hadn't been running on low gear all the way from the time you picked up your lady friend over on Bloomfield avenue? When did you first change from your high gear to the low?

A When did I first change from high to low?

Q As you came to Fifth street. A I threw the gear into neutral about at this point.

Q Indicating P. Where did you shift your gear? A You don't have any gear shift. You simply, to start a Ford car, you simply engage your low gear. You have all your shifts right  
20 on one foot pedal.

Q Where did you mesh into your low gear? A I started out of my gear just at the curb.

Q Indicating C. A Right about at the corner.

Q Is that correct? A Yes, that is right.

Q You struck the auto bus over at X, didn't you, almost on a line with the curb? A I should say about 10 feet away.

30 Q And the distance of this street, the width of Park avenue as you have testified is 60 feet from curb to curb so that you had then run from C over to 50 feet before you came to X?

A That is right.

40 Q Can you tell us, you usually take about 25 feet to get going into high speed where you changed into your high, why didn't you change it in 25 feet and why did you take double the usual distance? A I didn't say I did. I said if you speeded your motor up quick you could make the change in about 25 feet.

*William A. Traud, cross.*

Q And under ordinary circumstances might do it in about 25 feet? A I think in about 25 feet under ordinary circumstances, if your road was clear.

Q In this case you think the road was clear?

A The road was clear.

Q And you did it in the usual way? A I was just about to enter my gear when the accident happened. 10

Q Why did you continue twice the distance?

A I am very careful about that time. In the dusk of day your lights don't show you much on the road and you are more careful than you are in the ordinary day's running.

Q You just told us you could see the bus way up on the bridge, 250 feet away? A I said I could see the bridge lights 290 feet away or whatever it is. 20

Q You not only could see the bridge lights, but you could see a car? A I didn't say it was a bus. I said I imagined it was a touring car.

Q You had some basis for your imagination?

A I saw this bus as it rode in the streets and and I saw there were not any bright lights on it.

Q What I am trying to get at is when the car was down on the bridge you knew what kind of a car it was? A I didn't know what kind of a car. 30

Q You said you imagined. What was the basis of your imagination? A I might term it a touring car, some kind of a car, coming across the bridge with very bright lights.

Q You could see it was an automobile? A Yes.

Q As a matter of fact, there was sufficient light for you to see a block and make out an 40

*William A. Traud, cross.*

object? A I couldn't from the lights of day; probably the lights in the street I could.

Q There wasn't lights in the street that would permit you to see a block away? A There were not lights in the street.

10 Q Yes, but you could see to the bridge by the light of the day, couldn't you? A No, I couldn't see that.

Q You are sure you couldn't? A Yes, I couldn't.

Q How far could you see? A I would not have any idea. This car had passed in front of me I saw quick enough.

Q As you came along on Fifth street over to Park avenue where did you first look? A I started to cross the road.

20 Q No, as you were coming along where did you first start to look? A I looked up Park avenue.

Q Where were you? A I was probably 40, 50 feet from Park avenue.

Q And then after you looked to the west, you looked to the east first? A Yes.

Q That is towards Newark? A That is towards Newark.

30 Q And then where did you look? A Then I looked ahead of me to start up, then I looked west.

Q First east, then ahead and then west? A West.

Q And didn't see the auto bus at all? A Didn't see the auto bus at all.

40 Q Saw nothing but the touring car and the car down by the bridge? A I saw the bright lights coming over the bridge, yes, sir.

*William A. Traud, cross.*

Q The first you saw of the accident was when you and the bus came together? A Collided, yes.

Q You saw the bus right at your left? A At my left, yes.

Q Now after the bus was struck how far did it go before it turned over? A You say after the bus was struck? 10

Q After you and the bus came together? A How far did the bus go?

Q Yes, before it turned over? A Why, it appeared to me to be about 35 feet from the curb, that is from the southwest curb on Park avenue and Fifth street on Park avenue.

Q My question is after the impact the bus continued on toward West Orange? A That is right. 20

Q How many feet? A I imagine about 35 feet.

Q Did you measure it? A No, I didn't measure it. I said about 35 feet.

Q Right after the accident you got out? A Got out.

Q You were not hurt? A I wasn't hurt.

Q Did you know at that time that Mr. Young was killed? A I didn't know it for about a half hour, pretty near, after. 30

Q You knew he was hurt? A I didn't know there was anybody in the front of the car.

Q How was it you didn't find that out? A I was going around with the officer and all of a sudden there was somebody came up to me and told me there was somebody killed in the bus.

Q You didn't make an examination, didn't like to see what happened? A I even helped try to get the people out of the bus; but nobody knew there was anybody under it until some- 40

*William A. Traud, cross.*

body saw a man under the bus and then they raised it up. By that time I was talking to the officer.

Q And that was how long after the accident?

A I say a half hour. I don't know exactly how long. It may have been only fifteen minutes. It  
10 seemed like a half hour.

Q What did you do right after the accident happened? Tell us the first thing you did? A The first thing I did was to see this officer and he was pretty busy. I looked at my lights. I saw they were all lit.

Q What did you do next? A Then I went back to my officer and got him and handed him my license cards.

Q Then what did you do? A Identified myself and tried to assist all I could with the young  
20 lady that was with me.

Q Then what did you do? A Just stood around and waited for the officers to decide what we were going to do.

Q Then did you go— A Then we went over to the station house.

Q You are sure that is all you did? A Yes.

Q Did you come back then? A Back to the scene?

30 Q Yes. A I did further some other little things.

Q Then did you go back to the scene again? A No, I didn't go back to the scene after I left it.

Q You didn't as a matter of fact investigate the tracks? A Investigated the tracks, yes.

Q I asked you what you did? A I told you I saw the tracks before.

40 Q I just asked you now to tell me from beginning to end what you did. A If you want me to tell you step by step I will do so.

*William A. Traud, cross.*

Q I asked you to tell me from beginning to end what you did and you told me that was all. A I told you nothing of the kind.

Q Then you didn't consider the examination of those tracks was of any account? A I thought it was of some account. I noticed that when I was talking to the officer.

10

Q Why did you not tell us when you were speaking of all the details? A I told you that before.

Q You did not tell it now? A I told it to the court.

Q That is the reason you didn't tell me when I asked you? A I have probably forgotten it. I can't remember everything. That is two years ago.

Q How far back did you look at the tracks? A I imagine they were about, they showed an impression of about 12, 15 feet.

20

Q From where the car lay? A No.

Q From where? A From where that started until they disappeared.

Q Now, you started from some point and went towards Newark looking for the tracks for 12 or 15 feet? A I didn't walk back of the tracks. They were apparent by those two black tracks coming down the hill and they stopped about the curb of Fifth street and they went on up the hill about 15 feet.

30

Q 15 feet from where? A They started about here and they went on up the hill about 12 or 15 feet.

Q Started where? A Started about here and went on up the hill about 12 to 15 feet.

Q They looked to you as though brakes had been applied? A It looked that way.

40

*William A. Traud, cross.*

Q You never applied your brakes? A I surely did.

Q How close were you to the bus when you applied your brakes? A When I first heard that car and as it was on that side of me, why my car was stopped. I locked my  
10 brakes and my motor was running after the accident, so it shows the clutch was released.

Q Once more, how close were you to the bus when you put on your brakes? A I should say—how close to the bus?

Q Yes. A When I first heard it and saw it from the side of me I was about 2 or 3 feet. It was very close.

Q Do you remember being asked in our interrogatories when you first saw the bus and you said at the moment the accident happened?  
20 A The moment the accident happened.

Q Do you remember being asked how far away was it, the bus, when you first saw it and answering, "Unable to answer as I did not see the bus until it struck my car." A Within 2 or 3 feet, yes.

Q Now, just a minute. It was true that you saw the car when it was 2 or 3 feet away and applied your brakes, or as you swore in your  
30 interrogatories some time ago, that you don't know that you didn't see the bus until it struck the car? One or the other of those is true. Which is true? A I said the moment of the accident I saw the car.

Q You said also, "I did not see the bus until it struck my car," didn't you? A Until the moment of the accident, didn't I?

Q You will answer my question or we will stay here until tomorrow. Did you swear that  
40 you did not see the bus until it struck your

*William A. Traud, cross.*

car, yes or no? A Until the moment of the accident.

Q That is your signature, isn't it? A Yes, sir.

Q And you were asked in your seventh interrogatory, "At what rate of speed were you travelling just prior to the happening of the accident," and did you not answer, "I was travelling"—Sixth interrogatory, you were asked, "How far away was it when you first saw it," and did you not swear to your answer, "I am unable to answer as I did not see the bus until it struck my car?" A That is right. 10

Q You did so swear? A Yes.

Q As a matter of fact, you didn't see the bus when it was about 3 feet away from you? A I didn't say that. 20

Q Why did you say that a moment ago? A I figured it out that way. 20

Q You are figuring this accident out now for the purpose of your testimony? A No.

Q Why didn't you figure it out when you signed this? A I did figure it out. I figured out everything.

Q Why didn't your figures then when you answered that agree with your figuring now if you are telling the truth? A If a foot makes any difference I don't know it. 30

Q You think so. You could stop your car 3 feet going at the rate of speed you were? A I said about 3 feet.

Q Then you don't think 3 feet makes any difference to this jury, don't you? What did you mean when you told us a moment ago you didn't think a foot made any difference? A I meant I couldn't stop the car to avoid the accident. 40

*William A. Traud, cross.*

Q Didn't you tell me ten minutes ago you could stop the car going at that rate of speed in 3 feet? A I said about 3 feet.

Q Then, about 3 feet makes a difference of a human life, doesn't it? A Yes, sir.

10 Q Have you any other explanation to give to us as to why you swore in your interrogatories that you didn't see the bus until it hit you, and why you swear now you saw it far enough away for you to have stopped it? A The explanation is simply this. The bus was so close to me I didn't measure it with a rule to see whether it was 3 feet or 1 foot away but almost at the impact of the accident I had a side glance of the car.

20 Q Why didn't you take that side glance a moment before? A Because I was looking to the west to see the car as I was crossing the center of the road and the only danger I figured was an automobile coming from the west, coming from Orange and I watched the cars from the west and I was then about to start into Fifth street on the opposite side of Park avenue.

Q You had recognized this touring car? You hadn't stopped? A Surely I did.

30 Q You did look to see that? A Surely I did.

Q Will you tell us why when you were looking for that you didn't look for the auto bus? A I looked for everything that was on that street.

Q You have no reason to give us why you didn't see it on that street? A No reason at all.

40 Q You give it as your opinion that the axle was bent down by the auto bus running over it, didn't you? A Yes.

*William A. Traud, cross.*

Q You don't think that by your left side turning in against and under the bus so as to lift the bus up and throw it on its side you bent down that axle? A It would hit the wheel.

Q Couldn't have gone in under there? A Because the radiator would hit there and the radiator isn't damaged a bit. 10

Q Would the radiator hit first if it hit from the side? A Why, surely the radiator is the highest part of that motor.

Q You think so? A Surely.

Q As compared to that width of Fifth street, how far did you look back for the tracks, as far as width of Fifth street, half as far, third as far? A I told you there were not any tracks the width of Fifth street. They didn't start until they left the curb of Fifth street. 20

Q I am asking you the length of the marks as compared with the length of Fifth street. Were they greater or less than the width of Fifth street? A They appeared to me to be less.

Q How much less? A I should say about 12, 15 feet. I should imagine the width of Fifth street is about 30, 35 feet wide, so I should say it was half. 30

Q I am going to ask you if you ever met Natalie Schwarz between the time that Dot Hagerty introduced her to you at the dance?

A If I met her?

Q Yes. A Surely, I had seen her probably twice a week.

Q Before? A No, at her home.

Q At that time? A Yes. 40

*William A. Traud, re-direct.*

Q The lady was sitting on the right side of your car? A She was sitting on the right side of the car.

Q And she saw the bus before you did? A I imagine she did.

10 Q You heard her scream before you saw the bus at all? A Yes.

Q I thought you were sitting nearer to the bus than she? A Nearer.

Q And as soon as she screamed then you turned your wheel toward West Orange? A West Orange.

Q So that you didn't at that time, the time you turned, see the auto bus? A I wasn't sure I did.

20 Q Are you testifying from imagination? A I can't testify from imagination, but it all happened so quick you can't testify how quickly you saw it.

Q You haven't very much of a recollection of it, except that the cars came together? A I have something I shall never forget.

*By Mr. Bradner.*

30 Q You said something about the bus coming downhill. Is it downhill from the bridge to Fifth street? A Yes, sir.

Q How much of a grade there, do you know? A In percentage I don't know, but judging from the top of an automobile at Fifth street it can't be seen at the level of the bridge, so the grade in one block is at least 12 or 14 feet.

40 Q What is that? That an automobile at Fifth street can't be seen from the bridge? A On a level with the bridge. If you level your eye with the bridge on the other side you couldn't see a good high touring car at Fifth street.

*William A. Traud, re-direct.*

Q If you were on the bridge? A If you were levelling your eye with the bridge, if you had your eye level with the bridge.

Q You have been asked a great many questions as to what you did or where this car was when you first saw it. Now, I want to ask you what was the first thing you did when you became conscious that there was a bus or a car there close to you on your left side? A Naturally, the first thing I did was turn to look— 10

*Mr. Lum.* I object to this. That is a repetition. We have both been over it and we had the different stories.

*Mr. Bradner.* I have a right to direct his attention to that situation. The witness always has a right to enter into any explanatory matter. It is the duty of his counsel to bring it out. 20

*The Court.* Yes.

A The first thing I saw was the motor.

Q After you became conscious that there was something there what did you do with reference to your car? A I immediately turned my wheel to get away from it.

Q What else, if anything? A That is all I could do then to try to avoid the accident, to look and see where it came from, if I could see it and get away from it. 30

Q How did your brakes become locked? A As soon as this young lady hollered I knew the first thing I wanted to do was to apply my brakes.

Q Have you any recollection of applying your brakes? A I imagine I have a faint recollection of it. 40

*William A. Traud, re-direct.*

Q What was the condition of your brakes that you saw on your car immediately after the accident? A Well, the brakes were locked and the clutch was released.

Q What was the motor doing? A The motor was running.

10 Q Was there anybody else there to see the condition of your car at that time? A You mean immediately after the accident?

Q Yes. A Probably ten minutes after.

Q Immediately after. A The young lady was sitting with me. She was right in the car.

Q Did anybody who came there examine your car, do you know? A Well, right after that, not while we were sitting in the car and as soon as I got out of the car I stopped the motor.

20

*By the Court.*

Q Why did you put your car in neutral at the point marked P on the map? A Because I had to practically stop to allow this car to pass me. There was a pleasure car of some kind, an automobile, it was just about to pass me.

30 Q And that pleasure car, as I understand it, was going towards Sixth street? A Was going towards Sixth street.

Q And this other? A Crossing Fifth.

Q At that time? A Yes.

Q You spoke of a car coming down the bridge to Fifth street? A That is the car from this bridge.

40 Q Down to Fifth street? A It is practically a hill. The level of the street takes the street out, carries it out on the level. After it enters this grade from the bridge this one continues down to Fifth street.

*Natalie Schwarz, direct.*

Q When you get to Fifth street and go to Sixth is there a grade? A It might be a little rise in the opposite direction making Fifth street as a hollow, as a low point.

Q How is Fifth street, level? A Fifth street is practically level.

10

*By Mr. Bradner.*

Q Did you notice at about what speed this touring car was going? A I imagine it was going at least twenty miles an hour.

NATALIE SCHWARZ, sworn for the defendant.

*Direct examination by Mr. Bradner.*

Q Miss Schwarz, were you with Mr. Traud in a Ford car on this day the accident happened? A Yes, sir. 20

Q When did you first notice the bus? A Why, I happened to glance up and spy it and the next thing I knew it hit us and I happened to be sitting in a direction if it had been anywhere in sight I would have seen it. I was sitting on his right side. Instead of sitting direct the way the car was going, I was sitting cat-a-cornered facing him and looking up towards Fourth street. 30

Q Just where was the Ford car when you saw the bus? A Why, it was three or four feet away over Park avenue.

Q How fast was the Ford car going? A Why, very slowly.

Q Do you know anything about running a car? A No, I do not.

Q You made some exclamation when you saw the car? A Why, yes, I said, "Oh, my 40

*Natalie Schwarz, direct.*

God!" Of course, I expected they would clash right into us.

10 Q Did you notice anybody in the bus? A Why, it looked like a delivery wagon to me as it came along and I thought that was what it actually was until I heard the women screaming. Of course, we didn't hear that until after it had upset.

Q How far away was it in your best judgment when you first saw it? A About where this young man was sitting.

Q Very close?

*Mr. Lum.* Indicating 5 or 6 feet.

A No, not that far. The man that was driving the car.

20 *The Court.* I should think about four feet.

Q It was pretty close to you? A Yes, very close.

Q Did you notice what happened to Mr. Traud's car just a moment after that? A No, I did not.

30 Q Did you notice the impact of their coming together? A Well, I don't know just how it hit us, but I know it crashed into us causing our car to turn.

Q Which way did your car turn? A As though we were headed up Park avenue towards Orange.

Q What became of the bus? A Why, the bus after hitting us it swerved and swayed and went towards the curb and upset and slid along as I remember it.

40 Q And did you notice where it was when it stopped sliding? A I imagine it near the

*Natalie Schwarz, cross.*

curb. I didn't really look; there was a crowd around shortly after.

Q Did you get out of the car immediately?

A Yes, just as soon as it occurred I got out of the car and stayed there for a few moments.

Q What was the condition of the engine when your car was standing there at that point? A I can't say. 10

Q You don't know? A No.

Q You don't know what the condition of the brakes were, do you? A Well, I will tell you. As I remember, the car jerked. I think it was the brake when Mr. Traud put the brakes on.

Q And after the accident you went home from there? A Yes, I went home. I stayed a very few minutes and walked down Park avenue and went home. 20

Q You didn't go to the station? A No.

*Cross examination by Mr. Lum.*

Q Where do you live now? A 365 Littleton avenue.

Q How long ago do you think it was you met Mr. Traud? A I have known him about four or five years.

Q Where did you meet him? A At a dance. 30

Q On the day in question you had come from your employment, Telephone building? A Telephone building.

Q Just coming out of the building? A Just coming out, I stopped at five o'clock.

Q You stopped at five o'clock? A I stopped at five o'clock. It takes me two or three minutes to come out in front.

Q He was going along. You hollered to him or did he see you? A No, he was waiting for me on the opposite side intending to meet me. 40

*Natalie Schwarz, cross.*

Q Then you came across from Bloomfield avenue directly to Park avenue? A No, he was on the opposite side of Bloomfield avenue, on Bloomfield avenue on the opposite side of the street from the building.

10 Q And you came directly over to Park avenue? A Not to Park avenue, to Bloomfield avenue. He was standing on Bloomfield avenue waiting for me.

Q After you got in the car? A No, we went up Bloomfield avenue to Fifth street and then came over Fifth street.

Q And then came over Fifth street? A And then came over Fifth street towards Park avenue.

20 Q You went nowhere else? A Nowheres else, no.

Q It was just two or three minutes after five when you got in? A I imagine so.

Q You came over at the ordinary rate of speed, I presume? A Yes.

30 Q He had come to call for you and to meet you? A He was up in that direction and it was about my time coming out and he thought he would wait for me, which he does quite often.

Q And you and he were talking, chatting, visiting? A We were what?

Q Visiting. A We were talking occasionally, yes. He was paying attention to the wheel. He wasn't facing me.

Q You are quite sure he was paying more attention to the wheel than he was to you, are you? A Yes.

40 Q As he came towards Fifth street did you notice anything towards Park avenue on Fifth

*Natalie Schwarz, cross.*

street? A Yes, there was a touring car came along. He had to slow down to let it pass by.

Q How far away from Park avenue was he when he slowed down? A I can't say exactly. I imagine it was about—I am not a judge of distance. It wasn't very far from Park avenue. I don't really know. He stopped. Don't know whether he stopped, but he slowed down to let this touring car go by going up Park avenue. **10**

Q Where was the touring car when you first saw it? A I don't remember seeing it.

Q You don't remember seeing it at all? A I wasn't looking for any car.

Q You were not looking for any car? A No, not I.

Q You didn't see the touring car until it had gone by you? A I saw it near Fifth street and Park avenue. I didn't see it approaching. **20**

Q Of course, if you had been looking you would have seen it? A Certainly, if I was driving the car I would have looked for it.

Q So you were not driving the car, you paid no attention to traffic coming that way, is that correct? A That is it. **30**

Q Where did you first see the auto bus? A When it was very near hitting us, when it crashed into us. That is the first I saw it.

Q What part of the auto bus was it that hit you? A I don't remember, crashed into us, that is all I know.

Q You don't know whether it was the left-hand wheel or the right front wheel? A I don't know. I imagine it was the front part of the car. **40**

*John A. Byron, direct.*

Q You don't imagine that it was the side of the car indicated on this mark by Exhibit P. 3 that crashed into you, do you? A I can't say.

10 Q As the cars came together Mr. Traud turned up towards West Orange, turned to the right, you were aware of that? A Yes.

Q You spoke of the car jerking. How close were you to the bus when you noticed the jerking of your car? A The jerk and then the bus crashed right into us.

Q The same instant practically? A Very near it.

Q You say you happened to glance up and saw the auto bus? A Yes.

20 Q Just chanced to glance up? A I imagine so. I don't know how I happened to do it. I just glanced up and spied it and the next thing it crashed into us.

Q Which way were you looking before you glanced up? A I don't remember where I was looking.

*By the Court.*

30 Q Did you notice whether the bus had a light on it? A I really don't remember. I don't remember seeing any. In fact, it didn't look as though it had any lights inside.

Q You don't know whether it had any headlights? A No, I don't remember seeing any.

JOHN A. BYRON, sworn in behalf of defendant.

*Direct examination by Mr. Bradner.*

40 Q Mr. Byron, you are a member of the fire department of the City of Newark? A Yes, sir.

*John A. Byron, direct.*

Q Did you see the accident in Park avenue on November 20, 1914, at the corner of Fifth street? A No, sir.

Q Did you get there shortly after the accident? A Immediately after.

Q You say immediately. How could you judge it was immediately after? A Well, we were standing in the front doors of our truck company, corner of Sixth street and Park avenue, and there was two of us. We had been outside and it got a little chilly and we went inside so we just came in and we stood there looking up, getting warm like we heard this sound, an awful sound as though something had fallen hitting the hard pavement like and we ran right out and we seen this thing turned over in the street and we didn't know what it was until we reached there. 10 20

Q Then you saw the bus turn over? A No.

Q You saw it in the street? A In the street.

Q Where was it lying in the street when you saw it? A When we got there the first thing that we done, we heard the women screaming in there, we pulled them out of the bus there, another fireman and I and one civilian. He stood on the outside of the bus. We went in the bus and we picked them up, some of them. Some didn't want to get out. Their legs was caught and we figured on taking a chance on their leg and we pulled them and they seemed to think we were a little bit rough with them, but we wanted to rid the bus of the people for fear there would be some one in the bottom. 30

Q On which side did the bus lay, on its left or right side? A On its right side. 40

*John A. Byron, direct.*

Q How close to the curb was the top of it?

A The top of it as it turned over?

Q Yes. A I should judge between 3 and 4 feet at the most.

Q In what position, what location rather on Park avenue was the bus as it laid there? A  
10 It was on the south side of Park avenue, the west side of Fifth street about, I should judge, from the curb line of the southwest crossing of Fifth and Park avenue; would be up at the end of those two buildings. Whether that would be 30, 35 feet I am not sure.

Q At the end of the buildings on the corner of Park avenue and Fifth street? A Yes, double stores there.

Q Could you see the condition of the ground  
20 back of the bus toward Fifth street? A Not at that night.

Q Did you see it the next morning? A The next day we observed it.

Q Had it rained during the night? A Well, I won't say that. It wasn't a very pleasant night.

Q What was the condition of the ground there?

30 *Mr. Lum.* I object.

Q West of Fifth street?

*Mr. Lum.* I object. He did not observe it the night before.

Q Was the bus still lying there the next morning? A Yes, yes.

Q Hadn't been disturbed during the night?

A I can't say that.

Q It hadn't been taken away from there? A  
40 No, it hadn't been taken away.

*John A. Byron, direct.*

Q Did you see the driver of the bus there?

A Afterwards, after we had taken the young man from under. It was me that discovered the young man under the bus.

Q Whereabouts, what portion of the bus was over him? A Why, there is a hood like comes out, like the peak of my hat, and that was lying right on his head, laid across the head. 10

Q The hood of the bus? A Yes, sir, the left front, on the left side of the front.

Q You don't mean the hood of the radiator? A No, the top of the bus. We figured the top of the hood like.

Q He was lying with his feet toward the curb? A He was in a sort of funny position like. His feet was around and sort of like, his head pointing like towards the head of the curb and his feet around this way. We had gotten the occupants out that was in there. There was one little child and some women. Wasn't any men in there. They got out the door before we got there. After we got them out I walked around and someone said, "What is this?" and I looked around and there was the young fellow under the bus, so I took charge like and he lifted the bus off him. 20

Q Was he entirely under the bus? A Only the head. 30

Q The rest of his body lying— A Was in a funny position. I couldn't really describe it.

Q Was the front seat there, did you notice that? A You mean the padded seat?

Q Yes, the driver's seat? A Well, the seat was there but whether the cushion was there I couldn't say.

Q How soon did you notice the driver there?

A Why, it was after we got everybody out, 40

*John A. Byron, direct.*

everybody was taken out and there was an automobile pressed into service and I seen that he was taken with one of these women we thought was most seriously hurt to the hospital, so I pressed him into service and took him over to the City Hospital with this woman. I believe  
 10 after the ambulance had gotten there they had taken another woman over to the hospital with their patrol ambulance.

Q Where was the driver all this time? A I didn't see the driver until after we had one lady I noticed here today on the witness stand fixing her head up in a sort of side room there of the hotel parlor like and he came in then and I don't know whether he did the telephoning or not. He came in with the park policeman.

20 Q Did you see anything of Mr. Traud there?  
 A Mr. Traud, yes, sir.

Q Did you notice him down there at the time of the accident? A Well, there was quite a crowd around and we were so excited ourselves in getting these people out, then afterwards I did notice Mr. Traud's car and didn't know Mr. Traud at the time, didn't know who he was.

30 Q Where was his car standing? A I should judge his car was standing, it was over the line and was on the southerly side of Park avenue.

Q It was over the Fifth street crossing? A Over Fifth and Park avenue crossing.

Q Tell us on the map about where it was, where Mr. Traud's car was? A I should judge his car would be about here.

Q At the manhole? A I would not say at the manhole. I didn't discover it until just now.

40 Q Which way was his car facing? A His car, I would say in a sort of funny direction, like this, sort of southwest.

*Michael J. Robinson, direct—cross.*

MICHAEL J. ROBINSON, sworn in behalf of defendant.

*Direct examination by Mr. Bradner.*

Q Mr. Robinson, were you at the scene of this accident shortly afterward? A Shortly after the accident.

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Q How soon after, can you judge? A I got there about the same time as the fireman.

Q You saw the fireman come there? A Yes.

Q Where was the bus lying? A The bus was lying on the south side of Park avenue about 35 feet from the corner; that is, the southwest curb.

Q Towards Orange? A Towards Orange.

Q There are a couple of buildings on that corner? A Yes, two small buildings.

Q And with reference to the westerly side of those buildings where was the bus lying? A The bus was lying on the south side.

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Q In front of those buildings or beyond them or where? A The hood of the bus was about at the edge of the building further west.

Q How close to the curb was the bus? A I should judge about 3 or 4 feet; that is, the top after she was turned.

Q Where was Mr. Traud's car? A Mr. Traud's car was about 20 feet behind.

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Q Look at the map there. Can you tell us, locate on the map just about where Mr. Traud's car was? A Mr. Traud's car was right about at that manhole.

Q Which way was it facing? A It was at an angle like that.

*Cross examination by Mr. Lum.*

Q The front of the buss was nearer the curb than the rear, I believe? A Yes, sir.

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*Lawrence Maude, direct—cross.*

LAWRENCE MAUDE, sworn in behalf of defendant.

*Direct examination* by Mr. Bradner.

Q Mr. Maude, were you at this scene of the accident shortly afterwards? A Shortly afterwards.

10 Q Whom did you notice there at the time?  
A I noticed Mr. Robinson, the fireman.

Q Did you see Mr. Traud there? A No, not right away.

Q He had gone when you got there? A He was around some place, I believe, but he wasn't there when I met Mr. Robinson.

Q Did you notice the position of the bus as it was lying there in the street? A I did.

20 Q Was it standing or lying? A It was lying.

Q On what side? A On the left side.

Q How near to the curb? A About 3 feet.

Q Where was it, how far from Fifth street?

A I should judge about 30, 35 feet.

Q Where was Mr. Traud's car? A Mr. Traud's car was behind it.

30 Q In which direction was Mr. Traud's car facing, towards Orange or towards Newark? A Towards Orange.

*Cross examination* by Mr. Lum.

Q The front end of the bus was nearer the curb than the rear end? Yes, sir.

DEFENDANT RESTS.

40 *The Court.* It is admitted in this case that the plaintiff is the administratrix of Frank C. Young.

*Motion for Direction of Verdict.*

*Mr. Bradner.* Yes, she has taken out letters of administration.

*Mr. Bradner.* I want to put the traffic ordinance of the City of Newark in evidence.

*Mr. Lum.* I object to that on the ground it is immaterial, irrelevant and incompetent and has not been pleaded, and it is immaterial to the issue in this case inasmuch as the plaintiff in this suit cannot be charged with contributory negligence and cannot be charged with the operation of the car. 10

*The Court.* I will allow it to go in subject to your objection.

Counsel for plaintiff prays an exception to the ruling of the Court.

Exception noted as ground of appeal. 20

Marked D. 4.

*Mr. Bradner.* I renew my motion and ask the Court to direct a verdict for the defendant on the ground, first, that there is no proof that the defendant was negligent, and secondly, upon the ground that the proof in the case is that the sole proximate cause of the injury was the negligence of the driver of the bus and on another ground that if there was any negligence on the part of the defendant that was contributed to by the negligence of the passenger on the bus and the plaintiff cannot recover. 30

*The Court.* I will refuse your motion.

Counsel for defendant prays an exception to the ruling of the Court.

Exception noted as ground of appeal.

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

The Court charges the jury as follows:

CUTLER, *J.*,

10      Gentlemen of the Jury. This action is brought  
by Grace W. Erwin, administratrix of the estate  
of Frank C. Young, deceased, against William  
A. Traud, to recover on behalf of the widow and  
infant child of the deceased damages for the  
pecuniary injury—the widow and child suffered  
by reason of his death.

20      Some facts in this case are not disputed. They  
are, that Frank C. Young was twenty-eight years  
of age, of good habits and enjoying good health  
when he met with an accident on November 20,  
1914, which resulted in his death on that day;  
that deceased was then working for an insur-  
ance company at a salary of \$1,500 per annum,  
which had been increased from \$1,400 during  
the year previous to his death; that out of his  
salary he gave his wife \$5 per week, he paid his  
household expenses, amounting to between \$17  
and \$18, as I now recollect it, and in addition  
paid for clothing, doctor's bills, and so on, and  
he invested \$5 a month in a building and loan  
30      association; that his family consisted at the time  
of his death of his wife, age about twenty-three,  
and his little daughter, between three and four  
years of age. It is not disputed that the deceased  
was riding in a auto bus on Park avenue in  
Newark, and that the defendant was driving a  
Ford automobile on Fifth street in Newark and  
that the auto bus and the Ford car collided on  
Park avenue near Fifth street. The Ford car  
was damaged and the auto bus was overturned  
40      and the bus fell on Mr. Young and killed him.

*Charge to Jury.*

The contention of the plaintiff is that the defendant was negligent in the way he operated his car and ran into the auto bus and caused it to overturn and that the negligence of the defendant was the proximate cause of the death of Frank C. Young. The plaintiff puts his declaration in this form, "and he did so carelessly, negligently and improperly operate and run said motor vehicle or automobile upon the public highway as to lose the proper control thereof and because of the said carelessness and negligence the said automobile owned and operated by defendant ran into and collided with the automobile bus upon which the said Frank C. Young was a passenger, causing the said automobile bus to upset and to overturn whereby and by reason whereof the said Frank C. Young sustained injuries from and on account of which he died on the 20th day of November, 1914."

The term "proximate" which I have used indicates that there must be no other culpable and efficient agency intervening between the defendant's dereliction and the accident. It therefore becomes of great importance that you gentlemen, who are to determine the facts in this case, should determine how the accident occurred and who, if anyone, was responsible for it. The mere fact that Mr. Young was suddenly killed, and left a widow and infant child without his support and care, will not alone authorize you to render a verdict in favor of the plaintiff and against the defendant. Before you can find a verdict against the defendant you must be satisfied by the preponderance of the evidence offered by the plaintiff that the defendant was guilty of negligence and that his negligence was the proximate cause of the accident in which

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*Charge to Jury.*

Young lost his life. In order to ascertain whether any liability attached to the defendant you must consider all the evidence which has been offered on behalf of the plaintiff and on behalf of the defendant and after duly considering it, determine just what happened at the time  
10 of the accident.

The accident occurred on Park avenue where it crosses Fifth street. The defendant was operating his automobile on Fifth street and was crossing Park avenue. The deceased was riding on the auto bus operated on Park avenue and was crossing Fifth street. Both streets were public thoroughfares and the vehicles had an equal right to use the streets. Although each had the lawful right to use the street such right  
20 was subordinate to the duty on the part of each of the drivers of these vehicles to exercise such care that each having an equal right in the road should not injure the other.

In defining the degree of care to be observed, the elementary principle of law is that where there is a common right to a common use, the care required depends upon the circumstances of the particular user. So, you see that what happened on this day in question at the time  
30 of the accident is important and you should be careful in considering the evidence to determine just exactly what did take place at that time.

It is contended, however, that under the ordinance of the City of Newark, the defendant crossing over Park avenue had the right of way over the driver of the bus, as the bus was approaching from the left and not from the right. The defendant claims that he looked towards the right to see if any vehicle was coming in that  
40 direction, but I do not understand that he claims

*Charge to Jury.*

to have looked to the left until the auto bus was almost upon him. I do not understand that the defendant claims that he saw the auto bus coming, and relying on the ordinance giving him the right of way, attempted to pass in front of the bus and that in so doing the accident occurred. If that was the situation, another question might be presented, but in this case there is no contention on the part of the defendant, as I understand it, that he saw the auto bus until it was almost upon him. The fact that there was such an ordinance did not relieve the defendant from using that degree of care which was reasonable under the circumstances, that degree of care that a reasonably prudent man would take under like circumstances. You are to say from all the evidence considering where the accident occurred, the grade of the roads, the ordinance requiring vehicles to keep to the right, and the ordinance giving vehicles coming from the right and crossing an intersecting street the right of way, whether the accident was caused by the negligence of the defendant.

Negligence is not the only overt act that produced the injury complained of, but may be the failure to foresee the danger likely to result from the duty of not acting. Danger reasonably to be foreseen at the time of acting is the established test of negligence. If you find from a fair preponderance of the evidence that the negligence of the defendant was the proximate cause of the accident, then unless you find that the deceased was guilty of contributory negligence, your verdict should be for the plaintiff. The negligence of the driver of the automobile bus cannot be imputed to the deceased, so if you find that the driver of the automobile bus contributed to the

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*Charge to Jury.*

accident by his negligence that would not prevent the plaintiff recovering. If you find that the accident was caused by the negligence of the defendant, and that the deceased was not guilty of contributory negligence.

10 The law draws a distinction between the negligence of the driver of the auto bus and the negligence of Mr. Young, who was on that bus either as a passenger or by invitation. However, if you find that the deceased was personally negligent and that such negligence contributed to the accident, then in this case there can be no recovery, even if you believe that the defendant by his own negligence caused the accident because the plaintiff in such case would be guilty of contributory negligence, I mean the deceased would  
20 have been guilty of contributory negligence, and contributory negligence is always a defense in a case of this kind.

The plaintiff was bound to prove by a fair preponderance of the testimony that the defendant was guilty of negligence and that such negligence was the proximate cause of the accident, but the defendant is bound to prove by a like preponderance of the evidence that the deceased was guilty of contributory negligence. If you find from the  
30 evidence that the accident was caused by the driver of the auto bus and not by the defendant, then your verdict must be for the defendant, because of course, if the defendant was not guilty of negligence, there can be no recovery against him.

The question in this case was the defendant negligent on the day in question and by such negligence did he cause the accident which resulted in the death of Mr. Young. If you find for the  
40 defendant, then your duty is ended, but if you

*Charge to Jury.*

find for the plaintiff, then you must go further and determine what sum you should award for the death of Mr. Young.

The second section of the act, which is generally known as the Death Act, as amended in 1913, reads as follows:

“Every such action shall be brought by **10**  
 and in the name of their personal repre-  
 sentatives of such deceased person, and the  
 amount recovered in every such action shall  
 be for the exclusive benefit of the widow,  
 surviving husband, and next of kin of such  
 deceased person, and shall be distributed to  
 such widow, surviving husband, and next of  
 kin, their proportion provided by law in re-  
 lation to the distribution of personal prop-  
 erty left by persons dying intestate; and in **20**  
 every such action, the jury may give such  
 damages as they shall deem fair and just  
 with reference to the pecuniary injuries re-  
 sulting from such death to the wife, surviving  
 husband, and next of kin of such deceased  
 person; provided, that where such deceased  
 person has left or shall leave him or her  
 surviving a widow or husband but no children  
 or decedent if any children and no par-  
 ents, the widow or surviving husband, as **30**  
 the case may be, shall be entitled to the whole  
 of the damages which she or he shall sustain,  
 and which shall be hereinafter recovered in  
 any such action, and the same shall be paid  
 to her or to him; and provided further, that  
 every action shall be commenced or sued  
 within two years after the death of such de-  
 ceased person and not after.”

*Charge to Jury.*

The plaintiff, you see, gentlemen, can only recover for the pecuniary loss suffered by the widow and child and nothing else in this case can be had. Our courts in speaking of the damages which can be recovered in a case of this character have laid down the following as a

10 rule to govern you and govern cases of this character. The plaintiff is entitled to a capital fund which shall represent the present value of all the pecuniary loss which will fall upon the widow and next of kin by the premature taking off of the intestate. That fund is to be ascertained by taking into account all the possibilities. The intestate might have died by the course of nature shortly after the accident; he might, had he lived, suffered financial reverses; the wife, had he

20 lived, might have died before he did and so might his next of kin. Nothing is to be added for loss of society or wounded feelings or anything else which cannot be measured by money and satisfied by a pecuniary recompense."

That is the rule which is to govern you in finding the amount of damages; if you find in favor of the plaintiff. Now, apply this rule to the present case, consider the amount the deceased was receiving at the time of his death,

30 the amount he expended on his wife and child but you must exclude from that all the money that he had to expend on himself for his clothing and things for personal comfort. The wife and child are only entitled to such pecuniary damage as they suffered by reason of his death. Consider the probability of his living, the probability of his widow and child living, the probability of his earning capacity being lessened by sickness or reverses and then award the plaintiff if you

40 find for the plaintiff such sum as will represent

*Charge to Jury.*

the present value of the pecuniary loss of the widow and child, but not a sum the interest of which will represent such pecuniary loss. The fund must not be a fund which will create an income equal to the loss, but it must be a fund which will represent the present value of all the pecuniary losses.

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I have been requested in this case to charge certain requests which I shall dispose of at this time:

"1. If the jury is satisfied that the plaintiff's intestate was injured through the concurring negligence of the defendant and the driver of the automobile bus, and that the defendant's negligence was remote and did not approximately, either immediately or by a direct line of causation, produce or concur in producing the plaintiff's injury, the plaintiff cannot recover."

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I so charge.

"2. If the jury is satisfied that the negligence of the driver of the automobile bus was the sole proximate cause of the injury to the deceased person, the plaintiff cannot recover from the defendant, but must look to the driver or the driver's employer."

I so charge you.

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"3. If the jury is satisfied that the plaintiff's intestate Frank C. Young was negligent, that his negligence contributed in any degree to the happening of the accident, the plaintiff cannot recover from the defendant."

I so charge you.

"4. If the jury is satisfied that the driver of the automobile bus was driving west on the south side of Park avenue, they must then assume that the driver was *prima facie* negligent, and if they

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*Charge to Jury.*

are further satisfied that Frank C. Young was aware of such negligence of the driver, and did not request him to change his course, or warn him of the danger, or if the said Frank C. Young requested the driver to take that course on the south side of Park avenue, then they must find  
10 that Frank C. Young was also negligent."

Gentlemen, I so charge you, but you must recollect in applying that rule that the burden of proving the contributory negligence of Frank C. Young is on the defendant and that there is no assumption that he was negligent unless such fact is established to your satisfaction by the evidence of the defendant.

The plaintiff has requested me to make cer-  
20 tain charges:

"1. The negligence of the driver of the automobile bus is not attributable to Frank C. Young."

I have so charged you and I so charge you again.

"2. Even though you find that the negligence of the driver of the automobile bus contributed to and was in part the cause of the accident which occurred, nevertheless, if you find that the  
30 defendant was negligent and that that negligence also caused the accident, your verdict must be for the plaintiff, because the negligence of the driver of the automobile bus is not attributable to the plaintiff's decease, Frank C. Young."

I so charge you.

"3. It is immaterial whether or not Frank C. Young paid for his transportation upon the automobile bus or whether he was merely riding  
40 upon said bus on the invitation of the owner

*Charge to Jury.*

without hire or reward, because in neither case is the negligence of the driver of that automobile bus attributable to the said Frank C. Young."

I so charge you.

"4. There is no evidence in this case that Frank C. Young was guilty of any negligence, so that if you find that the defendant, Traud, was negligent, your verdict must be for the plaintiff." 10

That, gentlemen, I cannot charge because the question of contributory negligence of Frank C. Young is a question for your determination and you must say from all this evidence whether or not there was any contributory negligence shown on the part of the plaintiff's intestate.

"5. If you find by the greater weight of the evidence that the negligence of the defendant caused the accident, then even though you find that the driver of the automobile bus was guilty of contributory negligence, your verdict must nevertheless be for the plaintiff." 20

Unless you find that the deceased Frank C. Young was also guilty of contributory negligence, in which case the verdict must be for the defendant.

"6. Frank C. Young was a perfectly innocent party and had no control over the driver of the automobile bus and even though you find that the negligence of the driver of the automobile bus in part contributed toward the accident, nevertheless if you find that the negligence of the defendant was the proximate and reasonable cause of the accident, your verdict must be for the plaintiff." Unless, as I have heretofore said, you find that the deceased, Frank C. Young, was also guilty of contributory negligence. 30

*Charge to Jury.*

To sum the whole matter up, if the accident was caused by the negligence of the defendant and there was no contributory negligence on the part of the deceased and the negligence of the defendant was the proximate cause of the accident then your verdict should be for the plaintiff  
 10 for such sum as you shall determine under the rules as I have laid them down.

If the defendant was not negligent or if his negligence was not the proximate cause of the accident, then your verdict should be for the defendant.

If the accident was caused by the carelessness or negligence of the driver of the automobile bus and the defendant was not chargeable with negligence, then, of course, your verdict should be  
 20 for the defendant.

*The Jury Retires.*

*Mr. Lum.* I want to except to that portion of your Honor's charge in which you refer to the contributory negligence of plaintiff's deceased. I mean that there is no evidence whatsoever in this case offered by any one that Mr. Young was negligent in any way and contributory negligence must always be proved and may never be  
 30 assumed in the absence of proof.

*The Court.* You may take your exception. Exception noted as ground of appeal.

*Mr. Lum.* I except to your Honor's refusal to charge the fourth, fifth and sixth requests on behalf of the plaintiff, to your Honor's failure to charge it in the words of the requests. In other words, in each case your Honor added clauses which modified the request.

40 Exception noted as ground of appeal.

*Charge to Jury.*

*Mr. Bradner.* I desire to except to your Honor's refusal to charge the fourth request of the defendant specifically as requested. You modified that. And to your Honor's charge of the plaintiff's second request to charge.

(By the direction of the Court, the jury returns to the court room.)

10

*The Court.* Gentlemen, the counsel for the defendant thinks the Court made a mistake when I said to you that the bus fell on Frank C. Young and killed him. The contention for the defendant is that while he was killed, perhaps the bus did not fall on him. You heard the circumstances. You heard all the evidence on that point and you are to say just exactly how the accident happened, whether or not he jumped out or whether he fell and the bus ran over him or what happened. You are to be the judge. You recollect that the officer who pulled him out from under the bus said that when he came there Mr. Young was on the ground and that the hood, the upper part of the auto bus was resting on his head. That matter is entirely for you gentlemen and you must take it and consider it as one of the elements.

20

*Mr. Bradner.* I also ask your Honor to state that the evidence was that that point where he was found was 35 or 40 feet from Fifth street.

30

*The Court.* Yes, the bus was 35 or 40 feet down on Park avenue from Fifth street and you will recollect also on that point that while the witnesses differ a little as to the exact difference they all fix it at the end of the building.

(The jury retires.)

*Mr. Bradner.* I desire to except to your Honor's charge that each had an equal right in

40

*Charge to Jury.*

the road at the point where the collision occurred, Also, to your Honor's charge, "I do not understand that the defendant relied upon the ordinance." I suppose that your Honor meant by that that he did not in fact at the time rely upon the ordinance. My contention is he had a  
 10 right to rely upon it whether he did in fact or not. Also, to your Honor's charge that the ordinance did not relieve the defendant from that degree of care required. I object also to your Honor's charge as to the danger reasonably to be foreseen and not avoided is negligence or whatever your Honor said in reference to that, carrying out, of course, your theory of it that the ordinance does not affect the case.

Exceptions noted as ground of appeal.

20

RECESS.

(The jury returns to the court room.)

*The Court.* Gentlemen, I received your communication. This case is one of fact which you gentlemen have to decide for yourselves. I will try to answer as much of your communication as it is possible for me to do without passing on the facts but all the facts and circumstances  
 30 you must determine.

The defendant was obliged to use such reasonable care as a reasonably prudent man would use in crossing Park avenue taking into consideration the conditions as they then existed and which he could have observed had he looked. The question is what a reasonably prudent man would have done under like circumstances. The defendant was only obliged to use such reasonable care as a reasonably prudent man would  
 40 use under like circumstances and you have no

*Charge to Jury.*

right to assume that the defendant was negligent because the accident occurred. That is the very thing to determine, whether or not under the circumstances he was negligent and his negligence caused the accident. The case is to be decided by the evidence and you have no right to consider anything outside of the matters that have been committed to you. That, of course, refers to all the testimony of all the witnesses and the inferences which you draw from such evidence must be drawn from the case as presented to you. In determining whether the defendant was negligent or not you should consider all the circumstances surrounding the accident, the speed the cars were going, whether one or the other of them or both of them slowed up and all the facts connected with the transaction. Both parties had an equal right to use the streets. The defendant under the ordinance had the right of way but that right of way did not excuse him from using the reasonable care that an ordinarily prudent man should have taken in crossing the avenue at that particular time.

I think that answers all the questions except so far as the questions of fact which you have to decide. If there is anything further you desire in your consideration of the case I will be pleased to give it to you, but as to the facts, that is your duty to determine.

(The jury again retires.)

*Plaintiff's Requests to Charge.***Plaintiff's Requests to Charge.**

Plaintiff' counsel request the Court to charge the jury as follows:

10 (1) The negligence of the driver of the automobile bus is not attributable to Frank C. Young.

(2) Even though you find that the negligence of the driver of the automobile bus contributed to and was in part the cause of the accident which occurred, nevertheless if you find that the defendant was negligent and that that negligence also caused the accident, your verdict must be for the plaintiff, because the negligence of the driver of the automobile bus is not attributable to the plaintiff's decease, Frank C. Young.

20 (3) It is immaterial whether or not Frank C. Young paid for his transportation upon the automobile bus or whether he was merely riding upon said bus on the invitation of the owner without hire or reward, because in neither case is the negligence of the driver of that automobile bus attributable to the said Frank C. Young.

30 (4) There is no evidence in this case that Frank C. Young was guilty of any negligence, so that if you find that the defendant, Traud, was negligent, your verdict must be for the plaintiff.

(5) If you find by the greater weight of the evidence that the negligence of the defendant caused the accident, then even though you find that the driver of the automobile bus was guilty of contributory negligence, your verdict must nevertheless be for the plaintiff.

40

*Defendant's Requests to Charge.*

(6) Frank C. Young was a perfectly innocent party and had no control over the driver of the automobile bus and even though you find that the negligence of the driver of the automobile bus in part contributed toward the accident, nevertheless, if you find that the negligence of the defendant was the proximate and reasonable cause of the accident, your verdict must be for the plaintiff. 10

**Defendant's Requests to Charge.**

Defendant's counsel requests the Court to charge the jury as follows:

(1) If the jury is satisfied that the plaintiff's intestate was injured through the concurring negligence of the defendant and the driver of the automobile bus, and that the defendant's negligence was remote and did not approximately, either immediately or by a direct line of causation produce or concur in producing the plaintiff's injury, the plaintiff cannot recover. 20

(2) If the jury is satisfied that the negligence of the driver of the automobile bus was the sole proximate cause of the injury to the deceased person, the plaintiff cannot recover from the defendant, but must look to the driver or the driver's employer. 30

(3) If the jury is satisfied that the plaintiff's intestate Frank C. Young was negligent, that his negligence contributed in any degree to the happening of the accident, the plaintiff cannot recover from the defendant.

(4) If the jury is satisfied that the driver of the automobile bus was driving west on the south side of Park avenue, they must then as- 40

*Postea.*

sume that the driver was *prima facie* negligent, and if they are further satisfied that Frank C. Young was aware of such negligence of the driver, and did not request him to change his course, or warn him of the danger, or if the said Frank C. Young requested the driver to  
 10 take that course on the south side of Park avenue, then they must find that Frank C. Young was also negligent.

**Postea.**

This case was tried before Judge Willard W. Cutler, to whom it had been referred for trial by Hon. Wm. S. Gummere, Chief Justice, holding  
 20 the Essex Circuit with a jury at the Essex Circuit on April 24th, 25th, and 26th, nineteen hundred and sixteen.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for six hundred and fifty dollars (\$650).

WILLARD W. CUTLER,  
*Circuit Court Judge.*

30 A true copy.

WM. C. GEBHARDT,  
*Clerk.*

*Rule Entering Judgment.*

**Rule Entering Judgment.**

NEW JERSEY SUPREME COURT.

GRACE W. ERWIN, ADMRX., ETC., OF FRANK C. YOUNG, DE- CEASED,  <i>vs.</i> WILLIAM A. TRAUD.	}	Action at <i>Law.</i>  On Postea.	10
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It is ordered that judgment be and hereby is entered in favor of plaintiff and against the defendant for the sum of six hundred and fifty dollars besides costs to be taxed nisi.

20

Entered May 3, 1916, on motion of

LUM, TAMBLYN & COLYER,  
*Attorneys.*

A true copy.

WM C. GEBHARDT,  
*Clerk.*

30

40

*Notice of Appeal.*

**Notice of Appeal.**

Filed May 18, 1916.

NEW JERSEY SUPREME COURT.

10

GRACE W. ERWIN, Administra-  
trix, etc., of the Estate of  
FRANK C. YOUNG, deceased,  
*Plaintiff,*

*vs.*

WILLIAM A. TROUD,  
*Defendant.*

*Action at  
Law.*

*Notice of  
Appeal.*

20

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

Dated, May 16, 1916.

Yours respectfully,

FRANK E. BRADNER,  
*Attorney of Appellant.*

30

TO LUM, TAMBLYN & COLYER, ESQS.,  
*Attorneys of Plaintiff.*

40

*Consent.***Consent.**

Filed June 17, 1916.

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

10

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 GRACE W. ERWIN, Administra-  
trix, etc.,
*Plaintiff-Respondent,**vs.*

WILLIAM A. TRAUD,

*Defendant-Appellant.*


---

*On Appeal  
from  
Supreme  
Court.**Consent.*

Consent is hereby given that the appellant may  
have twenty days additional time from this date  
to file his grounds of appeal in the above stated  
cause and serve the same.

20

Dated, June 17, 1916.

LUM, TAMBLYN & COLYER,  
*Attorneys of Respondent.*

30

40

*Grounds of Appeal.***Grounds of Appeal.**

Filed June 30, 1916.

**New Jersey Court of Errors and Appeals**

10

GRACE W. ERWIN, administratrix, etc., <i>Plaintiff-Respondent,</i>  <i>vs.</i>  WILLIAM A. TRAUD, <i>Defendant-Appellant.</i>	}	<i>On Appeal          from Supreme          Court.</i>  <i>Grounds          of Appeal.</i>
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20 The appellant states the following grounds of appeal:

1. The denial of the motion to non-suit the plaintiff.

2. The denial of the motion to direct a verdict for the defendant.

30 3. The refusal of the court to charge request No. 4 of the defendant specifically as requested, as follows: "If the jury is satisfied that the driver of the automobile bus was driving west on the south side of Park avenue, they must then assume that the driver was *prima facie* negligent, and if they are further satisfied that Frank C. Young was aware of such negligence of the driver and did not request him to change his course, or warn him of the danger, or if the said Frank C. Young requested the driver to take that course on the south side of Park avenue, then they must find that Frank C. Young was also negligent."

40

*Grounds of Appeal.*

4. The charge of the court modifying request No. 4 of the defendant as follows: "Gentlemen, I so charge you, but you must recollect in applying that rule that the burden of proving the contributory negligence of Frank C. Young is on the defendant, and that there was no assumption that he was negligent, unless such fact was established to your satisfaction by the evidence of the defendant." 10

5. The charge of the court of request No. 2 of the plaintiff as follows: "Even though you find that the negligence of the driver of the automobile bus contributed to and was in part the cause of the accident which occurred, nevertheless, if you find that the defendant was negligent, and that that negligence also caused the accident, your verdict must be for the plaintiff, because the negligence of the driver of the automobile bus is not attributable to the plaintiff's deceased Frank C. Young." 20

6. The charge of the court as follows: "Both streets were public thoroughfares, and the vehicles had an equal right to use the streets."

7. The charge of the court as follows: "I do not understand that the defendant claims that he saw the automobile bus coming and relying on the ordinance giving him the right of way, attempted to pass in front of the bus and that in so doing the accident occurred. If that was the situation, another question might be presented, but in this case there is no contention on the part of the defendant, as I understand it, that he saw the automobile bus until it was almost upon him." 30

8. The charge of the court as follows: "The fact that there was such an ordinance, did not relieve the defendant from using that degree of 40

*Grounds of Appeal.*

care which was reasonable under like circumstances. You are to say from all the evidence, considering where the accident occurred, the grade of the roads, the ordinance requiring vehicles to keep to the right, and the ordinance giving vehicles coming from the right and crossing an intersecting street the right of way, whether the accident was caused by the negligence of the defendant.”

10 9. The charge of the court as follows: “Negligence is not the only overt act that produced the injury complained of, but maybe the failure to foresee the danger likely to result from the duty of not acting. Danger reasonably to be foreseen at the time of acting, is the established test of negligence.”

20 10. The plaintiff failed to prove that the defendant was negligent, and the evidence on the part of the plaintiff showed that the plaintiff’s intestate, Frank C. Young, had been negligent, and that his negligence contributed to the injury; therefore, the defendant was entitled to prevail on the motion to non-suit.

30 11. At the close of the case, it appeared clearly and was the only reasonable inference from the evidence, that the accident was caused by the negligence of the driver of the bus solely, and that the plaintiff’s intestate, Frank C. Young, participated in that negligence, and therefore, the defendant was entitled to prevail on the motion to direct a verdict.

FRANK E. BRADNER,  
*Attorney of Appellant.*

*Exhibits.*

## DEFENDANTS' EXHIBITS.

	PAGE.
D. 1—Diagram .....	58
D. 2—Photograph .....	64
D. 3—Photograph .....	64
D. 4—Traffic Ordinance .....	99

10

## PLAINTIFF'S EXHIBITS.

	PAGE.
P. 1—Photograph .....	25
P. 2—Photograph .....	25
P. 3—Photograph .....	25
P. 4—Photograph .....	25
P. 5—Photograph .....	25
P. 6—Photograph .....	25

## EXHIBIT D. 4.

20

*Extract from Traffic Ordinance of Newark, N. J.*

An ordinance to regulate the use of the public streets of the City of Newark, by vehicles, automobiles, street cars, equestrians, horses and other draft animals, and to regulate and control the public traffic therein, adopted April 4, 1912, to take effect immediately.

Be it ordained by the Board of Street and Water Commissioners of the City of Newark:

30

## PART I.

*Definitions.*

a. The word "street" or "streets" includes highways, roads, avenues, courts, public lanes and public alleys. It also includes sidewalks or foot paths, unless otherwise specified.

b. The word "vehicle" includes equestrians, led horses, and everything on wheels or run-

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*Exhibits.*

ners, except street railway cars or baby carriages, unless otherwise specified.

c. The word "driver" includes the rider or driver of a horse, bicycle or motor bicycle, and the driver or operator of a motor vehicle or street car.

10

## PART II.

*Passing, Turning, Crossing and Stopping.*

Section 1. A vehicle, except when passing a vehicle ahead shall keep as near as possible to the right-hand curb.

Section 2. A vehicle meeting another shall pass to the right.

20

Section 3. A vehicle overtaking another shall pass on the left side of the overtaken vehicle and not pull over to the right until entirely clear of it.

Section 6. A vehicle turning into another street to the left, shall before turning pass to the right of and beyond the center of the intersection of the two streets.

## PART IV.

*Right of Way.*

30

Section 1. Police, fire department, fire patrol, traffic emergency repair, United States mail vehicles and public ambulances, shall have the right of way through any street or in any procession.

40

Section 2. Subject to Section 1 of this part, every driver or operator of a vehicle approaching a street intersection, shall grant the right of way at such intersection to any vehicle approaching from his right.

*Exhibits.*

Note. This regulation requires that every driver or operator must on approaching intersections, give special attention to the traffic approaching from his right hand, and in case some other vehicle approaching from his right hand side reaches the intersection practically at the same time he must stop until such vehicle approaching from the right hand has crossed in front of him. 10

The foregoing note is incorporated in the traffic ordinance as published.

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30

40



## New Jersey Court of Errors and Appeals

GRACE W. ERWIN, Administra-  
trix, etc.,

*Plaintiff-Respondent,*

vs.

WILLIAM A. TRAUD,

*Defendant-Appellant.*

*Action at Law.*

*On Appeal  
from Supreme  
Court.*

### Brief for Appellant.

#### Abstract of the Case.

This is an action to recover damages for causing the death of one Frank C. Young.

The plaintiff, as administratrix, alleges in her complaint, that Frank C. Young was a passenger upon an automobile bus which was being operated between the cities of Newark and Orange, and on November 20, 1914, the bus was run into by a motor vehicle or automobile which was being driven and operated by the defendant upon Park avenue in the city of Newark; and that defendant carelessly and negligently and improperly operated and run the said motor vehicle or automobile upon the public highway and lost control thereof.

The defendant denying all the allegations in the complaint, except that he was the owner of the motor vehicle, made the special defence, that his vehicle was run into by the automobile bus, *and that the collision was caused entirely by the carelessness of the driver of the automobile bus.*

The facts as they appear in the evidence on the part of the plaintiff, may be stated as follows:

Edwin Wille testified, at p. 13:

“The big bus was coming down Park avenue, and it slowed up, and then there was another was coming over Fifth street, *and they both kind of slowed up*; then they started together and the bus kind of go toward the wrong side of the street, where it was hit.

Q When you first saw the bus, on which side of the street was it? A The right side.

Q Then you say you saw it turn which way? A Turn up towards the wrong side of the street.

Q Towards the south side of the street?

A Yes.

Q Then where did the cars come together? A Right about a little ways from the curb.

Q On the south side—that is, the west side? A The side nearest Orange street.

Q What happened to the bus? A The bus fell over.

Q Which way? A Towards Orange street.

Q On its side? A Yes, sir.”

Emma H. McGall testified, p. 26: That she was sitting on the left hand side of the bus towards the door end (meaning the left hand side going towards Orange) *and that she saw a Ford car at the scene of the accident and saw it approaching when it was quite near, and that it seemed very near*, because she heard exclamations in the bus, and that there was a man injured as a result of the accident, and that he was sitting on the outside of the bus with the driver, and that she learned that the man was Mr. Young.

At p. 27, she was asked:

“Q Will you tell us how far you could see at the time of the accident? A As I recall, I could see as we came along the canal. I saw the lights, but I don't recall more than that.”

At p. 29, she said:

“I didn't mean the lights of the car, I meant of the city, I didn't mean the lights of the Ford car.”

At p. 31, she said that she *saw the Ford car when it was quite close, and the bus was then pretty close to Fifth street.*

Mary L. Twining testified, at p. 34:

“Q Tell us the condition of light at the time, how far could you see? A Well, I was talking to a friend, and was very much interested about the theatre, *and we had stopped for a moment after we had turned, and we seemed almost in the middle of the street and I looked up Fifth street and I saw this Ford car coming.*”

She then described the distance as about from wall to wall in the court room, indicating about 100 feet, and further stated that she had no difficulty at all in seeing the Ford car.

At p. 35, she testified that the Ford car was coming as fast as it could go—

“*I think the driver tried to swerve, I think he tried to get over to the gutter, and I think we were right to the center when he saw this car, and I think he was trying to get to the gutter.*”

Q What part of your bus did the Ford car strike? A What do you call that?

Q The mud guard? A Right up where the two drivers sat, the driver and the gentleman that was killed.

Q That gentleman that was killed you learned later was Mr. Young? A Yes.

Q He was sitting alongside the driver?

A He was."

At p. 37, she testified:

"Q You didn't notice where you were going and how fast you were going? A No, sir, I didn't notice that. *We were going at a pretty good speed like most of them go. They go pretty quickly, but nothing out of the way.*"

At p. 37 bottom of page, she testified that the bus was about to the left of the center, and further:

"Q *Did it keep on to the left of the center all the way up to Fifth street?* A Yes.

At p. 39, she testified:

"*The bus was just going to cross Fifth street, and the Ford car had not quite reached Park avenue, it was just about to reach it and it was the whole length of this room away*"; and at the bottom of p. 39, she testified: Q "Then you mean it happened way over on the south side of Park avenue towards Orange street? A Yes, I think so.

Q Then you were probably further to the left of the center than you realized? A Well, I can't tell you about that because I was too excited."

And at the top of p. 40, she testified:

"Q Isn't it a fact that when this driver turned up Park avenue, he turned south to the curb and went along that left side? A I can't be positive whether he was crossing to the curb or in the center of the street.

Q *He was to the left of the center?* A *He was to the left of the center. He wasn't*

*to the right, because we would have been struck sooner if he had been to the right."*

Alice Larue testified, p. 43: That she was a passenger in the bus, and that as the bus came along the canal, she sat looking out and could see the lights all around, and she was sitting looking towards Bloomfield, the way the Ford car was coming, *and as the bus came out of Fourth street into Park avenue, it turned towards the left center, and that it was not over on the right as much* because there was a machine coming over the bridge, and the bus couldn't get over to the right side of Park avenue. At the top of p. 44, she testified:

"Q You think you were about in the middle? A About in the middle, we were not on the right, but about in the center I should say."

At the bottom of p. 44, she was asked by the Court:

"Q *Where was the bus at that time?*

A *The bus, we were coming along the canal when I saw the Ford coming."*

At the top of p. 46:

"Q Can you give us any idea of the rate at which the Ford was going? A *They both put on speed to get by, they seemed as if they could pass one another.*

Q That is the way it appeared to you?

A That is the way it appeared to me.

Q Where was Mr. Young sitting? A He sat on the left, on the other side of me, the driver was right in front of me.

Q He sat along side of the driver? A Yes, he sat along side.

Q You turned over Fourth street to Park avenue? A Yes."

At the bottom of p. 47, she testified:

“Q *The Ford machine was coming along on Fifth street? A Yes, sir, it was.*

Q *And it was some distance? A It was a half a block when I saw it.”*

At the top of p. 48:

“Q *Half a block from Park avenue? A Yes.*

Q *And you were a little distance from Park avenue down Fourth street? A Fourth street.”*

The witness then stated that the bus turned to the left of the center of Park avenue, but was not at the curb.

At the bottom of p. 50, she testified:

“Q *You continued on Park avenue to the left of the center? A Yes.*

Q *No doubt about that? A Yes, we did.*

Q *And when you got up to Fifth street, the two cars collided? A Yes, they both put on speed thinking they could get by, and that is how it happened.*

Q *When you got across to Fifth street, they both put on speed? A That is the way I thought of it.*

Q *Then you were conscious that the bus put on speed? A No, first the bus slowed up a little bit and I suppose he put speed on, and the Ford people put speed on, thinking he would get by.*

Q *They both hesitated, then went ahead?*

A *That is the way I thought.”*

On this evidence, a motion to non-suit was made and denied.

The evidence on the part of the defendant may be stated as follows:

The defendant testified, beginning at p. 57, that he was driving a Ford car south on Fifth street about 5:20 p. m. and had a companion, a Miss Schwartz, sitting beside him at his right. At p. 59, he testified that he imagined he was going about three or four miles and that he was driving at low gear.

At the top of p. 60 he testified:

“Q When you got to Park avenue, what did you do? A I had to stop to let a car pass by and I started up again and all I saw was the car’s bright lights.

Q Which way was the car coming? A It was coming towards Orange.

Q Had that reached the crossing before you did? A It was there before I was.

Q After that had gone by, what did you do? A I started to cross Park avenue.

Q State whether or not you came to a full stop? A I don’t think I hardly stopped, *but I had to go into low gear, the car was running very slow and practically stopped, and then I started to cross the street and I looked towards Orange to see if any cars were coming that way, and I didn’t see any, and the first thing I knew I heard this young lady holler; I had to turn there, I knew there wasn’t anything coming from my right, so I tried to turn to the right and I think that the bus hit us, threw my car around and part of the bus hit me in the arm and we got out. I didn’t know there was anybody in the bus, it looked to me like a delivery car. After I got out of the car, the ladies began to scream, and the firemen came over and started taking them out.”*

The witness then indicated on the map (Ex. D 1) the point where the collision occurred, which is marked with an X. He then stated: "We were practically entering the street when this car swerved around us and threw my car aside and after the accident was over I took particular notice that my left front wheel just rested on the edge of this manhole, and I had to measure that manhole. I don't know how far it is from the curb, but I had them put this manhole in here" indicating the black spot on the diagram.

At p. 61, he testified, that the bus seemed to climb over his car, the axle of his car, and that is what threw it over:

"It swerved to the right, I suppose struck my car with the front wheel, swerved to the right, and he having a tight grip on the wheel brought it back to the left and that is what upset it, *he swung so quickly around and between that and rising up over my car upset it—that the bus careened in a circle; it seemed to circle around and fall and then slide.*"

At the top of p. 52:

"Q When it finally landed where did it lay? A It lay about forty feet from the west curb, over five feet, right about forty feet about in here, just about even with the house in line with this building, and the point is marked on the diagram with the letter O. *The Ford car* after the collision laid almost facing due west, it laid across the manhole." And the witness was asked at p. 62, by the court: "*You mean it had been swung around at an angle of about 45 degrees?*" A Yes."

At p. 82, on cross examination, the defendant testified: He was being examined on the al-

leged discrepancy between his interrogatories and his testimony in court, and he stated:

“The bus was so close to me, I didn’t measure it with a rule to see whether it was three feet or one foot away, *but almost at the impact of the accident I had a side glance of the car.*”

Q Why didn’t you take that side glance a moment before? A *Because I was looking to the west to see a car as I was crossing the center of the road, and the only danger I figured was an automobile coming from the west, coming from Orange and I watched the cars from the west and I was then about to start into Fifth street on the opposite side of Park avenue.’*”

The defendant was corroborated by Natalie Schwartz, who testified at p. 87, that the Ford car was going very slowly and she made some exclamation when she saw the bus about 3 or 4 feet away, and at the bottom of p. 88, she testified:

“Q What became of the bus? A Why, the bus after hitting us, it swerved and swayed and went towards the curb and upset and slid along as I remember it.”

John A. Bryon, a member of the Fire Department of Newark, testified, at p. 93: That the bus was lying in the street on its left side, and at the top of p. 94, the top of the bus was about 3 or 4 feet from the curb, and the bus was on the south side of Park avenue and the west side of Fifth street, and was about up at the end of those two buildings on the corner of Park avenue and Fifth street.

Michael J. Robinson testified, at p. 97, that the bus was lying on the south side of Park avenue about 35 feet from the corner of Fifth street

about 3 or 4 feet from the curb, and Mr. Traud's car was about 20 feet behind.

Lawrence Maude testified, p. 98: That the bus was lying on its left side about three feet from the curb and 30 or 35 feet from Fifth street and the Ford car was behind it facing towards Orange; that the front end of the bus was nearer the curb than the rear end.

The Traffic Ordinance of the city of Newark, pertinent to the case, was marked Ex. D. 4, and is printed on p. 123.

At the close of all the testimony, a motion was made to direct a verdict for the defendant, which was denied.

The only evidence of the amount of damages was the age of the plaintiff's intestate, that he was 28 and that he was married and left a widow and young child and had been earning \$1,600.00 per year, and that his expectation of life according to the mortality tables, was 36 years.

The jury brought in a verdict of \$650.00 in favor of the plaintiff.

### Specification of Errors.

1. The denial of the motion to non-suit the plaintiff, p. 56.
2. The denial of the motion to direct a verdict for the defendant, p. 99.
3. The refusal of the court to charge request No. 4 of the defendant specifically as requested, as follows: "If the jury is satisfied that the driver of the auto bus was driving west on the south side of Park avenue, they must then assume that the driver was *prima facie* negligent, and if they are further satisfied that Frank C.

Young was aware of such negligence of the driver and did not request him to change his course, or warn him of the danger, or if the said Frank C. Young requested the driver to take that course on the south side of Park avenue, then they must find that Frank C. Young was also negligent," p. 107.

4. The charge of the court modifying request No. 4 of the defendant, as follows: "Gentlemen, I so charge you, but you must recollect in applying that rule that the burden of proving the contributory negligence of Frank C. Young, is on the defendant, and that there is no assumption that he was negligent unless such fact is established to your satisfaction *by the evidence of the defendant,*" p. 108.

5. The charge of the court of request No. 2 of the plaintiff, as follows: "Even though you find that the negligence of the driver of the automobile bus contributed to and was in part the cause of the accident which occurred, nevertheless, if you find that the defendant was negligent, and that that negligence also caused the accident, your verdict must be for the plaintiff, because the negligence of the driver of the automobile bus is not attributable to the plaintiff's decedent, Frank C. Young," p. 108.

6. The charge of the court as follows: "Both streets were public thoroughfares and the vehicles had an equal right to use the streets," p. 102, l. 16.

7. The charge of the court as follows: "I do not understand that the defendant claims that he saw the automobile bus coming and relying on the ordinance giving him the right of way, attempted to pass in front of the bus, and that in so doing, the accident occurred. If that was the situation, another question might be presented,

but in this case there is no contention on the part of the defendant, as I understand it, that he saw the automobile bus until it was almost upon him," pp. 102 and 103.

8. The charge of the court as follows: "The fact that there was such an ordinance, did not relieve the defendant from using that degree of care which was reasonable under like circumstances. You are to say from all the evidence, considering where the accident occurred, the grade of the roads, the ordinance requiring vehicles coming from the right and crossing from an intersecting street the right of way, whether the accident was caused by the negligence of the defendant," p. 103, l. 14.

9. The charge of the court as follows: "Negligence is not the only overt act that produced the injury complained of, but may be the failure to foresee the danger likely to result from the duty of not acting. Danger reasonably to be foreseen at the time of acting, is the established test of negligence," p. 103, l. 27.

### **Brief of Argument.**

#### **Points I and II.**

THE COURT ERRED IN DENYING THE MOTION TO NON-SUIT AND ALSO IN DENYING THE MOTION TO DIRECT A VERDICT FOR THE DEFENDANT.

The motion to non-suit was based upon three grounds (p. 56) as follows:

1. The evidence shows that the negligence of the driver of the bus was the sole proximate cause of the injury.

2. There was no evidence from which any negligence on the part of the defendant could be inferred.

3. The evidence shows that there was contributory negligence on the part of the driver of the bus.

The case was tried upon the theory that Frank C. Young was a passenger on the bus, and it was assumed in the course of the trial that he was such passenger, but there is no legal evidence to prove that fact, and indeed, there is no legal evidence in the case which proves that the man who was found dead lying under the bus was the same man who was riding on the front seat.

The witness Mary L. Twining, at p. 35, spoke of the two men on the front seat of the bus, *as the two drivers*. The attention of the court was called to the fact of this uncertainty in the evidence after the jury had been charged, and the court had the jury brought into the court room and gave further directions (p. 111.) However, in fairness to the trial court, it is necessary to concede that Frank C. Young was a passenger on the bus and was riding on the front seat, *sitting beside the driver of the bus*.

"The ordinary rule in actions for negligence, is that plaintiff must produce some affirmative proof of the want of care on the part of the defendant, *and if his evidence is as consistent with care as with negligence in the defendant, he must fail.*"

Dixon, J. in *Whalen v. Cons. Traction Co.*, 61 Law, 32 Vr., 606 at p. 609, Court of Errors 1898, citing *Cotton v. Wood*, 8 C. B. (N. S.) 568;

*Hammack v. White*, 11 Id. 588;

*Weller v. McCormick*, 18 Vr. 397;

*Searles v. Manhattan Railway Co.*, 101 N. Y. 661.

In *Cotton v. Wood*, Erle, C. J. says:

“The plaintiff is not entitled to succeed unless there be affirmative proof of negligence on the part of the defendant, and there can be no such proof unless it be shown that there existed some duty owing from the defendant to the plaintiff, and that there has been a breach of that duty.” “*Where it is perfectly even balance upon the evidence whether the injury complained of has resulted from the want of proper care on the one side or on the other, the party who founds his claim upon the imputation of negligence fails to establish his case.*”

*Cotton v. Wood* was a case of a woman crossing a street in front of an omnibus, and suddenly turned back; the driver of the omnibus had seen her crossing the street, *but at the moment she turned back he had looked around to speak to the conductor* and was not aware of the woman's danger until warned by the cry of a bystander, but too late to avert the mischief. In the same case, Williams J. says:

“I wish merely to add that there is another rule of the law of evidence which is of the first importance and is fully established in all the courts, viz.—*that where the evidence is equally consistent with either view,—with the existence or non-existence of negligence it is not competent to the judge to leave the matter to the jury.*”

In *Searles v. Manhattan R. W. Co.*, 101 N. Y. 661, 5 N. E. Rep. 66, Erle J. says:

“When the fact is that the damages claimed in an action were occasioned by one of two causes, *for one of which the defendant is responsible and for the other of which it is not responsible*, the plaintiff must fail

*if his evidence does not show that the damages were produced by the former cause, and he must fail also if it is just as probable that they were caused by the one as by the other, as the plaintiff is bound to make out his case by the preponderance of evidence."*

The evidence which has been sufficiently stated in the foregoing abstract of the case, shows that the injury was caused by a collision of the automobile bus and the Ford motor car. The witnesses for the plaintiff agree that both vehicles were going fast; and that as they approached very near to the intersection of the two streets, Park avenue and Fifth street, *both vehicles slowed up and then proceeded without stopping and the collision occurred.*

The preponderance of evidence for the plaintiff was that the bus was on the left of the center of Park avenue going west, but that fact is not necessary to be determined on the motion to non-suit. Park avenue runs east and west, and Fifth street, north and south. The bus was proceeding west from Fourth street towards Fifth street, and the Ford car was proceeding south from a point north of Park avenue and was about to cross Park avenue. The respective duties of the drivers of the Ford car and of the bus, are fixed by the ordinance of the City of Newark.

The ordinances and by-laws of the City of Newark as contained in the printed books of such ordinances and by-laws issued by the City of Newark, are Public Laws P. L. 1874, p. 198.

The ordinance Ex. D 4, p. 123 provides in Part IV as to right of way p. 124 section 2, "subject to section 1 of this part (which relates to Police, Fire Department, etc.) *every driver or operator of a vehicle approaching a street inter-*

*section shall grant the right of way at such intersection to any vehicle approaching from his right."*

In a note appended to the ordinance and published therewith, is a specific notice that this ordinance requires *that the driver or operator must on approaching intersections give special attention to the traffic approaching from his right hand, and in case some other vehicle approaching from his right hand side reaches the intersection practically at the same time, he must stop until such vehicle approaching from the right hand has crossed in front of him.*

This ordinance prescribes a rule of conduct to be observed by drivers and operators of vehicles at street intersections.

Under the evidence on the part of the plaintiff, it appeared that the defendant's car could be seen approaching Fifth avenue, and that it was to the right of the bus. The evidence shows that the two vehicles reached the point of intersection at practically the same time. Thereupon, *it was the duty of the driver of the bus to stop.* The defendant *had the right to assume that the driver of the bus would stop his vehicle.* The defendant was not negligent in proceeding to cross Fifth avenue.

*N. J. Express Co. v. Nichols*, 33 Law, 4 Vr., 434, Court of Errors 1867;

*Fielders v. North Jersey Street R. W. Co.*, 68 Law, 39 Vr., 343, Court of Errors 1902;

*Pesin v. Jugovich*, 85 Law, 256 Court of Errors 1913;

*Evers v. Davis*, 86 Law, 196, Court of Errors 1914;

*Kathmeyer v. Mehl*, 60 At. Rep. 40 Sup. Ct. 1905;

*Geleailen, Admr. v. Semel*, Sup. Ct. Nov. Term 1911, Opinion filed Feby. 26, 1912 (not reported.)

The evidence on the part of the defendant did not change the situation. It was contended at the trial, that it was the duty of the defendant to observe the bus coming from the left towards Fifth street, and his evidence showed that he did not see the bus until practically the moment it struck his car.

This contention disregards the rule of conduct prescribed by the ordinance.

In the absence of an ordinance, it may be conceded that the rule applicable would have been that laid down in *Earle v. Cons. Traction Co.*, 64 Law 573, Court of Errors 1900, to the effect, that the first to reach the crossing had the right to pass over first, but if it appeared to the defendant that this right was not being observed by the driver of the bus, he could not proceed without imprudence, and was bound to stop, or to turn aside if he could by the exercise of due care do so and protect himself from injury. That no doubt, is the general rule of the road in the absence of any statutory or municipal regulation; and under that rule, the case would have been properly left to the jury. The same rule was followed in *Rabinowitz v. Hawthorne*, 98 At. Rep. 315, Court of Errors 1916.

In the present case, *it was not a question of which vehicle reached the crossing first.* The evidence shows, that they reached the crossing *practically at the same time* and under such circumstances, the defendant *had the right to assume that the driver of the bus would stop*, and it was not the defendant's duty to stop or to turn aside, that is, *he did not owe any duty to the driver of the bus to stop or to turn aside.*

It was the duty of the trial judge to determine whether facts had been established by the evidence from which negligence could be reasonably inferred. In ruling upon the motion to non-suit and upon the motion to direct a verdict, the court erroneously determined that there were facts from which negligence could be inferred. Either motion should have been granted also upon the ground *that the driver of the bus was negligent, and that his negligence was the sole proximate cause of the injury.* This appears clearly from a reading of the testimony as set forth hereinbefore, in view of the rule of conduct prescribed by the ordinance.

It was also apparent that the *negligence of the driver was imputable to the passenger.* It is conceded that the law is established in this State, that the negligence of the driver of a vehicle is not imputable to the passenger *unless there is some co-operating negligence on the part of the passenger.*

The cases are *Bennett v. N. J. R. R. & Trans. Co.*, 36 Law, 7 Vr. 225, Sup. Ct. 1873;

*New York, Lake Erie & Western R. R. Co. v. Steinbrenner*, 47 Law, 18 Vr., 161, Ct. of Er. 1885;

*Mittelsdorfer v. West Jersey & Seashore R. R.*, 77 Law, 48 Vr., 698, Ct. of Er. 1909;

*Rodenberg v. Clinton Auto & Garage Co.*, 84 Law, 55 Vr., 545, Sup. Ct. 1913.

In the *Mittelsdorfer case*, Justice Trenchard states the rule to the effect, that the passenger or person riding by invitation, may recover from the third party by whose negligence he is injured notwithstanding that the negligence of the driver of his conveyance contributes to the injury *where the person injured is without fault and has no*

*authority over the driver.* He says further, at p. 700: "The fact that the plaintiff was a guest, did not relieve her from exercising ordinary care," and cites cases.

In the present case, the passenger was sitting beside the driver on the front seat and was in a position where he could observe the condition of the road and approaching vehicles from either direction from his left or from the right, or from the front. He could have observed that the driver was on the wrong side of the road and was apt to collide with vehicles coming from the opposite direction, and it was his duty to request the driver to stop or to turn aside. He could have observed that the *Traud car was rapidly approaching from the right*, and that the two cars would practically reach the intersecting crossing at the same time, and he was chargeable with knowledge of the ordinance, *and it was his duty to request the driver to stop.* The presumption is, that if he had requested the driver to stop, the driver would have stopped. He was not using ordinary care to protect himself.

Justice Trenchard cites 3 A. & E. Ann. cases 703, which is a note to the reported case entitled "Contributory negligence of driver as imputable to occupant of vehicle" and it is said at p. 704: "But the guest or passenger is bound to exercise due care and caution as well as the driver, and if the negligence of the person riding contributes in any way approximately to the accident, no recovery can be had." And the note cites particularly two cases—*Crescent Township v. Anderson*, 114 Pa. State 643, and *Dean v. Pa. R. R. Co.*, 129 Pa. State 514, in which it was held that: "Though the plaintiff was not affected by the negligence of the driver, *where the danger*

*was either patent, or the plaintiff had knowledge or warning of it before hand, his own negligence would bar recovery; and in the latter case, the violation of a fixed rule of law as to the duty of travelers in crossing a railroad to stop, look or listen, was held to constitute clear legal negligence on the part of the plaintiff."* The duty of the driver of the bus was to stop at the crossing, and the violation of this duty constituted clear legal negligence on the part of the plaintiff's intestate who participated in it.

In *Brickell v. N. Y. Central & Hudson Riv. R. R. Co.*, 24 N. E. Rep. 449, 1890, the court said in a railroad crossing case in which the plaintiff was injured, and he occupied a seat with the driver and had the same knowledge of the road and opportunities of discovering danger, that the rule that the driver's negligence may not be imputed to the plaintiff should have no application.

Potter, *J.* says:

"Such rule is only applicable to cases where the relation of master and servant, or principal and agent does not exist, or *where the passenger is seated away from the driver, or is separated from the driver by an enclosure and is without opportunity to discover danger, and to inform the driver of it.*"

Citing *Robinson v. Railroad Company*, 66 N. Y. 11.

"It is no less the duty of the passenger where he has the opportunity to do so, than of the driver, *to learn the danger and avoid it, if practicable.*"

It is submitted that the defendant was entitled to either a judgment of non-suit, or to the direction of a verdict in his favor on the whole case.

### Points III, IV and V.

THE CHARGE OF THE COURT, THAT THE NEGLIGENCE OF THE DRIVER WAS NOT ATTRIBUTABLE TO THE PLAINTIFF'S DECEASED—FRANK C. YOUNG, AND THE FURTHER CHARGE, THAT THE JURY COULD NOT FIND THE PLAINTIFF'S INTESTATE GUILTY OF CONTRIBUTORY NEGLIGENCE UNLESS SUCH FACT WAS ESTABLISHED BY THE EVIDENCE OF THE DEFENDANT, WERE BOTH ERRONEOUS.

It has been shown, that under the facts in this case the negligence of the driver of the bus was imputable to the plaintiff's intestate.

As to the proof of contributory negligence, the rule is established in this State: "That negligence on the part of a plaintiff, such as contributes to the injury of which he complains, *when discovered through his own testimony will preclude his right of recovery.*"

This, I take it, means not only the testimony of the plaintiff in person, but of the plaintiff's witnesses.

*City Railway Co. v. Lee*, 50 Law, 21 Vr., 435 Court of Errors 1888, at p. 436.

The charge was erroneous as a direction to the jury, that they must find the proof of Mr. Young's negligence in the evidence submitted by the defendant. This excluded the evidence of the plaintiff.

### Points VI, VII, VIII and IX.

THE CHARGE OF THE COURT AS TO THE EQUAL RIGHT OF THE PARTIES TO USE THE STREETS AND AS TO THE RELIANCE OF THE DEFENDANT UPON THE ORDINANCE, AND AS TO THE LEGAL EFFECT OF THE ORDINANCE, AND AS TO THE FAILURE TO FORESEE DANGER, AS BEING THE TEST OF NEGLIGENCE, WAS ERRONEOUS.

It sufficiently appears in the preceding discussion, that the parties did not have an equal right to the use of the street *at the point of intersection*. As a general abstract proposition of law, the charge was correct, but it should have been limited to the use of the streets at the crossing.

The charge was erroneous as to the defendant's reliance upon the ordinance, because the defendant testified at p. 82: "I was looking to the west to see the car, as I was crossing the center of the road, and the only danger I figured, was an automobile coming from the west, coming from Orange, *and I watched the cars from the west*, and I was then about to start into Fifth street on the opposite side of Park avenue."

This testimony shows that the defendant did have the traffic ordinance in mind, and although he did not testify that he relied upon the ordinance his testimony shows that he did, unconsciously perhaps, rely upon the traffic rule, that he must give particular attention to vehicles coming from his right.

The charge was also erroneous as to the legal effect of the ordinance. The cases have been heretofore cited, and I insist that under the authorities, the ordinance prescribes a rule of conduct which gave the defendant *the right to*

*assume, whether he saw the driver of the bus or not, that any vehicle coming from his left which reached the intersecting street practically at the same time that he did, would stop.*

The general rule as heretofore stated, which would require the defendant to stop if he had seen the bus, and it was apparent that the bus was not going to stop, to turn aside, is not applicable. The charge put the duty upon the defendant to particularly observe vehicles coming from his left, *and to foresee that the bus was not about to stop.*

The charge is in direct conflict with the ordinance.

It is respectfully submitted that the judgment of the Supreme Court entered on the verdict should be reversed, and judgment entered in favor of the defendant.

FRANK E. BRADNER,  
*Of Counsel with Appellant.*



## New Jersey Court of Errors and Appeals

GRACE W. ERWIN, administra- trix, etc., Plaintiff-respondent,	} <i>Action at Law.</i>
vs.	
WILLIAM A. TRAUD, Defendant-appellant.	} <i>On appeal from Supreme Court.</i>

### Brief for Respondent.

#### Statement of Facts.

This action was brought by Grace W. Erwin as administratrix of the estate of Frank C. Young, deceased, under the Death Act, to recover damages for the death of Frank C. Young, caused by the negligence of the defendant, William A. Traud.

The case was tried at the Essex Circuit and resulted in a verdict in favor of the plaintiff for \$650.

The accident occurred shortly after five o'clock in the afternoon of the 10th day of November, 1914 (p. 26, ll. 3 to 4) on Park avenue, near Fifth street, in the City of Newark, New Jersey.

Frank C. Young was a passenger on a public automobile bus operated between Newark and Orange, New Jersey, and was seated outside of the bus with the driver of the car at the time of the accident (p. 26, ll. 6 to 9; p. 27, ll. 12 to 15). The automobile bus was running west on Park avenue, a little to the left of the center of the road, just prior to the happening of the accident, being forced to do so because another ve-

hicle in the road prevented it from staying to the right (p. 43, ll. 30 to 35).

Park avenue at the place of the accident is approximately sixty feet wide between the curb lines and is exceptionally even and straight (p. 59, ll. 1 to 6), there being nothing to obstruct the view of Park avenue from Fifth street looking east (See Exhibit P. 6). The defendant was driving an automobile south on Fifth street proceeding toward Park avenue (p. 57, l. 30). He drove at a great and excessive rate of speed (p. 35, ll. 10 to 16; p. 42, ll. 14 to 22), and ran into the side of the automobile bus, striking it with the left front side of his car (p. 35, ll. 20 to 24; p. 45, ll. 18 to 20), (Exhibit P. 3; Exhibit P. 1; Exhibit P. 2), thereby turning over the bus (p. 28, ll. 1 to 2; p. 46, ll. 21 to 23), which caused the death of Frank C. Young.

Frank C. Young, at the time of his death, was twenty-eight years of age (p. 54, ll. 14 to 16), and left him surviving Mabel M. Young, his widow, twenty-five years of age (p. 54, ll. 16 to 18), and a daughter Grace, five years old (p. 51, ll. 30 to 31). He had been employed by the Firemen's Insurance Company of Newark and had received a salary of \$1,500 a year (p. 51, ll. 22 to 26). He gave to his wife weekly a personal allowance of \$5 (p. 51, ll. 34 to 36), and paid all of the bills for the household expenses, amounting to \$17 or \$18 a week (p. 52, ll. 6 to 10). He also bought the child's clothing and paid all of the doctor's bills and other expenses (p. 52, ll. 12 to 16). He was in perfect health at the time of the accident (p. 52, ll. 17 to 20), and according to the mortality tables, had an expectancy of life of approximately thirty-six years (p. 55, ll. 14 to 20). His salary was also testified to by Mr. Hassinger of the Firemen's Insurance Company on page 66.

**Point I.**

THE COURT PROPERLY REFUSED TO GRANT A NON-SUIT.

At the close of the plaintiff's case there was an abundance of evidence to prove the negligence of the defendant in the respects as set forth in the plaintiff's complaint.

The first witness produced by the plaintiff was Edwin Willie, a boy twelve years of age, who testified to the collision taking place. He says that the bus was first on the right side of Park avenue (p. 13, ll. 24 to 25), and that apparently in an attempt to avoid the accident, swung over to the left side of the road, where it was struck by the Ford car driven by the defendant (p. 13, ll. 16 to 24). After the happening of the accident the bus lay near the gutter of the south side of Park avenue past Fifth street (p. 22, ll. 17 to 26).

Emma H. McGall was one of the passengers in the automobile bus and was seated on the left hand side toward the rear (p. 26, ll. 15 to 17). The accident happened at about dusk (p. 27, ll. 23 to 26), and she did not see the Ford car until it was very close, her attention being first attracted to it by exclamations of alarm made by the other passengers in the bus (p. 26, ll. 28 to 34). The Ford car ran into and struck the side of the automobile bus toward the front part (p. 27, ll. 34 to 40).

Mary L. Twining was also a passenger of the automobile bus and was seated in the best possible position to obtain a view of all that occurred, being seated on the left hand side of the bus in the center, which would make her face the di-

rection from which the Ford car came (p. 34, l. 1).

Q Where were you at the time?

A I was on the left hand side of the car in the center, about the middle woman in the center car.

Q On which side, on the right or left?

A Left hand side.

Her testimony as to the occurrence of the accident and the cause of it is clear and convincing and can be best told in her own words (p. 34, l. 24).

Q Tell us the condition of light at the time. How far could you see?

A Well, I was talking to a friend, and was very much interested about the theatre, and we had stopped for a moment after we turned and we seemed almost in the middle of the street and I looked up Fifth street and I saw this Ford car coming.

Q How far away was it?

A It was about from that wall to that wall, about that distance, I should think, when I saw it (indicating).

Q Indicating 100 feet?

A From one wall to the other, about that distance, and, of course, I saw it because I was on this side and the car was coming right straight forward.

Q Did you have any difficulty at all in seeing it?

A No, not at all.

Q Plenty of light for you to see it that far?

A Plenty of light.

Q Could you have seen further if need be?

A Yes, but after I was looking so at this

car which was coming toward us and I knew there was no escape.

Q At what speed was it coming?

A As fast as it could go. I think the driver tried to swerve, I think he tried to get over to the gutter and I think we were right to the center when he saw this car and I think he was trying to get to the gutter.

Q Was your bus struck?

A It was, certainly was.

Q By what?

A By the Ford car.

Q What part of your bus did the Ford car strike?

A What do you call that?

Q The mud guard.

A Yes, right up where the two drivers sat, the driver and the gentleman that was killed.

Q That gentleman that was killed you learned later was Mr. Young?

A Yes.

Again on page 36, line 16:

Q Do you know whether or not there were any lights on either the bus or the Ford?

A I don't. I didn't notice the Ford. I didn't notice about the lights. I could see what happened without any light. It was half-past five and it wasn't so very dark that you could not see anything that happened.

Again on page 37, line 1:

Q Now, I want you to tell us with reference to Fifth street, whether it was past Fifth street towards West Orange or

whether it was approaching Fifth street on the Newark side of Fifth street?

A I should judge we had just got across the street, but I am not positive of that. I think we had just got across.

The witness on cross-examination says that the automobile bus was going at a usual rate of speed, nothing out of the ordinary (p. 37, l. 46):

Q You didn't notice where you were going and how fast you were going?

A No, sir, I didn't notice that. We were going at a pretty good speed like most of them go. They go pretty quickly but nothing out of the way.

Page 38, line 1:

Q This bus was going pretty quickly?

A Yes, but not out of the way.

The witness further on cross-examination, on page 40, line 20, says:

Q The bus was struck on the right hand side?

A Yes.

Q You felt the impact as it was struck?

A Yes.

Q Did it turn over immediately?

A Yes.

Q Went right straight over?

A Yes.

Q It didn't careen?

A No, because I went on my back, so it must have went straight over and I couldn't get up.

On page 42, line 10, the witness in answer to the question in reference to the speed of the bus, says:

Q It hadn't slackened up at all?

A No. I felt as if he was trying to get out of the way. Of course, I may be mis-

taken. I don't know. I think that is why he went over to the left.

Q The Ford car didn't slack up at all?

A Not at all.

Q That kept right on?

A Yes, sir, on at a terrible gait.

Q Going very fast?

A Very fast. I just had time to say one word from that distance until we was struck. I said, "The Lord have mercy on us," and we all went over and the women in front fell on top of me and all the women that were on that side were very much hurt.

The only other passenger of the automobile bus who testified was Alice E. Larue, who was seated in the front on the right hand side of the bus (p. 42, ll. 37 to 40), who said that it was just commencing to get dark (p. 43, ll. 16 to 18), and that she sat looking around so that she was facing the direction from which the Ford car came (p. 43, ll. 19 to 20; ll. 24 to 26).

In answer to the question as to what part of the road the automobile bus was in, she says (p. 43, l. 30):

Q No, as you came on Park avenue?

A Well, we came out, we were towards the left center, I should say. We were not over in the right as much because there was a machine came over the bridge and we couldn't get over.

The Ford car was approximately half a block away when this witness first saw it (p. 44, ll. 14 to 20).

The Ford car ran into the side of the automobile bus (p. 45, ll. 18 to 24). (See also Exhibits P. 3 and P. 4), and the bus turned over immediately after it was struck by the Ford car (p. 45, ll. 27 to 30). After the accident the auto-

mobile bus lay past Fifth street towards West Orange, having entirely cleared Fifth street (p. 46, ll. 1 and 2).

It was upon this state of facts that the defendant moved for a non-suit, the refusal of which he now contends was error. There can be no question but that the proof on the part of the plaintiff showed that the defendant was driving his automobile at an excessive rate of speed, going, as the witness says, "at a terrible gait;" that there was nothing to obstruct his view from Fifth street up Park avenue, as the witness in the automobile bus saw the Ford car when it was fully half a block away. Park avenue at the place of the accident was approximately sixty feet wide and the testimony is undisputed that the automobile bus was being driven a little bit left of the center of the road, so that instead of violating any of the rights of the defendant, it gave him more of an opportunity to avoid the accident had he exercised due diligent care.

The testimony and the exhibits show beyond a doubt that the Ford car struck and ran into the side of the automobile bus, Exhibits P. 3 and P. 4, showing a large mark on the side of the automobile bus immediately to the rear of the front wheel. The bus immediately turned over and lay entirely past Fifth street and very close to the left hand gutter on Park avenue, showing that it had cleared Fifth street and was entirely past this thoroughfare at the time the collision actually occurred.

The duty of a driver of an automobile is stated by Justice Kalisch in his opinion in the case of *Pool v. Brown*, 98 Atl., 262, in which, on page 263, he says:

"The driver of the automobile was under a legal duty to use reasonable care to avoid

colliding with other vehicles or persons in the public highway. His duty was to be on the alert to observe persons who were in the street or about to cross the street and to use reasonable care to avoid colliding with them. He was under a duty to have his automobile under proper control. He was under an obligation to take notice of the conditions existing in the public street and to propel his car in a manner suitable to those conditions."

It is respectfully insisted that the defendant in this case did not use reasonable care to avoid colliding with the automobile bus; that he did not even observe it as it was his duty to do, nor did he have his own car under proper control, all of which is shown by the evidence.

The Court properly refused to grant a nonsuit.

## Point II.

### THE COURT PROPERLY REFUSED TO DIRECT A VERDICT.

The evidence on behalf of the defendant consisted of his own testimony and that of Miss Schwarz, who was riding with him at the time, as to the actual occurrence of the accident, and three other witnesses in reference to the position of the bus after the accident had happened.

The defendant, William A. Traud, says that he was only going at the rate of three or four miles an hour (p. 59, ll. 34 to 40), and on page 60, l. 14, he tells his story as follows:

Q State whether or not you came to a full stop.

A I don't think I hardly stopped, but I had to go into low gear. The car was run-

ning very slow and practically stopped and then I started to cross the street and I looked toward Orange to see if any cars were coming that way, and I didn't see any, and the first thing I knew I heard this young lady holler. I had to turn there. I knew there wasn't anything coming from my right so I tried to turn to the right and with that the bus hit us, threw my car around and part of the bus hit me in the arm and we got out. I didn't know there was anybody in the bus. It looked to me like a delivery car. After I had gotten out of the car, the ladies began to scream and the firemen came over and started taking them out.

Again on page 61, line 16:

Q What called your attention to the bus?

A When the young lady hollered that is the first I heard.

Q And then it was right on you?

A Right on top of us. I saw it out of the corner of my eye and it was about two or three feet away.

The story of the defendant is a conflicting one and on his direct examination he indicates that he looked merely to the right. On his cross examination he testifies that he looked also to the left.

Page 72, line 34:

Q Then you did look as you came up Park avenue, you looked to the left for vehicles?

A I did.

And he also admits (p. 73, l. 4) that there was a perfectly open field and nothing to prevent a clear view.

Q Perfectly open field, nothing to hide your view?

A Nothing.

Q And there is no reason why you could not have seen all these vehicles between Fourth street and Fifth street?

A No.

The defendant then testifies to the fact that he could stop his car within two or three feet (p. 73, l. 28).

Q But if you had observed the bus, you could have stopped your car within two or three feet?

A If I had seen it I could have.

Q If you had seen it you could have stopped within two or three feet?

A Yes.

It is perfectly apparent from this testimony that the reason that the accident occurred was that the defendant failed to observe the other vehicle which was coming toward him on Park avenue. There can be no dispute as to this point because the testimony is clear and concise and admissions are made by the defendant himself. Had he observed the other vehicles upon the highway and used reasonable care to prevent his car from colliding with any other, the accident would never have occurred.

The only other witness produced on behalf of the defendant as to the actual occurrence of the accident was Miss Schwarz who was riding with the defendant at the time.

On page 87, line 28, she says that she first saw the bus when the Ford car was three or four feet away over Park avenue.

Q Just where was the Ford car when you saw the bus?

A Why, it was three or four feet away over Park avenue.

Q How fast was the Ford car going?

A Why, very slowly.

On page 88 the witness indicates that the bus was approximately 4 or 5 feet away from her when she first saw it.

It must be remembered that Park avenue at this point is sixty feet wide between curb lines and that if the witness first saw the automobile bus when they had gone three or four feet over Park avenue, the bus must have been approximately twenty-four feet away, because the undisputed evidence is that the bus was to the left of the center of the road.

The other witnesses for the defendant simply testified as to the position of the automobile bus after the accident. There seems to be no dispute that the automobile bus lay on the southerly side of Park avenue within a few feet of the southerly curb line, and about 30 to 40 feet past Fifth avenue, toward Orange.

The defendant in his case admitted that he failed to observe the automobile bus, but denies that he was going at an excessive rate of speed as testified to by the plaintiff's witnesses. He denied that the condition of light was as testified to by the plaintiff's witnesses and his contention was that his car did not actually strike or run into the automobile bus, but that the automobile bus veered sharply to the right and ran into his car, so that taking all the facts into consideration there was conflicting testimony on both sides in regard to the way the accident actually happened.

Where there is conflicting testimony on both sides in regard to a disputed fact it is a proper question for the decision of the jury, and this Court will not disturb their verdict.

*Bank v. King*, 14 N. J. L. 45.

*Knickerbocker Ice Co. v. Anderson*, 2 Vr. 333.

*Consolidated Traction Co. v. Reeves*, 58 N. J. L. 573.

*Bennett v. Bush*, 75 N. J. L. 240.

*Steterstorm v. Dietrich Import Co.*, 73 Atl. 65.

*Garret v. Driver Harris Wire Co.*, 70 N. J. L. 382.

*Spargo v. Central Railroad Co.*, 86 Atl. 385.

*Scott v. Blakely*, 90 Atl. 317.

*Rabinowitz v. Hawthorne*, 98 Atl. 315.

*Pool v. Brown*, 98 Atl. 262.

While in the last above cited case Justice Kalisch quotes and follows the case of *Fox v. Great Atlantic & Pacific Tea Company*, 84 N. J. L. 728, in which case the Court quoted with approval the statement made by Mr. Thompson in his work on "Negligence" (p. 728). The rule is well stated in 1 Thomp. Negl. Par. 1322. The learned author says:

"Cases of collision on highways almost invariably involve questions of concurrent negligence on the part of both the actors. As the circumstances attending such injuries are within the range of every-day observation and experience the question of contributory negligence, in these cases is in a peculiar sense a question for a jury, though, of course, within the limits of the principle that there must be evidence reasonably tending to that conclusion, and subject also to the rule that, in cases where the evidence tends only to that conclusion, the judge can decide it as a matter of law."

The defendant then offered in evidence an ordinance of the City of Newark in reference to the right of way at intersecting streets (see p. 123, state of case) and contended that it became

the duty of the driver of the automobile bus to stop and permit the defendant to proceed, and that the defendant had a right to assume that the driver of the bus would stop his vehicle.

The authorities cited by the defendant are clearly not applicable to the situation as it occurred in this case and do not establish the point contended by the defendant.

According to all of the evidence it was quite clear and apparent that the driver of the automobile bus did not intend to stop; that he had reached the intersection of the two streets prior to the defendant and had noticed the approach of a Ford car. In order to avoid the accident, he swung to the left hand side of the road, thereby giving the defendant ample opportunity to stop his car or change his direction and thereby avoid the collision. Had the defendant used reasonable care in operating his car or had he observed the automobile bus, as he was in duty bound to do, for there was nothing to obstruct his view, the accident would not have occurred, because the defendant himself says he could have stopped his car within two or three feet.

The contention of the defendant is that because of the ordinance in question he had a right to assume that he would have the right of way and he could, therefore, absolutely ignore any other vehicles upon the highway at this point and proceed regardless of their presence or position; not even being obliged to look for any other vehicle.

In other words because of the ordinance in question he was relieved of the responsibility of acting as a careful and prudent man.

It is respectfully insisted that the ordinance gives no such right to him, nor does it create such a situation.

This apparently is the law as stated in the case of *Pool v. Brown*, 98 Atl., p. 262, in which the court on p. 264, says:

“Under the traffic law of this state, the driver of a vehicle is required to pass the vehicle ahead of him to the left. That requirement, however, is subject to the conditions existing in the highway and does not relieve the driver of the passing vehicle from the duty of exercising reasonable care to ascertain whether he can pass the vehicle ahead with safety to other vehicles or pedestrians which or who may happen to be on the life side of the street.”

The Court therein cites the case of *Smith v. Barnard*, 82 N. J. L. 468 and then continues:

“From what has been said, it is manifest that the question, whether or not the appellant had acted with reasonable care in the circumstances which confronted him at the time he made the attempt to cross the street, was one for the jury and not for the court to pass upon.

The automobile bus was practically across Fifth street when the collision actually occurred. This is clearly shown by the fact that the Ford car struck the bus in the side, indicating that the automobile bus must have reached the point of intersection first. It was therefore, not negligent for the automobile bus to continue.

*Earle v. Consolidated Traction Co.*, 46 N. J. L. 573.

.. *Rabinowitz v. Hawthorne*, 98 Atl. 315.

Even assuming that the driver was negligent the result would not be altered because his negligence is not imputable to Young, who was a passenger. (See Point III).

**Point III.**

THE NEGLIGENCE OF THE DRIVER OF THE AUTOMOBILE BUS WAS NOT IMPUTABLE OR ATTRIBUTABLE TO FRANK C. YOUNG, WHO WAS A PASSENGER.

It is admitted by the defendant that Frank C. Young was a passenger on the automobile bus in question. It is therefore contended that even though the driver of the bus was negligent this negligence is not attributable to the plaintiff's intestate Frank C. Young.

The situation is covered fully in the case of *N. Y., L. E. & W. R. R. Co. v. Steinbrenner*, 47 N. J. L., 161, Court of Errors and Appeals case, opinion by Justice Depue, wherein the court holds that the negligence of the driver, without some co-operating negligence on his part, cannot be imputed to the passenger in virtue of the simple act of hiring.

The same rule is laid down in the case of *Bennett v. N. J. R. R. & T. Co.*, 36 N. J. L., 225, both of which cases are cited and followed in *Mittelsdorfer v. West Jersey & Sea Shore R. R. Co.*, 77 N. J. L. 698, wherein the Court on p. 700, says:

“One who, while riding in the private conveyance of another, is injured by the negligence of a third party, may recover against the latter, notwithstanding that the negligence of the driver of the conveyance, in driving his team, contributes to the injury, where the person injured is without fault and has no authority over the driver. See cases collected in note to 3 Am. & Eng. Anno. Cas. 703.”

*Horandt v. Central R. R. Co.*, 78 N. J. L. 190.

*Rodenberg v. Clinton Auto & Garage Co.,*  
84 N. J. L. 55.

The rule of law as laid down in the above cases is conceded to be correct by the appellant in his brief and in making this concession he cites some of the above cases.

The appellant's argument is that it became the duty of the plaintiff's intestate to request the driver of the automobile bus to stop and that there is a presumption that had such a request been made the driver would have stopped.

It is respectfully insisted that the cases above cited do not hold that there was any duty upon the plaintiff's intestate to make any such request and we fail to see where the presumption, that the driver would stop if he were so requested, could arise, because Frank C. Young had absolutely no control over the driver and the driver was under no obligation to follow his directions.

Even assuming the contention of the appellant to be correct the burden of proof is upon him to prove that the plaintiff's intestate failed to do the things which he alleges should have been done. There is absolutely no proof in the case upon this point and the contributory negligence of the plaintiff's intestate will not be assumed as the appellant contends.

**Point IV.**

THE CHARGE OF THE COURT THAT THE JURY COULD NOT FIND THE PLAINTIFF'S INTESTATE GUILTY OF CONTRIBUTORY NEGLIGENCE UNLESS SUCH FACT WAS ESTABLISHED BY THE EVIDENCE OF THE DEFENDANT WAS HARMLESS ERROR AND NOT REVIEWABLE BY THIS COURT.

The defendant's contention in this regard is made under Points III, IV and V, the first part of which we have covered under Point III of this brief.

The part of the charge objected to is found on p. 108, state of case, in which the court says:

"Gentlemen, I so charge you, but you must recollect in applying that rule that the burden of proving the contributory negligence of Frank C. Young is on the defendant and that there is no assumption that he was negligent unless such fact is established to your satisfaction by the evidence of the defendant."

If this be error then it is harmless for it is cured by the subsequent remarks of the court on p. 109, which reads:

"That, gentlemen, I cannot charge because the question of contributory negligence of Frank C. Young is a question for your determination and you must say from all this evidence whether or not there was any contributory negligence shown on the part of the plaintiff's intestate."

Furthermore, a close examination of the plaintiff's case fails to disclose a shred of evidence showing or tending to show negligence on the part of the plaintiff's intestate, therefore if such

negligence is to be found it must be in the defendant's evidence.

The counsel for the defendant made no objection to this part of the court's charge which he now alleges is error, nor did he even constitute it as one of his grounds of appeal. (See Grounds of Appeal, pp. 120 to 122). Therefore, there is no legal question on this point for this court to consider.

*Coppola v. Grande*, 96 Atl. 67.

*Kargma v. Carlo*, 86 N. J. L. 362.

*Miller v. Del. River Trans. Co.*, 85 N. J. L.

700

### Point V.

THE CHARGE OF THE COURT AS TO THE EQUAL RIGHTS OF THE PARTIES TO USE THE STREETS AND AS TO THE FAILURE TO FORESEE DANGER AS BEING THE TEST OF NEGLIGENCE WAS NOT ERRONEOUS.

These points are covered by the appellant in his brief under Points VI, VII, VIII and IX. That part of the court's charge in reference to the defendant's reliance upon the ordinance and the legal effect of that ordinance has already herein been covered. The other part of the court's charge which the appellant is now objecting to is found on p. 102, in which the court says:

"Both streets were public thoroughfares and the vehicles had an equal right to use the streets."

It is insisted that this is a correct rule of law and a doctrine which is almost elementary.

It is recognized by this court in the case of *Pool v. Brown, supra*, in which the court, on p. 263 says:

“He had a right to rely on the driver of the automobile respecting his (the appellant’s) equal right in the street, and that the driver would control his car accordingly, and would use reasonable care to avoid running it against the appellant.”

The other portion of the court’s charge to which the appellant excepted and contends was erroneous is found on p. 103, in which the court says:

“Negligence is not the only overt act that produced the injury complained of, but may be the failure to foresee the danger likely to result from the duty of not acting. Danger reasonably to be foreseen at the time of acting is the established test of negligence.”

This is exactly the law as stated by this court in the case of *Evers v. Davis*, 86 N. J. L., 196, in which the court through Justice Garrison, on p. 202, says:

“A fact constantly to be borne in mind in tracing the legal effect of such statutes is that the negligence that is essential to the action of negligence is not solely in the overt act that produced the injury complained of, but may lie in the failure to foresee the danger likely to result from the doing of such act. ‘Danger, reasonably to be foreseen at the time of acting, is the established test of negligence,’ says the writer already cited.”

It is, therefore, respectfully contended that the court in this respect properly charged the jury and that there was no error harmful to the appellant.

**Point VI.**

For the reasons herein stated it is respectfully insisted that there was no error at the trial; that all the evidence and admissions of the defendant clearly showed his negligence and that the verdict was in accordance with the weight of the evidence and the charge of the court and should be sustained.

Respectfully submitted,

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