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Summons.

Filed 9/26/33.

Served 10/10/33.

10

The State of New Jersey to: Joseph P. Walsh.

You Are Hereby Summoned to answer the annexed complaint of Hartus Wilkinson, in an action at law in the Essex County Circuit Court. And take notice that unless you file your answer to said Complaint with the Clerk of the Essex County Circuit Court, at Newark, New Jersey, 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.

20

Witness, WORRALL F. MOUNTAIN, Judge of the Essex County Circuit Court, at Newark, this 26th day of September, Nineteen Hundred and Thirty-three.

JOHN H. SCOTT,

Clerk.

30

HARVEY G. STEVENSON,
Attorney for Plaintiff.

Complaint.

Filed 9/26/33.

ESSEX COUNTY CIRCUIT COURT.

10	HARTUS WILKINSON Plaintiff,	}	Action at Law
	vs.		
	JOSEPH P. WALSH, Defendant.		

Plaintiff residing in the City of East Orange, County of Essex and State of New Jersey, respectfully says that:

20 1. On or about August 3rd, 1932, plaintiff was the owner and operator of an automobile which was proceeding in a general easterly direction on the Lincoln Highway, on the bridge crossing the Hackensack River, Kearny, New Jersey.

2. At or about the same time, the defendant was the owner and operator of an automobile which was proceeding in a general westerly direction on said Lincoln Highway as aforesaid.

30 3. The defendant operated his automobile carelessly, recklessly and negligently, at a high and excessive rate of speed, without having said automobile under control, without regard for the rights of the plaintiff on said highway, on the wrong side of the highway, and otherwise, carelessly, negligently and contrary to the statute in such case made and provided, so as to collide with and damage the plaintiff's automobile.

40

Complaint.

4. As a result of the aforesaid negligence of the defendant and the resulting collision, plaintiff's automobile was damaged and depreciated greatly in value.

Wherefore, plaintiff demands of the defendant, the sum of Two Thousand (\$2,000.00) Dollars, together with costs of suit.

10

HARVEY G. STEVENSON,
Attorney for Plaintiff.

Answer.

Filed 11/16/33.

ESSEX COUNTY CIRCUIT COURT.

20

HARTUS WILKINSON
Plaintiff,

vs.

JOSEPH P. WALSH,
Defendant.

Action at Law

30

Defendant by way of answer to the complaint in the above entitled case says:

1. Defendant has no knowledge or information sufficient to form a belief as to the allegations in paragraph 1 of the complaint and leaves plaintiff to his proof thereof.

2. Defendant admits paragraph 2 of the complaint.

40

Answer.

3. Defendant denies paragraph 3 of the complaint.

4. Defendant denies paragraph 4 of the complaint.

FIRST SEPARATE DEFENSE.

10 Defendant avers that the collision complained of was caused by reason of the plaintiff at the time and place stated operating his automobile in a careless, reckless and negligent manner and not exercising care or taking proper precautions.

SECOND SEPARATE DEFENSE.

20 Plaintiff was guilty of contributory negligence which was the producing cause of the plaintiff's damage, if any.

THIRD SEPARATE DEFENSE.

The accident was caused by the negligence of the owner of an automobile which was proceeding in a westerly direction on Lincoln Highway and which struck defendant's automobile causing it to collide with the automobile of the plaintiff.

WILLIAM J. McCORMACK,
Attorney for Defendant.

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Reply.

Filed 11/22/33.

ESSEX COUNTY CIRCUIT COURT.

HARTUS WILKINSON
Plaintiff,

vs.

JOSEPH P. WALSH,
Defendant.

} Action at Law 10

The plaintiff by way of reply to the answer of the defendant, respectfully says that:

1. He denies each and every allegation contained in said Answer excepting so much thereof as admits the allegations contained in the complaint and he joins issue with the defendant. 20

HARVEY G. STEVENSON,
Attorney for Plaintiff.

30

40

Notice and Grounds of Appeal.

Filed 11/27/34.

Served 11/26/34.

ESSEX COUNTY CIRCUIT COURT.

10

HARTUS R. WILKINSON,
Plaintiff,

vs.

JOSEPH P. WALSH,
Defendant.

Action at Law

To WILLIAM J. McCORMACK, Esq.,
Attorney for Joseph P. Walsh.

20 Take Notice, that the plaintiff appeals to the Court of Errors and Appeals of the State of New Jersey, from the whole of the judgment entered in this case upon the following ground:

The trial court directed a verdict in favor of the defendant and against the plaintiff over the objection of the said plaintiff, whereas said trial Judge should have submitted the case to the Jury for its verdict.

30

HARVEY G. STEVENSON,
Attorney for Plaintiff.

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Testimony.

ESSEX COUNTY CIRCUIT COURT.

Tuesday, October 23, 1934.

HARTUS WILKINSON
Plaintiff,

vs.

JOSEPH P. WALSH,
Defendant.

} Action at Law 10

Before—HON. JOSEPH L. SMITH, J., and a jury.

For the plaintiff appears HARVEY G. STEVENSON (by SAMUEL WEITZMAN).

For the defendant appears WILLIAM J. MCCORMACK. 20

A jury is called and sworn.

Mr. Weitzman opens for plaintiff.

Mr. McCormack opens for defendant.

Mr. Weitzman: Is there any objection to my calling the mechanic first, so he can get away? 30

Mr. McCormack: Not on my part.

RAGNEALD ROSENBERG sworn in behalf of plaintiff.
Direct-examination by Mr. Weitzman:

Q. Mr. Rosenberg, in August, 1932, by whom

40

Ragneald Rosenberg—Direct.

were you employed? A. Pierce-Arrow Auto Sales Corporation.

Q. What branch? A. Newark Branch.

Q. What was your job there? A. Well, I was a tester, service salesman, also supervising the work—see that the work was being done properly, and also making up estimates on accident jobs and different kind of jobs coming in.

Q. How long have you been in that line of business? A. For the last sixteen years.

Q. For how long have you been with the Pierce-Arrow people? A. For the last sixteen years I have been with them.

Q. Did you have occasion to see the automobile owned by Mr. Hartus Wilkinson after this accident? A. Yes.

Q. Where did you see it? A. In our shop.

Q. Had it been towed into your shop? A. It was towed into our shop, yes, and I made up the estimate.

Q. Do you have a copy of that estimate with you that you submitted, or the original? A. Well, I have one copy here (handing paper to Mr. Weitzman).

Q. This is the one with the cost of the individual items, is that right? A. Yes.

Q. Would you compare that with this that was submitted to Mr. Wilkinson? A. That is the same kind.

Q. Have you seen both of these before? A. Yes.

Q. And they are both identical? A. Yes.

Q. These items of damage were seen by you on the Wilkinson car, were they? A. Yes, they were all done by flat rates. We have flat rates on the different items.

Q. And the items charged on here are the flat

Ragneald Rosenberg—Cross.

rates for Pierce-Arrow repairs? A. That is what it would cost to have the car repaired at that time.

Q. Were all these damages occasioned by an accident, so far as you can say? A. As far as I could see, I should say so.

Mr. Weitzman: I offer this in evidence. 10

Mr. McCormack: No objection.

(The paper referred to is received in evidence and marked Exhibit P-1.)

The Court: What is the total amount of the estimate?

Mr. Weitzman: \$1121.90.

Q. Was the car ever repaired—I mean for Mr. Wilkinson? A. No, it wasn't repaired for Mr. Wilkinson.

Q. Was it traded in? A. It was traded in for a new car, and we repaired it and sold it as a used car. 20

Cross-examination by Mr. McCormack:

Q. When was it traded in, Mr. Rosenberg? A. Well, that I couldn't say.

Q. Haven't you any record as to when it was traded in? A. I think Mr. Wilkinson will tell you that. 30

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

By the Court:

Q. What was the amount of repairs that you charged against the car that you made to it to place it in the second-hand market? A. Well, your Honor, that is kind of hard for me to say.

Q. You were in charge—you were the service manager, weren't you? A. Well, you see, as far 40

Ragneald Rosenberg—Redirect.

as we are concerned in the Service Department, the Used Car Department takes it over. Of course if we repair it in the shop—

Q. Did you repair it in the shop? A. We did.

10 Q. What did your company charge for the repairs that were made to it before you put it in the used car department? A. Well, that is kind of hard for me to answer. I couldn't say.

Q. Don't you know? A. Well, you see, of course, it wouldn't cost us \$1100 ourselves, because I think they figure cost plus 50% on used cars. I think that is what they figure.

Q. 50% of this would be what you would charge before you would put in the used car department? A. Well, I wouldn't say that. Probably it may be more than that—probably about \$700.

20 Q. That is the best estimate you can give? A. That is the best estimate I could give.

Redirect-examination by Mr. Weitzman:

Q. Mr. Rosenberg, the Pierce-Arrow Company has gone out of business, hasn't it? A. We have gone out of business.

Q. Their records are not available to you, are they? A. No, I can't get them, no.

30 Q. What is the charge on this bill? What would be the charge to the owner of a Pierce-Arrow car? A. That is what Mr. Wilkinson would have been charged to have his car fixed. That is what it would have cost to have it fixed at that time.

By the Court:

Q. What model car was this? A. 54.

Q. What kind of body? A. Sedan.

Hartus Wilkinson—Direct.

Q. Five or seven-passenger? A. Five passenger.

Q. What is the depreciation on a new car the first year? A. Well, I wouldn't be able to answer that, your Honor.

Q. Don't you know anything about the values of used cars? A. Not much, no. That all depends on the condition of the car and also the mileage. 10

Q. Do you know what the mileage of this car was? A. I think it was between eleven and twelve thousand miles at that time when Mr. Wilkinson had the accident.

By Mr. Weitzman:

Q. You are not in the used car department, are you? A. No, I am not. I am in the repair department. 20

HARTUS WILKINSON, plaintiff, sworn in his own behalf.

Direct-examination by Mr. Weitzman:

Q. Where do you live, Mr. Wilkinson? A. 64 Newfield Street, East Orange.

Q. Is that where you lived on August 3, 1932? A. At that time I was at my summer residence in Beacon Beach. 30

Q. Your home is in East Orange—your regular home? A. Yes.

By the Court:

Q. Where is Beacon Beach, Mr. Wilkinson? A. It is a part of Keansburg.

Hartus Wilkinson—Direct.

By Mr. Weitzman:

Q. Did you own an automobile on that date?

A. I did.

Q. What kind of car was it? A. A 1931 Pierce-Arrow sedan, five-passenger.

Q. When had it been purchased, do you know?

10 A. In January, 1932.

Q. How much had you paid for it? A. I think it was \$3175.

Q. Up to the time of this accident about how far had it gone? A. Approximately 12,000 miles.

Q. What was the general condition of the car?

A. First class.

By the Court:

Q. Did you buy it new? A. Yes, sir.

20 *By Mr. Weitzman:*

Q. On the day of this accident where were you bound for? A. New York.

Q. What road were you taking? A. I beg your pardon?

Q. Which road were you taking? A. The Lincoln Highway, near the Federal Ship Yards.

Q. Who else was in the car with you? A. My wife and a friend, Mr. Erickson.

30 Q. Were you driving? A. Yes.

Q. Where was your wife seated? A. On my right.

Q. In the front seat? A. Yes.

Q. And Mr. Erickson? A. In the rear seat.

Q. What was the condition of the weather on that day, Mr. Wilkinson? A. A wet morning.

Q. Was it raining? A. It was raining all morning.

40 Q. About what time did this accident take place? A. About 8:15.

Hartus Wilkinson—Direct.

Q. Where did it take place? A. On the Hackensack Bridge, on the Lincoln Highway.

Q. As you entered the bridge on what side of the road were you traveling? A. Right hand side, approximately, I would say, 4 or 5 feet from the girders which protect the sidewalk.

Q. Was there any traffic or anything to your right? A. Nothing. 10

Q. About how fast were you going? A. About 20 to 25 miles an hour.

Q. Where were you bound for at the time? A. New York.

Q. Your place of business? A. Yes, sir.

Q. Will you tell us exactly what happened in your own words as you started to go over that bridge? A. As I entered the bridge I would say I was approximately 40 or 50 feet on the bridge. Coming on the left hand side was a car. I don't recall whether it was a sedan. It was some kind of a closed car, and a little way behind it was a second car. 20

Q. If I may interrupt you, on what part of their side of the road were these two cars traveling? A. They was on the regular—well, they were on their side of the road.

Q. There was one directly in back of the other? A. Yes, one straight behind the other when I saw them. 30

Q. What was behind the two cars? A. That I am not positive of.

Q. What is that? A. I believe it was a truck, but I am not positive. The only ones I really visualized was these two cars.

Q. Then what happened? A. It seemed to me—

Q. No, just tell us what you saw. A. Oh, what I saw was that the first one seemed to slow up a 40

Hartus Wilkinson—Direct.

little, and the second one evidently couldn't slow up or couldn't stop in time, and he came out in back of the car—

Mr. McCormack: Just a minute.

10 Q. Let me caution you again. Don't tell us what you thought or what your conclusions are about what evidently happened; just tell us what you saw happen. A. The second car came out from behind the first.

Q. How did he come out? A. The right hand side of the second car hit the mudguard of the front car as he came out. Then he came across the road like that (indicating) into me.

20 Q. What part of your car was struck? A. He hit me at the back of the front mudguard, raked me down the side, which caused me to swerve around.

Q. Then what happened to your car? A. It crashed into the Mack truck.

Q. What side crashed into the Mack truck? A. My right front wheel hit the Mack truck first that way (indicating) and crashed on the side.

30 Q. At the time you were struck were you still in the same position on the roadway as you had been when you entered that bridge? A. I swerved over as much as I could when I saw him coming across.

Q. You swerved in which direction? A. To the right, as much as I could, to try and avoid him, and I couldn't swerve far, because it happened so quick.

Q. What would you approximate the speed of this car to be that pulled out from behind the other car? A. From 25 to 30 miles an hour.

40 Q. After the accident what did you do? A. I

Hartus Wilkinson—Direct.

called to Mr. Walsh, who was driving the car, to stop.

Q. Was he still moving at that time? A. He was still moving, as if he was going away.

Q. You called out what? A. "Stop."

Q. And what did he do? A. He stopped. Afterward he said he thought it was an officer that called. 10

Q. Who said that? A. Mr. Walsh.

Q. Did you have a conversation with him in respect to the condition of your car? A. Yes.

Q. What was that? A. I don't recall the exact words I said to him.

Q. Before that did he tell you where he was coming from? A. Yes. He said that he had been to take some friends to a boat that was going on an outing, and that he had not driven his car for about six months, and the brakes were no good. 20

Q. What was the last thing? I didn't hear what you said. A. The brakes were no good—the brakes didn't work. He said it was the first time he had driven the car for about six months.

Q. Where was your car taken after the accident? A. I managed under its own power to get it off the bridge, which an officer ordered me to do, and I telephoned to the Pierce-Arrow place, and they sent a wrecking truck. 30

Q. Did they prepare this estimate that has been put in evidence for you? A. They prepared an estimate for me.

Q. Did you trade the car in? A. I did.

Q. What was allowed to you on the trade-in? A. \$1670 and some odd dollars.

Q. 1670 odd dollars? A. Yes.

Q. I believe the exact figure was \$1689. Does that refresh your recollection? A. Well, I have 40

Hartus Wilkinson—Cross.

a copy of it in my pocket here. I can tell you the exact amount.

Q. Take it out. A. \$1689.

Q. When did you trade that car in, or how soon after the accident? A. At the end of a week.

Q. The end of that week? A. Yes. That was the 6th. I bought a new car.

10 Q. In your opinion what was your car worth before the accident, before it was damaged? A. About twenty-seven or twenty-eight hundred dollars.

Q. It was about six or seven months old at that time? A. Yes. I bought it on—I believe it was January 3 or January 5.

Q. Of that same year? A. Of that same year.

20 *Cross-examination by Mr. McCormack:*

Q. You paid how much for that car, Mr. Wilkinson? A. I beg your pardon?

Q. You paid how much for that car? A. \$3100—3175.

Q. You feel it only depreciated about \$375 before the accident? A. I do.

Q. Had you had any experience in buying and selling Pierce-Arrow cars before? A. No.

30 Q. Do you know anything about the first year's depreciation on a car? A. No. I considered what it was worth to me.

Q. You don't figure that as market value—that is what it was worth to you, is that right? A. That is what it was worth to me.

Q. Not what the market value was? A. I don't know what the market value would be.

Q. You were going where, Mr. Wilkinson? A. New York.

40

Hartus Wilkinson—Cross.

Q. Your place of business is in New York? A. Yes.

Q. You were going to your place of business? A. Yes.

Q. And as you got on the Hackensack River Bridge were there any other cars ahead of you going in the same direction you were? A. I don't recall.

10

Q. Did you see any other cars ahead of you as you got on the bridge, going in the same direction that you were? A. I don't remember seeing any cars.

Q. When you first got on the bridge did you see the Walsh car at that time? A. I beg your pardon?

Q. When you first got on the bridge did you see the Walsh car at that time? A. I saw these two—the second car, which was the Walsh car, and the first one, approaching.

20

Q. When did you first see it? A. Just before the accident I took particular notice of it.

Q. Then you didn't see the Walsh car when you first got on the bridge, is that right? A. I can't say for certain, because driving I don't take any notice of any particular car. You see cars, naturally.

Q. Well, how far away from them would you say you were when you first saw them or first took particular notice of them, if you want to put it that way? A. Well, I took particular notice of them when he started to come out behind the other one.

30

Q. How far away was he from you then? A. I would say about 25 or 30 feet.

Q. He was about 25 or 30 feet away and on which side of the road? A. He was on the left hand side. I was on the right.

40

Hartus Wilkinson—Cross.

Q. You saw him start to skid at that time? A. He started to skid when he came from behind the other car.

Q. About 25 or 30 feet away from you he started to skid, is that right? A. Yes.

Q. And you were doing at that time how much? A. From 20 to 25 miles an hour.

10 Q. Did you see him strike the other car? A. I did.

Q. What part of his car struck what part of the other car? A. I should say the right hand mudguard—it was some part of that.

Q. Struck what part of the other car? A. The left hand mudguard.

By the Court:

20 Q. Is that the front or the rear right? A. Rear.

By Mr. McCormack:

Q. His right rear struck the left rear of the other car? A. That is right.

Q. And that did what to it? A. And he came across the road—skidded across the road.

Q. You are coming down in the opposite direction, are you not? A. Yes.

30 Q. And he is coming toward you? A. Yes.

Q. And you saw these two rears come together distinctly, did you? A. I just saw them touch.

Q. They just barely touched? A. Yes, it was only just a small matter—they just touched.

Q. What happened to the Walsh car then? A. It came on across the road.

Q. Right directly in front of you? A. He skidded right across that way (indicating).

40 Q. Did he come in a circle, half circle, or quarter circle? Did he come straight across at you?

Hartus Wilkinson—Cross.

How did he come? A. He came across at an angle that way (indicating).

Q. With his front or rear? A. His front.

Q. What part of his car did you strike? A. I didn't strike his car; he struck me.

Q. His front struck you where? A. That I am not positive. I know he came into my left hand side. I didn't examine his car. 10

Q. How close were you at that time to these girders that you speak of, at the time the two cars came together, Mr. Wilkinson? A. I should say about 4 or 5 feet.

Q. You then had not swerved over at all, had you? A. You mean when the cars struck?

Q. Yes, when they came together. A. I turned as quick as I could.

Q. Let me have you answer that again. You had not swerved at all then, had you, when the cars came together? A. When he hit me I swerved a little. I turned as much as I possibly could. 20

The Court: That is not the question. Will you kindly answer the question?

(The last question is read by the stenographer.)

A. Yes.

Q. Wasn't it your story that you were about 4 or 5 feet out from these girders as you were first coming down the roadway? Wasn't that your story on direct-examination? A. Yes. 30

Q. Didn't you just say that you were 4 or 5 feet out at the time your car was struck? A. All right. I could be.

Q. Then you had not swerved, or had you? A. Yes, but if I was 5 feet out I could have swerved in 1 foot, which would have made me 4 feet. 40

Hartus Wilkinson—Cross.

Q. So do you say you swerved about 1 foot in?

A. I don't say that. I say I swerved.

Q. How much? A. I don't know.

Q. How far was the nearest side of your car out from the girders at the time the two cars came together? A. I don't know exactly. I didn't measure it.

10 Q. Which way did your car skid after the accident? Did the rear swing around or did the front start swinging? A. As we swung, we came around that way (indicating).

Q. I can't understand you. I don't think the jury can. Will you please tell us, so it is on the record, so the jury, counsel and everyone else understands, which part of your car started to swerve? The front or the rear? A. The front

20 came around to the left, and the rear with it, partly turned around.

Q. The rear turned toward the girders? A. The front was coming around at the same time.

Q. Which part turned the greater, your front or your rear? A. My rear, naturally.

Q. Did it hit the girders? A. No.

Q. Did it continue around? A. Yes.

Q. It made a complete swing, didn't it, before you got down to that truck? A. It went in a half moon.

30 Q. Your front came in contact with the truck, didn't it? A. Yes.

Q. So that after you struck, as you said, your car was coming in this direction (indicating). It was going east, you are in a collision, the rear of your car swings around, does it not? A. Yes.

Q. And you came around into a half moon? A. I came right around, and then I was facing in the way that I came.

40

Hartus Wilkinson—Cross.

Q. Then you made a complete circle, did you not? A. No, a half circle.

Q. Then the front of your car— A. (Interposing) Was facing in the same way as I had been coming from.

Q. Is that the time you collided with the truck? Were you facing the direction that you came from when you collided with the truck? A. I wasn't all the way around. 10

Q. Were you almost all the way around? A. I was almost all the way around.

Q. If you were 4 or 5 feet from these girders at the time this collision occurred, how is it that the rear of your car swung around that way without touching the girders?

Mr. Weitzman: I object to the question as argumentative. 20

The Court: I sustain the objection.

Q. Your car didn't come in contact with the girders at any time, did it, Mr. Wilkinson? A. No.

Q. How far away would you say this truck was at the time the collision occurred? A. I wouldn't say that it was more than 25 feet from the spot where I was standing. It was really the width of the road, you might say, and I considered the road is about 25 feet there between us. 30

Q. Isn't it wider than 25 feet there? A. Well, whatever it is.

Q. There is ample room for four cars on that road at that spot? A. Yes.

Q. Would you say that the truck was about the width of the road behind the Walsh car at the time it came in contact with yours? Is that right? A. No. It was coming along behind the Walsh car. 40

Hartus Wilkinson—Cross.

Q. How far behind the Walsh car was it at the time your car and Walsh's came together? A. Well, the Mack truck was right on the opposite side of the road all that time.

Q. No, at the time your car came together—your car and Walsh's car came together, the Mack truck wasn't there then, was it? A. I wasn't looking at the Mack truck.

Q. All right. You saw it after the accident; you crashed into it, didn't you? A. Yes.

Q. You didn't see the Mack truck then at the time of the collision, is that right? A. Not when Walsh hit me. I was watching him.

Q. Wasn't there in front of Walsh, as he came along, another Mack truck? A. I didn't see any.

Q. You don't know? A. I didn't see any.

Q. You don't know, do you? A. I think I have answered your question.

Mr. McCormack: I think, if the Court please, I am entitled to an answer as to whether the witness knows or not.

The Witness: I said I didn't see any.

Mr. McCormack: That is not answering the question, your Honor. He doesn't know.

The Court: I will sustain the objection.

Q. What sort of car was this that collided with Walsh's before the collision with you, do you know? A. You mean the car that I said—

Q. That Walsh was in collision with before you said he was in collision with you. A. A sedan or a closed car of some kind. It seemed to be a small car.

Q. A black car? A. It was a dark car.

Q. Do you know where he went after he and Walsh came together? A. Just went ahead.

Hartus Wilkinson—Cross.

Q. He didn't stop at all? A. No.

Q. Was this collision between your car and this truck an easy impact, or was it a very hard impact? A. Very hard.

Q. How fast was the truck going, would you say, at the time of this occurrence, or can't you say?

A. I think when I hit the truck, the truck had stopped.

10

Q. So it was standing still? A. I believe so.

Q. You are sure you saw Walsh's car hit the rear of this other car? A. I am sure he touched it.

Q. You are sure they touched? A. Yes.

By the Court:

Q. Mr. Wilkinson, where were you when you yelled "stop"? A. I was out of the car. I got out of the car immediately.

20

Q. Where was the Walsh car when you yelled "stop"? A. It was still off the end of the bridge.

Q. How many feet were you away from the Walsh car? A. I would say about 40 or 50 feet.

A Juror: Your Honor, may I ask a question?

The Court: Yes.

The Juror: Has this been brought out—which part of the left side of his car he damaged?

30

Redirect-examination by Mr. Weitzman:

Q. Will you tell them that, Mr. Wilkinson? A. The impact seemed to be just at the rear of the front mudguard. That was the only part of the left side of that car that was damaged. It raked right down the side, the front mudguard and the running board, and the rear mudguard.

40

Hartus Wilkinson—Redirect.

Q. And the front mudguard ran all the way down the side? A. Yes, it cut me down the side. I don't recall what damage was done to each part, because I didn't examine the car after it went to the shop.

By the Court:

10 Q. What part of Mr. Walsh's car hit you on the side? A. It was his right front part, I believe. I am not positive.

By Mr. Weitzman:

Q. You say his right front. A. No, it would be his left. Excuse me.

By the Court:

20 Q. What makes you say it was his left front if you didn't see it? A. Well, it was the left side of his car.

Q. It was his left rear that came out, wasn't it? A. Well, he came right across the road—the whole car.

Q. Do you know which part of Walsh's car struck you? A. I am not positive.

30 Q. It struck you right where you were sitting, didn't it—the left front mudguard? It is a left hand drive. Weren't you right there? A. Yes, sir.

Q. Didn't you see what part of the Walsh car hit your car? A. No. I was doing my best to get out of his way.

Q. What did you do? A. Tried to swerve as much as I could, and I tried to control the car.

Q. Were you riding in the trolley tracks? A. No, sir.

40 Q. Were you traveling between the trolley

Hartus Wilkinson—Redirect.

tracks? A. I don't know much about trolley tracks there.

Q. Are there any trolley tracks? A. I really don't know, sir.

Q. Do you drive your car to business often? A. Every day.

Q. What way do you go? A. I used to come along that road. 10

Q. And do you mean to tell us that you don't know whether there are any trolley tracks on the Lincoln Highway crossing on that bridge? A. I really don't recall, sir.

Q. Do you know whether there are any trolley tracks along the Lincoln Highway? A. No. I think there is some trolley tracks in the center, farther down.

Q. Is it your impression that they stop when they get to the bridge? A. No. I don't know exactly where they run—through the center of the bridge or on the side. 20

Q. I didn't ask you where they run. I understood you to tell me that you don't know whether there are any trolley tracks on the bridge. Is that correct? A. I couldn't swear to it.

Q. How many times a week did you go over there to New York to your place of business? A. Four or five times a week. 30

By Mr. Weitzman:

Q. Mr. Wilkinson, how long did this entire episode take from the time he pulled out until he struck you and your swinging around? A. A matter of seconds it seemed to me.

*Hartus Wilkinson—Recross.**Recross-examination by Mr. McCormack:*

Q. Mr. Wilkinson, when you saw Walsh's car come out the only thing you did was to swerve your car, wasn't it? A. That is all.

10 Q. How long was your car stopped before you yelled "stop" at Walsh? A. Will you kindly repeat that?

Q. How long was your car stopped before you yelled "stop" at Walsh? A. I immediately stopped. The first thing I did was to clasp my hands to my neck, and I said to my wife, "My neck is broken." Then I got out. I got right out of the car. I saw Walsh driving away, and I shouted "stop."

Q. You got out of your car? A. Yes, sir.

20 Q. So he had stopped his car, hadn't he? A. Not when I shouted.

Q. Well, his car had stopped? A. Not when I shouted.

Q. How far away was he from you when you shouted "stop"? A. I would say around 45 or 50 feet.

30 Q. Just about the distance it took your car to swerve or collide into the truck, where it was stopped? A. No. He was gone towards—going towards Newark.

Q. About how far from the point of the collision was he at the time you hollered "stop"? A. I would say 40 or 50 feet.

Q. Your car didn't stop right at the place where the collision occurred, did it? A. Almost straight across.

Q. Almost straight across the road? A. Yes, sir.

40 Q. You didn't swing down the road at all? A. Not much, if any.

*Hartus Wilkinson—Recross.**By the Court:*

Q. What was the position of your car after the accident, when it came to rest? What was the position of your car? A. At a slight angle on the right hand side of the road, going towards New-ark—more towards the center of the road.

Q. Had you only made that half or three-quarters of a circle in your skid, or had you made more than that? A. No, sir; that was all. After we hit the Mack truck, we bounced off some feet. 10

Q. You said the value of the car before the accident in your opinion was \$2700? A. Yes, sir.

Q. What was your opinion as to the value of this car after the accident, before any repairs had been made to it? A. I would only know by what the Pierce-Arrow people allowed.

Q. I would like to have you tell me. A. I can tell you what that was. 20

Mr. McCormack: If your Honor please—

Mr. Weitzman: Mr. Wilkinson, the question is what in your opinion was it worth. Never mind what the Pierce-Arrow people allowed.

Mr. McCormack: If your Honor please, I want to object and request that the matter be stricken out. He testified on cross-examination that he didn't know what the market value of the car was; it was what it was worth to him; so that there is no testimony before us as to the market value of that car before the collision. 30

The Court: I will strike out my question.

By the Court:

Q. Mr. Wilkinson, can you give us your opinion as to what the market value of this car was be- 40

Selme M. Wilkinson—Direct.

fore the accident? A. No, sir; not before the accident. I have never bought a second-hand car or sold one.

Q. Therefore, you can't give us an opinion as to what the market value of the car was after the accident? A. No, sir.

10 *By Mr. Weitzman:*

Q. Mr. Wilkinson, aside from the market value, in your opinion as an individual who owns an automobile, what was that car worth after the accident?

Mr. McCormack: Just a minute. If the Court please, I object to that. It doesn't matter what his opinion is, if it is not as to market value.

20 The Court: I will sustain the objection.

SELME M. WILKINSON sworn in behalf of plaintiff.

Direct-examination by Mr. Weitzman:

Q. Mrs. Wilkinson, are you the wife of Mr. Hartus Wilkinson, who was just on the stand?

30 A. Yes, sir.

Q. Were you driving with him on the morning of this accident? A. Yes, sir.

Q. Where were you seated in the car? A. On the right hand side—on the right hand side of my husband.

Q. In the front seat? A. Yes.

Q. Did you observe the car that struck you before the accident happened? A. No, not before the accident happened.

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Selme M. Wilkinson—Direct.

Q. Where was it when you first saw it? A. It started to come out on the roadway.

Q. It started to come out? A. Yes.

Q. Started to come out from where? A. From behind the car in front—from behind a closed car in the front.

Q. Did you observe the two cars coming in the opposite direction? A. Yes, sir, I did. 10

Q. Was this Walsh car the first or the second car? A. The second car.

Q. Was it riding behind that first car or abreast of it when you saw it? A. No, behind the first car.

Q. What did you observe it do? A. Well, the first thing I noticed was just a noise, as I suppose he hit the other.

Q. No, not what you supposed. Just tell me what you saw. A. Well, the first thing I noticed was him coming across the roadway. 20

Q. Pulling out toward your side? A. Yes.

Q. At that time was your car on the right hand side of the road? A. Yes, on the right hand side of the road.

Q. What part of your car was struck? A. Well, that I am not sure, because I was too excited at the time to pay very much attention to where.

Q. Was it the left side of your car? A. On the left side of our car; yes, sir. 30

Q. Did you observe the speed of this car as it came across the road? A. It came very fast.

Q. Could you estimate that in miles per hour or not? A. No, sir; I couldn't, sir.

Q. But you feel it came fast? A. Yes, sir.

Q. Were you present when your husband had a conversation with Mr. Walsh after the accident? A. Yes, sir.

Q. Did you hear Mr. Walsh make any state- 40

Selme M. Wilkinson—Cross.

ment as to the condition of his car? A. Well, his brakes didn't work.

Cross-examination by Mr. McCormack:

10 Q. Did you see the Walsh car at any time, Mrs. Wilkinson, before it started coming across the roadway? A. Well, I saw cars coming toward us. I couldn't particularly say I noticed it was the Walsh car.

Q. There were a number of cars coming in the opposite direction to yours, were there not? A. Yes, sir.

Q. And your car was the first one in line coming across the bridge going east? A. Yes, sir.

20 Q. There wasn't anything directly in front of your car? A. None as I recall.

Q. Do you recall whether or not there was a truck in front of the Walsh car and this other car with which it collided? A. No, I don't recall.

Q. Did you see the Walsh car in the collision with this other car? A. I heard a noise. I wouldn't say that I saw the collision, but I heard a noise. Then he started across the roadway.

Q. What part of his car started to come across? A. Well, the front part.

30 Q. His front started to come across and not his rear? A. No. His front part came across.

Q. What part of his car came in contact with yours? His front? A. I can't say, sir. I was too excited at the time to realize this.

Q. What part of your car was hit, can you tell us, Mrs. Wilkinson? A. The left hand side.

Q. You were sitting in the seat with the driver, were you not? Was it behind your seat or in front of it? A. No, it was in front, I think.

Selme M. Wilkinson—Cross.

Q. You think it was your left front that was injured? A. Yes—

Q. In the impact with his car? A. No, I wouldn't say positively. I was nervous at the time.

Q. His car came out very quickly, did it not? A. It did.

Q. How far away from you would you say this car of Walsh was as it started to come out across the road? A. I can't say. 10

Q. Could you point out something in the court room that might enable the jury to get an idea as to how far away his car was from yours at the time he started to come across the road? Is there any object here, any one of these chairs or seats, Mrs. Wilkinson, that might be helpful? A. Well, I should say about where the railing is—possibly a little further, but not much further. 20

Q. About where I am? A. No, not as far as that.

The Court: For the record that is 18 feet.

Q. What did your husband do as this Walsh car started to come across, if anything? A. I cannot tell you, sir.

Q. Do you know about how far your car was from these girders that are along the bridge before the Walsh car started to come across? A. No, I can't say in feet, but we were close to the girders, because we were right over on the right hand side of the road. 30

Q. You were very much over on your right side of the road? A. Yes, we were.

Q. After your car was struck, the back of it swung around, did it not? A. Well, we turned right around.

Q. The back of your car swung around? A. 40

Selme M. Wilkinson—Redirect.

Well, we turned completely around, so it must have.

Q. Your back swung, and your front stayed where it was? A. No, we went right across the road.

10 Q. Well, I mean by that that the front stayed in approximately the same position on the roadway, but circled around, is that right, or did you go across the road? A. We went across the roadway.

Q. Did you go down the road any distance? A. No, because we just seemed to hit the truck as we were coming right over the road.

Redirect-examination by Mr. Weitzman:

20 Q. Was your car traveling at a high rate of speed or a moderate rate of speed? A. No, sir. It was slow—we were going slow. It was a wet morning.

ADOLPH SCHADEWALD sworn in behalf of plaintiff.

Direct-examination by Mr. Weitzman:

30 Q. On August 3, 1932, Mr. Schadewald, what was your occupation? A. Truck driver.

Q. By whom were you employed? A. By the Mason Materials Supply Company.

Q. In what town? A. Bayonne.

Q. On that morning were you driving a truck on the Hackensack Bridge of the Lincoln Highway? A. Yes, sir.

40 Q. What kind of truck was it? A. A Bull Dog Mack, 7½-ton.

Adolph Schadewald—Direct.

Q. Which way were you proceeding? A. Towards Kearny.

Q. On what side of the road were you? A. On my right hand side.

Q. What was directly in front of you, Mr. Schadewald—I mean any cars? A. Where?

Q. On the Hackensack Bridge, as you were going across. A. Well, there was a space about 20 feet in front of me—there was cars in front of me. 10

Q. Speak up. It is rather hard to hear you. A. There was a space of about 20 feet in front of me, and there was a sedan car in front of me.

Q. What was in front of that sedan? A. A closed truck.

Q. And this sedan was in front of you, is that the sedan that later turned out to be Mr. Walsh's car? A. Yes, a Studebaker. 20

Q. In what line of traffic was that sedan? A. What line of what?

Q. In what line of traffic as he was crossing the bridge? A. Well, just before we came to the bridge it passed me out.

Q. How fast was he going at that time, do you know? A. About 18 or 20 miles an hour.

Q. Did he continue to pull away from you as you entered the bridge? A. As I entered the bridge, I slackened up myself, and he pulled in front of me. 30

Q. Was he directly in front of you in the same line of traffic that you were traveling? A. Yes, sir; on the truck hand side.

Q. Did he or did he not attempt to pull out to attempt to pass this car that was in front of him? A. After he got on the draw bridge he tried to pass out this here closed truck.

Q. Did or didn't his car come in contact with 40

Adolph Schadewald—Direct.

the truck? A. As he passed out he pulled out towards to his left. As he did, he hit the rail, and the rail swung him back towards the truck lane, and he hit this here closed truck.

Q. What part of his car came in contact with it? A. His rear, on the right hand side.

10 Q. Came in contact with what side of the other car? A. Of the truck?

Q. Yes. A. The left hand side.

Q. Then what did his car do? A. It swung over to the opposite side of the road.

Q. Did you see it come in contact with the Wilkinson car? A. Yes, sir.

Q. What did you do? A. I seen that he hit Mr. Wilkinson's car, and Mr. Wilkinson turned completely around. As he did, I stopped. I seen him
20 sliding towards me, so as I seen his sliding, I stopped my truck.

Q. What happened? A. And he slammed into me.

Q. Was Mr. Wilkinson going at any excessive rate of speed at the time?

Mr. McCormack: I object.

Q. Did you see at what speed Mr. Wilkinson was traveling? A. No, sir.

30 Q. What part of Wilkinson's car was struck, do you know? A. Where did Walsh's car strike him?

Q. Yes. What part of Wilkinson's car was struck by Walsh's car? A. Right behind the drivers' seat, on the left hand side.

Q. Then what did the Walsh car do? A. Well, I got off my truck, went to pick up Walsh's tail light, and then walked up to see Mr. Walsh. Before I got there, an officer of the traffic precinct
40 a traffic man—picked up the tail light.

Adolph Schadewald—Cross.

Q. But you are certain that before the accident Walsh was in the same lane of traffic that you were? A. Yes, sir.

Q. That is the truck side? A. Yes, sir.

Q. You are certain that he pulled out to pass another car? A. As he did he hit the rail.

Cross-examination by Mr. McCormack:

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Q. Mr. Schadewald, who picked up Walsh's license plate after the collision? A. The bridge tender.

Q. You saw him do that? A. Yes, sir.

Q. And he gave it to Walsh, did he? A. Yes, sir.

Q. Walsh stopped after this collision, didn't he? A. A distance up further; yes, sir.

20

Q. He didn't try to run away, did he? A. I don't know.

Mr. Weitzman: There is no such claim made that he was attempting to run away or anything like that.

Q. Walsh passed your truck before you got on the bridge? A. Right, sir.

Q. About how far away from the bridge did he pass you? A. About 20 feet or so—25 feet.

30

Q. On the bridge you have what you call two lines on each side, haven't you—a truck line and a passenger vehicle line? A. Right, sir.

Q. And your truck was in the truck line, close to its right hand side, is that right? A. Yes, sir.

Q. Was there any other truck that you saw on the bridge ahead of you? A. A closed truck; yes, sir.

Q. Was there anything ahead of that, that you noticed? A. I didn't notice.

40

Adolph Schadewald—Cross.

Q. About how fast was Walsh going when he passed you? A. About 18 or 20 miles an hour.

Q. He continued about the same speed as he went along the bridge, did he? A. Well, I didn't watch him.

10 Q. Did you continue about your own speed as you went on the bridge? A. As I hit the bridge I slackened up a little bit.

Q. About how far across the bridge in the direction in which you were going did this collision occur? A. Right on the draw bridge, as it opens up.

Q. About in the center? A. That is about 45—40 feet from the—

20 Q. About 40 feet from which side? A. From the Jersey City side, going in—well, about 45 feet from the Kearny side, in the middle of the draw.

Q. About in the middle of the bridge? A. Yes, sir.

Q. Isn't that bridge more than about a hundred feet long there? A. Yes, sir.

Q. It happened about in the middle? A. Yes—not quite in the middle. I can't say exactly the center.

30 Q. But it happened somewhere near where the bridge tender's house is? A. That is up there ahead. It is a little farther than that; yes, sir.

Q. Have you any idea, Mr. Schadewald, as to how long that bridge actually is? A. I guess about 125 feet, I guess.

Q. That is all you think it is? A. I think so. I didn't take, you know—I didn't pay no attention to how long the bridge is. I go over it every day, and I never pay any attention to it.

Q. It is quite a long bridge, isn't it? A. Yes.

40 Q. How far behind Walsh's car did you say

Adolph Schadewald—Cross.

you were as he started to pull out? A. About 18 or 20 feet.

Q. Had you followed him closely as you went up on the bridge and started across to where this collision occurred? A. No. As he passed me going on the bridge he kept on going, and I slackened up, and he got about 20 feet ahead of me. He was on the truck hand side at that time.

10

Q. So that from the time he passed you coming onto the bridge or before you came onto it until the collision occurred about half way across the bridge he had only gotten about 25 feet ahead of you, is that right? A. Yes, sir.

Q. He wasn't driving fast, was he? A. No, he wasn't driving fast at that time.

Q. Did you actually see his car collide with this other black car that was there? A. Yes, sir.

20

Q. What parts of them came together? A. Mr. Walsh's right hand mudguard hit this here tail end of the truck.

Q. Mr. Walsh's right hand rear was in the impact with this other truck? A. Yes, sir.

Q. And the front of the other truck? A. Yes, sir.

Q. And at that time Mr. Walsh was still on his own side of the road, wasn't he? A. No, sir.

Q. At the time Mr. Walsh's car came into collision with this other truck was he on his wrong side of the road? A. No. He was pulling out from behind that truck.

30

Q. This truck that you speak of was on its line, the same as you were, wasn't it? A. Yes, and he was on his right.

Q. Walsh was on his right? A. Walsh was on his right.

Q. When Walsh was passing this truck he was

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Adolph Schadewald—Cross.

still to the right of the center of the road, wasn't he? A. Yes, sir.

Q. And it was the right rear of his car that was in the impact with the front of this car that was going in the same direction that he was? A. The front? No, sir.

10 Mr. Weitzman: The testimony is that it was in contact with the rear of this truck.
Witness: The rear, I said.

Q. The two rears came together? A. Mr. Walsh's rear on the right hand side connected with the truck's rear end on the left hand side.

Q. Then what happened to Walsh's car? A. As he did that he skidded across the road.

Q. With his back or front? A. He went sideways.

20 Q. He went over sideways? A. Yes, sir. The rear end was more further than the front.

Q. How far across the road did he go? A. All the ways over to the other side.

Q. He went all the way over to the other side? A. Yes, sir.

Q. Did he go up against the girder? A. No, sir.

30 Q. How far from the girder did he go? A. He couldn't get near the girder. He hit this here Pierce-Arrow coming down.

Q. Was this Pierce-Arrow near the girder? A. Saddling the rails.

Q. How much distance was there then between the Pierce-Arrow's right hand side and the girder? A. I wasn't paying no attention how far it was over, but I seen him coming down.

40 Q. You are going over the bridge and you see the Pierce-Arrow straddling the rails. You know this vicinity pretty well, don't you? A. Yes, sir.

Adolph Schadewald—Cross.

Q. How much distance was there between the Pierce-Arrow's right hand and the rail? A. I didn't pay no attention to that, sir.

Q. Room enough for another car, would you say? A. I can't say that.

Q. Let us see. On your side of the road you were up near the girders, weren't you? A. Yes, sir. 10

Q. Now, there was room for another car between your truck and the center of the road, wasn't there? A. Yes.

Q. On your side? A. On the touring side.

Q. And there is just the same on the other side, isn't there? A. Yes, on both sides it is the same.

Q. And these rails are near the center on each side; in fact, there are four rails, and a space between the second and third rails, isn't there? A. Right, sir. 20

Q. That is really the center of the road there? A. Yes.

Q. So that if Mr. Wilkinson's car was straddling the rails, as you say, then there would be room for another car between Mr. Wilkinson's right hand side and the girders, wouldn't there?

Mr. Weitzman: I object to that as argumentative. It is purely arithmetic that Mr. McCormack is trying to figure out. 30

The Court: I will allow him to say how many feet there were between the right hand side of the Wilkinson car and the right curb line.

Mr. Weitzman: He has already testified that he does not know, because he didn't pay any particular attention to that.

The Court: I will sustain the objection to the form of the question. 40

Adolph Schadewald—Cross.

Q. Do you know, Mr. Schadewald, how many feet there were? A. I didn't pay no attention, but I could tell you how many feet it was from the rail to the curb.

Q. How many feet? A. About 3 or 3½ feet to the curb—not to the pillars.

10 Q. You mean on the road bed from the right hand side to the rail nearest that side is only about 3 feet? A. That is, if there is cars between the rails, and straddling the rail to the curb.

Q. You said you couldn't tell us the distance between the rail and the curb, didn't you? A. I said I couldn't?

Q. No, I said you said you could. A. Yes, sir.

Q. How many is it? A. About 8½ feet.

20 Q. How did this Wilkinson car skid after the accident? Did its rear end skid around? A. He came around sideways, and then he turned around.

Q. He came down sideways first? A. Yes, sir.

Q. For how many feet? How much of his car went sideways? A. About 4 or 5 feet.

Q. And then he started to swing? A. He started to turn.

Q. What part of his car started to come around? A. The rear end.

30 Q. Did he swing around once or twice? A. No, once.

Q. As he came into your truck? A. Yes, sir.

Q. Did he come into your truck with much force? A. Yes, he did.

Q. What damage was done to your truck?

Mr. Weitzman: I object to that as immaterial.

40 The Court: I will allow it. It is proper cross-examination.

Adolph Schadewald—Cross.

A. The damage to my truck?

Q. Yes. A. Slightly.

Q. What? A. Slightly damaged.

Q. Didn't you say it was thrown out of line?

A. Yes, the body is.

Q. You told me that the body of your truck was thrown out of line, didn't you? A. I did; yes.

Q. It was a forceful collision? A. When you skid, there is a force behind it.

Q. Whether you skid or not this was a forceful collision? A. Well, anybody skids with force—there is force behind it. He skidded into me; yes, sir.

Q. With great force? A. Not with great force; no, sir.

Q. It didn't take great force to knock your Mack truck body 4 or 5 inches out of line? A. There is nothing holding a Bull Dog Mack body, only the two shafts. It is a hoist dumper.

Q. Then he didn't come into collision with your truck with any degree of force? A. Well, there was force behind it, but not a great force.

Q. Did he skid into your truck easily? A. Well, a medium force.

Q. What parts of his car were damaged, do you know? A. Of whose?

Q. Of Wilkinson's.

Mr. Weitzman: Your Honor, there is a repair bill in evidence that will settle that better than this witness.

The Court: I will allow it.

Q. What parts of his car were damaged? A. The side.

Q. Is that all you saw? A. Yes, sir; and his roof.

Q. His whole car was pretty well smashed up,

Adolph Schadewald—Cross.

wasn't it? A. After the accident I looked at it; yes, sir.

Q. Did you get out of your car after the accident? A. Yes, sir.

10 Q. Walsh was there, was he not? A. As I walked off the bridge, I walked up to the cop's shanty. They have a shed there, and they were taking names and addresses. They have a shanty there, I don't know what they hold there—lanterns and stuff like that—lanterns.

Q. Did you see Mr. Walsh come up and give his name and address? A. Yes, sir.

Q. Did Mr. Wilkinson come up there at the same time? A. Well, I can't say. I seen the cop there talking to Mr. Walsh, and I walked up there and I gave my name and address.

20 Q. Your car was stopped, was it not, at the time Wilkinson's car came into collision with it? A. It was; yes, sir.

Q. You got out of your car at that time, did you, or did you pull off the bridge before you got out of the car? A. I had to get out.

Q. Right then? A. Yes. I couldn't move.

Q. Did Mr. Wilkinson get out of his car then? A. Yes, sir.

30 Q. Where was Mr. Walsh at that time? A. He was up about 35 feet.

Q. Up the road? A. From where we were then.

Q. What did Mr. Walsh do then? A. Mr. Walsh?

Q. Yes. Did he come back to the Wilkinson car at that time? A. No, sir.

Q. Where did he go? A. I don't know where he went. The one I spoke to—

40 Q. Did he pull his car off the bridge at that time? A. I don't know.

Adolph Schadewald—Cross.

Q. You saw Wilkinson there? A. I seen Mrs. Wilkinson there.

Q. Where was Mr. Wilkinson? A. He walked away.

Q. Do you know where he went? A. No.

Q. Walsh didn't come up to the Wilkinson car, did he? A. Walsh?

Q. Yes. A. No, sir.

10

Q. You don't know where he went until you saw him in the bridge tender's shanty afterwards? A. Who is that?

Q. Walsh. A. Well, when I walked over to pick up that tail light—they beat me to it—and he was down about 35 feet from me.

Q. Where was the car? After he was 35 feet down the road with his car did he pull it off the bridge or come back? A. I don't know if he pulled it off or left it stopped where it was.

20

Q. He got his tail light and license, did he not? A. Yes, sir.

Q. Where did he go then, do you know? A. The officer at the bridge handed him the tail light, and I walked over to Mrs. Wilkinson, and then the cop came and he said, "You have to get your truck out of the way," I said, "I can't move it; the car is against me," and we pulled the cars away from each other, and we seen that the car could go on its own power.

30

Q. So Mr. Wilkinson moved his car off under its own power and you pulled your truck off the other way? A. The cop came back with Mr. Wilkinson, and made him take it off the bridge. Then we all had to get off the bridge.

Q. Mr. Walsh wasn't talking to Mr. and Mrs. Wilkinson while you were there, was he? A. No, sir. Only Mrs. Wilkinson was there.

40

*Adolph Schadewald—Redirect.**Redirect-examination by Mr. Weitzman:*

Q. Mr. Schadewald, can you tell us one thing: What part of the Wilkinson car first came in contact with your truck? Do you understand what I mean? What part of the Wilkinson car first hit your truck? A. The whole side hit my truck.

10 Q. All at the same time? A. At one time. It was just as he was facing, the same way I was facing—one right against the other.

Recross-examination by Mr. McCormack:

Q. You didn't see the Wilkinson car until the collision, did you? A. I seen it skidding, but turning around, sliding around.

20 Q. That was the first time you saw it? A. That was the first time. I seen a new Pierce-Arrow, a yellow Pierce-Arrow coming down at the time, and I seen Mr. Wilkinson skid at that time, and I seen him come over towards the road I was on, and I knew there was an accident coming. When he hit Wilkinson, no more than I said, "There goes one," they hit, and as I seen Wilkinson turning around, I stopped.

By the Court:

30 Q. What did you see that made you say, "There goes one"? A. Well, as he pulled out from the truck side, he pulled over into the rail. He hit the rail, flew back, and he went over to the opposite side, and I seen he was going to connect with the Pierce-Arrow.

Q. That was before the Pierce-Arrow and the truck had come in contact? A. Yes, sir.

Q. What course did the covered truck in front

Adolph Schadewald—Recross.

of you take on the bridge? A. He was on the truck side.

Q. Did he change his direction at any time, did you observe? A. No, sir; he didn't even stop.

Q. Did he change his direction? A. No, sir.

By Mr. Weitzman:

Q. You say this closed truck was going toward Newark? A. Going toward Newark. 10

Q. On the right hand side? A. The same way we was all going.

Q. And it continued to go that way all the time? A. Yes, sir.

By Mr. McCormack:

Q. What tires of the Walsh car were on the rail? His left hand or right hand side? A. Whose rail? 20

Q. Walsh's. A. He wasn't on the rail. His left hand rear wheel hit the rail on the opposite rail.

Q. What do you mean? A. The left hand rail as you are going down.

Q. The left hand rear wheel hit the second rail going in your direction, and then he skidded back toward the closed truck? A. Yes, sir. That is when he hit the tail end of the closed truck.

Mr. Weitzman: That is the plaintiff's case. The pleadings, of course, admit ownership and operation. 30

Adolph Schadewald—Recross.

ADOLPH SCHADEWALD recalled.

By the Court:

Q. Mr. Schadewald, you are driving along in your truck across this bridge, and the Walsh car is ahead of you, as I understand? A. Yes, sir.

10 Q. Did his wheel get into the car track and start to skid before he hit the truck or after he hit the truck? A. Before he hit the truck.

Q. So it was the skidding of his car that put him into the truck, is that what I understand from you? A. As he pulled out away from the truck side, he pulled over into the rail. As he pulled over to the rail, he didn't quite go into the rail. The left hand wheel—hind wheel—hit the rail, and he wanted to get over the two rails, you see.
20 As he did, his hind left wheel hit the rail, which threw him back towards this here truck.

Q. And after he was thrown back— A. (Interposing) After he hit this closed truck it threw him away, and he made one dive, and he must have put his brakes on, and at that time I seen his tail end going around.

By Mr. McCormack:

Q. Walsh's tail end did go around, didn't it?
30 A. In the distance; yes, sir.

Q. His tail end went first, didn't it? A. Well, he swung away from the rail, and then his rear end went around.

Q. Those rails are quite level with the road, aren't they? A. About an inch and a half.

Joseph P. Walsh—Direct.

JOSEPH P. WALSH, defendant, sworn in his own behalf.

Direct-examination by Mr. McCormack:

Q. Where do you live, Mr. Walsh? A. 13 Birch Street, West Orange.

Q. Were you living there on August 3rd last? A. I was. 10

Q. You were living there on August 3, 1932? A. Yes, sir.

Q. On that day you owned an automobile? A. Yes.

Q. What kind was it? A. Studebaker.

Q. Will you speak a little louder? A. Studebaker.

Q. What year? A. 1929.

Q. You were on the Lincoln Highway that morning of August 3rd? A. Yes, I was. 20

Q. Where had you been? A. Jersey City, Pier B.

Q. You were taking some people there? A. Friends to the boat, yes.

Q. Were you working on that day? A. No.

Q. Where were you going at the time this collision occurred? A. I was on my way home.

Q. To West Orange? A. Yes.

Q. Were you going any place specially besides home? A. No. 30

Q. What kind of day was it? A. It had been raining hard all morning—wet.

Q. As you approached the Hackensack Bridge did you pass anything? A. Yes, I passed a Mack truck.

Q. Where was that Mack truck with reference to the center line of the road? A. Well, I passed him about 40 feet before I came up to the bridge. 40

Joseph P. Walsh—Direct.

Q. Was he on his right or left side? A. On the right hand side.

Q. Near the curb? A. Yes, he was.

Q. About how fast were you going, Mr. Walsh?

A. Oh, around 18 miles an hour.

Q. Was there anything ahead of this Mack truck as you got on the bridge? A. Yes, there
10 was a closed truck and a sedan car following it.

Q. Which of them was the nearest to you after you passed the Mack? A. The sedan car.

Q. Where was that car riding with reference to the other truck that you speak of? A. Well, he was following the first truck about 4 or 5 feet behind it.

Q. Was this first truck a big truck? A. Yes, it was.

Q. What kind was it? A. Well, that I couldn't
20 say—an old truck.

Q. On what part of the bridge did this accident between yourself and Mr. Wilkinson's car occur? A. It was a little over one-third on the bridge, up near the tender's house.

Q. After you passed this first truck did you go over to the right hand side of the road or did you not? A. No, I did not.

Q. There are two lanes of traffic, are there not?
30 A. Yes.

Q. Truck traffic and passenger vehicles. You stayed in the passenger line? A. I did, yes.

Q. With reference to the center of the road where did you ride? On your own side? A. Yes, I continued on the second lane, right past the two cars.

Q. You say this was a sedan? A. Yes, sir.

Q. What if anything did you do? A. Well, before I passed the car I blowed my horn that I
40 was going on to pass him.

Joseph P. Walsh—Direct.

Q. What happened to you then? A. I was about half way up the side of the truck, and this fellow turned out—the sedan car—and struck my car on the right rear mudguard, right in the right rear fender.

Q. How fast were you going at that time? A. About 18 miles an hour—just on an average of 15 or 18 miles an hour.

10

Q. You had given him warning, you say? A. Yes, I did.

Q. Was your car on the car tracks at the time it was struck? A. No, it was not. My left side of the car was in the center of the track, and my right side was off the—straddling the rails.

Q. Straddling the first rails, is that what you mean? A. Yes.

Q. There are four rails there? A. Yes.

Q. And the center of the four rails is approximately the center of the street there? A. Yes.

20

Q. Did your car skid on the rails at any time before your collision with the first car? A. No, it did not.

Q. You say the sedan struck your car? A. It seems that as I was about to pass him and almost cleared him, he turned out, and he just touched my car on the right rear fender.

Q. And what happened to you? A. My car skidded around in a sort of a circle.

30

Q. Did the rear of your car cross the center of the road? A. Yes. It went across in a circle.

Q. Before this had you seen the Wilkinson car? A. Well, when my car started to skid I seen him coming down, yes.

Q. How far away was he from you then? A. Oh, he must have been a hundred feet.

Q. What part of the roadway was he riding on? A. On the right side, running east.

40

Joseph P. Walsh—Direct.

Q. With reference to the rails? A. Well, I don't know whether he was straddling the rails or not. I guess he may have been that way. I didn't see him.

Q. Can you approximately state which way he was going? A. Well, I would say probably 40 miles. He was coming down fast.

10 Q. Were there any cars ahead of him as he was coming down? A. No, sir.

Q. What happened? A. Well, I was about to the end of my skid. I was doing everything to control it. My car was almost stopped, and Mr. Wilkinson's car just clipped my car on the rear left fender, taking off the half of the bumper—the abbreviated bumper, tail light, and license plate, cutting the tail light right off, and he went
20 on right through, I might say, 10 or 15 feet.

Mr. Weitzman: A little bit louder.

Witness: After he had hit my car he went on about 10 feet or so. He started to turn sideways. He turned completely around about 50 feet down the road, and went into the side of a Mack truck. The side of it came right up against the Mack truck. I sat in my car and turned around and watched him skid.

30 Q. You had your car stopped? A. Yes, my car was stopped.

Q. Did he go into this Mack truck with any degree of force? A. Oh, yes—a loud crash.

Q. You watched this car skid, you say? A. Yes, I was watching that skid.

Q. What damage had he done to your car—the Wilkinson car? A. I say he had taken off the bumper, the tail light, the license plate, and dented the rear mudguard on the left side.
40

Joseph P. Walsh—Direct.

Q. Was there any damage done to the front of your car? A. No. The car is standing there now the same way.

Q. Your car is standing now the same as it was? A. Yes, sir; and it has never been touched.

Q. What was the condition of your car on the day of the accident? A. Good.

Q. Did you have any conversation with Mr. Wilkinson after the accident about your brakes? A. I didn't; no, sir. 10

Q. You say you stopped your car and watched him skid? A. Yes.

Q. What did you do then? A. I got out of the car, stood on the road alongside the car.

Q. Where had this black sedan gone? A. Why, he turned around in front of the truck. The truck that was leading him, when he heard the crash, stopped. 20

Q. That is, the truck that was in front of you stopped? A. That is right.

Q. And this black sedan went in front of him? A. He went around it and he stopped.

Q. What did you do about him? A. Well, he got out of his car, and he was looking at his front fender, and I was looking down where the Wilkinson car was for a minute or so, and when I turned around I seen his car about 200 feet up the road, driving away. 30

Q. What did you do? A. Well, there was a police officer coming from the west side of the bridge to the east side, and I hollered to him, "There is the man that hit me, going away," and he paid no attention, and he went right on down where the accident—wreck—was.

Q. Did you get the license number? A. I did take the number and I didn't write it down. I had it in my mind, and the bridge tender hollered 40

Joseph P. Walsh—Direct.

10 to me that he had the license. I thought he had seen it, and it turned out to be that he had picked up my license plate and tail light, and he handed me that. I mentioned the fact to him I thought he had the number. He said, "No." So then I was confused in the number, but as I thought I had it right, I put it together and tried to run it down.

Q. Did you have a pencil? A. No, I didn't. I borrowed one in the shed.

Q. What efforts did you make to locate that license? A. Well, I stopped over at the Kearny police station, and reported it there, and I went directly to East Orange and called up Trenton, and asked for the owner of that plate, and they informed me that there was no such number issued in Bergen County—it was a B.

Q. Have you got the slip with you that you wrote that down on? A. I have some memorandums, yes.

Q. Referring to those can you tell the Court and jury what other efforts you made to locate it? A. Then I went back. I had written to Trenton and asked them for the same number in Essex and Hudson County and so forth.

30 Q. A little louder. A. So I wrote a letter to Trenton again, asking for the owners of the license plate in Essex and Hudson, thinking that I might have been off on the letter, and they had sent me back the owners of those plates, and I went to them, and it turned out to be it wasn't the right car.

Q. You went to those houses and found they weren't the right cars? A. Yes.

40 Q. Did you make any other efforts to locate the driver of that car? A. Yes, I did. I went down

Joseph P. Walsh—Direct.

on the highway and spent three mornings down there. I was informed that he might have worked in the Western Electric.

Q. Did you ever see the car? A. Well, I seen cars like it, yes, but I wasn't positive it was the same car. There was two men in the car that struck me.

Q. Was your car moving fast or slowly, or how was it moving at the time you came in contact with the Wilkinson car? A. Well, my car was just about at the end of its skid, just about out far enough to get clipped.

Q. What had you done to bring your car out of the skid? A. I was doing everything I could do to throw it back with the steering.

Q. Did you apply your brakes? A. No, sir.

Q. Why didn't you apply your brakes? A. Well, from my past experience it would tell me that that isn't a good thing to do in a skid.

Q. You would be skidding worse? A. Yes, I would.

Q. You say that this Wilkinson car was coming about 40 miles an hour when you saw it? A. Yes, I judge about that.

Q. What did he do, if anything, to avoid the collision? A. Well, I don't know. He came right on through, and he just simply clipped me, and I don't know how far he went. He ended the skid up against the side of a truck, about 50 feet in back of me.

Q. The only parts of your car that were damaged were your left tail light, license plate, and bumper? A. That is right.

Q. The bumper was taken off? A. That is right.

Q. That is, by the Wilkinson car? A. Yes.

Joseph P. Walsh—Cross.

Q. Did you skid at any time on the car tracks?

A. No.

Q. Did you drive at any time on the car tracks?

A. No.

Q. How long were you driving a car before this collision? A. About 23 years.

10 *Cross-examination by Mr. Weitzman:*

Q. You say you started to pass this black sedan and had passed it, and that the front of your car was past or somewhere up near this closed truck? A. Yes, sir; the sedan following the truck.

Q. You were up that far, were you? A. Yes, sir.

20 Q. You were watching the roadway in front of you, weren't you? A. Naturally.

Q. How do you know that this sedan turned out? A. Because I felt the bump.

Q. Did you see him do anything? A. No, but I know after I felt the bump and I heard the noise, and after I seen him looking at his own car in the front.

Q. You felt the bump and heard the noise, is that it? A. Yes, sir.

30 Q. From that you came to the conclusion that he turned out? A. Positively.

Q. And at that time the right rear of your car was where? About even with the left front of his car? A. Well, my car, I will say, half—about two thirds lapped over the truck—just almost past the sedan car that was following the truck.

Q. How close was the sedan car to the closed truck that you are talking about? A. About 4 feet.

40

Joseph P. Walsh—Cross.

Q. There was about a 4 foot distance between those two? A. He was following it close, yes.

Q. Your car was about two-thirds up alongside the truck, and about how much of it stuck out behind the truck? A. About half of the car.

Q. Two thirds of it was up alongside the car, and half of it stuck out? A. Yes.

Q. In feet, about how much stuck out? A. Well, 10
I will say maybe about a half a foot or so.

Q. A half a foot stuck out from the rear of the truck? A. Yes, sir.

Q. And there was a 4 foot distance between the truck and this black sedan, is that right? A. That is about right, yes.

Q. About how much distance was there between the right side of your car and the left side of this sedan that you were passing to the left side of this truck? A. Oh, I might say a foot and a 20
half or 2 feet.

Q. You had passed the truck, the Mack truck, is that right? A. That is right.

Q. And you knew it was raining, did you not? A. Yes.

Q. You knew that the pavement was wet? A. Yes.

Q. And there are car tracks there? A. Yes.

Q. You were riding either in the car tracks or 30
very close to them, weren't you? A. I wasn't riding in them, no.

Q. Were you very close to them? A. No, I was straddling the tracks.

Q. When you say straddling, just what do you mean? Straddling which rail? A. Practically the left wheels were in the center—about in the center.

Q. The left wheels were in the center of the west bound rails? A. That is right. 40

Joseph P. Walsh—Cross.

Q. That would leave half the width of your car extending into the right of the most northerly rail? A. Almost, yes.

Q. And you think there is still room for your car to pass another car or truck that is on the righthand side? A. It is quite wide there.

10 Q. Isn't it a fact that if you pass a car on that road or just stay in the line of traffic—that is, passenger traffic, it is almost necessary to be in the rails? A. No, I don't.

Q. You weren't there? A. No.

Q. Why didn't you chase after this car? A. I tried to.

Q. Just what efforts did you make to go after it? A. I didn't make any effort to go after it.

Q. Why not? A. I couldn't go after it.

20 Q. Your car was in running condition, wasn't it? A. It certainly was.

Q. You were able to drive home with it afterwards? A. Yes, but—

Q. Just answer the question. You were able to drive home with it, weren't you? A. Yes, I was.

Q. And it was your opinion that there was another man who was responsible for this accident, is that right? A. Positively, yes, sir.

30 Q. And you saw that man drive off? A. Yes.

Q. And you didn't get into your car to go after him? A. No, I did not.

Q. Why not? A. Well, I wouldn't drive away from the accident.

Q. You wouldn't drive away? A. No.

Q. But you weren't responsible for this accident in your opinion, were you? A. No.

40 Q. And this other man was? A. Yes, he caused the accident.

Joseph P. Walsh—Cross.

Q. At least, that is your conclusion—you think that he did something to cause the rear of your car to be bumped? A. I do, yes.

Q. And despite the fact that you saw him drive off you didn't drive after him? A. No, I did not.

Q. There is no doubt in your mind, is there, that you went over to the wrong side of the roadway? A. I didn't go over to the wrong side, no. 10

Q. What happened at the time you came in contact with the Wilkinson car? A. Well, my car skidded out in a circle.

Q. Did it go over to the wrong side of the road? A. Yes, it did.

Q. And you say at that time you think Wilkinson was a hundred feet away from you? A. I do. I saw him coming down.

Q. And that he was going 40 miles an hour? A. 20 Yes.

Q. He wasn't passing any other cars? A. No. He had the lead on the line.

Q. And he just came right on through, is that right? A. He did, yes.

Q. There was plenty of time for him to avoid it, wasn't there? A. It is possible, yes.

Q. What do you mean when you say it is possible? A. Well, it all depends on the speed.

Q. What is that? A. It all depends on the speed and the condition of the road and his brakes. 30

Q. The speed that you saw him going at, and considering the condition of the roadway at the time of this accident, it was your opinion that he could have avoided it, wasn't it? A. Possibly, yes.

Q. Do you have any doubts about it? You say "possibly." A. I am not positive of it, no. He 40

Joseph P. Walsh—Cross.

may have skidded himself, and he may have been afraid to stop at the rate of speed he was going.

Q. The entire thing happened very quickly, didn't it? A. Yes, it did.

Q. And neither you nor anybody else had much opportunity to do very much about it? A. Not I.

Q. What is that? A. I didn't, no.

10 Q. You didn't, and you say you stayed there watching Mr. Wilkinson's car skid down the road and crash into this truck? A. Yes.

Q. How long did all of that take? A. When Mr. Wilkinson struck my car it just set it in position in the center of the road, turned around.

Q. Facing which way? A. Newark.

Q. Then what? A. I turned around and looked out through the back of the car, and saw the car skidding down the road.

20 Q. You are positive that you did not pull out to pass any other car on the bridge? A. No, I did not, no.

Q. You are positive that you never passed anything on the right hand lane; that is, what is known as the truck lane? A. Not after I passed the Mack truck.

Q. You passed the Mack truck before you got onto the bridge, didn't you? A. Just about, yes.

30 Q. I mean you didn't pass the Mack truck on the bridge? A. No, sir, I didn't.

Q. That was about 40 feet before you got to the bridge? A. That is right.

Q. When you entered the bridge there was nothing to prevent you from being in that truck line, was there? A. Well, I stayed on the line I was on. I didn't turn in.

Q. Just how fast do you think you were going when you were passing these cars on the bridge?

40 A. About 18 miles an hour.

Joseph P. Walsh—Cross.

Q. There isn't any doubt in your mind that you were passing them—that is, you were going faster than they were going? A. Well, naturally.

Q. You were doing that, and it is only your guess as to what this black sedan did that caused the accident; you didn't see it do anything? A. No, but I felt it, and I heard the noise.

Q. You didn't see him do anything? A. That 10
is right.

Q. And when he got out and stopped and looked at his car you didn't go over then to talk to him, to ask him why he pulled out, did you? A. No, I did not.

Q. You continued to sit in your car? A. No. I was standing on the road.

Q. Standing, doing nothing? A. Watching 20
down where Mr. Wilkinson's car was.

Q. But you did see the other person standing there? A. Yes, I did.

Q. And you didn't go over then to ask him for his license number or to exchange license information with him? A. No.

Q. And that despite the fact that in your opinion that is what caused the entire accident? A. Yes.

Q. You stayed there without asking for his license number? A. Yes. 30

Q. You did have a conversation with Mr. Wilkinson, didn't you? A. Well, he came over to my car after—

Q. So you did have a conversation with him? A. Yes. He just looked at my car.

Q. And he didn't know you before—had never met you before? A. I don't think so.

Q. And he didn't know where you had come from, except as you had told him where you had come from? A. That is right. 40

Joseph P. Walsh—Cross.

Q. And it is true you had told him you had just taken some people to a boat? A. That is right.

Q. And it is true that you told him that you just had your car out; that you had not had it out—that this was the first time you had had it out that year? A. No, I didn't.

10 Q. Isn't it true that you had not had the car out until the 1st of August? A. It was around the 1st of August I had taken it out.

Q. And you made some mention of that to him, did you not? A. Well, I don't know whether I mentioned that to him or not.

Q. Well, if Mr. Wilkinson says that that is what you told him, so far as you know there was no other source that he could get that information from—that is something that you knew and he didn't, unless you told it to him, is that right?
20 A. That is right.

Q. So that if he says that you said that, it is true that you had not had the car out for six months? A. Well, I might have mentioned something about not having the car out for some time and accommodating somebody by going in when this thing happened.

Q. This accident happened on August 3rd, and it is true you had not had your car out for some
30 six months prior to August 1st, isn't that so? A. That is right.

Q. About how many times did you use the car from August 1st to August 3rd? A. Well, I don't know. I may have had it out once before that.

Q. You took it out of the garage, of course, without having any repairs done to it or anything else of that kind? That is true, isn't it? A. Yes.

*Joseph P. Walsh—Redirect.**Redirect-examination by Mr. McCormack:*

Q. Is there anything wrong with the car, Mr. Walsh? A. No, sir.

A Juror: Your Honor, could I ask a question?

The Court: Yes.

10

The Juror: Has Mr. Walsh any copies of those letters here or anything that he wrote for the numbers?

Witness: Well, I don't know whether you can make them out or not. Of course, I wrote a letter, and then for my own benefit, I would make some kind of a copy of it.

Mr. McCormack: Is there any objection on the part of counsel to my showing it to the jury?

20

Witness: Of course, I wrote it in long-hand.

By Mr. McCormack:

Q. Have you got any more of them there, Mr. Walsh?

Mr. Weitzman: The question that was asked by the juror was whether he had any copies of the letters.

The Juror: I should like to see whether Mr. Walsh had proof that he did write to get the address of the owner of a certain car.

30

Q. What is that (handing paper to witness)?

A. That is just some license numbers that I had down. Here is an address of a man in Maplewood that had the same number on an Essex plate (indicating). There is a number that I originally

40

Joseph P. Walsh—Recross.

had—Bergen 95285, but the series of numbers issued in Bergen didn't run that high.

Q. This then was written down by you? A. Yes.

Q. There is the number that you thought was the number of the car (indicating)? A. That is right.

10

Mr. McCormack: Is there any objection?

Recross-examination by Mr. Weitzman:

Q. When was that written? Is that the piece of paper that you originally made the notation on, Mr. Walsh? A. No, that is not the one I made the original one on.

By Mr. McCormack:

20

Q. Have you got those letters to the Motor Vehicle Commissioner there? A. Yes, I got some of those here. Here, there is the answer to my letter (handing paper to Mr. McCormack).

Q. What is that letter (handing paper to witness)? A. That is an answer to one of my letters.

Q. With reference to the numbers? A. Yes.

Q. Look through the others and see if you have
30 got any more of those letters.

Mr. McCormack: Is there any objection to that going to the jury?

Mr. Weitzman: Just put it in evidence.

The Court: It may be marked in evidence.

(The paper referred to is received in evidence and marked Exhibit D-1.)

40

Mr. McCormack: Here is another letter

Joseph P. Walsh—Recross.

from the Commissioner of Motor Vehicles.
Is there any objection to that?

Mr. Weitzman: I have no objection to the letter going in, no.

Mr. McCormack: I offer that.

(The paper referred to is received in evidence and marked Exhibit D-2.) 10

The Court: Is there any other question you would like to ask?

A Juror: Is this all the information he has?

Mr. McCormack: He has one slip here.

Q. Will you let me have the slip back that counsel took, which is not the original memorandum?

Mr. Weitzman: Well, this is the equivalent of it, so you don't have to worry about that. 20

By the Court:

Q. You passed this sedan, you say, did you not, Mr. Walsh? A. I was passing it; yes, sir.

Q. What color was this car? A. It was a black—a new Chevrolet—black body, with yellow wire wheels.

Q. You say it was a new, black Chevrolet? A. 30
Yes, sir.

Q. Whom did you see in the car? A. There were two men in the car. They had no hats or coats on.

By Mr. McCormack:

Q. You got a name on this with an address in Millburn. What does that name and address refer to, Mr. Walsh (handing paper to witness)?

A. Well, that was—

40

Joseph P. Walsh—Recross.

Q. Speak a little louder. A. That was the license plate number I got by changing one of the numbers—a man out in Locust Street, Millburn. That is out in the Stevens Development in South Mountain.

Q. You went up there? A. Yes, I did.

Q. That wasn't the man? A. No.

10

The Court: Where are the letters that have been offered?

By Mr. McCormack:

Q. Have you got any other letters from the Motor Vehicle Commissioner that refer to those numbers? A. I don't think I have referring to those numbers.

20 Q. Mr. Walsh, is there any reason why you didn't go after this man when he started to go away? A. No. At the time I thought if I got in my car and tried to drive after him they would think I was trying to get away.

(At one o'clock p. m. the Court takes a recess until two o'clock p. m.)

AFTER RECESS.

30

JOSEPH P. WALSH, defendant, resumes the stand.

By Mr. Weitzman:

Q. Mr. Walsh, did Mr. Wilkinson swerve his car at all as he approached you that you observed? A. No, he came right straight.

Q. He was coming right straight on? A. Yes.

40 Q. But no part of the front of his car struck you? A. About the front wheel, I think.

Adolph Schadewald—Rebuttal—Direct.

Q. The front wheel on the left hand side? A. Yes.

Q. Did the front bumper hit you at all? A. Yes, the fender and wheel.

Q. I say the bumper. A. Well, I don't know. I couldn't say. It hit the car about at the front wheel.

Q. And he came straight toward you without swerving at all? A. Yes. 10

DEFENDANT RESTS.

ADOLPH SCHADEWALD recalled in behalf of plaintiff in rebuttal.

Direct-examination by Mr. Weitzman:

Q. Mr. Schadewald, are you quite familiar with the scene of this accident at that particular bridge? A. Yes, sir. 20

Q. In your opinion and from your experience in going over that bridge, would it be possible for a car that was traveling in the so-called passenger lane and with its left wheels in between the two car tracks—do you understand what I mean? Would it be possible for a car that was traveling with the left wheels in between the two westbound car tracks to pass cars that were on the right side of that bridge? 30

Mr. McCormack: If your Honor please, I object to that question, first, because it is calling for an opinion; second, because it is not proper rebuttal.

The Court: I will sustain the objection. (Counsel argue.)

The Court: I do not think it is proper. 40

Motion for Direction of Verdict.

Q. Now, Mr. Schadewald, did you have a clear view at all times of the Walsh car? A. After he passed me; yes, sir.

Q. After he passed you? A. Yes, sir.

10 The Court: You will have to confine this to rebuttal. I am not going back over the plaintiff's case.

Mr. Weitzman: That is all, then. Plaintiff rests.

20 Mr. McCormack: If your Honor please, at this time I would like to make a motion for a directed verdict on the ground, first, that no negligence has been shown on the part of the defendant. The plaintiff was guilty of negligence himself. He drove his car admittedly at least 20 to 25 miles an hour across this bridge, and was going at a higher rate of speed than the defendant. All he did himself to avoid this accident, on his own story, was to attempt to possibly swerve his car some slight distance. I submit there is no negligence shown on the part of the defendant as a matter of law, and that this accident was occasioned by the negligence of the plaintiff.

30 (Counsel argue.)

The Court: The testimony is that this accident occurred on a roadway that was wet, due to the fact that it was raining at the time or had been raining shortly before the time of the accident. The plaintiff's own case indicates that apparently the defendant's car skidded, and the testimony of a witness produced by the plaintiff, who apparently was a disinterested witness, was to the effect, as the Court understands it, that the de-

Motion for Direction of Verdict.

fendant's car, by having one of its wheels closely approach a car track, went into a skid and then came in contact on its right during the course of its skidding with a truck, which impact threw it out into the oncoming course of the plaintiff's car. The defendant, of course, denies that he skidded, as the Court recalls it, but states that he was in the line of traffic when struck by a car that was pulling out of the line from his right, which forced him over to his left into the path of the plaintiff's car. This Court is unable to see any evidence that would warrant submitting the case to the jury. After consideration, therefore, I will grant the motion for a directed verdict, and request the clerk to accept the verdict. 10

Mr. Weitzman: May I ask that it be noted if that motion is made on the ground that there is no proof of any negligence on the part of the defendant or on the ground of contributory negligence of the plaintiff? 20

The Court: Well, whatever the grounds are, they are already on the record.

Mr. Weitzman: I mean so far as the ruling of the Court is concerned.

The Court: I say the grounds are stated on the record in so far as I have ruled.

Plaintiff's counsel prays an exception to this ruling of the Court. 30

Exception noted as ground of appeal.

New Jersey Court of Errors and Appeals

HARTUS R. WILKINSON,
Plaintiff-Appellant,

vs.

JOSEPH P. WALSH,
Defendant-Appellee.

Action at Law

On Appeal
from Essex
County Cir-
cuit Court.

BRIEF OF PLAINTIFF-APPELLANT.

Facts.

The plaintiff brought this action in the Essex County Circuit Court to recover from the defendant damages resulting from an automobile accident which occurred on August 3rd, 1932.

On that day at about 8:15 a. m., the plaintiff was driving his automobile in a general easterly direction (towards New York) on the southerly side of the Lincoln Highway, crossing the Hackensack River Bridge in Kearny, New Jersey. He was accompanied by his wife and a friend. It was raining at the time and the roadway was wet. Plaintiff testified that when he had traveled about 40 or 50 feet on the bridge, he observed two cars traveling in the opposite direction on the extreme northerly side of the bridge, one following directly behind the other. He further testified that when these cars were about 30 feet from him, the second car suddenly pulled out to pass the first car and in doing so the right rear struck the left rear of the car in front and then this second car,

which was owned and driven by the defendant, traveled over to the left or southerly side of the roadway, striking and damaging plaintiff's car and causing it to collide with a truck. Plaintiff estimated the speed of defendant's car as being 25 or 30 miles per hour. Plaintiff's wife corroborated his story. A witness, Adolph Schade-wald (the driver of the truck) was produced who verified the fact that defendant had pulled out to pass another car on the bridge. This witness stated that, in doing so, defendant's wheels caught in the car tracks and defendant's car was thrown to its right coming in contact with the car which it was about to pass and then defendant's car skidded to the left side of the roadway coming in contact with the plaintiff's car. Plaintiff's automobile, a Pierce-Arrow Sedan, was damaged to the extent of approximately Eleven Hundred (\$1100.00) Dollars.

At the close of plaintiff's case, no motion for non-suit was made. The defendant's version of the accident differed. He testified that he was traveling in a westerly direction on the bridge on his right hand side but that cars were traveling in the same direction in a lane to his right. He testified that he was traveling from 15 to 18 miles per hour and was passing a car that was on his right, when this car pulled to its left striking the right rear of defendant's car and causing it to skid over to the wrong side of the road where his car was struck by the plaintiff's car. He testified that plaintiff was coming at a high rate of speed. Defendant stated that the driver of this third car drove away after the accident.

Both sides rested and the Court, on defendant's motion, directed a verdict for the defendant on the grounds that it "was unable to see any evidence that would warrant submitting the case to

the Jury''. The plaintiff asked for and was granted an exception. This ruling by the Court is the sole ground of appeal.

ARGUMENT.

The Trial Court erred in directing a verdict for the Defendant.

This Court has, in numerous cases, defined the rule to be observed in passing upon a motion for a direction of a verdict. In the very recent case of *Davis et al v. Public Service Co-Ordinated Transport*, 113 N. J. L. 427, 174 A. 540, (Court of Errors, Sept. 27, 1934), TRENCHARD, J., in his opinion says, on page 429:

“Now the rule is that a trial judge in passing upon defendant's motion for a directed verdict, is not concerned with the credibility of witnesses, nor with the weight of the evidence, but must take as true all evidence which supports the plaintiff's view and must give him the benefit of all legitimate inferences which may be drawn therefrom in his favor. *Andre v. Mertens*, 88 N. J. Law, 626, 96 A. 893; *Miller v. Public Service Co-ordinated Transport*, 111 N. J. Law, 339, 168 A. 409.”

Appellant contends that, tested by this rule, the case should have been submitted to the Jury.

The plaintiff testified that (S. of C., p. 12, l. 20 to p. 15, l. 25) he was traveling to New York on the bridge, about four or five feet from the right hand side, at a speed of 20 to 25 miles per hour; that it was raining and the roadway was wet; that two cars approached going in the opposite direction and that the second car pulled

out to pass the first one but, in doing so, struck the rear of the car in front and then came over to the wrong side of the road and struck the plaintiff's car; that he estimated the speed of this second car (the defendant's car) to be from 25 to 30 miles per hour; and that after the accident he had a conversation with the defendant in which defendant admitted that his brakes were poor. Plaintiff further testified (S. of C., p. 17, ll. 29-40) that at the time the defendant pulled out to pass this car, plaintiff was but 25 or 30 feet away.

Mrs. Wilkinson testified (S. of C., p. 28, l. 27 to p. 30, l. 2) that she was in the front seat of her husband's car; that she observed two cars approaching one behind the other; that the second car pulled out to pass the first one and then came across the road at a fast rate of speed and struck her husband's car; and that she heard the defendant state that his brakes did not work.

Adolph Schadewald testified that (S. of C., p. 32, l. 27 to p. 34, l. 23) he was driving a truck about 20 feet to the rear of defendant's car; that defendant was traveling in the so-called truck lane and did pull out to pass another truck; that when he pulled out defendant's wheels struck the car tracks in the center of the roadway; that defendant's car was thrown to its right and struck the left rear of the car it was attempting to pass; and that defendant's car then skidded across to the opposite side of the roadway where it struck the plaintiff's car.

Applying the rule heretofore stated, that is, viewing the aforesaid testimony and inferences to be drawn therefrom, in the light most favorable to the plaintiff, it would appear that the defendant pulled out of a lane of traffic at a high rate

of speed traveling on the wet roadway of a bridge part of which contained trolley car rails. It would further appear that defendant in pulling out, came in contact with the car in front of him and then proceeded across the roadway into the path of plaintiff's car, striking and damaging the plaintiff's car. It seems clear to the appellant that it was for the Jury and not for the Court to determine whether defendant operated his car as a reasonably prudent person would do under the same or similar circumstances.

Amazingly enough, defendant never alleged, either in his answer (S. of C., p. 3) or in his testimony (S. of C., pp. 47-62) that this accident was unavoidable or was caused by the wet condition of the roadway. He testified that the accident was caused by some unidentified third party whose car struck the rear of plaintiff's car and caused it to collide with that of the plaintiff. Defendant expressly denied (S. of C., p. 49, ll. 13-24) that his car was in the trolley tracks or skidded on the rails. Even the Judge, in directing a verdict, stated (S. of C., p. 67, ll. 8-9):

"The defendant, of course, denies that he skidded, as the Court recalls it, but states that he was in the line of traffic when struck by a car that was pulling out of the line from his right, which forced him over to his left into the path of the plaintiff's car."

In the very recent case of *Shields et al v. Yellow Cab, Inc.*, 113 N. J. L. 479, 174 A. 567, (Court of Errors, Sept. 27, 1934), Justice PERSKIE says on page 483:

"In passing upon a motion to non-suit and to direct a verdict upon the ground that there was no evidence of the defendant's negligence, the court is not concerned with

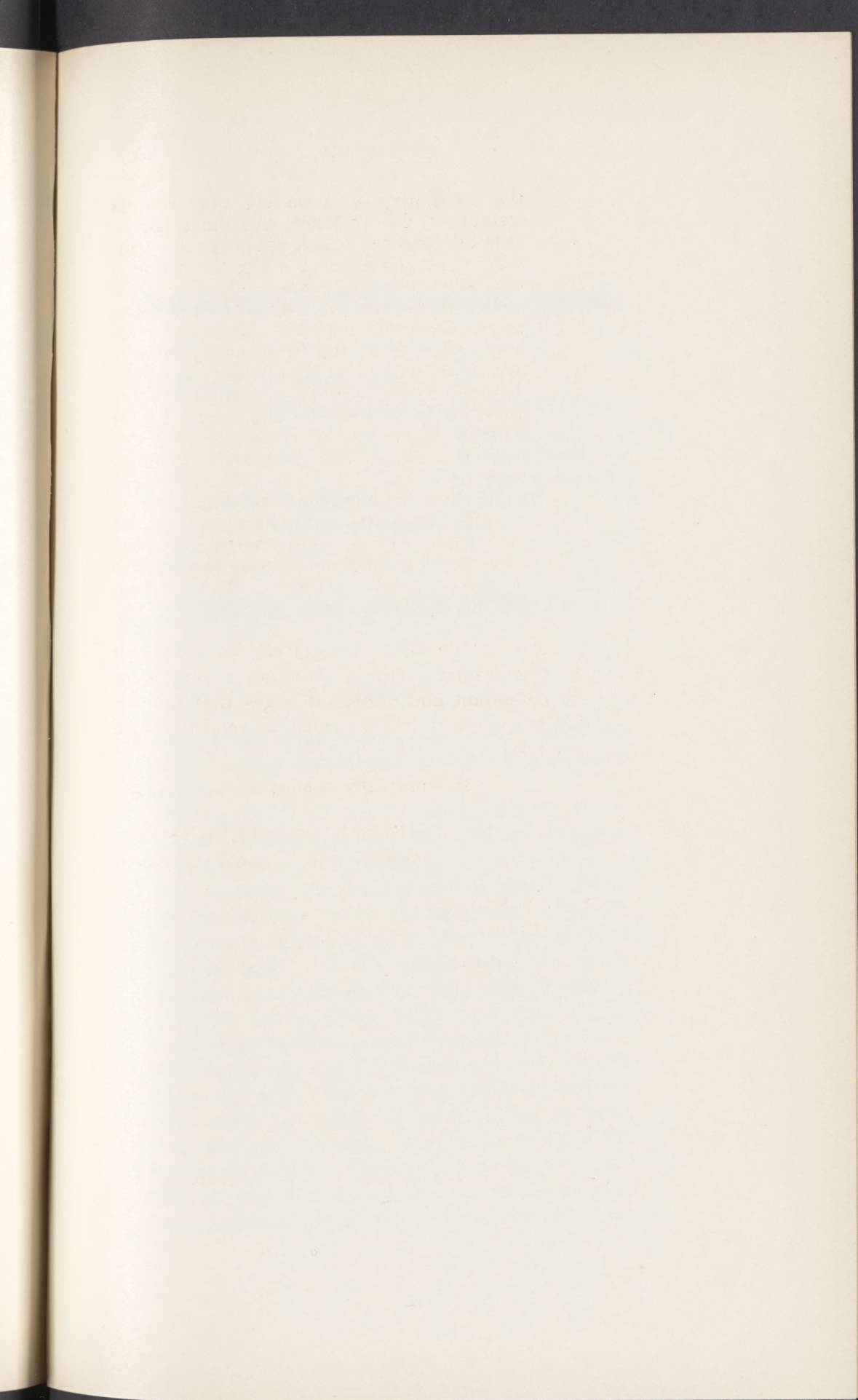
the credibility of witnesses nor with the weight of the evidence, but must take as true all evidence which supports the plaintiff's view and must give him the benefit of all legitimate inferences which may be drawn therefrom, in his favor; and where the evidence is such that reasonable minds may differ as to the fair conclusion to be drawn therefrom as to whether or not the defendant exercised reasonable care, a jury question is presented, and such motions must be denied. *Lozio v. Perrone*, 111 N. J. Law 549, 168 A. 764; *Toscani v. Quackenbush Co.*, 112 N. J. Law, 173, 170 A. 212. And where fair-minded men might honestly differ as to the conclusion to be drawn from facts, whether controverted or uncontroverted, the question at issue should go to the jury. *Sakos v. Byers*, 112 N. J. Law, 256, 169 A. 705.

Appellant therefore respectfully contends that the trial Court erred in directing a verdict for the defendant and appellant urges that the verdict be reversed and the cause be remitted for a new trial.

Respectfully submitted,

HARVEY G. STEVENSON,
Attorney for Plaintiff-Appellant.

SAMUEL WEITZMAN,
Of Counsel (on the Brief)





New Jersey Court of Errors and Appeals

HARTUS R. WILKINSON,
Plaintiff-Appellant,

v.

JOSEPH P. WALSH,
Defendant-Appellee.

Action at Law.

On Appeal
from Essex
County Circuit
Court.

BRIEF OF DEFENDANT-APPELLEE.

Facts.

After both sides rested in the court below the Court granted defendant's motion for a directed verdict.

Taking the testimony in the light most favorable to plaintiff-appellant the collision occurred in this manner. Plaintiff at about 8:15 on a rainy morning was driving on the Lincoln Highway toward New York. He was going across the Hackensack River Bridge at the rate of 20 to 25 miles an hour. On the bridge there was ample room for four cars abreast. As plaintiff was 40 to 50 feet on the bridge he saw two cars coming in the opposite direction on their side of the road. Defendant's car was the second and was straight behind the first. The first one slowed up and the defendant's car going 20 to 25 miles an hour came out and his right rear barely touched the rear of the first car (*plaintiff's own story*) or the left rear wheel of defendant's car which was not being operated fast hit the second trolley rail in the

direction in which he was going and this threw him back against the first automobile which he was passing (*plaintiff's witness Schadewald*). There are trolley tracks on both sides of the road, the center of the road being the middle of the space between the second and third rails. At all times prior to the contact between defendant's car and the one he was passing, defendant was no nearer the center of the road than the second rail in the direction in which he was going. After the contact defendant's car skidded or was thrown to the wrong side of the road and hit or was hit by plaintiff's car.

Plaintiff observed the defendant's car start to skid when plaintiff was 25 to 30 feet away from it. Plaintiff made no effort to stop, did not apply or try to apply his brakes. The only thing he did was to swerve possibly one foot when he was hit. His car was at all times 4 to 5 feet out from the girders which protect the sidewalks. The defendant's car was in contact with the left side of plaintiff's car, which then made a half circle forcibly crashing into a truck which had been proceeding on the right side of the road behind defendant in the direction defendant was traveling and was at a standstill when it was hit. Plaintiff's car was badly damaged.

The plaintiff's wife did not see the defendant's car until it was crossing the road.

ARGUMENT.

The trial Court did not err in directing a verdict for defendant.

Negligence must be proved it will not be presumed. *Farrell v. New Jersey Power and Light Co.*, 111 N. J. L. 526, 528; *Boyer v. Great A. &*

P. Co., 99 N. J. L. 451, 456; *McCombe v. Public Service Ry. Co.*, 95 N. J. L. 187. Negligence may be inferred, but such inference must be based on facts from which the inference may be reasonably made. *Farrell v. New Jersey Power and Light Co.*, *supra*.

What facts did plaintiff establish from which negligence on the part of the defendant might reasonably be inferred?

Defendant was not at any time on the wrong side of the road until after his alleged touching a car which had been preceding him (S. C., pp. 37-38), and which according to plaintiff was a closed car (S. C., p. 13, l. 16). He barely touched this preceding car (S. C., p. 18, ll. 33, 34; S. C., p. 23, ll. 12-14) a truck according to plaintiff's witness (S. C., p. 33, ll. 16-17) after it had suddenly slowed up (S. C., bot. l. 13, top p. 14) or his left rear wheel hit the second rail going in his own direction (S. C., p. 45, ll. 26-29) and threw him against the truck (S. C., p. 46, ll. 13-22). Defendant was not driving fast (S. C., p. 37, ll. 16-17; S. C., p. 22, ll. 30-38). On the bridge there are two lines for traffic going in each direction, a truck line and a passenger line (S. C., p. 35, ll. 31-33) room enough for four cars abreast (S. C., p. 39, ll. 11-16) with the middle of the road being the space between second and third trolley rails (S. C., p. 39, ll. 17, *et seq.*). After the contact defendant's rear end went around (S. C., p. 46, ll. 31-33) and he was in a collision with plaintiff's car on the wet road.

Wherein lay the alleged negligence?

Negligence cannot be inferred from the mere happening of an accident. *Boyer v. Great A. & P. Co.*, 99 N. J. L. 451, 456; *Kingsley v. D. L. & W. R. R. Co.*, 81 N. J. L. 536.

The mere happening of an accident raised no presumption of the negligence of the defendant. *Paynter v. Bridgeton and Millville Co.*, 67 N. J. L. 619, 625.

What act of defendant's was such that an ordinary careful, a reasonably prudent person would not have done? True, plaintiff claims defendant said his brakes were no good, but for the sake of argument, conceding this to be so, the only testimony in the case is that applying brakes would make the skid worse (S. C., p. 53, ll. 2-24). There is no claim that defendant tried to stop or should have stopped. Plaintiff fails to point out from the testimony any act of defendant's which would constitute negligence.

We cite *Chase v. Tingdale Bros., Inc. (Minn.)*, 149 N. W. 654. In that case the plaintiff was on the right side of the road. An electric car being backed out of an alley suddenly loomed up ahead of defendant. He applied his brakes and attempted to make a quick turn to get around the rear of the electric. The pavement was wet and slippery because of the weather. The rear wheels of defendant's car skidded to the right, striking the rear wheel of electric and colliding with plaintiff. The collision occurred in a residential part of the city. The court said:

"As to defendant's car not keeping to the right of the center of the street, plainly the statute has no application where a motor vehicle, through no fault of its driver, skids on a slippery pavement and is thus thrown across the center line."

In the present case there was no proof that defendant drove on the rails or on the wrong side of the road or that he failed to make observations or that in operating his car he did anything a

reasonably prudent person would not have done. There was no proof that plaintiff did other than barely touch this car which had been preceding him, no claim that plaintiff did not have his car under control, no evidence that this accident could have been avoided.

If plaintiff contends it was defendant's rate of speed which he places at 25 to 30 miles per hour and which his witness places at 18 to 20 miles per hour just before the collision (S. C., p. 33, ll. 20-27) and not fast (S. C., p. 37, ll. 16-17) plaintiff was negligent for he was, on his own admission, driving 20-25 miles per hour (S. C., p. 13, ll. 11-12). His wife considered this slow (S. C., p. 32, ll. 20-24).

Defendant did not attempt to stop he merely swerved his car one foot (S. C., p. 19, l. 14 to top p. 20; top p. 26; p. 14, ll. 27-35) although he had seen plaintiff come out and start to skid at least twenty-five to thirty feet from plaintiff (S. C., p. 17, ll. 29-40, top p. 18). There was nothing to plaintiff's right (S. C., p. 13, ll. 9-10).

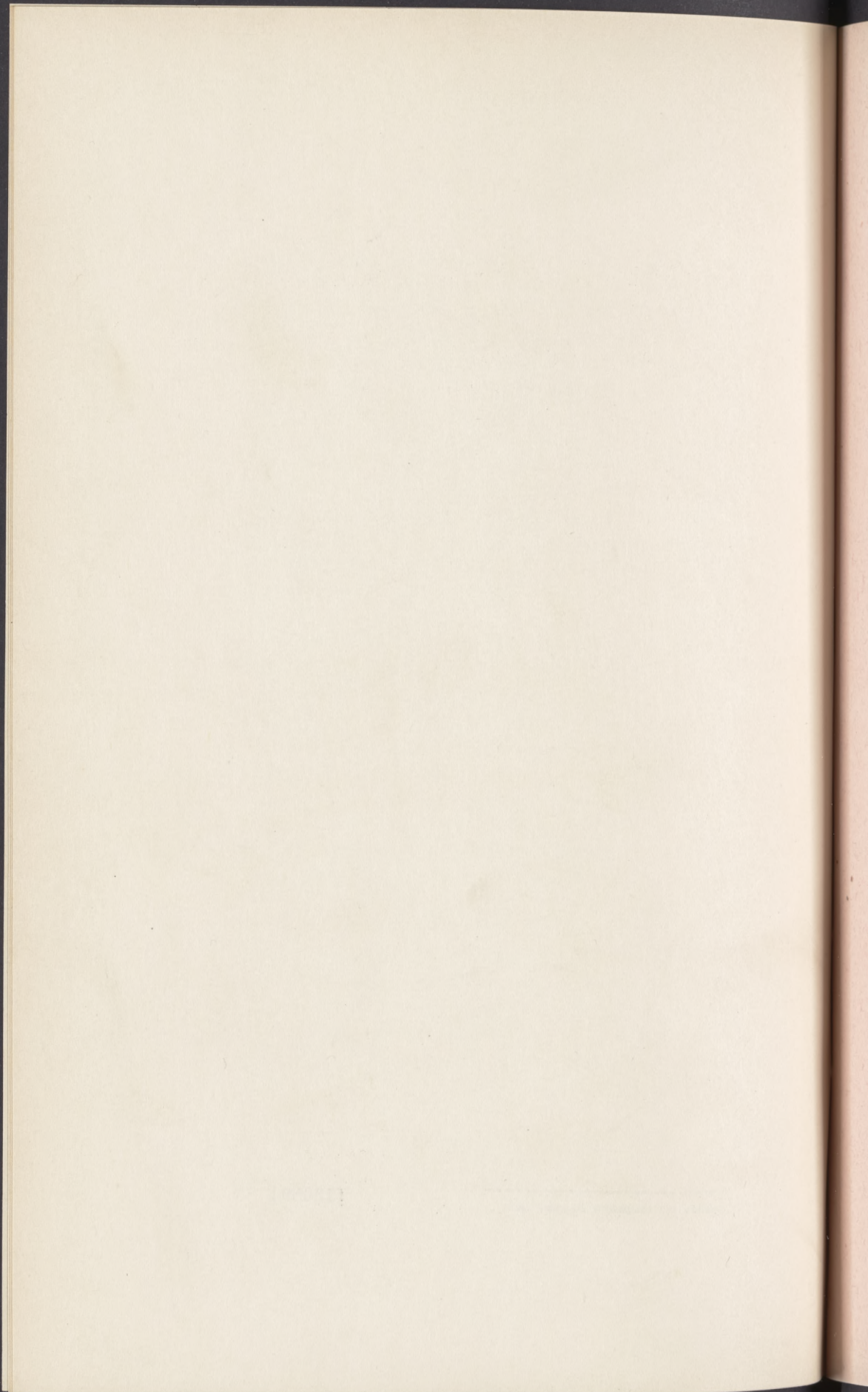
If plaintiff's conduct was negligent and his negligence contributed to the injury in such a way that, if he had not been negligent, he would have received no injury he cannot recover. *New Jersey Express v. Nichols*, 33 N. J. L. 434.

Defendant's answer denies negligence. What rule does plaintiff invoke that would require defendant to plead the accident was unavoidable?

We respectfully contend that the court below was right in stating it "was unable to see any evidence that would warrant submitting the case to the jury".

Respectfully submitted,

WILLIAM J. McCORMACK,
Attorney for Defendant-Appellee.



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