INDEX.

	PAGE
Notice and Grounds of Appeal	1
Complaint	5
Answer	9
Judgment	9
Motion for Non-suit	155
Motion for Direction	302
Direction of Verdict	306

TESTIMONY.

Plaintiff's Case.

Abner W. Gill:	
Direct	10
Harriet Nell:	
Direct	19
Cross	41
Josephine T. McGintee:	
Direct	48
Cross	58
William J. Dearden:	
Direct	63
Recalled—Direct	153
Max Wyler:	
Direct	73
Cross	78
John Sheehy:	
Direct	85
Cross	90
Frank Finelli:	
Direct	95
Cross	98
Joseph Rosenstangle:	
Direct	101

PAGE

Luke Frate:
Direct 103
Cross 104
Benjamin Campbell:
Direct 107
Cross 110
John Moore:
Direct 119
Cross 121
Julius Auerbach:
Direct 125
Cross 132
Joseph A. McPhillips:
Direct 134
Samuel A. Tannenbaum:
Direct 137
John J. Nell:
Direct 143
Cross 146
Redirect 150
John Sheehy:
Direct 295
Cross 297
William L. Miner:
Direct 300

Defendant's Case.

William C. Godstrey:
Direct 157
Cross 170
Redirect 207
Recross 215
Henry Wissel:
Direct 224
Cross 227
Joseph Gantert:
Direct 234
Cross 235

PAGE

John J. Gould:
Direct 237
Cross 239
Whitmore Robinson:
Direct 243
Cross 247
Robert W. White:
Direct 249
Cross 251
Patrick Dowdell:
Direct 253
Cross 258
Orlando H. Speer:
Direct 281
Cross 282
Joseph Rosenstangle:
Direct 286
Cross 288
Harriet Nell:
Direct 291

PLAINTIFF'S EXHIBITS.

1—Map 307
2—Photograph 308
3—Photograph 309
4—Photograph 310
5—Photograph 311
6—Photograph 312
7—Photograph 313
9—Medical History of Case..... 314
10—Examination of W. C. Godstrey Before Trial 314
11—Card of Edgewater Garage..... 338
12—Form of Statement..... 339
13-14—Records of Commissioner of Motor Vehicles 339

PAGE

16—Account of W. C. Godstrey in First Nat'l Bank 339
17—Account of Undercliff Taxi Co. in First Nat'l Bank 340
18 for Iden.—Bills to Edgewater Garage.... 340
19 for Iden.—Affidavit of Patrick Dowdell... 340

DEFENDANT'S EXHIBITS.

1—Agreement between Undercliff Taxi Co. and The Riverside & Fort Lee Ferry Co. 343
2 & 3—Two Books 345
4—Billhead of Undercliff Taxi Co..... 345
5—Receipt from Standard Oil Co..... 345
6 to 9—Receipts from Standard Oil Co..... 346
10—Certificate of Incorporation of Undercliff Taxi Co. 346

Bergen County Circuit Court

NOTICE AND GROUNDS OF APPEAL.

(Filed October , 1916.)

HARRIET NELL and JOHN J. NELL,
Plaintiffs-Appellants,
against
WILLIAM C. GODSTREY,
Defendant-Respondent.

To Wendell J. Wright, Esq., Attorney of Defendant:

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 grounds:

1. The Trial Court directed a verdict against the plaintiffs and in favor of the defendant when thereunto moved by counsel for the defendant, whereas said court should have denied said motion, and should have submitted to the jury for decision the questions involved in the issues.

2. Receipted bills showing money paid by the Borough of Edgewater to the Undercliff Taxi Co., referred to in the testimony of the witness Gantert, were excluded from evidence.

3. The affidavit sworn to by Patrick Dowdell,

plaintiffs' exhibit 19 for identification, was excluded from evidence.

4. The contract between the Undercliff Taxi Co. and the Public Service Corporation, Exhibit D 1, was admitted into evidence.

5. The book referred to as the "ledger at the beginning of the Undercliff Taxi Company's business" Exhibit D 2, was admitted into evidence.

6. Exhibit D 3 was admitted into evidence.

7. The billheads, defendant's exhibit 4, were admitted into evidence.

8. The memoranda from the Standard Oil Co., defendant's exhibit 5, 6, 7, 8 and 9, were admitted into evidence.

The following questions were overruled:

To the witness Harriet Nell:

9. Q. Have you suffered from melancholy at all?

10. Q. Did you have any trouble in carrying on a conversation before the accident?

11. Q. Have you shown any trouble in carrying on a conversation since?

12. Q. Can you recall—is there anything else that you recall?

To the Witness William C. Godstrey:

13. Q. You have been subpoenaed here to produce the books of that corporation, and I ask you to show me the certificate of stock issued to you in that corporation?

14. Q. Was there any reason in the world why that bank account—why the corporation could not

have given you, as manager of that company, authority to sign checks?

15. Q. Do you mean to say that when Dowdell took the car out that night that it was with the idea of depriving you out of the money he earned?

To the Witness Henry Wissel:

16. Q. Have for how long?

To the Witness Joseph Rosenstangle:

17. Q. Just tell us what he said about his relations with Dowdell?

18. Q. Did you have any talk with Mr. Godstrey when he came to the station house?

19. Questions to the witness Gantert as to his possession as a free-holder.

The following questions were admitted:

To the witness Benjamin Campbell.

20. Q. The taxi business was under the name of Undercliff?

21. Allowing the witness Campbell to testify who the officers of the Undercliff Taxi Co. were. Such evidence following the question and answer reading as follows:

22. Q. Do you know who the officers of the corporation were? A. Yes, sir.

23. Q. That company operated with taxi cabs, did it not?

24. Q. As manager of the taxi company?

25. Q. When was that?

To the Witness William C. Godstrey:

26. Q. I show you a paper; what is that paper that I show you?

27. Q. And this spring you said—did you make any statements over to the people interested?

28. Q. Did you ever give him any instructions to drive cars?

29. Q. Did you know this taxicab in which Mrs. Nell was riding on the night of January 15th or 16th?

30. Q. Did you personally own and operate any taxicabs in the Borough of Edgewater at any time from September, 1913, down to the present time?

31. Q. Did you personally have any interest in the result of the accident?

To the Witness Henry Wissel:

32. Q. At that time, what was the condition of the company?

To the Witness Joseph Gantert:

33. Q. In January, or at the time of the accident, who was operating the taxicab?

To the Witness Robert W. White:

34. Q. Who do you work for?

To the Witness Orlando H. Spear:

35. Q. What was that?

36. Q. When?

37. Q. What did he say to him about that?

NATHANIEL KENT,

Attorney of Appellant.

COMPLAINT.

(Filed ——— ——, 1916.)

WILLIAM C. GODSTREY, the defendant in this cause, was summoned to answer unto HARRIET NELL and JOHN J. NELL, the plaintiffs therein, in an action at law upon the following complaint:

The plaintiffs, who reside at No. 136 Larch Avenue, Bogota, New Jersey, say that:

I. At all the times hereinafter mentioned the plaintiffs were and still are legally married and reside and cohabit together in the village of Bogota, as aforesaid.

II. That at all the times hereinafter mentioned this defendant was and still is the owner of a certain automobile, used as a taxicab, which said automobile is usually known as a "Ford," and which bore a license from the Secretary of State of New Jersey, namely 60195-1916.

III. That at all the times hereinafter mentioned this defendant was and still is in the business of hiring out taxicabs for hire and conducted said business under the name of Godstrey Taxi Co., and its principal place of business was located in an automobile machine shop and garage, which he conducted at Edgewater, New Jersey, under the name of the Edgewater Garage.

IV. That at all the times hereinafter mentioned and for a long time prior thereto, this defendant had in his employ a person named Patrick Dowdell, who among other duties did drive automobiles and taxicabs for the said defendant, and the said defendant permitted him to conduct him-

self in the said premises and hold himself out to the public as such taxicab driver.

V. That prior to and on the 16th day of January, 1916, this defendant had permitted the aforesaid automobile, and the various parts thereof necessary to operate the same, to become old, worn out and defective.

VI. That on the early morning of the said 16th day of January, 1916, while this plaintiff, Harriet Nell, was a passenger for hire in the aforesaid "Ford" automobile, which was owned, operated or controlled by this defendant, or his agent, servant and employee, and more particularly the aforesaid chauffeur, Patrick Dowdell, and because of the defective condition of the said automobile, and the parts thereof, as aforesaid, and also solely through the negligence of the said defendant, his agents, servants and employees, and without any fault or negligence on the part of the said Harriet Nell, said automobile with great speed, and while not under the control of any one, ran down a steep, narrow hill in the Borough of Fort Lee, New Jersey, the sides of which hill were very abrupt, steep and deep, the surrounding territory being far below said hill, and while thus in imminent danger of her life, the said Harriet Nell was instructed by the said Patrick Dowdell to jump for her life, which she did, and by reason thereof she struck the highway with great force and violence and sustained serious and grievous injuries, and among other injuries she is informed she received a fracture to the base of her skull, a ruptured ear-drum, a severe concussion of the brain, injuries to her middle and inner ear, a very severe shock to her nervous system, and contusions and abrasions

on her head, face and other parts of her body, and other internal injuries, so that she became sick, sore, lame, diseased and disordered, and was confined to a hospital, where she was compelled to undergo medical and surgical treatment, and was also confined to her bed and home for a long period of time, and that she was compelled to have to submit to medical treatment, and is informed and believes that she will be compelled to submit to medical treatment for an indefinite period in the future, and that she has suffered and underwent great pain and still does so, and is informed that she will continue to suffer great pain and suffering in the future, and that some of her injuries are of a permanent nature. That said injuries have hindered and prevented her from attending to her necessary and lawful affairs by her during all that time to be performed and transacted, and lost and was deprived of and in the future will lose and be deprived of divers great gains, profits and advantages which she might and otherwise would have derived and acquired, to her damage in the sum of Fifty thousand ($50,000) Dollars

VII. Also by means of the premises the said John J. Nell, plaintiff, husband of the Harriet Nell, during all that time and from thence hitherto lost and was deprived of the company, aid and assistance of the said Harriet Nell, his wife, which he might and otherwise would have had, and the said Harriet Nell, his wife, by reason of her said injuries, became permanently disabled from rendering and affording in the future to the said John J. Nell that aid, comfort and assistance in and about his household and domestic affairs, which she otherwise could and would have done,

and thereby also the said John J. Nell, lost the service of his said wife for a long space of time, to wit, from the day and year aforesaid up to and until the present time, and also by means of the premises the said John J. Nell was obliged to devote and consume a large amount of time in attendance upon his said wife, and also by means of the premises the said John J. Nell suffered and underwent great agony, apprehension and anxiety of mind because of the injuries to his said wife, and also by means of the premises the said John J. Nell was forced and obliged to lay out and expend large sums of money in and about endeavoring to cure his said wife of her said wounds, bruises and injuries so received as aforesaid, to his damage Five Thousand ($5,000.00) Dollars.

NATHANIEL KENT,

Attorney for Plaintiffs.

ANSWER AND JUDGMENT.

ANSWER.

(Filed ——— ——, 1916.)

The defendant answered as follows:

The defendant, residing at Edgewater, Bergen County, New Jersey, says that:

1. He has no knowledge of the allegations in the first paragraph, and therefore denies the same.

2. He denies the second paragraph.

3. He denies the third paragraph.

4. He denies the fourth paragraph.

5. He denies the fifth paragraph.

6. He denies the sixth paragraph.

7. He denies the seventh paragraph.

WENDELL J. WRIGHT,
Attorney for Defendant,
Hackensack, New Jersey.

JUDGMENT.

(Entered June 10th, 1916.)

WENDELL J. WRIGHT, Defendant's Attorney.

Amount of judgment for costs in favor of defendant on verdict directed for defendant for fifty-nine dollars and two cents ($59.02) for costs.

Judgment signed and entered June 10th, 1916.

GEORGE VAN BUSKIRK,
Clerk.

Transcript of shorthand notes of testimony taken at the trial of the above entitled cause at the Court House in Hackensack, N. J., on June 1, 2 and 5, 1916.

Before Hon. WILLIAM M. SEUFERT, Judge, and a jury.

For the plaintiffs, Nathaniel Kent, Tobias A. Keppler, of counsel.

For the defendant, Wendell J. Wright.

MR. KEPPLER—I understand that the County Engineer is very anxious to get away, so that I will put him on as the first witness, a little out of order.

ABNER W. GILL, sworn for the plaintiffs, testifies as follows:

Direct examination by Mr. Keppler:

Q. Mr. Gill, where do you live? A. Leonia, N. J.

Q. What is your business? A. Assistant engineer for the county.

Q. This county? A. Bergen County.

Q. How long have you held that position? A. Four years.

Q. In pursuance of your official duty did you make a drawing or diagram of the Fort Lee Hill? A. Yes, sir.

Q. Have you that with you? A. I have this print of it; yes, sir.

Q. Did you make a survey that was the basis of that drawing? A. I plotted the survey from the field notes.

Q. You supervised the work? A. Yes, sir.

Q. Have you that original drawing or diagram? A. I have this print taken of the original tracing.

Q. And this is an accurate diagram showing the altitude or declivity and course of that hill? A. Yes, sir.

MR. KEPPLER—I offer that in evidence.

Mr. WRIGHT—I object to it going in evidence. It is perfectly competent for Mr. Gill to refresh his recollection from it. I want to ask about it for this purpose.

THE COURT—For what, refreshing his recollection?

Mr. WRIGHT—I could not see how it is material now.

THE COURT—A map of the location.

Mr. WRIGHT—Unless a foundation is laid for it.

THE COURT—He is putting on Mr. Gill out of turn.

Mr. WRIGHT—Putting him on to show the grade; that is what he is after. Mr. Gill is put on to show what the grade is.

THE COURT—Taking it out of turn. If you object to the materiality of it on account of its location I will have to hold Mr. Gill here.

Mr. WRIGHT—If Mr. Gill will explain it so that I understand it, what the various marks are, I won't object to it.

THE COURT—You may proceed.

Mr. KEPPLER—I was going to ask Mr. Gill to put it on the easel here and explain it to the jury.

THE COURT—Proceed, Mr. Keppler.

Mr. WRIGHT—I do not think that any one has introduced Mr. Keppler of the New York Bar and ask the privilege of the Court; I will do so.

THE COURT—You may have it.

Q. Will you be kind enough to pin that map on the easel and explain to the jury the various marks? A. (Referring) This part shows——

THE COURT—Can you, before you go on with the explanation, agree upon the exact point of the accident with Mr. Wright so that you can indicate it on the map?

Mr. WRIGHT—Somewhere around the turn; I don't know the exact location.

Mr. KEPPLER—We have photographs all along the line. Mr. Gill wishes to make this road more intelligible. I suppose I will have to get him to state——

Mr. Wright, will you concede these are fair representations of the scenes that they depict?

Mr. WRIGHT—They are all right, I guess, as far as I know. Where do you claim the accident took place?

Mr. KEPPLER—The accident started there

(indicating); the car kept running on down to here (indicating).

Mr. WRIGHT—The pictures are all right.

Mr. KEPPLER—It is conceded that the photographs bearing the red line in the left hand corner marked respectively one, two, three, four and five are correct representations of the scenes they depict, going down that hill, starting at about—— What street is this, Mr. Gill?

WITNESS—Starting at Bigler street.

Mr. KEPPLER—I will offer them in evidence.

Mr. WRIGHT—It is understood that they are not pictures taken at the time, but after the snow was on the ground.

Mr. KEPPLER—They were not taken at the time.

Mr. WRIGHT—When were they taken approximately?

Mr. KEPPLER—Oh, about a month and a half ago.

The photographs are marked Exhibits P. 2, P. 3, P. 4, P. 5 and P. 6.

Q. Mr. Gill, looking at the map that you have and at the photographs that have been offered in evidence, will you kindly indicate on the map the beginning and ending of the photograph which has been offered in evidence as plaintiff's exhibit 2? A. This house (referring) shown in this plaintiff's photograph, P. 2, is at the corner of Bigler

street at the top of the hill; the house is sketched on the map.

Q. Is there any objection, Mr. Gill, to making lead pencil cross marks to indicate that so that the jury may take it in the jury room? Will you kindly mark that beginning on 2? A. (Referring) P. 2, beginning.

Q. Will you point out, as near as you can, the end of exhibit 2 on that map? A. About the same point in here (indicating).

Q. You may mark it accordingly? A. (Referring).

Q. Will you kindly mark the beginning of exhibit 3? A. (Referring).

Q. Kindly mark on that map the beginning of exhibit 3 and the ending of exhibit 3? A. The same house as shown on the top of the hill (referring).

Q. You may mark the beginning of exhibits 2 and 3? A. (Referring).

Q. Will you kindly show the end of exhibit P. 3? A. (Referring).

Q. Mark the beginning of exhibit 4? A. (Referring) The same place as No. 3 ends.

Q. Kindly mark the beginning of exhibit 5 and the end of exhibit 5? A. (Referring).

Q. Likewise kindly do the same thing with exhibit 6? A. (Referring).

Q. Mr. Gill, will you kindly explain to the jury the blue line or the grade—will you kindly describe to the jury the grade of that hill between the beginning of exhibit 2 and the end of exhibit 6, and referring them to the photographs that show the grade of that hill? A. This (indicating) is the map showing the street coming in, and this is the

profile showing the elevation. Here (indicating) is Bigler street, being at an elevation, and here (indicating) it is at the turn.

Q. Is that based, or not, upon the height above the level of the sea? A. Yes, sir.

Q. How high above the level of the sea does that show the beginning of Exhibit 2? How many feet above the level of the sea? A. 276.4 feet; that is starting at the top of Bigler street, this point here (indicating).

Q. And the end of Exhibit 6, what is the level of the sea at that point? A. It is 208.98 feet.

THE COURT—What is the difference between the two of them?

WITNESS—(Referring) It is 800 feet.

Q. That makes a decline of 67 feet plus and that distance of 800 feet, doesn't it? A. Yes, 68 feet in 800.

Q. About 68 feet in 800. Can you tell us the distance between the first point on Exhibit 2, the beginning, and the end of Exhibit 2? A. (Referring). Approximately 100 feet.

Q. And in that 100 feet, what is the decline? A. It is 13 feet.

Q. 13 feet in a hundred. Now will you kindly look at the——

THE COURT—Does the grade change there?

WITNESS—Yes, sir.

Q. There is a drop in the grade of 13 feet of 100 feet. Will you be kind enough to look at Exhibit 3 and tell us the distance from the beginning to the end of Exhibit 3 and tell us the difference in the

grade? Rather the distance of Exhibit 3 and the difference in the grade? A. It is approximately 200 feet.

Q. Exhibit 3 shows approximately 300 feet in length, and the drop of grade is how much? A. 25 feet; it is 12½.

Q. Twelve and one-half feet a hundred? A. Yes, sir.

Q. Will you be kind enough to look at Exhibit 4 from the beginning to the end and let us know the length of that as near as you can figure it A. 400 feet.

Q. What is the drop in the grade there?

THE COURT—These are overlapping. They won't do you any good.

MR. KEPPLER—They are overlapping, but we have to have them according to the photographs. We have another grade now. We want to get the grade shown on each photograph.

THE COURT—If you are overlapping the grade, it won't be of any value, because you are averaging it up with your other photographs. You may give the difference in grade on the map as it exists; then you can figure the average.

MR. KEPPLER—Then what had we better do?

THE COURT—Take the exhibits there and indicate the average grade between the points from the beginning to the end of the exhibits.

MR. KEPPLER—I wanted to identify each

photograph, and then wanted to have him explain, in addition to the street the line that shows the grade, and then the photograph, so that the jury themselves could study it.

THE COURT—You may do that, but you are making confusion now, by giving overlapping averages.

MR. KEPPLER—If your Honor thinks so, I won't go into that and forget that we ever touched it.

Q. Will you kindly explain to the jury so that they themselves may figure the grade of any part of that hill, beginning with Exhibit 2 and ending with Exhibit 6? A. Bigler street, the center of it, the space in the center, is given on this slope line; this mark here (indicating) is the center line of Bigler street, and on that is given the station 99 plus 80.6 —9980 feet from the beginning to the rail.

Q. Will you explain to the jury what you mean by that, so that they may intelligently follow you, because you are familiar with it and it is rather technical to them? A. I will make the statement again; it is 9980 feet from the beginning of the rail; that is, that is where the center line of Bigler street is.

A JUROR—Beginning of what?

WITNESS—To the rail.

Q. What rail? A. Why, the Fort Lee Turnpike.

Q. Where does that begin? A. At Leonia Station. They take a point there and call it zero, and

they start and measure everything from that zero point.

Q. The railroad station at Leonia? A. Leonia Railroad Station.

Q. That point of Bigler street is—— A. 9980 feet; Station 9900 plus 80; station zero.

Q. As a surveyor in laying out a road, you have a point that you can take, and the point on this map is the railroad station at Leonia? A. Yes, sir.

Q. And these are the figures in there, 96, 9600 feet; 97, 9700 feet; 98, 9800 feet; 99, 9900 feet, is that right? A. Yes, sir.

Q. And then the additional feet show between these lines, the space in between them, is that correct? A. Yes, they show the additional feet to the end.

MR. KEPPLER—Do all you gentlemen understand that?

Q. If they want to figure out any point on this road, all they have to do is to look down here (indicating) and they can tell how much to add on? A. Yes.

Q. They can tell exactly just by looking at that? A. Yes.

Q. In view of the fact that the road has a direct turn, so as to be able to follow it out, you have made this line that I am pointing out here, isn't that correct? So as to account for this bend in the road on the right side of the map, which shoots down toward the bottom of the map; you have made this line so as to follow it out straight, isn't that so? A. This represents the elevation above the sea level, at different points along the center of this road.

Q. Yes, sir, I am referring to that? A. Yes.

Q. This only represents the elevation? A. All it represents is the elevation.

Q. How are the jury going to follow it out, if they want to find out how far—it says here 108 plus 35—to follow this thing intelligently, and determine the elevation, they would look at the map where they find P. 1, 108 plus 35, and then they would come down here to the figures here and determine the distance? A. They can determine the elevation at that point.

Q. They could determine the distance by looking at the figures in red above and determine the elevation? A. Yes.

(No cross-examination.)

HARRIET NELL, sworn for the Plaintiffs, testifies as follows:

Direct examination by Mr. Keppler:

Q. Your full name is Mrs. Harriet Nell? A. Yes.

Q. You were married to John Nell? A. Yes.

Q. When and where were you married? A. Rochester, N. Y., February 27th, 1905.

Q. Will you kindly repeat that? A. Rochester, N. Y., February 27th, 1905.

THE COURT—If you will stand back in your examination, she will have to talk to make you hear and then the jury will hear.

Q. Now, Mrs. Nell, have you lived with your husband constantly since you were married? A. Yes.

Q. Where do you live at the present time? A. 136 Larch avenue, Bogota.

Q. Have you any children? A. I have two.

Q. Living with you? A. Yes.

Q. Do you remember the 15th day of January, 1916? A. Yes.

Q. You were living in the same place in Bogota at that time? A. Yes.

Q. Do you remember what day of the week that was? A. Saturday.

Q. Did you go anywhere on that Saturday night? A. Yes.

Q. Where did you go? A. We first went to Hackensack to do some shopping; we could not get what we wanted, so we phoned Mr. Nell and told him we were going to New York; so we went over to New York.

Q. Was anybody with you? A. My sister.

Q. What is her name? A. Josephine T. McGintee.

Q. Where did you go in New York? A. We went to a little shop and got what we wanted and then went and called on some friends at No. 44 West 127th street, Mr. and Mrs. Burket.

Q. Where was this shop? A. Right next to the drug store, 7th avenue and 125th street.

Q. You say you then went to Mr. and Mrs. Burket's? A. Yes.

Q. Where do they live? A. No. 44 West 127th street.

Q. That is right close by this shop? A. About two blocks away.

Q. About what time was it that you got into the home of Mr. and Mrs. Burket? A. About twenty minutes after ten.

Q. Was Miss McGintee still with you? A. Yes.

Q. How long did you stay at the home of Mr. and Mrs. Burket? A. Until about half-past one.

Q. Mr. Burket is in Court? A. Yes, sir.

Q. Was there some other company there besides you folks? A. One young man.

Q. How long did you stay there, you say? A. Beg pardon?

THE COURT—1.30 was the answer.

Q. Where did you go then? A. We came out and took the cross-town car, tried to make the 2 o'clock boat, and we just missed it; so we had to wait until 2.45.

Q. Was anybody with you at that time? A. Mr. Schnell.

Q. He took you down to the boat? A. Yes.

Q. He did not go across the ferry with you, did he? A. No, he wanted to, but we found out that he could not get a boat back until about 5 o'clock, so we went on alone.

Q. What time did you get to Edgewater? A. Why, we caught the 2.45 boat across; I don't know how long it takes, 10 or 15 minutes, I think, to get across.

Q. When you got to Edgewater, what did you do? A. Started to go out to get on the cars, and there were three new cars standing there and they were all dark; a man waiting down there told us they did not leave until about 5 o'clock. So I asked him if they had a phone; he said there was a phone inside; so we called a colored man that took us around so that we would not have to pay a nickel to get in——

Q. Talk a little more slowly, and if you possibly can, talk a little louder, will you please? A. I

phoned to Mr. Nell and told him that the cars could not leave until 5 o'clock; so he asked me to try and get a taxicab, and so my sister and I came out; I asked an officer who was standing near, that had been talking to us, if he could get us a cab; he said if we waited 15 or 20 minutes, he would get us one, and told us to get inside, out of the cold, and he would call us when the cab arrived; which he did.

Q. Do you know the name of that officer? A. I think his name is Officer Gould.

Q. Then what happened? A. Why, the chauffeur came with a cab and my sister got in; I asked him how much he would charge me to take me to Bogota; I made a price with him and we got in the cab and started.

Q. What price did you make with him? A. Three dollars.

Q. Well, then, do you see the chauffeur in court? A. Yes, sir.

Q. What is that? A. Yes, I do.

Q. Will you kindly point him out? A. Right over there, the second man.

Q. Over on the other side? A. Yes.

Q. Will the chauffeur kindly stand up, Mr. Patrick Dowdell, is that the gentleman? A. Yes.

Q. What kind of a car was this? A. A Ford.

Q. A regular Ford taxicab? A. Yes.

Q. When you got in the car, what happened next? A. We rode along for 15 or 20 minutes, along the river edge, until we came to this big hill.

Q. How did you ride, North or South? A. Well, I don't really know, Mr. Keppler.

Q. Did you turn to the right or left when you got out of the ferry house? A. We started up the left, I believe.

Q. Are you sure of that? A. I am not sure, but it seems to me that.

THE COURT—There is no question about that; it is North.

MR. KEPPLER—They started North; there is no question that they started North, Mr. Wright?

MR. WRIGHT—I don't know really how they started; they finally ended up North.

Q. After you went along the River Road, what happened then? A. We came to this big hill, and we started up the hill, and he had some difficulty in getting to this point, and the car stalled, and started to go—

Q. Wait a minute; where did the car stall? How long had you been on that hill? A. How long had we been on the hill?

Q. Yes? A. Well, we just arrived there when the car stalled.

Q. What part of the hill were you on when the car stalled? A. I don't know—I don't believe it was on the top; there was another road running in there; I don't know the name of it.

Q. When the car stalled, what happened? A. The car started to go backwards, and he turned the wheel and backed us up against the curb so that the two back wheels were against the curb, and the two front wheels were slightly down hill, and he got out and started to crank the machine to make it go.

Q. Well, go ahead, when he started to crank the machine what occurred next? A. I then heard the engine going.

Q. Did it take any length of time? A. Yes, from 10 to 12 minutes.

Q. During that time did you do anything? A. No, I just opened the door once and asked him what the trouble was.

Q. What did he say? A. I understood him to say that the gasoline was low, and something about the radiator being hot.

Q. Did you observe anybody else around there during any part of that time? A. Yes, a man went down the hill; I rapped on the window and called to him, but he continued on down; did not pay any attention to me.

Q. At the end of 10 or 12 minutes, what happened? A. The car gave a leap and started down the hill; the chauffeur tried to hold it back, and it kept going faster and faster; he seemed to have his two hands around the radiator, and as the car got going faster, he kept going down underneath the radiator, and every little second or so, his face would come up in front of this rod, and he was scared to death; his eyes stuck out of his head; we were frightened, and I thought every minute—the car started to go from one side to the other—and I thought every minute it was going down the big bank; it looked like a big bank to me. He was terror stricken. We screamed and asked him what we were to do, and as his face kept up in front of this big rod, he hollered for us to jump, he said, "Jump for your life."

Q. How was the car going at that time, slow? A. No, going very, very fast; getting faster and faster, going faster and faster, and we finally—my sister put my fur cloak around my neck and I jumped. I just remember hitting my head. I had

terrific pain; I did not remember anything else.

Q. What happened? A. I don't remember anything after that, after I hit my head.

Q. What is the next thing you remember? A. On Monday afternoon, in the hospital; I remember I came to and Mr. Nell was there, told me what happened.

THE COURT—Monday afternoon, you say?

WITNESS—Yes, and I had this excruciating pain in my head; the more conscious I became, the more terrific my pain was; I did not sleep at night; I had to sit up in bed, to rest my back on the pillows; I could not lie down at all. Monday night I was in terrible agony; I asked for the doctor; he came down and he put cold applications on my head; did not seem to help any, and that went on for a week. We were taken home; I have the same trouble now occasionally, once or twice a week.

Q. You found yourself in the Englewood Hospital when you woke up, didn't you? A. Yes.

Q. How long did you say you remained there? About a week? A. About a week.

Q. And then you were taken home? A. Yes.

Q. In the hospital you were treated by Doctor Max Wyler? A. Yes.

Q. Did you observe any signs of bruises on your body? A. Yes, my shoulders and the end of my spine; I could scarcely move, I was so lame; my shoulders and my elbows; my face was cut on the side and underneath my chin, and my ear—I kept bleeding from the ear all the time.

Q. How did you know you were bleeding from the ear? A. Because I kept cotton in and when I took the cotton out, it was covered with blood.

Q. How long did that continue, that you were bleeding out of your ear?

A. All the time I was in the hospital, and after I came home, it was still—it wasn't clear at all; there was some kind of fluid.

Q. What was the color of the fluid? A. Why, a kind of gray.

Q. After you got home, how long were you in bed? A. I was in bed most of the time; I just got up occasionally; could not sleep at night; I had to sit up; I had to get up and down.

Q. How long did that condition continue?

A. Until February.

Q. How were you taken from the hospital? A. In an automobile.

Q. Can you give us any more definite idea of the bruises you had and the extent of those bruises? A. Why——

Q. Take your face, what part of the face did the bruise start and where did it end? A. From here (indicating) all the way down to my chin, and all the way under here (indicating).

Q. And your shoulder? A. My shoulders were all black and blue; from the shoulders on the side way back to the end of my spine.

Q. Back of the shoulders? A. Yes, sir.

Q. Where else? A. Under my spine.

Q. Any place else? A. My two elbows, and my knees.

Q. What else? A. My knees.

Q. Can you give us any idea of the pain that you suffered, what part of your body was it? A. Oh, I

had terrific, excruciating pains in my body, all up through here (indicating) and across my forehead. I thought I was losing my mind.

Q. How long did that pain continue so excruciatingly? A. About six weeks.

Q. How about the effect on your sleep? A. I did not sleep at all at night; slept a little during the day.

Q. Now, Mrs. Nell, prior to this accident, had you ever had an accident of any kind? A. No.

Q. Had you ever been sick? A. No.

Q. Now, tell us how you felt since that accident? A. Why, I have these sick spells about twice a week.

Q. What do you mean by sick spells? A. I nauseate and vomit, and I have these terrific dizzy spells and pain in my head.

Q. What kind of pains do you still have in your head? A. I have shooting pains that run all the way back through my head and through my ear.

Q. Is it a minor pain? A. I don't really know.

Q. Can you give us any idea at all of that pain? A. Why, it is almost indescribable.

Q. How long does the pain continue? A. Why, two or three hours; comes suddenly and leaves me very suddenly.

Q. Was it a mild pain or very severe? A. Very severe pain; usually having chills with it.

Q. How have you slept since the accident? A. I don't sleep well at night at all.

Q. What other sensations have you? A. Why, I get weak, and especially my ankles and my wrists and my eyes bother me a little and very deaf in my left ear; I am not able to hear at all over the telephone.

Q. Which ear is that? A. Left ear.

Q. The right ear is all right? A. Yes, sir; I get sinking spells when I get up quickly.

Q. Have you gained or lost weight since this accident? A. I have lost 20 pounds.

Q. Is there anything else that you can remember? How was your memory before the accident? A. My memory was very good. Now I don't remember over night where I put things; and in conversing, I go from one subject to another.

Q. Is there any difference in the shape of your face before and after the accident? A. Yes.

Q. Describe it? A. Why, it has changed on this side (indicating); it is different than the other.

Q. Were the two sides alike before the accident? A. Yes.

Q. Were you nervous before the accident? A. No. I am very nervous now; everything annoys me.

Q. Just what do you mean by that, very nervous now? How are you nervous? In what way? A. Why, I don't know just how; I am just simply nervous.

Q. Do sounds annoy you? A. Yes, everything.

Q. In what way? A. Why, I cannot explain how; just simply annoys me, sound or anything, hollering; everything annoys me.

Q. Did you experience any fear— A. Yes.

Q. Before the accident? A. No, I did not.

Q. What sensations did you feel in that respect since the accident? A. Why, I am afraid of cars and automobiles and horses and everything, and I have fear of everything I meet on the street.

Q. Did you ever have crying spells before the accident? A. No, sir.

MR. WRIGHT—I object to counsel leading.

THE COURT—Objection sustained.

Q. Tell me, Mrs. Nell—can you remember any difference in your physical condition or nervous condition before and after the accident? A. I was perfectly well before my accident; I was not nervous or anything.

Q. Are the conditions now as they were then? A. No, entirely different; changed in every way.

Q. Specifically, is there nothing else that you can recall, no other changes that you can recall? A. You see, Mr. Keppler, I cannot remember; I think of something and then I forget it.

Q. You have stated that you get dizzy from time to time? A. Yes.

Q. What happens when you get dizzy? A. Why, I have to sit down; in fact, I have fallen over two or three times.

Q. You have fallen over? A. Yes.

Q. Did you suffer as the result of any of those falls? A. I have—

MR. WRIGHT—I object to that as leading; it is also immaterial and irrelevant.

Q. Did anything occur upon any of these occasions when you fell? A. I broke my finger.

MR. WRIGHT—I object to that as immaterial.

THE COURT—On what theory are you going to produce any evidence of this sort, Mr. Keppler? What happened afterwards?

MR. KEPPLER—She has testified that as a result of these injuries she becomes dizzy; that she has fallen on a number

of occasions. We contend that if she was dizzy and fell as a result of this accident and suffered any other physical injuries—

THE COURT—You mean to say that she testified that she became dizzy and fell, and you claim on account of any fall of that sort, any additional damage? Why, you are going into another element of the case.

MR. KEPPLER—That is our contention. We contend that these are the proximate results of this accident.

THE COURT—I will take it subject to being connected up; in other words, it will have to be connected.

MR. WRIGHT—Exception.

THE COURT—You may have your exception. Don't lead the witness.

MR. KEPPLER—I respectfully ask for an exception on the ground that I am entitled to ask these questions.

THE COURT—There may be witnesses here interested in the case and the jury wants to hear her testimony, and not your testimony.

MR. KEPPLER—Of course I did not intend by any means to give my testimony.

Q. Mrs. Nell, you were just telling us that you fell upon one occasion—or, rather, upon a number

of occasions. Did anything happen on any of those occasions?

MR. WRIGHT—I object to that.

THE COURT—Objection overruled. Take your exception.

A. Yes; I broke my finger.

MR. WRIGHT—I move that the answer be stricken out.

THE COURT—I will let it go in.

Q. Which finger? A. This one (indicating).

Q. Take your gloves off? A. (Referring.)

MR. WRIGHT—I object to that question on the same ground.

THE COURT—Objection overruled. Take your exception.

Q. Kindly show which finger it was? A. This one here (indicating).

Q. The small finger of the left hand? A. Yes.

Q. When did that happen?

MR. WRIGHT—I object to that question on the same ground, and all testimony relating to injury subsequent to the accident.

THE COURT—You may have it.

A. About three weeks ago.

Q. Have you described everything that occurred in the hospital that you can remember? Can you recall anything else that happened to you? How is your appetite?

MR. WRIGHT—Objected to as leading.

THE COURT—Yes, objection sustained.

MR. KEPPLER—I submit that I have made every honest effort to get the witness——

THE COURT—I understand so, and you are limited by the rules of evidence.

MR. KEPPLER—I respectfully submit that having exhausted the witness' testimony, I have a right to refresh her memory upon——

THE COURT—Mr. Keppler, the Court has ruled.

MR. KEPPLER—I respectfully except.

THE COURT—You may have an exception.

Q. Mrs. Nell, you try to do your utmost to recall your sensations and experience from the time you regained consciousness up to the present day and he functions or the conditions of the organs of your body; now, can you recall any disturbance in any of the functions of your body?

MR. WRIGHT—Objected to as leading.

A. Yes, I can.

THE COURT—Objection overruled; you may have your exception.

Q. Well, tell us; was there any disturbance to the function of digestion?

MR. WRIGHT—Objected to as leading.

THE COURT—Objection sustained.

MR. KEPPLER—I respectfully except.

THE COURT—You may have your exception.

Q. Can you recall anything about that?

MR. WRIGHT—I object to that.

THE COURT—Objection sustained.

Q. Is it an impossibility for you to recall anything else? A. Why, yes, but I feel timid about telling about that.

Q. You are in a court room, Mrs. Nell, and you may feel timid, but you simply have to tell anything that you remember that relates to your body; you have to tell it; tell us what else you can recall? You will simply have to pluck up your courage and tell it; this is a court room. Can you tell us, Mrs. Nell? A. Why, I had hemorrhages.

Q. You mean menstrual hemorrhages? A. Yes.

Q. Were you ever troubled in that way before the accident? A. No.

Q. How long after the accident did that trouble commence? A. Must be five weeks.

Q. Continuous for five weeks? A. Yes.

Q. How long prior to that had you menstruated? A. Just about fourteen days.

Q. And have you had any trouble with your menstrual periods since that time? A. Yes.

Q. Of what nature? A. Why, they come about every twenty-one days.

Q. Prior to that you were always regular? A. Yes.

Q. Now, how was your temper before the accident? A. All right, I guess.

New Jersey State Library

MR. WRIGHT—Objected to as leading.

THE COURT—The answer is in, let it stand.

Q. How has it been since the accident? A. Why, it has been different.

Q. Just in what respect? A. Well, I just simply —things annoy me, I show signs of temper whereas before I never did.

Q. Were you free of that before the accident?

MR. WRIGHT—Objected to as leading.

THE COURT—Objection sustained.

MR. KEPPLER—I respectfully except.

THE COURT—You may have your exception.

Q. Well, tell us, Mrs. Nell; you must try to tax your memory and recall the differences prior to and after the accident, if there are any that you have not told us about? A. I have frightful dreams at night; I get scared; wake up in my sleep.

Q. What do you mean? How often do you have frightful dreams? A. Why, I dream nearly all the time.

Q. Can you recall any differences at all? You have told us that your left ear is deaf? A. Yes.

Q. Tell us in detail, all the sensations that you have felt in and about your ear—in and about your ear from the time you regained consciousness to the present day? Take it easy and try to recall?

MR. WRIGHT—Objected to. You have already gone over that, asked what sensations she had. Now you are going over the entire subject again.

THE COURT—Counsel is directing her attention to certain things; just limiting her to the sensations about her ear.

MR. KEPPLER—May I ask——

THE COURT—The Court is willing to give her every leeway.

MR. KEPPLER—May I be permitted to ask the Court if I have exhausted her memory? if we are not permitted to direct her attention to particular things?

THE COURT—The Court will take care of that and use its discretion upon every question involved. Proceed.

MR. KEPPLER—I will respectfully submit some law, and I will give your Honor authority after lunch, that if a witness states that she cannot remember, that she don't remember, I can suggest to her.

THE COURT—It is a matter of discretion with the Court as to whether it will allow any of these questions.

Q. Did you finish the question, Mrs. Nell? A. No.

Q. (Question read to the witness.) A. Why, I am; I could not hear, and I have these day noises—all kinds of noises in my ear; at times aches and pains.

Q. How often does it ache and pain? You know what the noises are, but the gentlemen of the jury don't know; you will have to give them some idea what those noises are, how they affect you and how

often you hear those noises? A. Why, I have been having these spells about two every week.

Q. Tell us more specifically about these noises which you refer to, what kind of noises are they? A. I could not just explain that; it is just a rumble noise.

Q. How long does that noise last? A. I have these spells; I am in them about two hours; after that, why it leaves me entirely.

Q. Can you recall anything else? You have stated that you were nervous specifically; can you point to anything else?

MR. WRIGHT—Objected to as leading.

THE COURT—I will allow the question.

Q. Can you? A. I think I have told everything, Mr. Keppler, that I can think of.

Q. Let us see if you cannot recall anything else afterwards; let us go on with the next line of examination. During the time that you were home, did you have any additional help in the house? A. Yes.

Q. Who? A. I had Mr. Nell's mother.

Q. Were you attended by any physicians other than Doctor Wyler? A. Well, the doctor in the hospital, do you mean?

Q. Yes? A. Why, I believe Doctor Proctor.

Q. Don't you know whether Doctor Proctor treated you or not? A. I believe he was there when they examined my head or something.

Q. Don't you know whether he was there or not? A. He was in consultation, I know.

Q. And outside of those two physicians, have you had any other physicians? A. Yes, had New York physicians.

Q. Who? A. Dr. Auerbach and Dr. McPhillips and Dr. Tannenbaum.

Q. Were you treated by all those gentlemen? A. Yes.

Q. Are you still under treatment? A. Yes.

Q. Now, can you at this time, Mrs. Nell, recall anything additional, any additional change in the action of the functions or any of the organs of your body or any nerves or any sensations or emotions that you have experienced that were different than you felt before the accident? A. Why, my head gets numb and I get very weak.

Q. What do you mean, your head gets numb? A. My head and my feet get numb; no circulation.

Q. How often does that occur? A. Oh, I have it nearly all the time; I could not bear to touch anything that has starch in it.

Q. What is the effect of touching anything that has starch in it? A. Oh, it just goes through my whole body.

Q. What do you mean, it goes through? A. It is repulsive to me; I don't know just how to explain it.

Q. Can you give any comparison in order to make the jury grasp what you mean? A. It just gives me a funny sensation, to take hold of anything that has starch or sandpaper or anything.

Q. You mean anything that has a graty sound? A. No, it is just the feeling; my fingers are so numb at the ends, when I take hold of anything, it sends a sensation all through my body, which is repulsive to me. That is the best I can explain.

Q. Now, you have succeeded in recalling that; what else can you recall? A. Loss of appetite; I don't eat the way I ought to.

Q. How was your appetite before the accident? A. I used to eat very good.

Q. How has it been since the accident? Just tell us the change? A. I never eat any breakfast; I haven't any appetite for breakfast, and I eat one meal; don't have any lunch; I eat perhaps one good meal a day.

Q. What else can you remember? Is that all you can recall? A. I think so.

Q. You have told us about the nausea and vomiting; when did you first notice that? A. Why, when I came over from the hospital.

Q. When you came from the hospital? A. Yes.

Q. Did you notice it in the hospital? A. No, because I was in bed all the time; I did not notice it until I started to walk around.

Q. You don't remember whether you felt nausea in the hospital at all, do you? A. Oh, yes; I vomited all the time I was there.

Q. That is what I am asking you; you vomited all the time you were there? A. Up until the last three days.

Q. Does that condition of vomiting and nausea still exist? A. Yes.

Q. What other nervous sensations have you felt that are different than those prior to this accident? Can you remember whether there is any difference in the members of your body?

MR. WRIGHT—Objected to as leading.

THE COURT—I will allow it.

Q. Have you told us everything that you can possibly recall? A. I think I have told the most important things.

Q. Can't you make an effort to recall anything

further? Don't you know if the trend of your thoughts—whether there is any difference in the trend of your thoughts before and after this accident?

MR. WRIGHT—Objected to as immaterial and leading.

A. I thought I had explained that.

THE COURT—She said she thought she explained that. I will allow that to stand.

Q. You don't recall it. If you have, tell us again?

MR. WRIGHT—I object.

THE COURT—Objection sustained. I think you have covered the question about seven or eight different times. I think you had better not go further.

MR. KEPPLER—I don't believe I touched on those facts.

THE COURT—You asked the question whether she could not recall anything else about a dozen times.

MR. KEPPLER—Then I submit that if she cannot recall anything else, I have a right to direct her attention to it.

THE COURT—I understand so; but there are certain limits to which you can go. The Court don't want to limit you, but we cannot stay here all day.

Q. Mrs. Nell, have you suffered from melancholy at all?

MR. WRIGHT—Objected to as leading.

THE COURT—Yes, the objection is sustained.

MR. KEPPLER—I respectfully except.

THE COURT—You may have your exception.

Q. Did you have any trouble in carrying on a conversation before the accident? A. No——

MR. WRIGHT—Objected to as leading.

THE COURT—Yes, objection sustained.

MR. KEPPLER—I respectfully except.

THE COURT—You may have your exception.

Q. Have you shown any trouble in carrying on a conversation since?

MR. WRIGHT—Objected to as leading.

A. I thought I explained all that.

THE COURT—Objection sustained.

MR. KEPPLER—I respectfully except.

THE COURT—You may have your exception.

Q. Can you recall—is there anything else you possibly can recall?

MR. WRIGHT—I object to it as having been asked, again asked the question improperly.

THE COURT—Yes, the objection is sustained.

MR. KEPPLER—I respectfully take an exception to your refusal to permit me to suggest to the witness things which she cannot recall after having exhausted her memory.

THE COURT—You may have your exception.

Cross-examination by Mr. Wright:

Q. Mrs. Nell, what time did you leave Bogota on this Saturday, this 15th day of January? A. About 7.30.

Q. You came to Hackensack? A. Yes.

Q. Then you went from Hackensack to New York? A. Yes.

Q. On the trolley? A. Yes.

Q. You got to your friend's house, you say, about half-past 10? A. About 20 minutes after.

Q. Twenty minutes after ten that evening? A. Yes.

Q. You stayed there until what time? A. About 1.30.

Q. That was at 127th street, West 127th street? A. Yes.

Q. That is near what avenue? A. That is between Lenox avenue and Fifth avenue.

Q. You left to go to the 130th Street Ferry, to get the 2 o'clock boat, I believe you stated? A. Yes.

Q. Some one accompanied you to the boat? A. Yes.

Q. Who was that? A. Mr. Schnell.

Q. He accompanied you from the Burket house? A. Yes.

Q. Did you get a trolley car at 125th street and go across? A. Yes.

Q. But you missed the boat? A. Yes.

Q. The next boat left at what time? A. About 2.45.

Q. Mr. Schnell stayed there until the boat left? A. Yes.

Q. He saw you on the boat? A. Yes.

Q. When you got to Edgewater, you wanted to

see if there was any trolley cars, did you, the first thing? A. Yes.

Q. You found that there were no trolley cars running? A. Yes.

Q. Then whom did you speak to? A. To the policeman.

Q. To Policeman Gould? A. Yes.

Q. Did you speak to any one else? A. To the colored man.

Q. You mean the colored porter at the building? A. Yes.

Q. What did you say to the porter? A. Why, the policeman asked him to take us around so that we would not have to pay a nickel.

Q. What did you say to the porter about getting a conveyance to get home? A. Why, I did not say anything to him; the policeman was the only one that was speaking about getting a conveyance.

Q. Didn't the colored man go and try to get a taxicab for you? A. I don't know; I left it to the policeman; he had us wait inside; so I don't know who went for the cab.

Q. You don't know whether the colored man went to try and get a cab for you or not, do you? A. No, I don't.

Q. How long did you wait before the cab came? A. About 15 or 20 minutes.

Q. And then you started out and went up the hill? A. Yes.

Q. And are you familiar with this River Road? A. Why, no; I had never been over that way before, been out that late at night.

Q. Was this a dark night? A. Yes, it was a very dark night.

Q. You are not quite positive just where you were

when the car stalled, are you? A. Why, I don't know the name of the street; there was another road running in there.

Q. Running in from which side? A. From the right side.

Q. From the right side? A. Yes.

Q. Quite a large street, looked like a wall? A. Yes.

Q. That was at the end of quite a steep hill, wasn't it? A. Yes.

Q. And that was where the car stalled? A. Yes.

Q. What happened after the car stalled? A. The chauffeur got out.

Q. First—— A. It started to go back down the hill.

Q. He backed around to the curb, did he? A. Yes,

Q. He was at the curb with the rear wheels, the right curb or left curb? A. It was on the left-hand side of the road.

Q. The rear wheels were on the left-hand side of the road? A. Yes.

Q. So that he backed over to the left side of the road? A. Yes.

Q. And there were some buildings right where he backed, isn't that true? A. Yes.

Q. Do you remember what building? A. No, I did not take particular notice.

Q. Right by the curb, isn't it? A. I did not even notice that; I noticed that there were buildings there, but did not take any particular notice of them.

Q. When he backed up against the curb, then he got out, you say? A. Yes.

Q. And at that time the car was standing there,

right across the road? A. Across the road, and his front wheels were headed down.

Q. Headed down the hill? A. Down the hill.

Q. He was some little time trying to crank the car, wasn't he? A. Yes.

Q. This was a taxicab, closed cab? A. Yes.

Q. With windows up or down? A. The windows were up.

Q. Well, he finally succeeded in cranking the car and then did he make a start? A. Yes.

Q. Where was he when the car started? A. Why, he was standing in front of it.

Q. Was the car holding him down? A. No, he seemed to be holding on in some way; did try to hold it back, but he couldn't.

Q. How far did the car go with him in that position, holding on to the radiator? A. Until I jumped; he was still hanging on when I jumped.

Q. About how far was that? A. Why, it seemed a terrible long ways; I don't really know the distance.

Q. You say the car was going very fast? A. Yes.

Q. Going as fast as it had been going up the hill or faster? A. Oh, much faster.

Q. You say you spoke to him, and asked him what the matter was; what did you say to him after the car started? A. What happened to the car before the car started, you mean?

Q. After the car started? A. I did not say anything to him. We were simply screaming and asked him what to do; I tried to open the windows in front, but I did not have strength to do it.

Q. You could not get the window open? A. No.

Q. You said he called to you? A. I called to him; we kept asking what we would do; finally,

when he came up, he said "Juhp"; then his face came up again, and then he said, "Jump for your life."

Q. You heard him quite distinctly say that? A. Yes.

Q. Notwithstanding the window was up? A. Yes.

Q. Of course you dont' know what became of the car after you jumped? A. No, I don't.

Q. You don't know whether it was injured or broken up or anything about it, do you? A. No.

Q. Dr. Wyler and Doctor Proctor, the doctors over here in the hospital, were treating you? A. Yes.

Q. Doctor Wyler was the first physician that you knew was treating you when you became conscious? A. Yes.

Q. And then Doctor Proctor was really in consultation. A. Yes.

Q. And that was at the hospital? A. Yes.

Q. After you came home, did either of them treat you? A. Doctor Wyler.

Q. He came there to see you? A. Yes.

Q. How many times? A. Called about three times; and then he called afterwards I believe when we were not in. I think he called twice.

Q. And then you have been treated by Doctor Auerbach in New York? A. Yes.

Q. And also Doctor McPhillips and Doctor Tannenbaum? A. Yes.

Q. Who was your doctor before the accident?

MR. KEPPLER—I object to that; that is entirely immaterial.

THE COURT—How is it material?

MR. WRIGHT—Very material, your Honor. Her condition, testified to before the accident. I think it is quite competent to find out who her doctor was before the accident.

THE COURT—She may testify. Objection overruled.

MR. KEPPLER—I except.

A. Doctor W. A. Morgan, 265 West 81st street.

Q. W. A. Morgan? A. Yes.

Q. He hasn't treated you since the accident? A. He prescribed for me once.

Q. But he hasn't treated you regularly? A. No.

Q. The principal trouble, as the result of the accident, was contused bruises, of course, which were painful for a while, but you got over those after a short time, didn't you? Over the bruises to the shoulder and arms and elbows? A. Yes.

Q. Those were mere—what you might term bruises? A. Yes.

Q. The thing or particular injury which you particularly sustained, was an injury to your ear?

MR. KEPPLER—I object on the ground that it calls for the opinion of the witness as to which one of the numerous injuries she has described is, in her opinion, the most important.

THE COURT—It is a question that is directed to the severity of any of the injuries. She may testify to it. You may have an exception.

MR. KEPPLER—I respectfully except.

Q. You did not have any serious——

THE COURT—Do you want an answer to this question?

MR. WRIGHT—Question withdrawn.

Q. You did not have any serious trouble as the result of the bruises on your shoulder, did you? A. Those were very lame, yes.

Q. For a short time? A. Yes.

Q. How long did they last, four or five days or a week? A. About four weeks, about a month.

Q. The serious ones were bruises on your elbows? A. Yes.

Q. You don't feel anything of those now? A. No.

Q. Or to the bruises on your leg and knee? A. Yes.

Q. That has all passed away? A. Yes.

Q. And the thing that you are really suffering from at the present time is trouble with your ear?

MR. KEPPLER—I object to that, because she has testified to many other injuries.

THE COURT—She has already testified, but she may answer the question.

(Question read to the witness.)

A. My ear and my head; these terrific pains in my head.

Q. That is incidental to the ear trouble, is it not?

MR. KEPPLER—I object.

THE COURT—Evidently the question is not clear.

Q. This pain in the head is incidental to your trouble with the ear, is it not?

THE COURT—Come at the same time?

WITNESS—Yes.

By Mr. Keppler:

Q. Mrs. Nell, you said that you heard the driver say, "Jump for your life"; was the door closed or open at that time? A. The door was closed; we were afraid to open the door, for fear that we would fall out.

Q. Can you at this time, after having been examined by counsel, recall any other injuries that you suffered?

MR. WRIGHT—I object to that as not re-direct, and it is leading.

THE COURT—Let her answer.

MR. WRIGHT—Exception.

A. I think I have answered everything that I can think of.

JOSEPHINE T. McGINTEE, sworn for the plaintiffs, testifies as follows:

Direct examination by Mr. Keppler:

Q. Miss McGintee, where do you live? A. Rochester, N. Y.

Q. You are a sister of Mrs. Nell? A. Yes.

Q. What is your business? A. I am a graduate nurse.

Q. And you were in New York with your sister on the night of this accident? A. Yes.

Q. Came back with her? A. Yes.

Q. What time did you leave the Burket home, as near as you remember? A. 1.30, a little after.

Q. You went up to 125th street for the car? A. Yes, and waited some time for the car.

Q. How long did you wait for the car? A. Oh, about fifteen or twenty minutes; we missed the 2 o'clock boat.

Q. What time did you reach the ferry? A. That I just could not remember, when the gates closed we waited for the 2.45 boat.

Q. Tell us as briefly as you can, what occurred when you got to Jersey City? A. We crossed on the boat, and we went over on the boat, and asked —we went for a car, and the officer told us not to run, not to be in a hurry, and my sister wanted to telephone her husband and she went in and the porter, instead of paying a nickel, took us around the gate; she went in and called Mr. Nell, and he told us to get a taxi.

Q. Well, you can come briefly down; then what happened in reference to getting a taxi? A. We waited about twenty minutes for a taxicab, and the officer told us that it was ready, to come out; I got in the taxicab and my sister walked up to the chauffeur and asked how much he would charge us to take us to Bogota, and he told her $3.00.

Q. Do you recognize the chauffeur in court? A. Yes, I do.

MR. KEPPLER—Will the chauffeur kindly stand up?

Q. Is that the gentleman? A. Yes.

Q. Then tell us as briefly as you can what happened next? A. We got in the taxicab and rode along the river for some distance and we got to the

steep hill, and near the top of the hill the car became stalled and started to back downward; the chauffeur turned the wheel and backed the car to the curb; it was across the road, and the wheels were slightly pointed downward; and he got out and cranked the car; took ten or twelve minutes, and my sister opened the door and asked him what the trouble was; he said the gasolene was low, and the radiator was over-heated, and finally the car—he got the car started; it made one leap down this hill, and the chauffeur tried to hold the car back, and it started and began to go faster and faster; and every time we looked, the chauffeur's head would bob up and down over the radiator; we began to scream and he told us to jump; he told us again to jump, and my sister jumped first.

Q. Do you remember his exact words? A. He told us to jump for our lives; my sister jumped first and the car was going, zig-zagging from one side of the road to the other, and it gained in speed; and after she jumped I jumped, and he shouted again for me to jump for my life, and I jumped.

Q. When your sister jumped, did you observe anything about her? A. Just what do you mean?

Q. Did you notice how she fell? A. No, we were too excited; I put her fur coat around her head, told her to jump, and I was taking my chances to jump, because the car was going from side to side.

Q. Have you any idea how far the car went from the time it started until she jumped? A. Well, being so excited, I could not tell exactly, Mr. Keppler.

Q. Give us your best estimate? A. Well, I think it had gone one hundred feet.

THE COURT—One hundred feet?

WITNESS—I think so; I am not sure.

Q. Now, how far after she jumped, did you jump? A. Why, I jumped one hundred feet from where she fell.

Q. Now, after this accident, what happened? A. After I jumped, I screamed for the chauffeur to come back and carry me back to my sister; I did not hear a sound from her and I did not know what happened, and instead of carrying me—

Q. The chauffeur came to help you back to your sister? A. He did not carry me; he could not carry me; he dragged me back to my sister.

Q. The chauffeur did? A. Yes.

Q. How long after you jumped did the chauffeur come up to you? A. Well, after he had been released from the front of the car—that was fully five or six minutes; we lay in the road.

Q. What was the condition of the weather at that time? A. It was very cold; a very cold night.

Q. And then you say he took you back to your sister? A. He dragged me back to my sister, and I sent him back for my furs, and the parcel that was lost. When I got to my sister, she was bleeding profusely from the ear, and her head, and she was vomiting, and just then a man came running down the road and asked what the trouble was; I told him that I guessed my sister was dying, and to get help; he went, and while he was gone, the chauffeur came back with my furs, tried to do what he could for us; and then shortly after that two officers came there and picked us up and took us in a machine to Doctor Wyler's office; when we got there, put me on the doctor's operating table and my sister on the floor facing me.

Q. Where was your sister bleeding from? Her ear and where else? A. From her head.

Q. Did you look at her head? A. Yes.

Q. What did you observe? A. I observed that blood was streaming from her head.

Q. What part of the head? A. On the left side.

Q. What part, the left side? A. Right back of the ear.

Q. Could you point to your own head and show just about what part? A. Yes, I could.

Q. Do that, will you please? A. (Indicating) about there.

Q. What was done in the doctor's office? A. They left my sister on the floor, and all the time she was vomiting, and I was up in his room and he waited downstairs about five minutes to find out how we were; went upstairs and dressed; that took about twenty minutes. All the time my sister was vomiting and the chauffeur was on the right of me standing, and one of the officers was on the left, and there was also an officer on the floor with my sister; and the doctor's chauffeur or office man was there, helping to assist my sister. The doctor came down; he got out the instruments; he shifted her head, and sewed it up; and finally he called the Englewood hospital, to send a special doctor and a nurse, and I insisted on, before she was sent to the hospital, calling my brother-in-law, Mr. Nell, and told him, and shortly after that the ambulance arrived and put us in the ambulance, and while—it was a long ride over to the hospital, and all this time my sister vomited, and she was unconscious; I tried to arouse her and talk, and she did not know a thing, and when we arrived there, they carried my sister to one room and I was in another.

Q. How long after that did you see your sister again? A. I saw my sister on Wednesday; they took me in a wheel chair into my sister, and I stayed with her probably all day, from then on, while we were in the hospital.

Q. Until you left the hospital? A. Yes.

Q. What did you observe about her condition during the period while you were there? A. When I went in, she was having awful pain, bleeding from the ear, and the only relief she got was while she was in a sitting posture, the back resting on pillows, and we tried cold applications, tried to relieve her, but it wasn't of much use.

Q. What else did you observe about her condition? A. She was vomiting continuously, and she was very nervous; and every little while, there seemed to be this very sharp, acute pain, and then she would be quiet for ten or fifteen minutes, and the same thing would happen.

Q. Have you been with her at home since this accident? A. Yes, I have.

Q. She keeps house with her husband and children, at Bogota? A. Yes, right over here on the hill.

Q. Did you see a good deal of your sister before this accident? A. Yes. The children had whooping-cough and I came down a year before Thanksgiving. She was in perfect health, and always had been. She had no sickness except when the children were born.

Q. Do you know what Doctor Morgan treated her for? A. When she had children, Dr. Morgan was her doctor.

Q. In child birth? A. Yes, the doctor attended

her each time the children were born, the Lying In Hospital.

Q. Have you taken care of your sister since the accident? A. Yes, as I have been able to.

Q. How often did you see your sister before this accident? A. Well, I got down here once or twice a year; I usually come down when the children are sick.

Q. Did she ever come up to Rochester? A. Yes.

Q. How long a period of time was it that you saw her in that way? A. Well, I was down—really I have only been up in New York three times; never been here very much, once while I was in training, and twice since then.

Q. How long have you been a registered nurse? A. I have been a registered nurse three years.

Q. How often did she come up to Rochester? A. At least once a year.

Q. So that you were familiar with her general physical condition? A. Yes, Mr. Keppler.

Q. Now, tell us, if you can, of any changes that you have observed since this accident? A. My sister has changed in every way, her appearance.

Q. What do you mean by her appearance? A. Her face—she doesn't look the same; she had a plump face, and the left side of her face, by looking at her, it is very different than the right side; and loss of appetite; she practically eats very little food, one meal a day; and at her menstrual periods, she is in bed four or five days and that is unusual, because she has always been perfectly all right; since this happened, she has been bad, and these spells come on her; she doesn't know any minute that she is liable to have one; she will get dizzy and this nausea and vomiting.

Q. How often have you observed that? A. What?

Q. How often have you observed her vomiting? A. About twice a week she has had it, real hard spells, but in between; she will go along and all of a sudden she will put her hand up to her head, dizzy, and she has to take hold of something or she will fall.

Q. Have you noticed any change in her general disposition? A. Yes, she is very irritable and cross; everything annoys her; even the children recognize it; she will start very suddenly.

Q. Do you know whether she was affected that way before the accident? A. No, she was not.

Q. What else did you observe that you can recall? A. She is afraid to be alone any minute of the day, and if a train or automobile passes her, she will shudder and begin to shake and get dizzy; she is frightened; and in the night she will cry out, in her sleep. I have gone in and asked her, aroused her, awakened her, and she would say oh, she thought she was falling.

Q. Anything else? A. She has this weakness, weak in her ankles, and these very bad severe headaches.

Q. How often does she have these headaches? A. Well, she has about two with this nausea and vomiting, but in between that, every day, she has complained so far of headaches.

Q. Well, have you told us all—is there anything else you possibly can recall at this time? Have you observed anything about her memory? A. Oh, her memory is very poor. My sister always had a very good memory. She will start to talk and lose her conversation, wander off on something else.

She does not remember over night. She will put a thing in a certain place and forget all about it—a very poor memory.

Q. Did you observe anything about the action of the muscles of her face? A. Yes.

Q. What? A. Why, at the time this happened, when they were taking us to the hospital, her mouth was sort of paralyzed; she could not open it; tried to give her cracked ice, but she could not open her mouth; it was as if you put a stone in her mouth and she choked. It was a study to really understand what she was saying. She could not use her mouth, but very little.

Q. Well, at the present time, is there anything about the operation of the muscles of the face that you did not notice before the accident?

MR. WRIGHT—I object to that as leading.

THE COURT—She may answer.

A. Why, the appearance of her mouth is different, and the whole face, the left side of her face.

Q. Did you observe whether she cries at the present time? A. Yes, she is crying; she cries about all the time.

Q. How was that before the accident? A. I never saw her cry. She cries very easily now; everything upsets her.

Q. You have stated that there is a difference in the way she carries on a conversation now and before; just what is that difference? A. Well, before she would carry on a conversation right through. At the present time she will talk about —go on and start a conversation and she is not able to finish it, and she will wander off on something else.

Q. Have you ever been present at any time when you say she has these dizzy spells? A. Yes.

Q. How did she act? A. Why, she acts very strange, and her whole body shakes; regular nervous chills, one after another, she has.

Q. How long do they last? A. Oh, they last—she had one two weeks ago Sunday; she was in bed all the time, and it lasted for about two hours. We had the doctor from Bogota down here.

Q. What doctor did you have in Bogota? A. Doctor—the only one there.

Q. Near your home? A. Yes, right on the same street—Doctor Edwards.

Q. What have you as a nurse done for her during that time that you have been there? A. When she has spells I put her right to bed, keep her quiet, and she becomes very cold.

Q. I mean, have you attended her in your capacity as nurse, while you were at that house? A. Over where she lives now?

Q. Yes? A. Yes, I have.

Q. Are you familiar with what nurses charge for services of that kind? A. Yes, Mr. Keppler.

Q. What is the fair and reasonable value of the services of a nurse?

MR. WRIGHT—Objected to.

A. Twenty-five dollars.

THE COURT—How is this material?

MR. KEPPLER—This lady has taken care of her during the period that she was confined to her home; she is a registered nurse.

THE COURT—Objection will be sustained.

MR. KEPPLER—I respectfully take an exception.

THE COURT—You may have your exception.

Cross-examination by Mr. Wright:

Q. Miss McGintee, I understand that you have been in Bogota ever since Thanksgiving. A. A year before Thanksgiving.

Q. You have been here continuously? A. Yes.

Q. Can you remember about when it was that this car stalled? A. Not being familiar with the road, never been over it before.

Q. Do you remember whether or not there was another road coming in from the road at about the place where the car stalled? A. Yes, I know that there was a road.

Q. That came in from the right? A. Yes.

Q. I show you photograph, Exhibit P. 5, which is a good perspective, and call your attention to the place where the roads divert; does that look something like where it was? A. I knew there was a building there, but I could not say where.

Q. There was a building on the left-hand side? A. Yes, left-hand side of the road.

Q. Just about where the car stalled? A. Yes.

Q. And the road turned off to the right just ahead of where the car stalled, is that your best recollection of that? A. Well, that I could not say, but I know that there was a road there where the car had stalled and that there was a building there.

Q. And there is a road that turned off to the right? A. Well, I am not really sure whether it is—I think the road—right or left, I could not

say; I know that there was a road through there.

Q. You do remember that there was a building on the lefthand side of the road here where the car was against the curb? A. Yes, there was a building.

Q. That is when the car was backed up against the curb? A. Yes.

Q. While he was starting to crank it? A. Yes.

Q. There was a building right there? A. Yes, there was a building there.

Q. Do you recall how the building was made, of what it was made, if it was a frame building? A. No, I don't. The machine was right up to the left of the curb.

Q. So that the building was left behind you? A. Yes, back.

Q. Was the machine standing about cross-wise in the road? A. It was cross-wise up the road, with the front wheels slightly downward.

MR. KEPPLER—I object to counsel picking out one of the buildings and saying that is where the car stalled.

THE COURT—She said there was some building on the left-hand side.

MR. WRIGHT—Where the car was stalled.

MR. KEPPLER—I object to his saying that was the building where the car stalled, because there were buildings all along the road on the left-hand side.

MR. WRIGHT—I did not say that.

Q. You say your sister has a bad memory now? A. Yes, very bad.

Q. Your memory is very good, though, isn't it? A. Sometimes.

Q. She has told this story how it happened almost in the same words that you have, so that her memory in regard to that is pretty good. A. She hasn't told all there is lots of things she hasn't told.

Q. Well, you have heard her testify as to how she came to Hackensack, related what time she left New York— A. Yes.

Q. About getting the cab and driving up the hill and the engine stalling? A. Yes.

Q. And she told it in almost the same words that you did, didn't she?

MR. KEPPLER—I object to counsel's misstatements.

THE COURT—He has a right to cross-examine on her statement as to what memory the plaintiff has.

Q. Now, when the car started to go down the hill, as you told about, how far—you say it went about one hundred feet before you started to jump? A. Yes, I did; it would not be correct.

Q. That is your best recollection? A. Because being excited, and the car going—

Q. I understand that? A. It is hard to know.

Q. You did not measure it, of course? A. No.

Q. Your sister jumped first? A. Yes.

Q. At that time the car was going very fast? A. Yes, kept gaining in speed all the time.

Q. At that time the fellow driving the car had his hand on the radiator in front? A. Yes.

Q. And then it went about another hundred feet before you jumped? A. Yes.

Q. Did you both jump out of the same side? A. Yes.

Q. How far down the hill, beyond the place where you jumped, was it that the car stopped? A. That I could not say. I heard a crash, but I could not say how far the car went.

Q. You did not see it then? A. No.

Q. A few minutes afterwards, the chauffeur came up to you? A. No, I screamed for him to come back. My whole left side was paralyzed, I could just raise my head; could not move.

Q. He came back in a few minutes, didn't he? A. Yes, about eight minutes after the car had stopped. I laid in the road five or six minutes, I guess.

Q. That is your best recollection? A. Yes.

Q. Five or six minutes? A. Yes; it seemed that long.

Q. Then he went back again to get the things left in the car? A. After he dragged me up to where my sister was, I sent him for my furs.

Q. Then he went back to the car for the furs and came back to you with the furs, is that right? A. Beg pardon?

Q. He went back to the car and got the furs and then brought them? A. The furs were not in the car; in the road where I lay. After he had been down to my sister, I sent him to get my furs and he brought them back. After that he went after the car.

Q. Did he go down and get the car again? A. That I don't know.

Q. Well, was he running the car which took you and your sister up to Doctor Wyler's? A. That I don't know; we were taken in a machine.

Q. Were you taken in the same kind of machine up to Dr. Wyler's? A. Well, that I don't know.

Q. Weren't you taken to the doctor's by a taxicab? A. Yes, it was a closed taxicab.

Q. And particularly the same one that you rode in before? A. Well, I understood it was a closed car; I could not say whether it was a Ford taxi.

Q. So far as you could notice, wasn't exactly the same as the car that you had previously been in, so far as you could see? A. Yes.

Q. About the same size, wasn't it? A. Yes, I think so.

Q. Don't you remember that Mr. Dowdell was the man that brought you up the hill, was the man that drove the car up to Doctor Wyler's? A. That I could not say.

Q. You never seen this man before that night, had you? A. Beg pardon?

Q. You never had seen this man that drove the car that night, had you? A. Oh, my, no.

Q. Ever see him after that? A. No, I never saw him.

Q. Never until you got in the car? A. No. I saw him in the doctor's office; he was there all the time.

Q. But since that time you have not seen him until in court? A. Until to-day.

Q. But you recognized him to-day here in court? A. Yes.

Q. You were not sure whether he was the man that drove the car up the hill or not after the accident? A. No, we were suffering too much; I don't know who was running the car.

(Recess until 2 o'clock.)

THE COURT—Do you consent to the offer in evidence of these photographs?

MR. KEPPLER — We offer in evidence side view of a part of the road which is self-explanatory, in conjunction with the other exhibits.

THE COURT—If there is no objection, it will be marked Exhibit 7, P. 7.

WILLIAM J. DEARDEN, sworn for the plaintiffs, testifies as follows:

Direct examination by Mr. Keppler:

Q. What is your full name and address, sir? A. William J. Dearden, 156 South Arlington Ave., Trenton, N. J.

Q. What is your business? A. Clerk in the automobile department, motor vehicle department.

Q. Will you kindly repeat that? A. Clerk in the motor vehicle department, Trenton, N. J.

Q. The Commissioner of motor vehicles has been subpoenaed to bring the original records of all applications issued to William C. Godstrey; have you those records? A. Yes, sir.

Q. Kindly let me have them? A. (Handing papers.)

Q. These papers that you have handed me are the original applications? A. Yes, sir.

Q. For the registration of automobiles in the State of New Jersey covering what period? A. 1913, 1914, 1915, 1916.

Q. And they represent every license issued in the name of William C. Godstrey? A. Yes, sir.

Q. In the State of New Jersey during those years? A. Yes, sir.

MR. KEPPLER—I offer them in evidence.

MR. WRIGHT—I object to the offer, particularly as to the years 1913, 1914 and 1915. If any are competent at all, it would be 1916.

THE COURT—What is the object of the offer?

MR. KEPPLER — Why, counsel in this case claims that this is simply a corporation, of which this man is only a manager, and that the corporation is the one that owns these automobiles. We want to show that continuously for years past, this man has been in the automobile business and hiring out automobiles. We want to show that the original applications show that he actually has owned these automobiles. We will show that these cars are the same cars, and in addition to that, they will be material on the examination that we have had before trial and deposition of the defendant before trial in which he said he hadn't had any cars licensed in his name. I have the original examination here, and cannot be proper at this time to offer in evidence as an additional basis for offering these cards in evidence.

THE COURT—What is the point of the objection, that they are immaterial?

MR. WRIGHT—I submit that the licenses for 1913, 1914 and 1915 are not competent at all. If anything is competent, it is the question in whose name this particular car was licensed in the year 1916 when the accident occurred.

THE COURT—Why isn't it competent to show the course of business in connection with it?

MR. WRIGHT — In the first place, I don't think that it is. In the second place, the car must be identified; and in the next place I want to know how many licenses were issued to the taxi company.

THE COURT—It is a question of detail, explanation and proof of each individual car or license; but I am inclined to think that it may be material to properly connect up and show the interest, if any, of the defendant in the business.

MR. WRIGHT—Further than that, I do not think it is competent unless it is shown that the applications were made by the defendant.

MR. KEPPLER—In that connection they are also competent because the defendant on his direct examination testified he ordered his son—

MR. WRIGHT—I object to his stating what the examination was. That is not evidence.

THE COURT—Let me see the card?
(Mr. Keppler handing paper to the Court.)

THE COURT—Is this the defendant or the defendant's son, William C. Godstrey?

MR. WRIGHT—William C. Godstrey is the name of the defendant.

THE COURT — There is one William Godstrey; is that the defendant or the defendant's son?

MR. KEPPLER—The defendant's son is Walter Godstrey.

MR. WRIGHT—It may be some other Godstrey for all I know. The only possible theory that they could be admissible or in operation, would be declarations against interest, and to that they must be shown that they were declarations made by this defendant.

I might say to the Court that I am not going to be technical at all; it is a fact, it appears to be a fact that in some way this particular car of 1916 was licensed in the name of William C. Godstrey. If he wants to prove it, I am perfectly willing to have him prove it. I have a duplicate of the license that was issued. If he wants to prove that, that it was issued in his name, that is one thing. I would object to the admission of it on the ground that it is incompetent unless shown that it

was made with his knowledge and signed by him.

THE COURT — I think under the objection you are a little too early, if this objection is pressed, because there is no testimony here that the defendant owned any machines or in fact was in control of any machines at that place. There is no connection at the present time between this case and the defendant as far as the evidence goes.

MR. KEPPLER—I can see that the evidence is premature and of course counsel himself knows that we contemplate connecting this up.

THE COURT—You see he is pressing the objection on that ground.

MR. KEPPLER—This gentleman comes from Trenton, and he has told me he has some important business that requires his presence there, and he has asked me to put him on out of his order, the same as we have put on, for example, the other gentleman this morning. I am willing to do it, subject to connection, because we realize that it is out of its order and premature. But I think the admission of counsel on the record, that the car in question, or license number for 1916, was issued to Godstrey, coupled with the outline of his defense that he has made to the jury, that it is

going to be a question whether or not——

THE COURT—This is for the defendant to settle now. If he presses the objection, I am bound to rule on it, because it is premature at the present time.

MR. WRIGHT—My objection is going to the admissibility of those things at any stage of the case. I said, to cut the thing short, and not to be technical, I will produce here a duplicate of the license issued for that car for 1916; it was issued to William C. Godstrey, and I would object to its admission, but I would concede the fact that it was issued; I would object to the admission unless shown that they were taken out by his application or his authority, that he had knowledge of that, because the only theory of admission would be the admission against interest.

As to the other licenses, for other cars, for other times, I submit that they are incompetent under any circumstances, and irrelevant.

MR. KEPPLER—There is no question that if this gentleman wasn't in court now, why we would undoubtedly arrive at this particular case in rebuttal in answer——

THE COURT—All that I can handle is the objection that is put up to me now. At the present time you haven't prepared

for the admission of this evidence, or shown the proof to be material at the present time.

MR. KEPPLER—Counsel has stated that the only question he will argue is that at no time will these things be material.

THE COURT—That might be so, and one of the times is now. As far as this goes, it has not yet been connected up with the defendant.

MR. KEPPLER—I am offering my testimony to facilitate this gentleman. I regret very much that he will have to stay. I thought it would help him along.

Q. Let us first come down——

MR. KEPPLER — You say you will concede that the license 60198 for 1916 on the Ford car was issued to this defendant, William C. Godstrey, is that right?

MR. WRIGHT—I will concede that to be a fact, but not concede it as evidence in the case. I object to the admission of it as evidence in this case, unless and until it is shown that the application was made with Mr. Godstrey's knowledge or authority or ratified by him.

THE COURT—It would have to be connected up.

MR. WRIGHT—As I said before, I have a duplicate of the license which was is-

sued, which I will permit them to use the same as an original.

THE COURT—You had better take it up and prove it, if you want to use it against him, Mr. Keppler.

Q. This paper I show you is an original record in the office of the Commissioner of motor vehicles of the State of New Jersey, issuing that license, 60198, to William C. Godstrey? A. Yes, sir.

MR. KEPPLER—I offer that in evidence.

MR. WRIGHT—I object to its admission until it is properly proved. The only ground that it can be admissible on in this case is that it is an admission against interest, and to actually accomplish that, it must be shown that Mr. Godstrey either made the application or had knowledge or authorized it or ratified it.

MR. KEPPLER—There is a section of the motor vehicle law that makes records of motor vehicles affirmative evidence, and if there is such a paper introduced, it must go in evidence to show that such a fact exists in the office of the Commissioner of motor vehicles.

THE COURT—There is no question about the records.

MR. WRIGHT—There is no question that license 60198 was issued to William C. Godstrey, on a Ford car, maker's number 121132, make of 1913. That is what it shows, and that is proof of that fact.

There could not be any question about that at all. As to being admissible in this case, it must be shown that that application was made by Godstrey or under his authority or ratified by him.

MR. KEPPLER — The evidence that such a record exists in the office of the Commissioner of motor vehicles is admissible evidence. That burden shifts to them——

THE COURT—Mr. Wright admits that. The effect of that is another proposition. You can readily see—suppose this application was made by some person in somebody else's name and that license issued to some other person in the owner's name; why, you can readily see that that will not bind the man whose name is mentioned in the application.

MR. KEPPLER— I can conceive that such an unusual state of facts has nothing to do with this case, will alter this situation. But will you admit that the particular car in question, that was involved in this case, bore that number, license number 60198 for 1916?

MR. WRIGHT—I think that to be the fact.

MR. KEPPLER—Well, that is a fact then?

MR. WRIGHT—I think the car had on those numbers.

THE COURT—The court at the present time will admit it as proof of the record in

the Secretary of State's office, which is produced here. Now, the effect of it is another proposition.

MR. KEPPLER—Very well, that is all we want for the time being.

(To Witness) I am afraid you will have to come again.

MR. WRIGHT—It is only admitted in evidence to show what the Secretary of State's office is?

THE COURT—That is all.

MR. WRIGHT — Not for any binding effect upon the defendant?

THE COURT—No, no.

MR. WRIGHT—If you want to accept this (indicating) so that he can get away, I would suggest that you let him go down to Mr. Bertholf or the agent in town and make out duplicates. If you will do that, then I will concede that with the same force and effect as originals.

MR. KEPPLER—No, we want to prove the handwritings on these various things, because that is going to be material in this case. Perhaps we can arrange to let this gentleman leave the originals with the Court?

WITNESS—It is impossible to leave the records.

MAX WYLER, sworn for the plaintiffs, testifies as follows:

Direct examination by Mr. Keppler:

Q. Doctor, you are a regular licensed physician and surgeon? A. I am.

Q. Your office is in Fort Lee? A. Yes.

Q. You are also connected with the Englewood hospital? A. I am.

Q. In the early morning of the 16th day of January, 1916, you treated Mrs. Nell, didn't you? A. I did.

Q. She was brought to your office? A. Yes.

Q. Thereafter you continued to treat her for about a week at the Englewood hospital? A. I did.

Q. Have you the hospital records here? A. I have.

Q. Kindly let me have them? A. (Handing.)

MR. KEPPLER—Does the other side concede these are the correct records of her case?

MR. WRIGHT—If the doctor says so, I will concede it to be a fact.

MR. KEPPLER — I offer the records in evidence.

MR. WRIGHT—Objected to as immaterial and incompetent. It is not what the records show; it is what the facts are, all the doctor testifies to.

THE COURT—Why do you need them? You have got the best evidence here.

MR. KEPPLER—Because the doctor was not

present all the time and the nurse who attended her—showing, for example, vomiting and unconsciousness, things like that, during periods of time that the doctor was not present.

THE COURT—It can be used by the doctor to refresh his memory.

MR. KEPPLER—I asked counsel if he insisted upon the production of the nurse; he said no; so I will have to produce the nurse to-morrow. This is to show what her condition was during the interim when the doctor was not there.

MR. WRIGHT—I am not trying your case for you, Mr. Keppler.

Q. Now, doctor, when you first examined Mrs. Nell, what did you observe? A. She was brought to my office by two officers; I forget what time it was; I guess it was about half-past four in the morning or something like that; 4 or half-past 4; Mrs. Nell and also her sister, Miss McGintee. Miss —do you want me to state the injury?

Q. Why, yes. A. Mrs. Nell has a laceration of the scalp on the left side, in the region of the parietal and occipital junction, about (indicating) here.

Q. Kindly mention how long that laceration was? A. About two inches.

Q. Was it a straight laceration or a jagged laceration? A. It was cornered.

Q. Beg pardon? A. It was cornered, and ran off into a triangle at one end.

Q. A regular cut or irregular? A. It was an irregular cut.

Q. I mean was the edge of the cut a straight cut or was it a jagged cut? A. The edges were straight, but the wound itself did not run straight; it branched out in two cuts; from the main cut it ran out into side cuts.

Q. What else did you notice? A. She was bleeding from her left ear.

Q. From any other place? A. Outside the one laceration.

Q. One on the back of the head you mean? A. The back side; she had some bruises and contusions on the left side of the face, I found at that time at the office that morning.

Q. Was she conscious or unconscious? A. She appeared to be conscious.

Q. Beg pardon? A. She appeared to be conscious.

Q. Did you talk to her? A. She was crying; she was highly excited and hysterical.

Q. Who are you speaking about, Miss McGintee or Mrs. Nell? A. Miss Nell.

Q. Beg pardon? A. Mrs. Nell.

Q. What was she suffering from, shock? A. Yes, she was under shock.

Q. Then you continued to treat her in the hospital? A. Yes.

Q. How long did you treat her altogether? A. I treated her about seven or eight days in the hospital. If you will let me have that hospital chart—

Q. Can you refresh your recollection by looking at that chart? A. Yes.

MR. KEPPLER — I would like to have the chart marked for identification, subject to connection by the nurses' testimony.

THE COURT—Mark it for identification.

(Marked Exhibit P. 8, for identification.)

WITNESS—I saw her the last time on February 12th.

Q. Do you know who the nurse was or nurses were, who made—are the names of the nurses on these? Look at that and tell me the names of the nurses? A. (Referring) No, the name is not on.

Q. Do you remember who the nurses were, doctor? A. I don't exactly remember their names. I guess Mrs. Nell probably does—have so many; I don't remember all their names. I really don't remember their names; that is a fact.

Q. On that last occasion did you say you saw her? A. That is when I saw her, in Bogota, in her house.

Q. So that you examined her again, didn't you? A. After the first examination?

Q. Yes? A. Oh, yes, I examined her several times; examined her at the hospital and at the house.

Q. The last examination was at her house, that was on February 12th? A. February 12th, the last time I saw her at her house, and then I examined her again on April 20th, at Doctor Auerbach's office.

Q. You examined her at that time on behalf of the defendant? A. Mr. Wright asked me to make an examination. I told him that I had been the physician for Mrs. Nell, and he told me that he did not care, that he wanted me to make an exam-

ination of her then; Doctor Proctor also; myself and Doctor Proctor examined her.

Q. You examined her at that time for Mr. Wright; you made a report of your examination? A. I made a report.

Q. Altogether, doctor, how many times did you see Mrs. Nell? A. (Referring) Including the days at the hospital?

Q. How many times did you see her at the hospital? A. Ten times.

Q. In the hospital? A. In the hospital.

Q. That was during a period of how many days, five or six days? A. Seven days; she went home on Sunday.

Q. How many times did you see her at her house? Can you give me a list of the visits, of the days thereafter at her house? A. Five times.

Q. On what days did you visit her, doctor? A. The days?

Q. Yes? A. On Sunday I visited her, on the 27th of January.

Q. How many days was that after she got out of the hospital? A. That was four days.

Q. On what other days did you see her? A. On the third of February; on the tenth of February; called on the twelfth, and there was nobody home; called on the eighteenth, and there was nobody home. I ceased coming. I made two calls at an appointed time, and there was nobody there, and I ceased coming. I was not notified that they would not be home, and they knew I was coming.

Q. You never saw her again after that except the one occasion? A. Only when I was at Doctor Auerbach's office.

Q. What is the fair and reasonable value of the services you have rendered, doctor?

MR. WRIGHT — I object to that, reasonable value. What is his bill?

Q. What is the amount of your bill that you rendered to Mr. Nell for the treatment of Mrs. Nell? A. Seventy-five dollars.

Q. Doctor Proctor was associated with you in the treatment of this case, was he? A. Only in consultation.

Q. You had him in consultation? A. The first day after the accident.

Q. Did you only have one consultation with him about the case? A. No, he saw the patient three or four times.

Q. With you? A. With me.

Q. Doctor Proctor is a surgeon? A. Yes.

Cross-examination by Mr. Wright:

Q. Does your bill include Doctor Proctor's bill? A. Yes, it includes Doctor Proctor's bill. I rendered the whole bill for $150 for both cases. I was asked to divide them or itemize them. That case was so close that I did not keep a separate record, so I cut the bill in half, $75.00 each—the whole bill $150. Fifty dollars to Doctor Proctor and one hundred dollars to me. That is, fifty dollars for me and twenty-five dollars for Doctor Proctor in Mrs. Nell's case.

Q. When you say both cases, you mean Miss McGintee? A. Miss McGintee and Mrs. Nell.

Q. Has your bill been paid? A. No.

MR. KEPPLER—I object to that as entirely immaterial.

THE COURT—The answer is in.

Q. What was Mrs. Nell suffering from when she was in the hospital?

MR. KEPPLER—I object to that as not proper cross-examination. We have not asked the doctor any questions of what she was suffering from—unless he wants to make the doctor his own witness.

THE COURT—You have got a bill here for seventy-five dollars for something; he has got a right to ask the nature of it, what it was paid for. The question will be allowed.

MR. KEPPLER—I respectfully except.

Q. (Read to witness.)

A. She was suffering from laceration, from shock, headaches, sleeplessness; laceration of the left drum membrane.

Q. That is the drum of the ear? A. Drum of the ear.

Q. In common phraseology. When you last saw her, what was her condition on February 12th? A. On February 12th, she——

THE COURT—He testified that she was not there.

MR. WRIGHT—On the 18th she was not there.

WITNESS—No, the 12th. (Referring.) February 12th, Mrs. Nell wasn't at home; on the 10th.

Q. The 10th, that was the last time you saw her? A. I called on the 12th, and Mrs. Nell complained about pains in the head, headaches.

THE COURT—On the 12th?

WITNESS—On the 12th.

THE COURT—Didn't you testify before that it was the 12th, or the 18th that she was not home?

WITNESS—No, she was not home on the 18th; on the 10th, they were out; wasn't home on the 10th; was home on the 12th, and then again out on the 18th when I called. On the 12th I saw her.

Q. On the 12th, what was her condition—on the 12th? A. She complained about pain in the head when she was blowing her nose and feeling weak.

Q. How was her condition at that time as compared with when she was in the hospital? A. It was improved from the time she was in the hospital, naturally.

Q. Were there any injuries such as would be permanent in their nature?

MR. KEPPLER—I object to that. There is no foundation laid for that question.

THE COURT—I think you are going too far.

MR. KEPPLER—There is no foundation laid for the question.

THE COURT—Objection will be sustained.

MR. WRIGHT—Exception.

THE COURT—You may have your exception.

Q. When you last saw her on February 12th, what was your prognosis of the case?

MR. KEPPLER—I object to that.

THE COURT—What do you mean by that, what was her prognosis of the case?

MR. WRIGHT—His prognosis of the case.

MR. KEPPLER—There is no foundation; it is another way of asking the same question.

THE COURT—I don't think your cross-examination, Mr. Wright, as far as the direct examination goes—I don't think you have a right to ask any conclusion from this witness. I will permit you to go into the details as to facts, so as to get his testimony as to the question of his services. The objection will be sustained.

MR. WRIGHT—Exception.

THE COURT—You may have your exception.

Q. When you saw her on April 20th, what was her condition as compared with the time she was in the hospital? A. Her general condition at that time, she was very much improved, her looks; she told me she was suffering from sick headaches and nausea, dizziness; that she had to be in bed two days a week, and all I found on that examination of her condition, was that the drum membrane, which had been lacerated——

Q. That is the ear drum? A. The ear drum; and it had completely healed; and the test of her hear-

ing showed that it was impaired. The conduction—the word conduction as we call it, meaning a bone—there is two ways of hearing sound, one through the bone and one through the normal ear passages. Ordinarily you find when there is no obstruction in the ear canal, that sound is through the bone, through the skull. There would be an exception such as of age. On examination I found that the bone conduction in Mrs. Nell's case was longer than the ear conduction through the ear; it showed an obstruction through the natural passage of hearing. This can be due to two or three different causes; one of them is the outer canal. The next cause may be in her drum, and the third cause may be behind the drum in what we call the labyrinth of the ear. In the case of Mrs. Nell, the injury to her drum, which had healed, and which I assumed was the cause for the deficiency of hearing which existed at that time, was due to the drum, which had healed, and the permeability of the sound was not normal at that time, though it had greatly improved, as Mrs. Nell told me herself, as well as Doctor Auerbach, as long as he had been treating her.

Q. How long does it take to become normal?

MR. KEPPLER—I object.

A. It is very hard to tell; it will take some cases longer than others.

Q. Well, in her case, how long will you say it will take for her to become normal? A. Based on the condition of the ear as I found it, and the questions answered me by Mrs. Nell as to how her hearing had improved in the last few weeks, and also asking Doctor Auerbach and doctor telling me it has greatly improved, it may be up to that time—

the 20th of April to May; that would be about two months after that, under treatment she received from Doctor Auerbach, the hearing probably would be normal.

Q. How many months? A. About two months, from the 20th of April; that would be around in June. That is a guess.

MR. KEPPLER—I move to strike out a guess.

WITNESS—No, that is hard to tell anyway. You could not tell how long it takes, when the hearing is normal; some cases take longer than others. In her case, judging from all the evidences and testimony of Mrs. Nell herself, and Doctor Auerbach, I must assume that the hearing will very soon be established to normality. In older persons it always stays deficient because the scar don't lighten up. We have no scar tissue in Mrs. Nell's case; and even Doctor Auerbach said it looked so well that if he had not seen the laceration, he could hardly locate where the laceration had been. He agreed with me. On the testimony that her hearing had so much improved, I am led to assume that the hearing probably will be all right by the end of June.

By Mr. Keppler:

Q. Then your assumption of two months is from the 20th of May and is based upon the fact that the deficiency was due to the torn ear drum, is that right? A. The torn ear drum.

Q. You have also said it might have been due

to some injury in the labyrinth of the ear, which is the center part of the ear, in the middle of the center; that is to say (indicating) by putting your two fingers in here, they would meet in the labyrinth on each side; there are many nerves connecting there with the labyrinth of the ear, are there not? A. There are.

Q. And there are two principal nerves in that portion of the ear, aren't there, doctor? A. Yes.

Q. There is a nerve of hearing of high sound and there is what is known, commonly known as the nerve of the equilibrium, isn't there? A. Yes.

Q. That is to say, the portion of the nerve that connects with the brain which has the function of enabling a human being to keep his proper poise; in other words, if there was an injury to that nerve, a person would lose his balance, so to speak, and if he closed his eyes, would not know which way to turn around or wouldn't turn around? A. Not this injury alone; we have some special injury connected with that, which does that. But alone with the ear injury, I haven't seen it.

Q. I mean that is the function? A. Yes.

Q. That is the function in all those nerves. The test that you made for conductivity of the bone was made by a tuning fork, wasn't it? A. Yes.

Q. What was the size of the tuning fork? A. I used different sizes. I am not a specialist on ear diseases. I used to do a lot of ear work.

Q. The one you used was a fork, the prongs of which were about the length of this (indicating)? A. It was a long one.

Q. To get the vibration of the prongs of the fork, you put on the mastoid bone? A. First put it to the ear, and told Mrs. Nell the moment she did not

hear that sound, to tell me. I put the end to the mastoid bone or put it almost anywhere, and she would answer that she would hear through that bone or did not hear it.

Q. In other words, the conductivity of the bone was merely the transmission of hearing through the canal of the ear? A. the normal ear does that.

Q. When your fork was against the parietal or mastoid bone, there was a vibration of the bone—there was a vibration of the prongs of the fork, wasn't there? A. Oh, yes; as long as there is sound, there is vibration.

JOHN SHEEHY, sworn for the plaintiffs, testifies as follows:

Direct examination by Mr. Keppler:

Q. Mr. Sheehy, where do you live? A. I live in New York, now.

Q. You are a clerk in my office? A. Yes, sir.

Q. Did you, after the 16th day of January of this year, talk to the defendant, William Godstrey? A. Yes, sir, I did.

Q. Where did you see him? A. Well, I seen him in several places; I seen him in Edgewater; seen him in New York once; mostly, I guess, I seen him in Edgewater two or three times.

Q. Did you ever have any talk with him as to who owned the automobile in which Mrs. Nell was riding at the time of this accident? A. I did, yes.

Q. Tell the Court and jury as briefly as you can the talk that you had with him? A. I guess it was about—it was two or three days after the accident I came over to Edgewater and I went into the little place right there around from the boat house, right

around the boat house; Mr. Godstrey and his son were in there. They talked along about this accident, one thing and another; I said to Mr. Godstrey's son, "Are you a partner in this business?" He said, "No, my father owns it all. I am only just—the same as any of the other men employed." Mr. Godstrey nodded his head and we walked outside of this little place and around to the front where these cars were there right in front of the ferry house. We stood there and we talked about it, the car, about the accident. Mr. Godstrey said that he had poor luck, or something like that, about the cars. It was all the conversation we had at that time. He had a couple of accidents.

Q. Well, did you have a conversation with him at any other time? A. Well, I seen him another time over there and I saw him a week or so later and we talked along the same lines that we did that time.

Q. Before you get to that: did you go into the garage after the accident? A. The next day, yes.

Q. That was on Monday? A. Monday night, about 6 o'clock, 7 o'clock, half-past 6, something like that.

Q. Who did you see there at that time? A. I saw Mr. Campbell, I think his name is.

Q. Ben Campbell? A. Yes, Benjamin Campbell.

Q. Who else? A. There was another fellow there; I did not take any particular notice of who he was; I did not know him, was not interested.

Q. Were you ever there at any time and met a man by the name of Patrick Dowdell? A. I was there a couple of times, yes, when Patrick Dowdell was there.

Q. Let us come down—did you ever have any

talk with Mr. Godstrey at any time relating to Patrick Dowdell? A. We talked about Dowdell at the first time I seen him.

Q. What did he say about Dowdell? A. Why, he did not say much about him. He said he was a kind of poor unfortunate fellow that bad luck was following.

Q. I am not interested in that; let us get down to this case, Mr. Sheehy. Was there any talk as to who Dowdell worked for?

MR. WRIGHT—I object to that as leading.

THE COURT—Let him answer the question.

A. He told me that Dowdell was working for him.

THE COURT—Who told you that?

WITNESS—Mr. Godstrey. He told me that several times.

Q. Were you there at any time, in the garage at any time when any cars were being fixed? A. Well, I was in there—I seen them moving cars around, you know.

Q. Just answer a specific question: Were you or were you not there at any time that cars were being fixed? A. What do you mean, fixed? I was in there when they were doing the ordinary run of business in the garage and the men were working, yes.

Q. I mean at the time any repairs were going on on the cars?

MR. WRIGHT—I object to that as leading.

A. Why, I was in there when one man in particular was putting a gas tank on the back of a car;

but the actual repairing or seeing what was done to a car, I don't think I did.

Q. Did you have any talk with anybody in the garage relative to repairing any car?

MR. WRIGHT—I object to that.

THE COURT—Objection sustained, unless it was the defendant.

Q. Did you have any further conversation of any kind with Mr. Godstrey or any one else connected with the——

MR. WRIGHT—I object to that question.

THE COURT—Yes, anybody else or——

Q. Did you ever have any talk with Mr. Godstrey or any persons relative to a particular car in the garage? A. I talked with Mr. Godstrey's son in his presence.

Q. What was the conversation? A. Why, about this particular automobile?

Q. Yes? A. Well, I said that I knew quite a little bit about automobiles, and I thought that the brakes of that car were not safe, you know; they would not hold. Mr. Godstrey, I think, said about the steepness of the hill, any brake would hardly hold on that hill; that he would have to use his reverse pedal instead of using his brake.

Q. What else was said in the presence of Mr. Godstrey, the defendant, about that matter? A. Well, we just mentioned that fact and Mr. Godstrey said, as to the steepness of the hill, any car would be—a man would be safer to use his reverse pedal.

Q. Was there any conversation about any brake bands? A. In front of Mr. Godstrey? No.

Q. With whom did you have any conversation like that?

MR. WRIGHT—I object to that.

THE COURT—Objection sustained.

Q. Mr. Sheehy did you try to subpoena Clarence Schnell for this trial? A. Yes, I did.

Q. Were you able to do so? A. No, sir, as you said he was living home——

MR. WRIGHT—I object to what was said.

Q. What did you do to find him? A. I telephoned to his home a couple of times and went up there once; up to Congers.

Q. He lives in Congers? A. Yes, sir.

Q. When you telephoned to his home, was his number on the phone book? A. Yes, sir.

Q. Did you call up the number that you found in the company's book? A. Yes, sir.

Q. When you called up that number and received a reply, you asked for Mr. Schnell? A. Yes, and she said she was Mrs. Schnell.

MR. WRIGHT—Not what she said.

Q. Just come down to the inquiry that you made; did you make any inquiry for Clarence Schnell? A. Oh, yes. I said——

THE COURT—Never mind what you said. You may answer.

A. Yes.

Q. Did you find him home? A. No.

Q. Did you go up there? A. Yes, sir.

Q. Did you make any inquiry for him there? A. Yes, sir.

Q. And you found him home? A. No, sir.

Q. Who did you see when you went up there? A. I saw this one woman.

Q. Do you know who the woman was? A. No.

Q. In the house where he lived? A. I went up to the door.

Q. Did you ask whether he was home? A. Yes.

Q. What response did you get? A. No, he wasn't in.

Q. Where were you told he was? A. Well, I wasn't told any place at that time.

Q. Did you make an effort to get him yesterday? A. Yesterday, yes, sir.

Q. Where were you told he was then? A. He said he left New York about three weeks ago; he was a traveling man and did not hear from him in three weeks; his business takes him all over.

Cross-examination by Mr. Wright:

Q. How long did you try to find Mr. Schnell? A. The first time?

Q. Yes? A. Well, it was just before this trial—I don't know just what date—was coming up; it was about a month ago, sometime; maybe three or four days before the other trial.

Q. That is the first time you tried to locate him-

A. That is the first time I did try to locate him? yes, sir.

Q. How many times did you try to find him? A. Just once, and yesterday.

Q. Do you know where he works? A. No, I don't know, sir. I could not get any satisfaction out of

anybody. I talked to his mother on the telephone, and brother.

Q. Did you inquire of Mr. and Mrs. Burket where he worked? A. No, I did not know Mr. and Mrs. Burket.

Q. How long have you been in Mr. Keppler's office? A. About—last September 10th, or 12th, along there some time; nine or ten months.

Q. The first time you saw Mr. Godstrey was when? A. Which Mr. Godstrey?

Q. William C. A. I think the first time I saw Mr. Godstrey was right at the ferry house.

Q. How long after the accident, what date? A. Really I could not tell you what date, because I don't know; two days or possibly three after the accident happened. I think my reports in the office would show it.

Q. You got on the job right away as soon as the accident happened, didn't you? A. Oh, no, I did not know anything about it until Monday.

Q. This happened on Sunday morning? A. Yes, Sunday, I came out here, I think, it was Tuesday or Wednesday some time.

Q. Where did you see him the first time? A. I seen him down to his house, to the ferry house in Edgewater.

Q. At the ferryhouse? A. Yes, sir.

Q. What did he say to you then about the accident? A. Why, he said that he did not think that there would be anything about it; he said it was an unfortunate affair. He would settle it up as best he could and he thought that he and Mr. Nell could come to some understanding as to what would be the right figure, and it would be settled up. One of my main reasons over there was not about this,

but I went up to Fort Lee about the trial of the chauffeur at the hearing.

Q. He had a hearing? A. Up to Fort Lee.

Q. This chauffeur was arrested, was he? A. He wasn't arrested; he was held for examination; he was held for examination.

Q. They had a trial? A. Well, I suppose they call it a hearing.

Q. And you were up at the hearing? A. I was the first one; they adjourned it; I wasn't up to the hearing when they dismissed it.

Q. You say they dismissed it? A. Well, I think they did. I think they did; I don't know what they did, I wasn't there.

MR. KEPPLER—I move to strike out what he thinks.

THE COURT—Mr. Wright is the only one that can make a motion of that sort.

MR. KEPPLER—It is not a fact.

THE COURT—Do you want it to go out, Mr. Wright?

MR. WRIGHT—I don't care.

THE COURT—Strike it out.

Q. When did you first hear about the taxicab company?

MR. KEPPLER—I object to that. There is no proof that he ever heard of any taxicab company.

THE COURT—He is not limited to the exact question. It has been testified to here that Godstrey's son said that his father

owned the business. Mr. Wright has some leeway to question about it. I will allow the question.

MR. KEPPLER—I respectfully object on the further ground that it is immaterial when he heard of it. Has nothing to do with this case.

THE COURT—You may have your exception. Objection overruled.

A. Really I could not say; I did not hear about it until this other time, before this other hearing; I did not hear about it maybe at all.

Q. Well, you were under the impression that the taxi company was the Godstrey taxi company, weren't you?

MR. KEPPLER—I object to that.

A. I thought it was just a trade name; that was the name.

Q. You heard about a taxi company then, didn't you? A. No, I did not, to be frank; I did not hear about it. I went by the garage and I saw the sign there, "Taxicabs."

Q. You saw the sign of some taxi company and you jumped to the conclusion that it was the Godstrey taxi company? A. No, that was not the way it was at all. I saw the taxi company.

Q. How did you come to report to Keppler that there was a Godstrey Taxi Company?

MR. KEPPLER—I object to that. There is no proof that he reported that there was a Godstrey Taxi Company.

THE COURT—He may answer.

A. I don't know whether I reported it or not. A man in Fort Lee told me that was the Godstrey Taxicab Company.

Q. And you reported that? A. I don't think I reported it at all.

Q. Did you ever see the complaint that Mr. Keppler drew up in this case? A. The complaint that he drew?

Q. Yes, the complaint in this suit? A. No, I don't think I did.

Q. Then you don't know that in that complaint he alleges that this concern's business is known as the Godstrey Taxi Company, do you?

MR. KEPPLER—Objected to as entirely immaterial.

THE COURT—I will allow it.

A. I really don't know; I did not see it, of course.

Q. You had all the investigating over there after the accident, had you not? A. Oh, not necessarily.

Q. Anybody else from your office go up there and make an investigation? A. Some of the clerks, like myself, were sent out on different things. I was sent up there probably more than any one of them. I did not do it all.

Q. You spent a good deal of time around Edgewater, didn't you, between the time of the accident and the present time?

MR. KEPPLER—I object to that.

THE COURT—Objection overruled.

MR. KEPPLER—Exception.

A. I don't understand what you mean by a lot of time.

Q. How much time did you spend there? A. It is really hard to estimate it; I went over there a great many times—quite a few times, you know what I mean, at different times; something I had forgotten to do or something I did not know. Other men had gone out. If I did not attend to it when I was there they would only send me right straight back to find out.

Q. You were the one that subpoenaed the witnesses for Mr. Keppler? A. I subpoenaed part of them; I did not do it all.

Q. You subpoenaed Mr. Dowdell the last time this case was supposed to come up, about three weeks ago? A. I did, yes, sir. I had another man with me.

FRANK FINELLI, sworn for the plaintiffs, testifies as follows:

Direct examination by Mr. Keppler:

Q. Mr. Finelli, where do you live? A. Fort Lee.

Q. You are married and live with your wife and children? A. Yes, sir.

Q. Where do you work? A. Down in Edgewater.

Q. What is your business? A. In the sugar house.

Q. What do you do down there? A. I am a filler-in.

Q. Do you remember the early morning of the 16th day of January, this year? A. Yes, sir.

Q. Do you know about what time you left your home? A. Half-past four.

Q. In the morning? A. Yes.

Q. How did you go down to Edgewater that

morning? A. I came in the sugar house at that hour; I had to walk down.

Q. You say that you walked down? A. Yes, sir.

Q. How? A. Right down the hill.

Q. Down Fort Lee Hill? A. Yes, sir.

Q. Did you notice a taxicab anywhere on the road? A. Yes, sir.

Q. Where did you see it? A. Right on the top of the hill.

Q. What street? A. Right up on Main Street, right opposite the depot street.

Q. When you first saw that taxicab, what did you observe the chauffeur doing? A. The chauffeur was working in front of it.

Q. What was he doing with it? A. Cranking.

Q. How long did you watch him? A. Did not stop to tell.

Q. How long did you see him cranking it? A. Just until I passed by. I asked him if he was in trouble; he said "No," and I kept on walking about my business.

Q. What was the position of the automobile at that time? A. Facing down hill, right up against the curb.

Q. How far away from the curb was he? A. Oh, about—right up close to the curb.

Q. I ask you to look at this photograph, Exhibit P. 2., which shows the junction of Bigler Street and Fort Lee Hill there, and point out just about where that taxicab was? A. (Referring) Right here.

Q. Kindly mark it with a cross? A. (Referring.)

Q. Well, then, after you passed him by, what occurred? A. Well, I walked down for about two minutes.

Q. How long? A. Two minutes.

Q. What happened? A. All of a sudden I heard the car coming down. Well, I stopped, thinking I might be able to ride down to the shop and get there quicker; just as I turned around, I heard a cry. Well, I walked right back. The car stopped about two hundred feet from me; I turned back—met Mr.—that man over there (indicating). We walked back. The first one we saw was that lady over there (indicating).

Q. Miss McGintee? A. Miss McGintee.

Q. How far back did you have to walk to strike her? A. Oh, about 100 feet, 125 feet. She was crying——

Q. When you heard that car coming right over to you, was it coming slowly? A. It was coming on a pretty good speed, down the hill.

Q. You went up to Miss McGintee? A. We walked back; we seen Miss McGintee lying down. She was crying about her leg, "Oh, my leg. Oh, my leg is broke." She says——

MR. WRIGHT — I object to what she said. Where did you go?

THE COURT—Objection will be sustained.

Q. What did you do? A. First, he asked me to help her out.

Q. Who asked you? A. Mr. Dowdell. He says, "Get somebody." Well, I went right to the police station and got Mr. Rosenstangle over there. I brought him down there. I was late then. I says, "Boys, I have got to go." So I left them there. I went on about my work.

Q. How was the weather that night? A. It was cloudy.

Q. I mean, was it warm? A. Well, it wasn't so warm.

Q. Was it cold? A. Cold a little

Cross-examination by Mr. Wright:

Q. What time did you leave home? A. Half-past four.

Q. How far did you live from the place you saw the taxicab? A. Just two minutes.

Q. What? A. Two minutes.

Q. So that it was about half-past four—it was after half-past four when the accident occurred? A. Yes, about twenty-five minutes to five.

Q. You saw the body of the taxicab at the top of the hill at Bigler Street? A. Right opposite, yes, sir.

Q. You are sure it wasn't at the bottom of that hill, down by the garage? A. No, no.

Q. How far did the cab go after it started down hill before it stopped? A. I seen it down there about three hundred feet from the place where I saw it.

Q. That is, three hundred feet down the hill? A. Down the hill.

Q. Down by the garage? A. A little past the garage.

Q. Where was it? A. Where was it?

Q. Yes, when you passed it, down by the garage, on the road or on the sidewalk or where? A. I was out in the road.

Q. Standing still? A. No, I was walking down.

THE COURT—No, the car.

WITNESS—Yes, the car stopped there; I turned back.

Q. That is on the hill? A. Right on the hill.

Q. It is up hill from Bigler Street all the way down to Edgewater? A. Yes, sir.

Q. Way down for half a mile? A. Yes.

Q. Did you see Dowdell start the car and run it back up hill? A. No, sir.

Q. Was it still there when you went on down? A. I went on down; I brought the policeman there and I went on down.

By Mr. Keppler:

Q. Could you point out on either of these pictures, the one showing the garage and the one beyond the garage, unless you can remember where that car stopped? A. Just where that car is now is just about where it stopped.

Q. Where that car is on picture marked Exhibit P. 6? A. Yes.

Q. Now, Mr. Finelli, will you kindly look at these pictures and tell us if you can, as near as you can, point out the place where you found Miss McGintee and the place where you found Mrs. Nell? A. (Referring.)

Q. Will you place a circle around the one where you found Mrs. Nell, around the cross where you found Mrs. Nell? A. (Referring.)

Q. So that the cross you have made on plaintiff's Exhibit 4, in a circle, represents the place you found Mrs. Nell? A. Mrs. Nell.

Q. And the other cross represents the place, as near as you can remember, where you found Miss McGintee? A. Miss McGintee.

Q. Mr. Finelli, when you gave your statement of two minutes, did you look at your clock? A. Well, I did not look——

Q. It is your best estimate as near as you remember? A. Yes.

Q. When you speak of measurements, you don't mean that you measured it; it is just your best honest estimate of what it was? A. Yes, sir.

Q. And these things you marked here are as near as you remember, your best estimate of about the places where these things occurred? A. Yes.

By Mr. Wright:

Q. I show you Exhibit P. 5, will you mark that picture where the car stopped and where it was when you passed it on your way to work? A. (Referring) It is down further than this.

Q. Down further than that picture shows? A. Yes, sir; than that house.

Q. Just about where the car stands in the picture marked P. 6., is that right? A. Yes, down from this white house here (indicating).

Q. Was it in the middle of the street or side of the street? A. Down on the side where it stopped.

Q. Which side? A. The left-hand side going down.

Q. The left-hand side going down, that would be the river side? A. River Road side.

Q. Up against the curb? A. Well, not quite up against it.

Q. So that it was standing straight, facing down the hill? A. Straight down the hill.

JOSEPH ROSENSTANGLE, sworn for the plaintiffs, testifies as follows:

Direct examination by Mr. Keppler:

Q. You are a police officer, Mr. Rosenstangle? A. Yes, sir.

Q. Connected with the Fort Lee Force? A. Yes, sir.

Q. Do you remember this night of the accident? A. Yes, remember the morning.

Q. Well, I mean the morning. About what time was it, as near as you remember? A. Ten minutes to five when I got there.

Q. Just tell the Court and jury, as briefly as you can, what you observed when you got over and what you did? Were you accompanied by anybody? A. Yes, sir.

Q. Who? A. Officer Frate. About ten minutes to five, Frank Finelli came over to the police station and said somebody was at the bottom of the hill. Officer Frate was there at the time. I said, "We had better run down." So we ran down and Mrs. Nell laid alongside the gutter and Miss McGintee laid about three feet from her, on the other side, right near the bend of the road.

Q. Mr. Rosenstangle, look at the cross in the circle on plaintiff's exhibit 4, and tell us is that about the place where you found those ladies? A. Referring.

Q. Would you have it a little further to the right of the cross? A. Right at the curb.

Q. At the curb? A. Yes, sir.

Q. That cross is only within a few feet of where you think it occurred, is that right? A. Within about ten or twelve feet.

Q. Do you mean that they were right at the curb? A. Right at the curb; right at the bend.

Q. Were they about in the same place or further down the hill? A. At the same place, just opposite.

Q. Right opposite the bend in the road there? A. Opposite the bend in the road.

Q. Go ahead, tell us what you saw? A. Mrs. Nell was lying down; she had her hand up here to her head (indicating). The first thing I noticed was a lot of blood. I looked and I did see a hole in her head and bleeding at the ear; and Miss McGintee laid just opposite; she could not move at all. So I asked her what the trouble was. She could not seem to tell me; said something about automobile. I looked down the street about a block and a half and I saw a man down there. I started to run down. As I was running down he came up.

Q. Who came up. A. Mr. Dowdell.

Q. Had you known Dowdell before that time? A. No, sir. He told me what the trouble was. We assisted them into the car, the car that the accident occurred in, and took them up to Doctor Wyler's.

Q. Did you notice anything else about Mrs. Nell's condition? A. She seemed to be in an unusual condition; I would not like to call it by unconscious—semi-conscious; did not seem to know anything.

Q. Did you notice anything else about her that you can remember? A. She had some bruises on her face, scratches.

Q. You went to the doctor's there? A. Yes, sir.

Q. How long did you stay altogether? A. I stayed there—near seven o'clock when I left the doctor's. I stayed there until they were put on the

ambulance and taken to the Englewood Hospital.

Q. You did not go to the hospital? A. No, sir.

Q. What did you see? What else was done? A. Well, I saw the doctor put some stitches into her head.

Q. Did you notice whether she continued bleeding out of her ear? A. She did.

Q. Did you notice whether anybody was vomiting? A. Mrs. Nell vomited.

Q. How many times? A. Oh, ever since I was there, continuously.

MR. WRIGHT—No cross-examination.

LUKE FRATE, sworn for the plaintiffs, testifies as follows:

Direct Examination by Mr. Keppler:

Q. Mr. Frate, you are an officer connected with the police force? A. Yes.

Q. You are the gentleman who went along with Mr.—— the last witness? A. Yes, sir.

Q. What did you notice when you got down to the point of the accident. A. As we were coming down the hill I saw two women, Mrs. Nell and Miss McGintee, moaning, and I ran to Mrs. Nell; she was the nearer one; asked her what the trouble was. She did not answer me. All she did was to put her hand up as though she wanted to get up and vomit. I helped her up and she tried to vomit and could not. As Rosenstangle went to help Miss McGintee she hollered. I turned around and looked down the street to see where the machine was, and I saw it about a block and a half down the street, coming up. I did not know it was the same machine; I

simply stopped the machine and put them in and took them to the doctor's. So he came up and I asked him if he was the fellow that had these two women in the car; he said "Yes." I told him to turn his car around and take the roundabout way instead of going up the steep hill.

Q. I don't understand; you did not go back up that hill again? A. No, sir.

Q. You took a different road to get up the hill? A. I took Mrs. Nell and put her in the car and left officer Rosenstangle with Miss McGintee.

Q. How did you get Mrs. Nell into the car? A. I had to lift her in.

Q. Did you carry her over your shoulder? A. No, she—— I kind of dragged her along on her feet. She kind of walked, but she hung, and Miss McGintee we had to carry in the car.

Q. Then you took her up to the doctor? A. We took her over to Doctor Wyler's; I ran in and woke Doctor Wyler up; he was just getting up out of bed.

Q. What did you notice about Mrs. Nell? A. Why, her head was bleeding and her ear was bleeding. She had some scratches on the face and a scratch on the hand.

Q. When you went up to the doctor's did you notice anything else about her? A. No, sir.

Q. Did you notice her vomiting? Yes, she vomited. She tried to vomit and did vomit.

Cross-examination by Mr. Wright:

Q. You say that you put them in the same car and took them up to Doctor Wyler's? A. Yes, sir.

Q. You said that they did not go up hill; that you

suggested they go around the other way? A. Around a block, yes, sir.

Q. You suggested that yourself? A. Yes, sir.

Q. When you say you went around a block, you mean you went up on—— A. Terrace.

Q. What you call Terrace Avenue, and came back to the triangle? A. Came back to Bigler Street.

Q. Just look at the map and mark it. This (indicating) is the hill; this is the terrace, isn't it? A. Yes.

Q. This road goes to Englewood? A. Yes, we went up this way (indicating).

Q. And this here is Bigler Street? A. Yes.

Q. Up here a little ways they come together; Bigler Street runs into Terrace, is that right? A. Runs the same as this is (indicating).

Q. You went this way (indicating) and came back Bigler Street? A. Came up this way (indicating).

Q. Dowdell started to go this way (indicating) and you told him to go up Terrace Avenue? A. Come up to about here (indicating) and I told him to turn around.

By Mr. Keppler:

Q. Why did you tell him to do that? A. I wouldn't take chances to go up in the car.

Q. Why wouldn't you take chances? A. I thought perhaps there was something the matter with the car. I did not want to take chances; I did not know whether it was all right or not. Q. Anybody tell you that? A. No.

Q. That road through the terrace is a much

longer road and more gradual, isn't it? A. It is mostly level.

Q. I mean, the top of that hill is gradual along the terrace? A. Yes.

MR. KEPPLER—Will you concede that this (indicating) is the examination of Mr. Godstrey before trial?

MR. WRIGHT—No.

MR. KEPPLER—Mr. Godstrey, take the stand.

MR. WRIGHT—To save time, I will agree that his former testimony was taken on the notice of examination before trial, if that is what you want to show. It speaks for itself. You want to offer it, I suppose, and I object to its offer, because it is not competent; that is the issue.

THE COURT—Outside of that the execution of it is——

MR. WRIGHT—There is nothing the matter with that, no.

MR. KEPPLER—I offer the examination of this witness in evidence.

THE COURT—I am going to rule it out at the present time and allow you an exception.

MR. KEPPLER—I respectfully except.

THE COURT—You may have your exception.

MR. KEPPLER—I would like to have the examination marked for identification.

(Marked Exhibit P. 10, for identification.)

BENJAMIN CAMPBELL, sworn for the plaintiffs, testifies as follows:

Direct examination by Mr. Keppler:

Q. Mr. Campbell, where do you live? A. 5600 Broadway, New York.

Q. Where are you employed? A. Where I am?

Q. Yes, sir? A. One Hundred Thirty-fifth Street garage.

Q. In January of this year, where were you employed? A. The Edgewater Garage.

Q. Where is the Edgewater Garage? A. River Road, near Hudson Avenue.

Q. Do you know Mr. William C. Godstrey? A. Yes, sir.

Q. What business is he in? A. He was in the garage business at that time.

Q. What garage? A. The Edgewater garage.

Q. You worked for him? A. As far as I knew.

Q. He hired you? A. Yes, sir.

Q. You kept the books of that garage? A. I did.

Q. Mr. Campbell, I show you a letter-head annexed to plaintiffs' Exhibit 10 for identification and ask you if you can tell me whose letter-head that is? A. Mr. Godstrey's.

Q. Mr. Godstrey's letter-head of the Edgewater Garage? A. Yes, sir.

Q. Are these the regular letter-heads he has there? A. They are.

MR. KEPPLER—I would like to be permitted to remove the letter-head from that deposition.

THE COURT—I don't think there is any objection to it.

MR. KEPPLER—And also this bill-head—— Is that the bill-head of the Edgewater Garage? Yes, sir.

MR. KEPPLER—I offer this letter-head and bill-head—I will have to tear them out from the Plaintiffs' Exhibit 10 for identification, and offer first this letter-head in evidence.

(Marked Exhibit P. 11.)

(Bill-head marked Exhibit P. 12.)

(Mr. Keppler reads to the jury.)

MR. KEPPLER—I would like to amend the complaint; Instead of referring to the Godstrey Taxi Company, I would like to amend it to read Edgewater Garage.

THE COURT—Any objection?

MR. WRIGHT—I suppose he might still have another case if he wants to.

THE COURT—Is there any objection?

MR. WRIGHT—I don't want to consent to it. I won't press any objection. I cannot plead surprise.

THE COURT — The amendment will be allowed. That means that you strike out——

MR. WRIGHT — Strike out the Godstrey Taxi Company and substitute Edgewater Garage, is that what you want?

MR. KEPPLER—That is right.

THE COURT—It may be allowed.

MR. WRIGHT—You have got it all in there. The third paragraph now says the defendant was and still is in the business of letting out taxicabs for hire under the name of the Godstrey Taxi Company; the principal business is located in the automobile garage Edgewater, N. J., in the name of the Edgewater Garage. So that it seems to be all in there.

Q. Now, you made up the bills for the work done in that garage, didn't you? A. Yes.

Q. Did you render bills to customers for taxi hire in that place? A. I did.

Q. And kept the books and records? A. Yes.

Q. Is this the kind of bill-heads that bills were rendered on? A. (Referring) Yes, sir, that is the bill-head.

Q. The same bill as the plaintiffs' Exhibit 12. Did you ever know Patrick Dowdell? A. I did after he came to work there; not before.

Q. How long did he work there altogether? A. From July until January.

Q. July, 1915? A. July, 1915, to January, 1916.

Q. When did Dowdell come to work there? A. I think it was around the first part of September.

Q. Is he still working there? A. I believe so.

Q. Ever see him drive a taxicab out of that place? A. Not drive one out, no.

Q. Did you ever see him drive them in? A. No.

Q. Do you know that he ever did drive taxicabs?

MR. WRIGHT—I object now. Ask whether he saw; he don't know anything that he did not see.

THE COURT—How is it material? He might have driven for somebody else. The question is whether he drove a taxicab for this defendant.

Q. What was the system of records in there to show whether or not a taxicab had been taken out of that garage? A. There was a day slip kept at the taxi office and the drivers put their calls on.

Q. I mean up in the office. Was there any way of knowing that? A. There wasn't supposed to be any calls made at night.

Q. Were there ever any calls made at night? A. Why, when he first came to work there, there might have been one or two.

Q. Did he make a report of those calls? A. He did.

Q. They appear on the regular slip? A. It should.

Q. What did you do with those slips? A. It would be added to the slip that came over from the taxi office.

Q. Did Mr. Godstrey get those slips? A. I don't know that he got them. As a matter of record, they should be on the taxi slip.

Cross-examination by Mr. Wright:

Q. The taxi business was under the name of Undercliff?

MR. KEPPLER—I object to that. In the first place the question is leading.

THE COURT—On his cross-examination.

MR. KEPPLER—On the other hand, it is a conclusion—calls for a conclusion and is immaterial.

THE COURT—The question will be allowed. You may have your exception.

MR. KEPPLER—I respectfully except.

A. It was run under the incline—there was a corporation, the Undercliff Taxi Company.

Q. That was the sign that was down on the taxi office, down in the taxi office at the ferry. A. The taxi office was on the sign.

Q. Just where the taxi office was the sign? A. Yes, sir.

Q. Do you know who the officers of the Corporation were? A. Yes, sir.

MR. KEPPLER—I object to that on the ground that it is not the best evidence; on the further ground that it is immaterial. There is no proof of any relation with the Undercliff Taxi Company and this defendant.

THE COURT—I will let him testify, if it is a matter of knowledge, if he knows. It isn't a question of title. It is a question of fact.

MR. KEPPLER—I object on the ground that there is no foundation laid and no proof of the source of his knowledge. It could only be his own conclusion.

THE COURT—The objection will be overruled. You may get it out on cross examination.

MR. KEPPLER—I respectfully except.

THE COURT—You may have your exception.

A. The president is Henry Whistle; treasurer Joseph F. Kennedy; those are the two officers.

Q. What are their names? A. Henry Whistle and Joseph F. Kennedy.

Q. Do you know whether Mr. Godstrey has any office in the company or not? A. Not as far as I know.

Q. What capacity was he acting for them? A. Manager.

Q. That Company operated with taxicabs, did it not?

MR. KEPPLER—I object to the question on the ground that it is leading and calls for a conclusion. No proof that this witness knew who they were.

THE COURT — Change your question as to who operated taxicabs, ran them out of the Edgewater Garage.

Q. Who operated the taxicabs which ran out of the Edgewater Garage? A. They were run under Mr. Godstrey's management.

By the Court:

Q. As manager of the taxi company?

MR. KEPPLER—I object to that as——

THE COURT—He may answer.

MR. KEPPLER—On the ground that there is no proof that he knows anything about it.

A. Yes.

Q. How did you fill out the bills for the taxi? A. They were billed out on the regular bill-head.

Q. Whose, Godstrey's bill-head? A. Yes.

Q. Why didn't the Undercliff Taxi Company use their bill-head? A. I never saw any.

Q. You never saw any? A. Any bill-heads at all.

Q. Was there any other taxicab running from the Edgewater garage? A. No, sir.

Q. How many taxis were in the garage? A. When they were all working, there were nine; six taxies and touring cars.

Q. What are the means of your knowledge that these taxis were run by the Undercliff Taxicab Company? A. The Yearly Income Tax statements were made out by the Undercliff Taxicab Company, the corporation's name.

Q. How were the taxis rented out? A. The taxis were rented and the checks came in, payable to William C. Godstrey.

Q. How is that? A. The checks came in for bills sent out, were made payable to Mr. Godstrey.

Cross-examination by Mr. Keppler:

Q. Now, Mr. Dowdell worked there only at night, didn't he? A. At night, yes.

Q. He came to work at what time? A. Usually about 7 o'clock.

Q. He worked in that garage, didn't he? What did he do there? A. He was a washer.

Q. What else? A. Served gas and oil.

Q. Sold gas and oil? What else? A. Locked up the place there at night.

Q. If a person had an accident or break-down to fix up, or a tire or do any other work down there— A. He was capable of fixing up a tire, yes. Not any mechanical work.

Q. He was a licensed chauffeur, wasn't he? A. I believe so.

Q. Licensed by the State of New Jersey? A. So I believe.

Q. He had charge of the garage at night, hadn't he? A. Well, I don't know as you could say he had charge of it.

Q. There was nobody in there but him, was there? A. Yes.

Q. Mr. Godstrey slept right above there? A. Yes.

Q. You kept the books of the place, didn't you? A. Well, while I was there, yes.

Q. There was only one set of books kept, wasn't there? A. That is all.

Q. All the moneys that came in were banked in William C. Godstrey's bank account, weren't they? A. Up to early of this year.

Q. As soon as this accident happened, about a month or so after this accident, they commenced to bank moneys in the name of the Undercliff, didn't they?

MR. WRIGHT—I object to that as immaterial and incompetent.

THE COURT—Let him answer. When did they bank in the Undercliff name, if at any time?

WITNESS—Why, I think it was in February. I cannot recall positively.

Q. And that account was never used before that while you were there, was it? A. Not while I was there.

Q. Now, Mr. Campbell, all the checks in the business were paid through William C. Godstrey? A.

Up to the time the account was opened in the Undercliff Taxi Company.

Q. When you came there until February, about a month after the accident, all the moneys taken in were banked in the name of William C. Godstrey, weren't they? A. Put that question again.

Q. All the bills put out, were put out in the name of William C. Godstrey? A. Yes, sir.

Q. And every book and record in your place was kept in the name of William C. Godstrey, that is right? A. Up until the time of the Undercliff Taxi Company bank book was started.

Q. Exactly. There was nobody else took any active interest in the business but William C. Godstrey? A. Not that I saw.

Q. And there wasn't a sign anywhere that shows the name of the Undercliff Taxi Company, was there? A. The bank books.

Q. Outside of that, that was the only thing you knew of to show the existence of the Undercliff Taxi Company, isn't that correct? A. I know the two officers personally.

Q. Is that all? A. And the other stockholder. I happen to know them all.

Q. You happened to know this man that you mentioned? They all live in Edgewater, don't they, right around? A. The two live in Edgewater.

Q. But there is not a sign anywhere of the Undercliff Taxi Company, is there? A. Not that I know of.

Q. Any card of the Undercliff Taxi Company? A. I don't think there is.

Q. Any contract of the Undercliff Taxi Company? Any telephone with the Undercliff Taxi Company? A. There is a contract; no telephone.

Q. No telephone with the Undercliff Taxi Company? The electric current in your garage, was that in the name of William C. Godstrey? A. Yes.

Q. Any gasoline bought in the name of the Undercliff Taxi Company? A. It was.

By Mr. Wright:

Q. Who directed Dowdell in his work there? A. Why, Mr. Godstrey gave him his original instructions when he hired him.

Q. Who hired him? A. I believe Mr. Godstrey did.

Q. Who did you look to as your boss? A. Mr. Godstrey.

Q. Who did he look to as his boss? A. Who?

Q. Dowdell? A. I presume Mr. Godstrey.

Q. You say when he first came there there were records that he had taken out taxicabs at night? A. I said there might have been.

Q. Those records were given to Mr. William C. Godstrey, weren't they?

MR. KEPPLER—I object to that as leading.

THE COURT—Objection sustained.

Q. Do you know what was done about the records? A. It would be put on the day slip that would go up to our taxi office.

Q. What became of those records that were put on the day slip? A. They were kept and filed.

Q. Well, do you know whether Godstrey——

THE COURT—There are two instances that you speak of; when did they take place? —the two records for calls for taxis?

WITNESS—It was about when he first came

to work there. I did not take any particular attention.

THE COURT—What did he have to do then?

WITNESS—He would leave a notice there on the slip and put the money in the cash box.

THE COURT—Who made the record?

WITNESS—Mr. Dowdell.

THE COURT—Why should he make the record?

WITNESS—Because the drivers all had to account for the money they took in.

THE COURT—That was when he first come?

WITNESS—It was shortly after he had been there.

THE COURT—Is that the only instance that you remember?

WITNESS—That is the only instance where I know that he took in actual cash for work.

THE COURT—What kind of work?

WITNESS—When he had driven and collected for it.

THE COURT—He had driven a taxi and collected for that?

WITNESS—Yes, sir.

THE COURT—That was in September?

WITNESS—Well, along in September, when he was there a little while.

Q. Shortly after he came there, wasn't he given orders not to drive the cars?

MR. KEPPLER—I object to that.

THE COURT—If he knows.

MR. KEPPLER—I object unless he knows.

THE COURT—Do you know about the orders?

WITNESS—Why, yes.

Q. What do you mean by yes? Do you know of—— A. Yes, I heard him give the orders not to drive.

Q. When was that?

MR. KEPPLER—I object to that on the ground that we are not bound by any such orders.

THE COURT—Objection overruled.

MR. KEPPLER—I except.

A. That was after he was arrested in New York. Q. Have you fixed that date about? A. The latter part of September, but I could not tell you the date.

Q. After that time he did not drive, did he, so far as you know? A. Not that I saw.

By Mr. Keppler:

Q. As a matter of fact, wasn't it very rarely that there were any calls at night? A. Yes, the records were kept up until after—until the last boat; sometimes would not come in until 4 o'clock.

Q. So that there were a lot of taxicabs kept down at the station, weren't there? A. Not a lot; two, possibly; sometimes one.

Q. So that he would rarely have occasion to go out, isn't that right? A. Very rare.

MR. KEPPLER—That is all.

JOHN MOORE, sworn for the plaintiffs, testifies as follows:

Direct examination by Mr. Keppler:

Q. Mr. Moore, where do you live? A. South Philadelphia.

Q. Mr. Moore, did you, in the Summer of 1915, have any conversation with Mr. Godstrey relative to going in his employ? A. Yes.

MR. WRIGHT—I object to what took place in the Summer of 1915.

THE COURT—Mr. who?

MR. KEPPLER—Godstrey, the defendant.

THE COURT—What time in 1915?

Q. When was the conversation? A. In July some time, or the middle of July.

Q. Did you work for Mr. Godstrey? A. Yes, sir.

Q. How long? A. About ten months.

Q. From July until about when? A. No, it wasn't that; about seven months, eight months.

Q. From July, 1915 to—— A. Until February this year, 1916.

Q. When he took you to work, did you have any conversation with him as to who you were working for? A. No, never asked him that.

Q. What did he say? A. I only remember about the repair work.

Q. Where? A. In the garage.

Q. Who hired you? A. Mr. Godstrey.

Q. Did he tell you who your boss was? A. Never said anything about it. He hired me; I supposed he was my boss.

Q. Did he pay you? A. Yes, sir.

Q. Did you see any other boss around there? A. No, there was one in there.

Q. Did you ever know, while you were there, of any other concern being there? A. I did hear something about that, but never paid any attention to that, because I always looked to Mr. Godstrey as my boss.

Q. Do you know Dowdell? A. After he came there to work.

Q. He came about September? A. Some time.

Q. Did he work there all the time that you were there? A. Yes, sir.

Q. When did he work? A. Nights, 7 until about 7 in the morning, 8 o'clock.

Q. What did he do there? A. Washed cars.

Q. You say, washed cars; whose cars did he wash? A. People that had them come in there for storage and wanted them washed. But anybody that ordered the cars washed there, why, he washed them.

Q. The people that kept their cars stored, brought the cars in your garage? A. They ran them in there and would want to stay over night; they would probably store there.

Q. In addition to that, there were people who lived around there who kept their cars, the same as private people at any garage? A. There may have been one or two.

Q. He took care of those cars too, didn't he? What did he do there as night man? A. Why, prac

tically—I could not say how he was there; I saw him wash cars, that is about all.

Q. Do you know whether he sold any gasoline? A. Sell gasoline once in a while.

Q. Did anybody else have charge of the place with him at night? A. Some times one of us might be in there for a while to help him out if there wasn't much doing, in case anything came in.

Q. You were only there in the day time? A. Yes, mostly.

Q. Did you ever see him drive any cars around that place? A. I helped to put heavy cars on the washstand; that is about all.

Q. Did he drive them on the washstand? A. Drove them on the washstand.

Q. In the presence of Mr. Godstrey? A. No, I don't think that Mr. Godstrey ever saw him drive them.

Q. Who paid you your salary, did you say? A. It came through Mr. Godstrey, I believe.

Q. Who paid it to you? Who gave you the money? A. Generally the bookkeeper, Mr. Campbell.

Cross-examination by Mr. Wright:

Q. Did you ever hear Mr. Godstrey give Dowdell any orders to drive cars? A. Never heard him give them personally; I heard something about it.

Q. You did not hear it personally? A. No.

Q. You said you never saw Dowdell drive the cars? A. Not on the road; only around inside the garage, putting them on the washstand, something like that.

Q. You worked in the shop how long? A. Oh,

the biggest part of the time, I guess; I wasn't on the road so very long.

Q. Were you sent on the road a part of the time? A. I did go on the road a little when we got slack in the shop.

Q. On the road doing what? A. Driving cars.

Q. You mean driving taxicabs? Yes, driving taxicabs, in charge of the cars.

Q. Who did you work for then? A. Why, the same man, I suppose.

Q. You suppose the same man? A. The same man.

Q. All you do know about it is that Mr. Godstrey asked you to work for him and you went to work? A. Yes, sir.

Q. You got your money? A. Got my money.

(Recess until 10 o'clock to-morrow morning.)

Hackensack, N. J., June 2, 1916, 10 A. M.

MR. KEPPLER—May it please the Court, I have a number of physicians here to testify. There is one to come over with Doctor Wyler yet. May I ask permission of the Court to read the testimony of Doctor Wyler, so that these physicians, in making their answers, can also base their answers on the testimony?

THE COURT—Any objection.

MR. WRIGHT—It is rather unusual.

THE COURT—It is unusual. I want to know if there is any objection?

MR. KEPPLER — Counsel knows that I intended to have that medical testimony this morning.

THE COURT—What have you to say?

MR. WRIGHT—I cannot see any reason for it. These doctors come to testify of their own knowledge. I don't see how they can base anything upon what Doctor Wyler says.

THE COURT—Under objection, Mr. Keppler, the Court doesn't see how it is going to grant the request. I am perfectly willing to have it done by consent of counsel.

MR. KEPPLER — Now, yesterday and before yesterday, Mr. Wright and I agreed that it would not be necessary to call the nurse to verify the record that they had made of the treatment or what she observed of the condition of Mrs. Nell, namely, the history of the case, and, relying upon that, I made no effort to subpoena the nurse. One of them has gone to Harrisburg, and another has pneumonia—the two nurses in the case.

THE COURT—You understand that the Court is powerless in the matter.

MR. KEPPLER—Under those circumstances and in view of the understanding I had with Mr. Wright, I offer the history of the case. Mr. Wright says the only reason he objects is that he considers it immaterial.

MR. WRIGHT—I never made any such promise, or never made any statement in regard to it. I never heard the question of the nurses or their testimony was to be brought into the case until yesterday. Mr. Keppler never mentioned it until yesterday, and yesterday in Court, he asked me, when Doctor Wyler was on the stand, if I would make any objection to this history or report; I said no; they were undoubtedly proper reports. I did not make any objection as to the method of proof. My objection was that they are immaterial.

MR. KEPPLER—If that is the only objection, I would like to offer the history of the case of Mrs. Nell, showing the observation of the nurse and the treatment given her while in the hospital.

THE COURT—If that is the only objection and you are not pressing any other objection, the Court will allow it to go in evidence.

MR. WRIGHT—I ask an exception to it.

THE COURT—You may have an exception to that proposition.

MR. WRIGHT—To make it clear, my objection is not to the manner of proof. I assume that if these witnesses were brought here, they would testify that they made those entries.

(Marked Exhibit P. 9. for identification.)

THE COURT—You understand, the Court reverses its ruling on the admission of the testimony taken of the defendant Godstrey, before trial, and will permit you to offer it in evidence if you so desire.

MR. KEPPLER—Then I will offer it in evidence.

(Marked Exhibit P. 10.)

JULIUS AUERBACH, sworn for the plaintiffs, testifies as follows:

Direct Examination by Mr. Keppler:

Q. Doctor Auerbach, you are a regular licensed physician and surgeon? A. Yes.

Q. And have been for how long? A. For 12 years.

Q. Have you made any specialty of any branch of medicine? A. Yes, I have.

Q. What branch? A. A special study of the ear during the past 11 years.

Q. Any other parts of the anatomy? A. And the head.

MR. WRIGHT—I will admit Doctor Auerbach's qualifications.

Q. What part of the head? A. The brain, skull, the ear.

Q. What hospitals are you connected with? A. I am attending physician of the ear department of the Mt. Sinai Hospital, Fordham Hospital, New York; St. Bartholomew's Clinic, and consulting

physician of the ear department for the hospital for deformities and joint diseases.

Q. And then you have, for ten years, made a specialty of that work? A. Yes.

Q. And particularly the subject of the ear? A. Yes.

Q. And the brain? A. Yes.

Q. Did you see Mrs. Nell, the plaintiff in this action? A. I did.

Q. Do you remember about when, the first time you saw her? A. Yes, I observed her for a period of about three months, beginning February 10th, and during which time I saw her probably about eighteen or twenty times and made a close observation of her case from the very beginning, from the time she came under my observation.

Q. Will you kindly tell the jury and Court, as briefly as you can, just what your examinations consisted of, just what tests you made, what treatment you gave her? A. My examinations consisted in the detailed history of the case, trying to determine whether or not there had been any ear condition in the case of Mrs. Nell prior to this injury, and was convinced, from her talk, that neither during childhood or during adult life, had there been any symptoms manifested about her ears until the time she met with this accident. The examination consisted of an examination of the ear canal, the ear drum, and then a determination of the hearing. An examination of her ear drum showed that where the drum had existed, part of this drum had been replaced by so-called scar tissue. Some kind of scar tissue that will form on the wound or burn or where the skin has been torn; this scar tissue had been contracted. I was led to conclude from the appear-

ance of the drum that there was some interference with the normal hearing. The hearing tests, both conversational voice and the forced voice and the watch and by an instrument known as a

all showed impaired hearing; showed that the impaired hearing was a permanent symptom which is closely associated with the ear organ, and this permanent symptom was vertigo. The vertigo I could absolutely establish and identify as the permanent form of vertigo that is due to an ear lesion. Vertigo or dizziness, while a subject of astigmatism, and astigmatism which the patient hereslf complained of in this case should be definitely proven, because there was, on examining the eyes, a dazed motion, a so-called astigmatic motion of both eyes, and this astigmatism is produced by irritation of a certain nerve which is connected between the eye and the ear. Further symptoms——

Q. What part of the head is that nerve in? A. The base of the skull. Further symptoms were those of very severe and distressing head noises. Mrs. Nell, the patient, described these noises as a rumbling noise of escaping steam. They were more pronounced when she was quiet and alone in her own room; that as soon as there was anything in the way of extraneous noise, why then the head noise was not pronounced; but when she was alone or she tried to concentrate upon a book or upon some sewing, the noise became very, very distracting. As I say, the noise resembled that of escaping steam. Sometimes, as she described it, the noise resembled that of a buzzing, of a low rumbling kind; and these noises were more or less constant. They were very distressing at night when she tried

to go to sleep. Then of course it was particularly quiet and she found a great deal of trouble in going to sleep. The dizziness or vertigo at times was so marked as to produce symptoms that resembled very much the symptoms of sea-sickness or nausea and vomiting. Another permanent symptom at the time and one which continued during the entire time that I had her under observation, was a severe headache, a headache that was traceable to the back of the head; that region of the head (indicating), which had been the seat of the injury. I am frank to admit that I haven't been able to do very much for Mrs. Nell; the reason being that the ear injury, that injury to the inner ear, that part of the ear is not easily accessible; it is seated at the base of the skull, and there is no medical or surgical means of getting at this particular portion of the anatomy.

Q. What is the name of that portion? A. The ear's labyrinth.

Q. The labyrinth? A. The labyrinth of the ear. It serves the function not only of hearing but serves the function also of enabling us to maintain our position, of enabling us to maintain our equilibrium.

Q. What is the effect of an injury to that portion of the anatomy? Just a moment; what do you mean by maintaining our position of equilibrium? A. Well, under normal circumstances, the normal man or woman is possessed of a special sense, a so-called fixed sense or this sense of equilibrium; that has been definitely located to be seated within the ear, the so-called labyrinth, the base of the skull, and is a part of the ear apparatus and intimately associated with the organ of hearing. Its situation is somewhat sheltered either from a direct injury,

such as a stab wound or a bullet wound or an indirect injury such as a fall upon the head or the back of the head where the force is transmitted through the brain tissue where marked disturbances may result. Those cases that have been examined of paroxysm, where there has been an injury, a fall, have been shown to consist of very slight, very minute hemorrhages within the ear labyrinth. Sometimes these hemorrhages are large enough, sufficient enough to entirely destroy the organ. Sometimes they merely diminish the function of the organ. In the case of Mrs. Nell, the organ is not entirely destroyed, but there is a very marked impairment of its function. In other words, she has to try to find her way about in the dark. A normal person could, by the aid of the other sense, find their way about fairly well. A normal person could fairly well stand upright with eyes shut, without swaying, without staggering from one side to the other. I have, at numerous times, tested Mrs. Nell with her eyes shut, walking backward and forward with the eyes shut, and at each and every time, have found an unstable, staggering gait, a decided swaying in one direction or the other.

Q. Now, doctor, will you very briefly give the jury an idea of the anatomy of the head—I mean the anatomy of the ear—so as to trace this wound, that is, the outer ear drum, the inner ear and the labyrinth, and explain where they are located in the head? A. Well, separating the middle ear from the outside ear or line of demarcation, that portion of the anatomy which separates the middle ear from the outside is the drum or drum membrane. This drum membrane is subject to injuries that other organs are not liable to. As for a direct injury of the

drum, that does occur at times. An indirect injury such as the injury which Mrs. Nell received is not uncommon, and it is brought about in this way: Force is received upon the top of the head, upon the back of the head, or perhaps a loud explosion takes place; there is a very sudden condensation of air, and this drum membrane, being very thin, might condense before it has had a time to readjust itself either to the new force or to its new atmospheric suroundings, will cause the ear, as it does in her case, its rupture, and at the time of the rupture, there was quite, as I understand it, a flow of blood. That the rupture was quite marked is evidenced by the findings that are proven. This normal drum is replaced by a large amount of scar tissue. Now, as long as the scar tissue remains, Mrs. Nell will be inconvenienced; she will be still more inconvenienced should she have a cold or should she forceably blow her nose. In that case this scar tissue, being very thin, can very easily rupture, and it is easy to see how infections might take place, with the discharge of pus. Where there is pus, there is always more or less risk of its extending.

Q. Now, doctor, basing your answer upon your examinations and treatment of Mrs. Nell and your experience as a specialist, can you state with reasonable certainty whether or not the impairment of the hearing of Mrs. Nell is permanent? A. I can.

Q. Is it? A. Yes.

Q. To what extent? A. To the extent that she will depend more or less for the rest of her life upon her other side to carry on a conversational voice or a telephone conversation. With the other ear neglected, either by her closing her ear canal

with her fingers or should anything happen to her other ear, she would have very little function; she can, to a very slight extent, depend upon the injured ear.

Q. Is that due to the ruptured ear drum or to the injury to the labyrinth? A. The permanent injury to that ear is due to injury to the labyrinth. The injured drum has affected her hearing, but that part is subject to treatment.

Q. And that has improved with treatment? A. That has improved with treatment.

Q. Well, will that part of the hearing be absolutely normal? A. Never can be, as long as the drum has been replaced by scar tissue.

Q. Can you state, with reasonable certainty, the extent the impairment will be, as far as the drum is concerned? A. The drum itself is not serving the purposes of a drum at present.

Q. Why not? A. Because it is not a normal drum; it is scar tissue; it is equivalent to replacing the normal drum by an artificial drum; it never serves the same purpose.

Q. How is the injury to the labyrinth going to affect her in the future? A. It will affect her in this way, that her dizziness will be a more or less disturbing factor during her life. The head noises will be very distracting, and distracting to the extent that not only will she suffer these noises, but the secondary symptoms or symptoms of that general result, cause the patient to concentrate her mind upon her ear. The patient is constantly reminded that she is having a constant buzzing going on; mental concentration becomes impaired as a result of the loss of sleep; they are tired, fatigued;

they are easily fatigued, and the patient ultimately becomes more or less a nervous wreck.

Q. Do I understand you to say this injury to the labyrinth is permanent? A. Yes.

Q. And that she will always suffer from dizziness and vertigo for the rest of her life? A. Yes.

Q. Doctor, are you familiar with the prices charged by a specialist for services such as you have rendered Mrs. Nell? A. Yes.

MR. WRIGHT—I object to that.

THE COURT—Let him state what the amount of his bill is.

Q. What is the amount of your bill in this case? A. About $100.

Cross-examination by Mr. Wright:

Q. You say, doctor, she has improved considerably? A. I said she has improved, but not considerably; to a slight extent.

Q. Her hearing is improved very materially, is it not? A. To a very slight extent.

Q. She has very acute hearing, has she not? A. No, she has not.

Q. You think you have to speak quite loud to have her understand you? A. If her other ear is closed, yes.

Q. Speaking generally of her hearing; you have to speak quite loud to have her understand? A. You have to speak a little bit louder than you would under ordinary circumstances, when the other ear is not included.

Q. I mean, her condition is such that in your conversation a person has to speak a little louder than you would normally, is that true? A. Yes.

By Mr. Keppler:

Q. When you say her hearing has improved, do you mean the portion of the hearing controlled by the drum? A. Exactly.

Q. How about the part controlled by the labyrinth? A. Absolutely inaccessible and not within reach, and could not improve.

Q. Those parts of the ear hear different sounds, don't they? A. Yes.

Q. And the high sounds are heard by the labyrinth? A. By one ear.

Q. And the duller sound by the drum? A. By the drum.

Q. If you were to put a tuning fork to the back of the head of the person that is absolutely deaf, would they be conscious of the fact that it was there?

MR. WRIGHT—I object to that.

THE COURT—Let him answer.

A. They would be conscious of feeling certain vibrations, but not of hearing them with the labyrinth.

Q. Have you to-day a tuning fork with you, doctor? A. No, I have not.

Q. In other words, assuming that a person is absolutely deaf, and you took a tuning fork and put it back of the ear the patient would be conscious of it? A. Of certain vibrations.

Q. That would be due to the vibration? A. It would.

Q. And the person wouldn't hear a sound? A. Wouldn't hear; they would feel it.

JOSEPH A. McPHILLIPS, sworn for the plaintiffs, testifies as follows:

Direct examination by Mr. Keppler:

Q. Doctor, you are a licensed physician and surgeon? A. Yes, sir.

Q. Practicing in the city of New York? A. Yes, sir.

Q. Connected with the Flower Hospital? A. Yes, sir.

Q. Were you called in consultation with Doctor Auerbach in this case? A. Yes, sir.

Q. Did you examine Mrs. Nell? A. I did.

Q. How many times did you examine her? A. Twice.

Q. Kindly state to the Court and jury, as briefly as possible, what you observed? A. The afternoon of the examination of Mrs. Nell, we found that the scalp had been injured to the extent of a laceration of about two inches long, which was completely healed. Upon examination of the ear, we found that the drum of the ear had been ruptured, torn in a ragged manner; that the drum had contracted as a result of the healing, and the replacement of the normal drum by scar tissue, which occurs in that part of the anatomy just the same as it would in the hand, if you cut your finger. And further, upon taking the history of the case of Mrs. Nell, she complained of these severe noises, headaches, nausea, vomiting, which are characteristic symp-

toms following an injury of this kind. And the degree of the injury sustained by Mrs. Nell would produce—will produce the symptoms that she complained of.

Q. Now, doctor, did you make any test at all to determine whether there was any injury in the labyrinth of the ear? A. Yes, the test of conversation, the test with a tuning fork, the test with a watch and the rattle.

Q. What did you find? A. We found that the hearing was markedly diminished. The distance that Mrs. Nell could hear the watch was—well, I don't just remember the distance, but it was very much impaired. Her conversation—her hearing in a conversation, it was necessary for me to speak exceedingly loud; not in a normal tone as under ordinary, normal circumstances.

Q. How did you make your test of the defective ear? A. On the side that was affected.

Q. What was the effect of the injury to the labyrinth in addition to the hearing? A. Vertigo, dizziness—vertigo or dizziness, and from time to time, nausea. These head noises produced from time to time, nausea and vomiting; severe headaches.

Q. Was that condition curable? A. No, it is not.

Q. Why not? A. Because that is a permanent condition. Science has been unable as yet to enter that portion of the anatomy, either with medicine or by surgery, and restore the injury that has been done, which is going to be permanent.

Q. Will you kindly explain to the jury just where that is and why you could not get at it? A. It is located at the base of the skull.

Q. Kindly point to the head, doctor, and show just about—— A. (Indicating.)

Q. That is located just about where the lines made with my two fingers? A. Yes, sir.

Q. Coming out in the center of the skull, and between the two ears? A. And between the two ears.

Q. And there is no way of getting in there? A. Absolutely no way of entering that portion of the anatomy, either by applying medicine there or taking it internally and having it absorbed.

Q. Now, doctor, just one more question: Did you make any test to determine whether there had been any injury to the base of the skull? A. No, I did not.

Q. Did you make any examination for that purpose? A. Yes, I did. We tried to determine—I examined Mrs. Nell for the purpose of eliciting whether or not she received any fracture of the skull, to see if I could find any evidences of any fracture, but I did not find any—that is, I did not find any scars or any evidence that a bone had been fractured. But it may be possible that there was a fracture there, from the history of the case, the bleeding from the ear and nose and the discharge of cerebral fluid.

Q. If there were a fracture, how would that evidence itself? A. The only way we could determine —the only way to show that would be by an X-Ray, but there has been no X-Ray picture taken of the skull.

Q. If there were a fracture, would a fluid emerge? A. If there were a fracture, a discharge of the cerebral spinal fluid.

Q. In other words, the base of the skull connects

with the labyrinth of the ear directly, and if there were a fracture, it would run down from the ear? A. Down from the ear and down through the nose.

MR. WRIGHT—No cross-examination.

SAMUEL A. TANNENBAUM, sworn for the plaintiffs, testifies as follows:

Direct examination by Mr. Keppler:

Q. Doctor Tannenbaum, you are a regularly licensed physician and surgeon? A. I am.

Q. Practicing medicine in New York City? A. Yes, sir.

Q. How long have you been practicing? A. Eighteen years.

Q. Do you make any specialty of any branch of medicine? A. Yes.

Q. What part of the body? A. Mental diseases.

Q. Now, were you called in consultation in Mrs. Nell's case? A. I was.

Q. You had a number of consultations with Doctor Auerbach and Doctor McPhillips? A. Twice.

Q. Have you examined Mrs. Nell? A. I have.

Q. How many times have you examined her? A. Twice.

Q. Will you kindly tell the Court and jury very briefly what you found? A. At my first examination of Mrs. Nell, I found a worn, somewhat haggard expression of the face, a tendency of the eyes to swing back and forth, to the right and left; a somewhat impaired hearing on the left side, and difficulty in following out a continuous train of thought. While speaking to her, or while speaking to me, she would constantly stop and say she did not know what she had been

speaking about, and I would have to remind her. She said it happened quite often to her since the accident, the injury. Also mental irritability. She would cry on the slightest provocation and lose her temper very easily and be annoyed at sudden sounds and any sudden occurrences. She also complained of considerable inability to sleep and said she often woke up with bad dreams. She complained of frequent and severe headaches, especially on the back of the left side of the head. Complained of frequent attacks of dizziness with a tendency to fall forward; especially if she leaned over. A loss of appetite, a loss of weight, and that she felt weak. She did not seem to get back her former strength. I think that about covers what I found at my first examination. I saw her again last week.

Q. What was the time of that first examination? A. Three or four weeks ago; I don't know the exact date. I saw her again last week and found that there was practically no change in her condition. In other words—Oh, yes, I want to add that she complained of frequent tirings, a peculiar numb sensation throughout the body, especially a peculiar creeping sensation when she touched certain objects like a piece of paper or a piece of velvet or silk, and putting all those symptoms together, I concluded that she was suffering the consequences of what we call a concussion of the brain; as well as a traumatic hysteria; that is, hysteria, following injury.

Q. Doctor, in addition to what she told you, what tests did you make to determine her condition? A. I put her through the different functions of the mind, and her sense organs, tested her vision, tested her hearing, and tested her memory; ques-

tioned her about the different events before the accident and since the accident, and discovered a marked disturbance of the memory for events since the accident; but apparently no trouble in remembering events that happened before the accident. That is quite a common condition, a characteristic thing about concussion of the brain; that a person does not remember well things that happened a little while ago, whereas the memory as to things before the injury is not impaired. I don't want you to think that she has lost her memory; it is simply impaired. She wouldn't remember for a minute or two, and recall things a few minutes or a few hours afterwards. That is, you see, no loss of memory, but an impairment of memory; a partial anemic.

Q. What do you mean by that? A. Partial forgetting; partial defect in memory.

Q. Did you make any other test, doctor, to determine the cause of her—I mean outside of the statement she made to you, what test did you make to determine the cause of her hysteria and the things you have described? A. The symptoms of hysteria could not be determined by physical examination. As to that you are guided entirely by the patient speaking. There is no way of recognizing hysteria by examining a person. In other words, we are entirely dependent upon what the patient says. As regards the disturbance of falling, the concussion of the brain, that is a matter that can be determined by objective examination.

Q. What do you mean by objective examination? A. By examining the person himself. In other words, if a person said nothing, you could determine that he had this certain trouble.

Q. What did you discover in this patient that justified you in coming to the conclusion that she had suffered concussion of the brain? A. The impairment of the hearing, the evidence of the scar in the drum, and the evidence of the scar in the back of the head.

Q. Well, did the eyes have anything to do with that? A. Oh, yes, she had astigmatism.

Q. Now, doctor, basing your answer upon direct examination and observation of Mrs. Nell and the statements she had made to you which you have told us about, and assuming that on the early morning of the 16th day of January, 1916, she jumped from a fast moving taxicab and she hit the back of her head, sustained the injury that you have described, and that it was bitter cold and she was left in the cold there for some time, some little time, and that thereafter she was taken to the taxicab, several blocks away, to a doctor's office; the doctor washed her wound and sewed it up, that immediately after the accident she was vomiting and after she was taken to the doctor's office, went through vomiting or motions of vomiting, the effect of vomiting, and that she was thereafter taken to the hospital and kept in the hospital for a period of a week or thereabouts—six days—and that during that time the attending physician who attended her stated that she suffered severe headaches, constant nausea, dizziness, and that the history of the case kept shows that when she was taken in, she suffered from a laceration of the scalp in the parietal and occipital regions, and that she was bleeding from the left ear, right after the accident, and she continued to bleed from the left ear quite some time after the accident; and also the

history shows that she suffered shock at the time and her pulse ran a course that you will find by looking at this history which I would like to have you examine before you answer, and her respiration was also what appears in this history, which I would like also to have you examine before you answer, and that she was unable to take any nourishment practically during the time that she was in the hospital, that she had practically no appetite, slept very little, and from all the other conditions which you find in this paper which I would like to have you look at, and after examining the history charts and referring to any part that you consider material, tell me whether or not you can state with reasonable certainty whether or not the injuries you have described are permanent and if so, to what extent? A. (Referring.)

Q. Have you carefully read that history, doctor? A. I have.

Q. Now, tell us whether or not you can say with reasonable certainty these injuries are to any extent permanent? A. You mean the result of the injuries?

Q. Yes? A. I can.

Q. Tell us to what extent? A. The symptoms of concussion of the brain——

MR. WRIGHT—I object to that; he is asked a question.

Q. Just tell us to what extent the effect will be permanent? A. Very slightly; the symptoms are permanent. Any improvement will be very slight.

Q. You mean then she will continue to suffer from these things which you have described for the rest of her life? A. Most of the symptoms she

will have, continue to have for the rest of her life, some may be getting worse; some will improve.

Q. Well, which, doctor? Which is there any likelihood of improving? A. The symptoms of nervousness, the chills, the insomnia, sleeplessness, the bad dreams, the numbness, the peculiar sensation in the finger tips will disappear; the attacks of dizziness and headaches will continue, and may even become worse.

Q. Now, doctor, is it posssible for a person after an accident to sit in a chair and cry without being conscious? A. Excuse me; I did not catch that question.

Q. Is it possible for persons who have been injured, as Mrs. Nell was, to sit in a chair and cry and not be conscious of the fact that they are crying or sitting in a chair?

MR. WRIGHT—I object to that.

THE COURT—How is it material?

MR. KEPPLER—Mrs. Nell says that the first thing she knew when she came to in the hospital—some witness said she cried in Doctor Wyler's office.

MR. WRIGHT—I don't think this witness is competent to testify to that.

THE COURT—You are asking a sort of hypothetical question. You may answer.

MR. WRIGHT—I ask an exception.

A. There is nothing more certain than that a person might live several days and be perfectly concious of life, and yet subsequently know nothing about it. Those are every-day occurrences. We

read of them all the time, and we see it in the hospitals continuously. People who speak to us and carry on their life's work, and yet months afterwards they know nothing at all about it, as if it had been a blank in their life, a temporary loss of personality.

MR. WRIGHT—No questions.

JOHN J. NELL, sworn for the plaintiff, testifies as follows:

Direct examination by Mr. Keppler:

Q. Mr. Nell, where do you live? A. Bogota.

Q. You are the husband of Mrs. Nell, one of the plaintiffs? A. I am.

Q. You are one of the plaintiffs in this action? A. I am.

Q. Now, do you know the defendant, Mr. Godstrey? A. I do.

Q. When did you first meet him and where? A. I first met Mr. Godstrey at Fort Lee police headquarters.

Q. Do you remember when? A. The date, I believe, was February 15th. It was the night the chauffeur Dowdell was arraigned on the charge——

THE COURT—February or January?

WITNESS—February—on the charge of assault and battery.

Q. The matter had been in court before that? A. The matter had been in court and postponed.

Q. Because of incapacity—— A. Because of the injury to Mrs. Nell.

Q. Did you have any talk with Mr. Godstrey at that time? A. I did.

Q. Or after you left the police station? A. I did; talked with Mr. Godstrey at police headquarters; also at the lunch room; we lunched after I had dropped the charge against Dowdell.

Q. Tell us as briefly as you can what you said and what he said? A. At police headquarters Mr. Godstrey had a man, an attorney by the name of Maidment or Maitland, who was drunk; he insulted me and everybody else there that was with me. I said that I did not care to prosecute Dowdell on account of his wife and three children, one of whom I was told was——

THE COURT — Answer the question. You were asked about a conversation with Mr. Godstrey.

WITNESS—Yes.

Q. Just tell us the talk you had with Mr. Godstrey? A. Mr. Godstrey said to me, walked over to me and said he was very unfortunate in his affairs, and he appreciated me letting Dowdell go; that he would do the right thing with me; that he apologized for having had this attorney, this lawyer Maitland there to defend Dowdell; he said Dowdell was his chauffeur, had been driving for him and had been very unfortunate, and for that reason he had Maitland, the man there, to defend him. We rode down on the trolley from police headquarters to this restaurant called Jack's; Mr. Godstrey and I were sitting at the north end of this lunch car, on two stools. Mr. Godstrey inquired about Mrs. Nell's condition, asked me what I would take. I told him I was unable to discuss the matter

intelligently and would not discuss it until we had determined the extent of Mrs. Nell's injury. Mr. Godstrey then said when I determined our final loss, he would meet me more than half way. He said the car was his, that Dowdell was his chauffeur, and that he did not want to go to court. He said, "I would much prefer to settle this thing out of court, Mr. Nell." I said "So do I." Subsequently Mr. Godstrey refused to do anything about it.

Q. Now, Mr. Nell, how long have you known Mrs. Nell? A. I have known Mrs. Nell twelve years.

Q. You knew her fully one year before you were married to her? A. Yes, sir.

Q. And have been living with her constantly during the years you were married? A. Yes, sir.

Q. You keep house at Bogota? A. Keep house at Bogota.

Q. Can you tell us of any difference in her physical appearance now and prior to the accident? A. I can.

Q. Tell us? A. The entire contour of her face has changed.

Q. In what way? A. Prior to the accident her face was full; she was rosy-cheeked; she has lost, I should say, twenty pounds.

Q. Is there any difference in the shape of her face? A. There is.

Q. What? A. It has entirely changed.

Q. In what way? A. The left side, it is drawn.

Q. What other changes have you noticed in her? What was her disposition before the accident? A. She had a sunshiny disposition; she is irritable now.

Q. What other changes have you noticed in her disposition? A. She now is not even able to take care of her little boy, who is 21 months old. She is physically and mentally unable to do it; she cries when she has one of these spells and wrings her hands—the dizzy spells come over her.

Q. What else? A. These attacks of headaches, vomiting, nausea, chills. Two weeks ago Sunday she had one of these headaches so bad she fainted in my arms, and I carried her upstairs, called Doctor Edwards in to attend her. Her pulse was very, very weak. We had four hot water bottles upon her, tried to warm her. Doctor Edwards gave her strychnine, her pulse was so low. She remained in bed all day; she was weak; she was unable to do the housework she did prior to the accident.

Q. She took care of your house before the accident? A. She did.

Q. Did you notice any change in her appetite? A. Yes.

Q. In what way?

MR. WRIGHT—I object to the question as leading.

THE COURT—Don't lead the witness. I will allow the question.

Q. In what way? A. She takes no breakfast, a cup of coffee for lunch; she eats sparingly when she does eat.

Cross-examination by Mr. Wright:

Q. How did you come to Fort Lee on the 15th of February? A. I went to see the trial of Patrick Dowdell; wanted to get a look at him.

Q. Were you subpoenaed? A. No.

Q. Who told you about it? A. The Recorder, Sheehan, of Fort Lee.

Q. Were you represented by an attorney over there? A. I was.

Q. You saw Mr. Godstrey—did you talk to him before the hearing or afterwards? A. After.

Q. After you had dropped your charge against Dowdell and he had been discharged? A. Yes.

Q. What did he say to you? A. Who, Dowdell?

Q. No, Godstrey? A. Mr. Godstrey apoligized for having this attorney there representing, defending Dowdell.

Q. No objection to that, was there? A. No objection; he apologized to me for his drunken, insulting way.

Q. That was perfectly proper; you didn't take an exception to that? A. I did not, because the man was drunk.

Q. What else did he say? What did you say? A. I told him that I felt sorry for Dowdell, for his family.

Q. What else? A. And that was the reason I refused to—to decide not to press the charge.

Q. What else did you say or did he say in your conversation? A. Mr. Godstrey said he would do the right thing; said he would meet me more than half way.

Q. He did not say that right off the bat, did he? Something preceded that? A. He asked me what my expenses had been in the matter; I told him I did not know.

Q. Something happened before that; that did not happen out of the clear air? A. I said Mr. Godstrey walked over to me.

Q. And apologized for the action of the attorney? A. Apologized—"You are Mr. Nell?" I said: "Yes."

Q. What I want is the conversation from that time on? A. Well, we left shortly after that. We rode down. I did not ride with Mr. Godstrey; we rode down on the trolley.

Q. The conversation you had was the defendant apologizing to you for the action of the attorney, is that right? A. I said before that he said that Dowdell had been very unfortunate, that he had been driving for himself, Mr. Godstrey, and he met with accidents before, and had engaged Mr. Maitland to defend Dowdell. That is all I remember of it.

Q. That isn't the conversation. Something else preceded that. What I want is the preceding conversation from the time of the apology? A. The apology was when Godstrey walked over to me.

Q. And apologized? A. And said he apologized for the action of Mr. Maitland. That was the first time I had seen Mr. Godstrey.

Q. Right after he apologized, then what was the next thing you said or he said? A. He inquired, I believe, as I remember it—he inquired about the patients, how they were doing.

Q. What did you say? A. Told him they were doing as well as could be expected.

Q. They were improving at that time? A. Yes, they were improving February 15th.

Q. Go ahead; tell me; give me the conversation? A. He asked me—came over and sat down; said he wanted to do the right thing; asked me how much I would take. I said "I am not prepared; I have received no bills from Doctor Wyler or Doc-

tor Proctor." That was about as near as I can remember all that was said up there.

Q. You don't remember distinctly what the conversation was? A. I have said what the conversation was.

Q. I say you don't—— A. I remember that part very clearly, that Mr. Godstrey said he would meet me more than half way. That I remember distinctly.

Q. That you remember distinctly. A. Yes.

Q. What else do you remember distinctly? A. Other common-placed remarks I do not remember.

Q. Do you remember distinctly what he said about Dowdell? A. No, except that he had been very unfortunate; that Dowdell had been driving for him and had killed a man.

Q. What else did he say about it? A. That is all I can remember.

Q. He told you, as a matter of fact, that Dowdell had driven a car and killed a man and he had threatened him not to ever drive again? A. No, he did not.

Q. You are positive he did not say that? A. I will swear to that.

Q. You are positive? A. Positive. He made no such statement to me. I told Mr. Godstrey that when he made the offer, that I had no idea what my financial loss was in the matter.

Q. What happened when you went down to the other place? Where was this, at Edgewater? A. Edgewater, at the lunch car—Jack's lunch room there.

Q. What happened down there? A. Mr. Godstrey and I got at the north end of the lunch wagon,

and Mr. Godstrey's son was along, and Mr. Campbell, who was Mr. Godstrey's bookkeeper.

Q. The witness called here yesterday? A. Yes. Mr. Godstrey very kindly bought the lunch and again said he would do the right thing by me when I was ready.

Q. Is that all that happened down there? A. That is about all. He did say there that, "I much prefer to settle this thing out of court, Mr. Nell. I said, "So do I." He said, "Law suits are very distasteful to me and I have no desire——"

Q. You never made any attempt to settle out of court? A. Yes, I did.

Q. Did you ever go to see him? A. I did not, no.

By Mr. Keppler:

Q. Where was Campbell at that time? A. He was in the lunch room.

Q. How far away from you? A. I should say 8 feet; about 8 feet. He was down toward the other end of the lunch room.

Q. Were any people sitting between him and you and Mr. Godstrey? A. Yes.

Q. Who else? A. Mr. Sheehy.

Q. And who else? A. Walter Godstrey.

Q. Well, then the place down there is a long counter? A. Long counter.

Q. You sit on stools? A. Yes.

Q. You say that there was Campbell, Sheehy, Walter Godstrey and yourself? A. And Mr. Godstrey, William C. Godstrey and myself.

Q. Was there any talk about Walter? A. Yes.

Q. What was that talk? A. Mr. Godstrey asked me to leave Walter, the son Walter, out of it.

Q. Did you hear all the conversation relative to Walter? How did that conversation come up? A. That I don't remember.

Q. Was there any conversation as to whether Walter owned the car or——

MR. WRIGHT—Objected to as leading.

THE COURT—Objection sustained.

Q. Try to recall just what conversation there was as to how Walter got to be mentioned in this matter? A. I have already said that Mr. Godstrey said the car was his. Dowdell was the chauffeur; that he would do the right thing with me.

Q. How did you come to mention Walter? A. He mentioned Walter; he said, "My son is not interested at all."

THE COURT—Where was that, down below or up on the street later?

WITNESS—This was up at the lunch room at Edgewater.

THE COURT—You told us before that he had said up at Fort Lee that Dowdell was his chauffeur; where was that statement made?

WITNESS—It was made at both places.

THE COURT—At both places?

WITNESS—At both places, yes, sir.

THE COURT—Who was at Fort Lee at the time you had the talk with Mr. Godstrey?

WITNESS—Mr. Godstrey and I sat in one corner alone.

THE COURT—Alone?

WITNESS—He walked over to where I was sitting.

MR. KEPPLER—It was stipulated yesterday that we would offer a record in evidence in lieu of having the witness from the bank testify to the transcript of the accounts of the Undercliff Taxi Company and of William C. Godstrey.

MR. WRIGHT—I object to the admission of the transcript and accounts; I do not make the objection upon the ground of the form of the proof. These are true copies and should be the same as original books, proved by a proper officer.

THE COURT—How are they material?

MR. KEPPLER—The contention in this case is that the Undercliff Taxi Company conducted that business. These things show that there was no account with the Undercliff Taxi Company.

THE COURT—That is already in. The bookkeeper testified that it was some time in February when the bank accounts were placed in the name of the Undercliff Taxi Company.

MR. KEPPLER—But there is nothing in the evidence to show that in the early part of 1914, they quit using the bank account of the Undercliff Taxi Company.

DEARDEN—Recalled.

MR. WRIGHT—I am perfectly willing to admit that it is the Undercliff Taxi Company.

MR. KEPPLER—If your Honor thinks it is sufficiently covered by the witness Campbell, and if they want to question it, we will question it then.

MR. WRIGHT—I am perfectly willing to admit that the Undercliff Taxi Company had an account——

THE COURT—One at a time.

MR. KEPPLER—I don't want them to admit it unless your Honor is satisfied—unless they should introduce some evidence to contradict Campbell; so that it is unnecessary to waste important time any further.

MR. WRIGHT—You made the offer and I made the statement, that I am perfectly willing to admit one statement.

THE COURT—The offer has been withdrawn, Mr. Wright. Call your next witness.

WILLIAM J. DEARDEN, recalled in behalf of the plaintiffs, testifies as follows:

Direct examination by Mr. Keppler:

Q. You have been subpoenaed to produce any license issued to the Undercliff Taxi Company for the years 1915 and 1916. Will you kindly produce those licenses? A. There is no license in 1915 or 1916 in the Undercliff Taxi Company.

DEARDEN—Recalled.

Q. Have you made a careful search of your records? A. Yes, sir.

Q. You have been subpoenaed to produce a record, an original record, and applications for all licenses issued to William Godstrey for 1912 down to date; have you those applications? A. Yes, sir.

MR. KEPPLER—I offer them in evidence.

MR. WRIGHT—I object to those as to 1912, 1913, 1914 and 1915.

THE COURT—What is the purpose of it?

MR. KEPPLER—The purpose is to show that William C. Godstrey has been conducting this business and all those licenses were issued to him, and all the licenses for automobiles were issued to him.

THE COURT—They will be admitted.

MR. WRIGHT—Exception.

THE COURT—You may have your exception.

Exhibits P. 13 and P. 14.

Q. This license, 60195, for 1916, covered a Ford car, manufacturer's number 121132, that is correct, isn't it? A. Yes, sir.

Q. Have you any record of that car having been licensed in 1915, with that same manufacturer's number? A. (referring) No.

By Mr. Wright:

Q. You personally have no knowledge as to whether those applications are signed by William Godstrey or not, have you? A. No, sir, I have not.

(Plaintiffs rest.)

MOTION FOR NON-SUIT.

MR. WRIGHT—I now ask for a non-suit on the ground that they have not only failed to show that Mr. Godstrey is the owner of the cab in question, but they have proved by their own witness to the contrary. They have proved by Mr. Campbell, whom they called and testified positively that the taxicabs were owned and operated by the taxi company; and also, I think, by some other witness. Mr. Campbell specifically stated that fact.

I also move for a non-suit on the ground that they have failed to show that Dowdell was acting within the scope of his authority. The proof is in Campbell's testimony and by Moore's testimony—those two in particular—that he had positive instructions not to run a car, and did not run the cars. Campbell says he never ran a car the first week or so he was there; he thinks he took it a couple of times. The other man, Moore, said he never saw him run a car at all except move a car inside the garage, heavy cars.

The further testimony is, they have put in evidence testimony of Godstrey taken on examination. Mr. Godstrey very expressly states—and they have made him their own witness, and they are bound by his testimony—that Dowdell was engaged as a washer. He was expressly ordered never to run a car; not even to start it in the garage. And

that was due particularly to the fact that after he had been there for a week in September, the latter part of September, he had an accident in New York, and after that accident he was told never to run a car again. There are no facts even to put it at issue. It is a question of fact. It is their proof, their proof by their witnesses.

THE COURT—I am going to deny the motion at this time for the non-suit, because there is the testimony of Mr. Nell, wherein he made the statement that Mr. Godstrey owned the car, and this man was his chauffeur. I hardly think the case is in a position where I can grant a non-suit.

MR. WRIGHT—With respect to that testimony, for the moment, I do not think that Mr. Nell intended that it should be used in the first person. Mr. Godstrey was the manager of the taxicab company. It can be read there from his own testimony. It has not been read to the jury; it should be read. He spoke of it as, "I did this" and "I did that," the same as any other man running a business. He was manager, and the man in charge of the whole thing. The most natural thing in the world that he would say, I. As a matter of fact, Dowdell was in the employ of the taxicab company, and in that way under the supervision and employment of Mr. God-

strey. It was perfectly proper that he should say "I did so and so"; "We own the car," or, "I own the car."

THE COURT—That is a matter of conclusion for Mr. Wright. I am going to deny the motion. I am going to put the defendant on the defense.

MR. WRIGHT—I take an exception.

DEFENDANT'S CASE.

WILLIAM C. GODSTREY, sworn in his own behalf, testifies as follows:

Direct examination by Mr. Wright:

MR. WRIGHT—I think, if your Honor please, so that the plaintiffs' case will be complete, that the examination which was put in evidence, shall be read so that his case is complete before the jury before I go on with the defense.

MR. KEPPLER—I have a copy of it here. (Reads.) "Examination of William C. Godstrey before trial, held at the office of Wakelee, Thornall & Wright."

(After the reading of the deposition, the examination proceeded, as follows.)

Q. Mr. Godstrey, you are the defendant in this action? A. Yes, sir.

Q. When did you first become connected with

the Undercliff Taxi Company? A. In September of 1913.

Q. And do you know how long the Undercliff Taxi Company had been in operation before that time? A. It had been in operation about five months.

MR. KEPPLER—I don't want to interfere any more than necessary with the examination of the defendant. All this matter has been gone over in the examinations covered. There is no objection to asking him anything in addition.

MR. WRIGHT—He was your witness at that time.

THE COURT—He is examining his own witness, Mr. Keppler. Proceed.

Q. At the time you became connected with them, who were the officers and people interested in the company, so far as you know? A. Henry Wissel, Joseph Gantert and Lewis Martin.

Q. Had they had a manager there prior to your connection with them? A. They had.

Q. What was his name? A. Joseph Merriman.

Q. Prior to September, 1913, did you have any stock in the company? A. No, sir.

Q. When you took hold of the company, did you then acquire some stock? A. I bought Mr. Merriman's stock.

Q. That was what proportion of all the stock issued? A. One-quarter.

Q. On this examination which has just been read, you said the company was capitalized at ten thousand dollars? A. Yes, sir.

Q. You mean that was the authorized capital

stock? A. That was the authorized capital stock.

Q. How much stock was actually issued?

MR. KEPPLER—I object to that on the ground that the stock certificate book and stock ledger are the best evidence.

THE COURT—Objection will be sustained.

MR. WRIGHT—He can state if he knows.

THE COURT—He can state how much he has himself.

MR. WRIGHT—He can state what proportion of the whole he has.

THE COURT—He has already stated.

Q. Mr. Godstrey, how many shares did you buy in September, 1913? A. Two and one-half.

Q. Two hundred and fifty dollars worth? A. Yes.

Q. Two shares and a half? A. Yes, sir.

Q. Has there been any other stock issued since that time? A. No, sir.

Q. Since September, 1913, when you became connected with the company, and on down to January of this year, were you an officer of the company? A. Only the manager, no, sir, not an officer.

Q. When you first became connected with the company, where was the business being conducted, what location? A. We kept the garage across—we kept it in a shed on the rear of a lot occupied by Mr. Gantert's.

Q. That continued until you built this garage on the River Road? A. Until the new garage was built.

Q. Did you enter into an agreement for the rent-

ing of a small building near the ferry in 1914? A. I did not.

Q. Well do you know about its being rented by the company? A. Yes, there was—Mr. Wissel, I believe, went to Newark and made arrangements with the Public Service corporation for a taxi office.

Q. I show you a paper; what is that paper that I show you? A. (Referring.)

MR. KEPPLER—I object. The paper speaks for itself.

THE COURT—He can state what it is, without revealing its contents.

A. This is an agreement with the Undercliff Taxi Company and the Public Service Corporation.

MR. KEPPLER—I move to strike out the answer on the ground that it is a conclusion.

THE COURT—I will let it stand. That is what it is called, isn't it?

WITNESS—It is practically a lease.

THE COURT—Never mind whether it is a lease.

WITNESS—It is an agreement with the Public Service Corporation and the Undercliff Taxi Company. That is right.

MR. KEPPLER—I respectfully except.

THE COURT—You may have your exception.

MR. WRIGHT—I offer this paper in evidence.

MR. KEPPLER—I object to it on the ground that it is incompetent, immaterial and

irrelevant; not binding upon the plaintiff.

THE COURT—How about its approval?

Q. Do you know the seal of the Undercliff Taxi Company? A. I do.

THE COURT—Have you got Mr. Wissel here?

MR. KEPPLER—I don't want to be technical, but I object generally upon the ground that it is irrelevant, immaterial and incompetent.

THE COURT—It will be admitted if that is the only objection.

A. This is the seal of both the Public Service and the Undercliff Taxi Company.

THE COURT—It may be marked.

(Marked Exhibit D. 1.)

MR. KEPPLER—I respectfully except.

Q. Was the building which this paper refers to occupied by the taxi company from that time on to date? A. It was, yes.

MR. WRIGHT—This, if the Court please and gentlemen of the jury, is an agreement made the 9th day of June, 1915. (Reads.) It is a license agreement for a taxicab stand at or near the ferry terminal, in payment of the nominal charge of $25 a year.

Q. Did you know this taxicab in which Mrs. Nell was riding, on the night of January 15th or 16th? A. The Undercliff Taxicab Company owned it.

MR. KEPPLER—I object to the form of the answer.

THE COURT—He may answer.

MR. KEPPLER—I respectfully except.

Q. Did you personally own and operate any taxicabs in the Borough of Edgewater at any time from September, 1913, down to the present time?

MR. KEPPLER—I object to that on the ground that it is immaterial who owned the particular cab in question. It would not make any difference whose cab was taken. As long as this man, Dowdell, was his employee, it would not make any difference if he went out on the street and took a cab. The question of ownership of the cab is not an issue; therefore I object on the ground it is immaterial.

THE COURT—The objection will be overruled. Take your exception.

MR. KEPPLER—I respectfully except.

A. No.

Q. Did you directly receive any returns from the operation of the taxicabs which were operated in the Borough of Edgewater during 1915 or 1916? A. No.

Q. Who did receive the proceeds or moneys received for the renting out of these taxicabs? A. The Undercliff Taxi Company.

Q. Now, from 1913 down until this year, did the taxi company have a bank account, a running bank account? A. Their account was running until six weeks after I was manager of it.

Q. And then what happened? A. Then I used my personal account for all funds.

Q. How did you come to do that?

MR. KEPPLER—I object to that.

THE COURT—He may answer.

MR. KEPPLER—I respectfully except.

THE COURT—You may have your exception.

A. I had to keep continuously going down to Mr. Gantert and Mr. Wissel to have them sign checks to me, and there were many times that I wanted to pay bills that I could not get their names.

Q. Was there any other reason why that practice was carried out? A. That was the principal one.

Q. Did the taxicab company have a substantial balance in the bank?

MR. KEPPLER—I object to leading the witness.

A. No.

THE COURT—Don't lead the witness.

MR. WRIGHT—That isn't a leading question.

THE COURT—It is pretty close to it.

A. No, the taxi company was losing money when I went in; had no funds when I took it. Did not get any for months.

Q. So that from that time on down to some time this Spring, you financed them through your account? A. Yes, sir.

Q. The moneys that came in you deposited in your account and the bills you paid out of your account? A. Yes, sir.

Q. And this Spring you made—did you make statements over to the people interested? A. Yes, sir.

MR. KEPPLER—I object on the ground that it is entirely immaterial.

THE COURT—The question is answered.

MR. KEPPLER—I respectfully except.

Q. Where did you hire this man, Dowdell? A. When did I?

Q. Where? A. At Edgewater.

Q. About September, you say, last year? A. Yes, I think it was in September.

Q. Where was that, at the garage or somewhere else? A. At my office in the garage.

Q. He came to the garage, did he? A. He came to the garage.

Q. Just tell us what he was hired for, and by whom he was hired and what you said to him?

MR. KEPPLER—I object to the form of the question. I have no objection to stating the conversation.

THE COURT—I think that is the purpose of it. Just tell the conversation you had with him at the time he was hired.

WITNESS—He came and asked me if I had a position to give him. I asked him what he could do. He said he had been working at the Bretton Hall Garage as a chauffeur. I told him I was in need of a chauffeur and he could go to work.

Q. What else, if anything was said to him at that time? A. I believe he started immediately to work

that night, and there was nothing else said at that time.

Q. Of course the salary was spoken of? A. No, I don't think it was mentioned just then.

THE COURT—How much did you pay him a week?

WITNESS—Eighteen dollars a week.

Q. What were his duties? A. He was hired to wash cars and keep the garage open nights for cars coming in or going out.

Q. Did you ever give him any instructions to drive cars? A. The first week he was with me——

MR. KEPPLER—I object to that question; that could not be binding on the plaintiff; not in the presence of the plaintiff; on the ground that it is entirely incompetent and immaterial.

THE COURT—On the question of the scope of the authority of Dowdell, I will allow it. You may have your exception. Objection overruled.

A. The first week he came to me on Saturday night, I said, "Paddy, can you drive?" He said, "Yes." I said, "Have you got a license?" He said, "Yes." I said, "Take this car—can you drive a Ford car?" He said, "Yes." I said, "Take this car and go to New York and deliver these tubes to one of my men who is in trouble." He took that car and went to New York and got in an accident.

Q. Go on? A. He was locked up on Saturday night.

Q. I don't care anything about that. Did you give him any instructions, was the question? A.

It was after he got home, out of trouble; when he came back, I told him never to drive a car under any consideration for anybody or for nobody.

Q. As far as you personally know, did he ever drive a car again until the night of this accident? A. Not that I know of.

Q. Did you ever see him drive any car? A. Never saw him drive a car.

Q. Did you ever have it reported to you that he had driven a car? A. Never had it reported to me that he had driven.

Q. Do you remember seeing Mr. Nell at Fort Lee, or Edgewater, on the night of February 15th? A. Yes, sir.

Q. And did you tell him at that time, either at Fort Lee or Edgewater, that you owned the car which caused the accident? A. No, sir.

Q. Did you tell him that Dowdell was employed by you as your chauffeur? A. I did not.

Q. Did you tell him that Dowdell had hard luck at that time? A. I think I did.

Q. Tell him about the accident in New York? A. Yes, sir.

Q. What else did you tell him at that time in connection with that? A. In Fort Lee I met him first, and I told him that if he had a mind to be reasonable, we could adjust this thing without any court action; that I would meet him half way, and after he found out what the amount of his expenses had been to let me know and we would get together and adjust this between us; that I did not care to have any court action.

Q. When you said I, what did you mean by that term?

MR. KEPPLER—One moment, I object to that.

MR. WRIGHT—I will change the question.

Q. Did you use the word I?

MR. KEPPLER—I object to that on the ground that it is leading.

THE COURT—Let him say what he did. What was the exact language used? What did you state?

MR. WRIGHT—I will change that question.

Q. Did you personally have any interest in the result of the accident.

MR. KEPPLER—I object to that; it calls for a conclusion; it is leading.

MR. WRIGHT—It don't call for a conclusion at all; it is a question of fact.

MR. KEPPLER—On the ground that it has already been answered and given his explanation of his alleged action in this thing.

THE COURT—I will overrule the objection. Allow it.

MR. KEPPLER—I except.

A. As manager of the taxi company, it would be up to me to adjust.

Q. I presume as a stockholder, you have an indirect interest? A. Yes.

MR. KEPPLER—I object.

THE COURT—Objection sustained.

MR. KEPPLER—I move to strike out the answer.

THE COURT—Don't lead the witness.

Q. Did you say to Mr. Sheehy, a few days after the accident, somewhere at Edgewater, that you had hard luck with the cars.

MR. KEPPLER—I object to that. There is no such testimony in the case.

MR. WRIGHT—That is what Sheehy said. He said he had poor luck with the cars.

MR. KEPPLER—I understood he had poor luck with Dowdell.

THE COURT—He may state what he said to them, if anything.

A. I don't believe so.

MR. KEPPLER—I object to his belief.

THE COURT—I will allow it to stand.

MR. KEPPLER—I respectfully except.

Q. Did you tell Sheehy that Dowdell was working for you? A. I did not.

Q. When did you first hear of this accident? A. About 7 o'clock Sunday morning.

Q. What did you do? A. Went up to the police station in Fort Lee.

Q. Well, did you go near the scene of the accident? A. I passed it on the way.

Q. Well, now, what, if anything, did you observe there? A. There was apparently nothing on the road to distinguish an accident; no wreckage, no marks or anything of the kind that I could see.

Q. At the time you left Edgewater, was the car in the garage or in Fort Lee? A. It was in Fort Lee.

Q. Where did you first see the car afterward? A. It was in front of the police station in Fort Lee.

Q. Did you look at the car? A. Yes, sir.

Q. Make an examination of it? A. Yes, I looked over it.

Q. Just tell us what you found after you looked it over? A. It was nothing different than it was Saturday.

Q. Did you run the car? A. Yes, sir.

Q. When? A. Drove it home.

Q. You drove it home? How did you go home? A. In a taxi.

Q. I know; but how, what road? A. Drove down the river road, right down to the place of the accident, went straight down.

Q. Did you go down the steep hill—well, from Bigler Street straight down to the turn? Yes, sir, right down the main street.

Q. That is down the hill, shown on these photographs—calling your attention to Exhibit P. 5 and also P. 3; did you drive down that hill? A. (referring) Yes, sir, right down the hill.

Q. All the way down to Edgewater? A. Yes, sir.

Q. Did you do anything to the car at all before you started? A. No, sir.

Q. How did it operate going down? A. The car was all right.

Q. How were the brakes? A. The brakes were good.

Q. Did you have occasion to use the brakes on the way down? A. Oh, yes, going down that hill, you have to put the brake on.

Q. What was the surface of that road at that time? A. Paving blocks.

Q. Paving blocks from Bigler Street for several hundred feet down, is it not? A. Yes, sir.

Q. Do you recall what the condition was that morning, as to whether it was snow or ice? A. It had been snowing that night.

Q. Well, to what extent was this snow on the ground? A. Not very much; two or three inches.

Q. After you took the car down, did you make any further examination, or see one made in your presence? A. No, sir, went out on the road to work.

Q. Did you personally make any application for any of these licenses for cars in 1916? A. No, sir.

Q. Or for 1915? A. No, sir.

Q. When did you first ascertain that licenses for these cars down in the garage were in your individual name? A. When Mr. Keppler brought it up to me. What was that about? A. About the 15th of February.

Cross-examination by Mr. Keppler:

Q. This garage is a one-story building, isn't it? A. Two stories.

Q. That is the ground floor where the cars are? A. And one story upstairs.

Q. And the part upstairs is occupied by your son and his wife? A. No, not the garage building; that is another building.

Q. The whole thing is one building, isn't it? A. No, sir, two buildings.

Q. That portion underneath the garage covers the entire ground floor of that building? A. No, sir.

Q. The building is a 50-foot building, isn't it? A. 50x56.

Q. Is the main floor and ground 50x56, where those cars are kept? A. Yes, sir.

Q. And there is no division or any partition—in other words, if you drove a car in the garage, you could drive in there and drive a car from one wall to the other wall, the entire fifty feet, couldn't you? A. Yes, sir, no partitions in it.

Q. Then, Mr. Godstrey, you are mistaken when you say that the part that Walter lived in, was a different building, aren't you? A. No, sir, two buildings on one wall. The garage is on the rear lot and stands two stories up, the garage building only.

Q. Then if there is no wall in there, running 50 feet by 56, do you want the jury to understand that you are testifying correctly when you say Walter lived in another building? A. I do.

Q. Do you know, Mr. Godstrey, that if Dowdell took a car out of that place at that hour of night, Walter would hear him? A. It is not a fact.

Q. What was there to prevent him? A. The walls of the building that he lived in.

Q. What kind of a building is it? A. It is a brick building.

Q. And a car going out in the middle of the night, three or four o'clock in the morning, could not be heard by Walter upstairs, could it? A. Not necessarily.

Q. What would prevent it?

MR. WRIGHT—I object to that——

A. Lying in bed asleep.

MR. WRIGHT—as calling for a conclusion.

WITNESS—Cars can pass you on the street when you are walking and you don't hear them.

Q. You say you drove that car down that same hill coming back? A. I drove it back in the morning.

Q. Who was with you? A. One of the drivers, I don't know which one.

Q. You went up there that morning, didn't you? A. Yes, sir.

Q. And bailed out Dowdell, didn't you? A. No bail.

Q. And then after that you got an attorney to defend him, didn't you?

MR. WRIGHT—I object to that as immaterial and irrelevant.

THE COURT—How is it material?

MR. KEPPLER—It would show whether or not he had an interest in the matter; whether he was his employee or not; what his motive was in defending him.

THE COURT—Go ahead; I will allow the question.

MR. WRIGHT—Exception.

A. I did not.

Q. Didn't you retain Mr. Maitland? A. I did.

Q. And Mr. Maitland appeared for him, didn't he? A. Did not; he appeared for me. I sent for him.

Q. Mr. Maitland appeared for you up there in the Recorder's Court at Fort Lee? A. Yes.

Q. You were not on trial? A. I had him take care of my interest; I could not be there.

Q. Then you did have some interest in that matter, didn't you? A. Sure.

Q. You paid Mr. Maitland a fee? A. No, he has not been paid yet.

Q. You appeared at the hearing up there, didn't you? A. Yes, sir.

Q. And your memory of the conversation with Mr. Nell is just the same as his, except that you said you did not tell him that Dowdell was your chauffeur and that you owned that car? A. I did not tell him that.

Q. Outside of that, both of you remember the same things, is that correct? A. I tried to meet him half way and settle it out of court.

Q. Now, you say that when you hired Dowdell, you really asked him, or rather, he really asked you for a job as a chauffeur, is that correct? A. That is right.

Q. You merely hired him as a washer; you said before you had no conversation except that, is that the truth? A. That is about the extent of it.

Q. Are you mistaken about that? A. I think not.

Q. And then you want the jury to understand that despite the fact that you hired that man as a washer, a few days thereafter you asked him whether he was a licensed chauffeur, is that correct? A. I asked him, could he drive, if he had a license.

Q. If you hired that man as a washer, how in the world did you know that he was a chauffeur? A. He told me.

Q. Then you did know, when you hired him, that he was a chauffeur? A. I did not.

Q. When did he tell you that? A. When I asked him.

Q. But you have stated that you only hired him as a chauffeur? A. I did not—washer.

Q. Or rather as a washer? A. Yes, sir, that is right.

Q. Despite the fact that you suspected that he was a chauffeur, is that correct? A. I did not say that.

Q. Now, in addition to the accident in New York, isn't it a fact that he had driven a car for you on another occasion after he had the accident? I mean outside of the one which is the subject matter of this action? A. Not to my knowledge.

Q. Do you remember one day when he was towing in a car that dragged a Ford car, one of your Ford cars? A. No.

Q. Didn't he ever tow in a Ford car? Didn't he ever tow in a car into Edgewater? A. Not that I know of.

Q. Well, let us understand, Mr. Godstrey; you run that Edgewater garage, don't you? A. Yes, sir.

Q. You own it, don't you? A. Yes, sir.

Q. You own the business? A. I do.

Q. You want the jury to understand that in all these things you have been connected with and received money for and kept all those cars of the Undercliff Taxi Company there, and you never have gotten a penny for it? A. That is right.

Q. That is the truth, isn't it? A. Yes, sir.

Q. And that you have rendered service gratis

there all the time and you have never gotten a penny for that, is that right? A. That is right.

Q. And the only interest that you have in it is the $250 interest, is that right? A. That is correct.

Q. In this ten thousand dollar corporation, you have a two hundred and fifty dollar interest, and you have been giving all your money, your time and your energy, all gratis, is that right? A. That is correct.

Q. You understand that you are under oath, Mr. Godstrey, do you? A. Sure.

Q. And all these things are correct? A. All them things are right.

Q. Mr. Godstrey, you say the reason that the funds of this business were put into your personal account was because you had difficulty in getting Mr. Martin and Mr. Wissel to sign a check, is that right? A. And the taxi company had no money.

Q. Was there any reason in the world why that bank account—why the corporation could not have given you, as manager of that company, authority to sign checks?

MR. WRIGHT—I object to that as irrelevant.

THE COURT—Objection sustained.

MR. KEPPLER—I respectfully except.

Q. Did you ever ask Mr. Martin or Mr. Wissel to give you authority to sign checks?

MR. WRIGHT—I object to that as immaterial and irrelevant.

THE COURT—Let him answer.

A. I don't think so.

Q. How much does the Undercliff Taxi Company owe you to-day?

MR. WRIGHT—I object to that, what they owe him to-day.

THE COURT—How is it material?

MR. WRIGHT—I withdraw the objection.

MR. KEPPLER—The purpose of the question is to show whether it is possible to loan them all this money and finance them for years.

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

Q. What is that? A. I don't know.

Q. Have you figured it up? A. No.

Q. Never in all these years have you figured out what this company owed you, is that right? A. That is right.

Q. Mr. Godstrey, Mr. Gantert is a personal friend of yours, isn't he? A. Yes, sir.

Q. He is a tenant in some property that you own? A. Yes, sir.

Q. And the question whether his lease is continued or not, depends somewhat on your good will, doesn't it? A. No, sir.

Q. Not at all? A. Quite a good while to run yet.

Q. But the question whether that lease is continued, whenever it expires, depends somewhat on your good will, doesn't it? A. Yes.

Q. And Mr. Wissel is a friend of yours too, isn't he? A. Yes, sir.

Q. Now, you say you bought the two hundred and fifty dollar——

THE COURT—Mr. Wissel is a resident of the town?

WITNESS—Yes, sir.

Q. You say that you bought this $250 share of stock from Mr. Martin? A. Mr. Merriman.

Q. Isn't it a fact that no stock was ever issued to you at that time? A. I got Merriman's stock.

Q. Are you sure that the stock was issued to you? A. It was transferred to me.

Q. You have been subpoened to produce here the books of that corporation, and I ask you to show me the certificate of stock issued to you in that corporation?

MR. WRIGHT—I object to the question.

THE COURT—Objection sustained.

MR. KEPPLER—I except.

Q. Is there actually in existence a certificate of stock representing two hundred fifty dollars of the capital stock of that corporation issued to you? A. There was, yes.

Q. Issued to you personally? A. No, transferred to me from Merriman.

Q. It was never issued to you? A. Not the original stock.

Q. Mr. Godstrey, isn't it not a fact that you personally own that business, but that you have organized a dummy corporation for the purpose of preventing people who are injured, just like these plaintiffs, from recovering against you personally, yes or no? A. It is not a fact.

Q. Is it not a fact that these men, Wissel and Gantert, your friend and your tenant, have aided you to form this corporation? A. They have not.

Q. And isn't that the reason that the money has been kept in your account and not the account of

New Jersey State Library

the Undercliff Taxi Company? A. That is not the reason.

Q. How do you explain the fact that there is no license issued for any car of the Undercliff Taxi Company if there was such a corporation in the years 1915 or 1916? A. I don't try to explain that; I don't know.

Q. Now, Dowdell was working for you, wasn't he? A. Yes, sir.

Q. You paid him a salary? A. The book-keeper paid him.

Q. Well, he was your employee, wasn't he? A. Working in the garage, yes.

Q. You gave him sole charge of that garage at night, didn't you? A. If there was nobody else, he was the man in charge.

Q. And you knew that at least in 1915 he had a license from the State——

THE COURT—What do you mean by the man in charge? What were his duties as the man in charge?

WITNESS—Well, there were cars coming in at night, and many a time three or four——

THE COURT—What was he to do?

WITNESS—Wash the cars.

THE COURT—By being in charge, what do you mean by that? What were the duties of the man in charge?

WITNESS—Simply keep the place open and take cars in the place when they came, so that they would not be all jumbled up.

THE COURT—Direct where they were to go?

WITNESS—They have to be lined up in the shop.

THE COURT—That is all that he was to do?

WITNESS—That was his duty, yes.

THE COURT—Practically night watchman?

WITNESS—Practically night watchman.

Q. Now, Mr. Godstrey, each time you have been asked about Dowdell, you stated that he had to wash cars, is that correct? A. Practically correct, yes.

Q. In addition to washing cars, you have testified now, that he directed the coming in and going out of the cars during the night time? A. The washer is the man that would tell a fellow where to put the cars until it was ready to go on the stand. If a man rode in there, and wanted his car washed, he would say, "Wash this car." "All right put it there until I am ready."

Q. In addition to that the cars are arranged so as to make it easy for them to go out in the morning? A. They were placed so that they would be out of the way.

Q. He did all that work, didn't he? A. Sure, that was a part of his duty.

Q. Then in addition to washing cars he had charge of the arrangement of the cars as they went in and went out, isn't that a fact, Mr. Godstrey? A. If there was nobody else there, he did that, sure.

Q. That is a fact. In addition to that, if someone came up to the garage at night to buy gasoline or oil, what would he do? A. He could sell gas.

Q. How about oil? A. He could sell oil too.

Q. Then he was more than a car washer, wasn't he? A. Yes, you could call it more than that. He could sell gas, oil, or wash cars and place them where told in the garage—practically a night watchman.

Q. As a matter of fact, it is a very rare thing to get a call in the garage at night; they run down at the ferry and want fuel, isn't that the fact? A. Nearly all of the calls at night are at the ferry.

Q. And it is right there that the call comes direct to the garage. A. Yes, only when all the men are in.

THE COURT—How long are the men stationed there at the ferry? Are there any standard hours?

WITNESS—Yes, from 7 in the morning until 3 in the morning.

THE COURT—That is when the taxi service exists?

WITNESS—Yes. There is a 3.05 boat; the men are supposed to meet that boat, which they do.

THE COURT—What time does the 3.05 boat leave New York City?

WITNESS—2.55.

THE COURT—When does the next boat come in?

WITNESS—4.05. I ain't sure of that. I know it is around 4.05, an hour between. If there is no passengers from that, they are through, and the car runs into the garage.

Q. You say the regular drivers make this call at 3.05 and then they put the car in the garage? Is that right? A. Yes, sir.

Q. And it is after that that Dowdell has charge of the garage, isn't it? A. He is night watchman at the garage.

Q. There is nobody else there, isn't there? A. Not that time in the day or night.

Q. You heard the testimony of Mr. Campbell, that at least upon two occasions Dowdell had made calls after those hours? A. Yes, I heard that.

Q. And had left money for that? A. I don't know about the money. He didnt' say that he left money I never saw it on the slips.

Q. What is that? A. I don't remember of ever seeing it on the slips.

Q. You collected slips every day? A. They come in the office; I don't collect them; the book-keeper does.

Q. If there were any slips, you would naturally see them? A. I would see them.

THE COURT—Did you know of it at the time that he done this thing?

WITNESS—Never heard of it except one occasion when I sent him away; immediately I directed him to never go out with a car again, and to my knowledge he has never done it.

Q. What do you mean? Do you mean to say that Dowdell took that car out that night, intending to take the charge——

MR. WRIGHT—I object to that.

A. I don't know.

MR. WRIGHT—I object to testifying to Dowdell's intentions.

THE COURT—He said he don't know. Let the answer stand.

Q. Do you mean to say that when Dowdell took the car out that night, that it was with the idea of depriving you out of the money he earned?

MR. WRIGHT—I object to that.

THE COURT—Objection sustained.

MR. KEPPLER—I respectfully except.

THE COURT—You may have your exception.

Q. You kept Dowdell in your employ after this accident, didn't you? A. Yes, sir.

Q. What does a car washer usually get? What is the average salary paid to a car washer? A. I guess $18 or $20 a week. I don't know what the other garages pay.

Q. Is it not a fact that a car washer gets one dollar a day? A. It is not.

Q. Is it not a fact that a night worker in a garage is usually paid four hours after the car comes in and after doing four hours' work, and the man gets one dollar? A. Not to my knowledge.

Q. Isn't it customary in garages to employ a washer for only four hours each day and night? A. Why, no.

Q. And that the men that do that work, do their work in the day time? A. No, no.

Q. You kept him after that first accident, didn't you? A. Yes, sir.

Q. You claimed that he violated your orders

when he took Mrs. Nell out, is that correct? A. He did.

Q. Why didn't you fire him?

MR. WRIGHT—I object to that as immaterial, what took place after the accident.

THE COURT—How is it material?

MR. KEPPLER—It is simply bearing on the fact that he had given the man those orders and he absolutely disobeyed them and he did not discharge him. The jury can take that into consideration as to whether he is telling the truth.

MR. WRIGHT—I withdraw the objection.

THE COURT—Answer the question?

A. In the first place, it is a hard thing to get a good washer, and Dowdell is a particularly good man at that business.

Q. Is that the only reason? A. Pretty near.

Q. Well, you knew he killed one man, didn't you? You knew that while driving one of those cars, he had killed a man didn't you? A. Yes, sir.

Q. You knew you had ordered him not to drive out in the cars and you knew he went out and injured two other people, isn't that a fact? A. That makes two accidents previous to this one.

THE COURT—No, including this one.

WITNESS—Oh; according to what he said it was up there.

Q. Now you say that is the situation. You knew he had injured these two ladies? A. Yes.

Q. You knew that he would remain alone there

at night and had absolute power to repeat that if he saw fit to do it, didn't you? A. Yes, sir. I guess he has had his lesson.

Q. You say that the first time you ever heard that the license for this car was issued to you, was the time that I told you about it? A. That is right.

Q. Well, then, why did you answer the question that was asked of you on page four of the examination, "Do you know, as a matter of fact, that New Jersey State license No. 60195 has actually been issued to William C. Godstrey? A. Yes, I do know."

Q. Isn't it probable that you told me the night I met——

MR. WRIGHT—You did not say the answer. If you will read the question correctly——

Q. "Q. Do you know, as a matter of fact, that New Jersey State license No. 60195 has actually been issued to William C. Godstrey? A. Yes, I do know."

MR. WRIGHT—"I do now." The K was struck off.

Q. "I do now" is correct. Then you told me about it and not I you, is that correct? A. No, sir, you told me first.

Q. Mr. Godstrey, is it not a fact that I had absolutely no conversation whatsoever with you, but went right into this examination? A. No, it is not a fact.

Q. Do you mean to say that I came over and told you that there was a license issued to you in your name and you did not know about it? A. You let me know it first.

Q. And that is the truth, is it? A. You told me.

Q. When did I tell it to you? A. Well, I don't know the time exactly.

Q. Where did I tell it to you? Where do you say I told you that you had a license of that car in your name? Don't hesitate Mr. Godstrey; you must know. You say I told you? A. I could not say where and when. You told me first that the license was in my name.

Q. Mr. Godstrey you have stated that I had a conversation with you about that examination, or, rather, before that examination; now, where and when did I have that conversation with you? A. Either to your office before then.

Q. Oh, you mean now that I told you when you were in my office? A. You told me some time previous to that; I could not recall whether it was the time at the office or one of the Fort Lee trips or where it was.

Q. You have testified that we had a conversation right before this examination; you don't mean that I told you at that time, is that correct? A. You did tell me at that time.

Q. When did I tell you? A. Some time previous to that examination.

Q. When? A. Well, I could not recall now whether it was the trip to your office or some of the other times I saw you in Fort Lee.

Q. When was the first time you knew this license was issued in your name? A. When you told me.

Q. How long before this examination was that? A. I could not go into details; may have been a month.

Q. What did you mean by answering the question, "I do now?" Why do you say now?

THE COURT—It speaks for itself; it was at that examination.

Q. Did you mean that you first learned of it at that time? A. No, not necessarily then.

Q. Now, didn't you ever have a conversation with your son Walter, stating that he ought to go and get out those licenses in your name? A. No.

Q. Mr. Godstrey, you notice your name on this application for license No. 60195, and you notice that is signed William C. Godstrey, sworn to before J. J. Bertholf, Notary Public, is that right?

THE COURT—What are you referring to, Bertholf the Notary Public?

WITNESS—Commissioner of Motor Vehicles.

THE COURT—The paper speaks for itself.

MR. KEPPLER—I am asking him——

Q. It is a fact that that is sworn to before J. J. Bertholf?

MR. WRIGHT—I object to that. It speaks for itself.

Q. Do I understand you correctly as stating that your son signed your name and swore that he was William C. Godstrey before a Notary Public without your knowledge or permission—is that correct?

MR. WRIGHT—I object to it as immaterial and incompetent; calls for hearsay.

THE COURT—There is no evidence that he did say that.

Q. You have stated that your son went to Hackensack and made application for the license, didn't you?

MR. WRIGHT—No, he did not.

Q. Didn't you testify in this examination that your son Walter Godstrey made application for those licenses, yes or no? A. Whatever it says there, is correct.

Q. Now, is it correct? Give me your memory now. Did you or did you not ask your son to go to Hackensack and get the license for that car?

MR. WRIGHT—He said before he did.

MR. KEPPLER—Pardon me; I am asking the witness.

A. I did.

Q. You did? And do you recognize that writing on there (indicating)? A. (Referring) Yes.

Q. Whose writing is it? A. Walter's.

Q. You still persist that despite the fact that he signed your name and swore to this before a Notary Public, that he did that without your knowledge and permission? I want you to answer the question carefully so that you carefully understand what I am asking you?

MR. WRIGHT—I object to it as incompetent, irrelevant and immaterial; calls for a conclusion.

THE COURT—Read the question?

(Question read.)

A. And sent him for the license.

Q. You don't answer my question, Mr. Godstrey. Did he, without your authority, without your knowledge and without your permission make an application for that license in your name? A. It was the week before the first of the coming year; I told him to go over and get the licenses.

Q. Answer my question yes or no?

THE COURT—Did you tell him to sign your name on the application?

WITNESS—Not when I sent him, no.

Q. Did you tell him at any time to sign your name? A. No.

Q. Don't you know that he signed your name? A. I don't think so! no, not then.

Q. Do you think that or don't you know? A. I know he would have to sign it to get the license.

Q. You knew he would have to sign your name to get the license? A. Yes.

Q. What did you mean by telling this jury that you never knew that there was a license issued for the car until I told you about it. A. I did not say I did not.

MR. WRIGHT—I object. The question is not complete, and it improperly states prior evidence which he refers to.

THE COURT—I think the unfortunate situation, Mr. Keppler, is that you put in inuendoes in your questions that are not warranted by the facts. In no instance, has he made any statement where he directed his son to go over and get the license in his name. If he directed him to go over and get the licenses, they might be in anybody's name, or in his name or in somebody's else name. As I recall the testimony, these statements are not in evidence.

MR. KEPPLER—I respectfully submit that my question be re-read; it does not apply to the last question.

THE COURT—Read the question.

(Question read.)

THE COURT—That does not mean that the license would have to be issued in his name. Suppose he was making application as an officer of the company——

MR. KEPPLER—That is not the case in this case.

THE COURT—I say, supposing it was; his testimony could not be construed as purports to be the fact in connection with getting the license for the Undercliff Taxi Company. It would not have to be the individual name.

Q. Mr. Godstrey, you are not an officer of the Undercliff Taxi Company, are you? A. Only manager.

Q. Your son Walter, is not either an officer or a director or stockholder of the Undercliff Taxi Company, is he? A. No, sir.

Q. He could not make any application for the Undercliff Taxi Company for a license, could he?

THE COURT—You don't ask him directly, how he expected the license would be made out.

MR. KEPPLER—I am asking that in the next question.

THE COURT—Go ahead.

Q. You could not answer this question I have asked you? A. Put the question to me.

Q. What did you tell him when you told him to

get the license? A. "Go over and have the license renewed."

Q. What did you tell him to get them renewed for? A. Did not tell him.

Q. He has been with you a long time? A. Yes, sir, all his life.

Q. He knows all about your business, doesn't he? A. Pretty well.

(Recess until 2 o'clock.)

Cross-examination resumed by Mr. Keppler:

Q. Mr. Godstrey, before recess you told us that you rode back from the police station, Fort Lee, in the same car that caused this accident, is that right? A. Yes, sir.

Q. What is the name of the chauffeur that took you up there? A. Tony Maone.

Q. Who else was with you in the car when you went up there? A. Nobody.

Q. Is it not a fact that you had one of your men drive you back in the same car that took you up there? A. Went up in the other car.

Q. Is it not a fact that one of your men went up with you, and he is the man that drove the car back and not you? A. I don't think so; I think I drove it.

Q. You are not sure, are you? A. I am quite sure I drove.

Q. Possibly mistaken about that? A. There is a probability, but I don't think so.

Q. Did you ever tell any person other than Mr. Nell that Dowdell was one of your chauffeurs and that he drove for you? A. Never told anybody he was a chauffeur, including Mr. Nell; I never told him.

Q. Did you speak to any man around Fort Lee police station? A. The morning of the accident there were a couple of officers there that we were talking to.

Q. Didn't you tell the persons who gathered there that Dowdell was your chauffeur and drove for you? A. No, sir.

Q. And that he was the most unlucky man you ever had? A. I say he was very unfortunate.

Q. Well, tell us what you told him about driving in the fence down at Edgewater? A. I don't think I told him anything about driving in a fence down in Edgewater.

Q. Well, what was that occurrence when he drove into a fence down in Edgewater? A. He will have to tell it himself; I don't know.

Q. Don't you know, as a matter of fact, he drove the car in a fence down at Edgewater? A. No, sir.

Q. Didn't you tell those men in the police station that—of the trouble you had with this man and didn't you tell them that the first accident he had was in New York, and that some months thereafter, he had another accident down in Edgewater and drove one of your cars into a fence? A. No, sir.

Q. Well, didn't anybody ever tell you about him driving somebody else's automobile into a fence? A. Not to my recollection.

Q. Do you know a lady by the name of Lady Robinson? A. Lady Robinson—yes, sir.

Q. She had a car in your place, didn't she? A. Yes, sir.

Q. Do you remember Mr. Patrick Dowdell driving a man around Edgewater in that car? A. No, sir.

Q. Did you ever hear about that? A. No, sir.

Q. Don't you know that? A. No, sir.

Q. Who drove Lady Robinson's car around Edgewater? A. She had no chauffeur; once in a while I would loan her Jack Moore, one of the witnesses who was here yesterday.

Q. And didn't you also, once in a while, loan her Paddy Dowdell? A. No, sir.

Q. Did you upon a number of occasions, get him to drive her after he had been working all night? Didn't you get him to drive her? A. No, sir, never.

Q. Why, didn't you get him to drive a certain man in the car? A. No, sir.

Q. In her car? A. No, sir.

Q. Well, you know that there was a man in Edgewater, from time to time, who had the right to use her car, didn't you? A. Well, she could loan it to anybody she liked. No, I did not know that there was any man who could use her car.

Q. Did she ever loan it to anybody? A. Not that I know of.

Q. What did you mean by saying she could loan it to anybody she liked? A. She may have lent it to somebody that I don't know.

Q. You have never given any money out of this Undercliff Taxi Company to either Gantert or Wissel or Martin, have you? A. They have never got any dividends, no—don't pay.

Q. Never got a cent? A. No, sir.

Q. Whatever money came in, it went in your bank account? A. Yes, sir.

Q. And stayed in your bank account, didn't it? A. There wasn't enough to go around.

Q. Your bank account is the same account in which all the money that you had went in, wasn't it? A. Oh, I used the one account along in the Fall of 1913, until this Spring.

Q. In other words, the money that was obtained from the storing of cars by customers, or who kept their cars in this garage, went in the same account? A. That is all one bank account; the only account that was kept.

Q. The other portion of the business, the garage, was your business? A. The taxi company got the benefit.

Q. Haven't you testified here this morning, that you owned that garage and not the taxi company? A. I had no garage; the garage building, the house and grounds, belonged to me.

Q. Haven't you testified that you owned that business? A. I don't think so.

Q. If you did, did you tell the truth? A. Yes.

Q. Then it is the truth that you do own that business?

THE COURT—What business do you refer to?

MR. KEPPLER—The Edgewater Garage.

A. Practically no business to the taxi company, and the sales of gasoline and stuff were all run through the one book. The taxicab company got the benefit of every bit of it. The building grounds belong to me.

Q. Outside of your conclusion that they got the benefit, did they ever get a nickel? A. No.

Q. All the money that came in, went in your bank account, didn't it? A. Yes.

Q. All bills that were paid, were paid by your bank account? A. Yes.

Q. All your money was kept in that bank account? A. Yes, sir.

Q. And there is no record in existence as to the amount of money that the taxi company owes you, is there? A. No.

Q. What did you mean by telling this jury—just what did you mean by tellling this jury that the taxi company got the benefit of the running of that garage? A. You are a little bit ahead of the question, I think.

Q. I am asking you what you meant by stating that the taxi company got the benefit of the running of that garage? A. All the money that came in that garage or in the taxicab business, in writing it up, there was one book that was run as the taxicab company's book; in fact, the only book in existence.

Q. Have you got that book here? A. We have got that, yes, sir.

Q. Let me look at it. Is there anything in that book that shows whose book it is? A. The beginning of it will show who it was run by, who started it, yes.

Q. Is there anything to show that the money that was deposited in your bank, was the property of the Undercliff Taxi Company? A. No.

Q. You never at any time had the faintest idea of the exact amount that they owed you, did you? A. I could make an account and find out and tell you.

Q. You never did, did you? A. Yes, I found that out; they owe me a lot of money.

Q. Oh, I mean before that? A. I found out last year they owed me a lot of money.

Q. Then you didn't know each year the amount of money that the taxi company owed you, didn't you? A. Yes, each January, yes.

Q. Do you remember testifying this morning that you never did figure up and never did know how much they owed you? A. I said I did not know now.

Q. Mr. Godstrey, I am asking you, do you remember testifying this morning that you never did know and never did figure up how much they owed you? Did you so testify, yes or no? A. I think I said I did not know.

Q. You always knew who your fellow directors were in this company? A. They have been the same men all the time, yes.

Q. Well, then, will you explain this question and this answer, or these questions and answers:

> "Q. you are one of their stockholders?" And your answer was "Yes." Q. One of their officers? A. No. Q. A director? A. I know four: I don't know who are the other three." You made that answer, didn't you?

A. I don't think it was put to me originally—I think that has been changed in some shape, that it means different than what it did when it was put to me originally.

Q. Mr. Godstrey, do you deny having signed and sworn to this examination? A. No.

Q. Then that is a part of your examination? A. That is a part of it.

Q. What did you mean when you testified that you did not know who the other three were? A. I think it was changed so that it would have a different meaning in there, both question and answer.

Q. You mean that Mr. Wright's stenographer, the young lady who took your testimony down, changed your testimony?

> Mr. Wright—Mr. Wright's stenographer did not take down the testimony. Your stenographer took it down and wrote it out.

MR. KEPPLER — Mr. Wright's stenographer and my stenographer both took the testimony.

THE COURT—What difference does it make what stenographer took it down; the examination is in evidence.

MR. KEPPLER—The only thing is that Mr. Wright is making a mis-statement.

MR. WRIGHT—I did not make a mis-statement, and I don't intend to have it so stated.

Q. Now, Mr. Godstrey, this particular taxicab was bought in 1915, wasn't it? A. I believe so, yes.

Q. What part of 1915? A. August, about the 6th.

Q. Who did you buy it from? A. I don't know the young man's name. He drove in town from Cornwall, and was in our town about two weeks; wanted to go away and I bought his car, this car.

Q. You bought a Ford taxicab from him? A. No, it was a touring car; I put a taxicab body on.

Q. Where did he live? A. Where did he live?

Q. Yes? A. I think it was Cornwall, some place like that—a stranger coming in town.

Q. You are sure of that? A. I am sure.

Q. That accounts for the fact that you don't know his name. A. That was the reason I don't know his name. He was the young man that drove in town.

Q. A man that you did not know came to you with a taxicab—with an automobile, and wanted to sell it to you, that is right? A. No.

Q. What are the facts? A. He came in town and the first thing he was in there, he would like to

have some repairs, and he came to my garage. I fixed it. He rode it a week, and he came up again the second time; "You did not fix it good the last time." I said, "Do you own the car?" "It is mine." I fixed it the second time, and he went away. A week after that his grandmother came up and says, "I am going to make the boy sell that car." I said, "Well, how much do you want for it?" She said, "Two hundred and fifty dollars." I said, "Too much money; never give it." It cost her three hundred dollars, something like that, and I bought the car eventually.

Q. His grandmother lived in your town, didn't she? A. She was living in Undercliff avenue, yes.

Q. You have lived in that town for a long time? A. Lived there for twenty-four, twenty-five years.

Q. You know everybody in town, pretty near? A. No.

Q. You knew his grandmother, didn't you? A. No, did not.

Q. Didn't you know her name? A. Did not know her name.

Q. You went and bought the automobile; did you get a bill of sale? A. No.

Q. Did you buy the automobile? A. I bought it, yes.

Q. You personally handled the transaction? A. Yes, it came through me.

Q. You bought it through his grandmother? A. The grandmother said she was going to make the boy sell it.

Q. Didn't the boy sign anything for you when he gave you the bill of sale? A. No.

Q. You knew nothing about a bill of sale when you bought the automobile and did not know his name? A. Did not have to know his name.

Q. Is it not a fact, Mr. Godstrey, that there never was a transfer of license issued on that car last year? A. I don't know.

Q. Well, after you bought that car you ran it didn't you? A. Yes.

Q. You put a taxi body on it, when? A. Oh, probably six weeks after we got it.

Q. Then you ran it again in about September or October; you are still running it, aren't you? A. Yes, still in business.

Q. But the license was never transferred to either the Undercliff or to you? A. I understood it was.

Q. When you testified that there were only four licenses issued to William C. Godstrey, you were mistaken, weren't you? A. That was all that was issued at that time. No, I was not mistaken.

Q. What did you mean when you gave this testimony: "How many cars did they have licenses for in their own name? A. I licensed four cars the first of January in my own name." A. What did I mean when I said that?

Q. Yes? A. That answer was made after I found out that the licenses were in my name; consequently I said I licensed four cars on January 1st in my name.

Q. Is it not a fact, Mr. Godstrey, that the truth of the matter is just as testified there, that you did license those four cars in your own name at that time? A. They were licensed in January in my name, yes, but I did not find out until you came and told me that; until you let me know. Your examination was after I found out. I might have said that I licensed four in my name.

Q. Do you say this additional personal all re-

lates to those licensed entries? "Didn't you have licenses for the other four cars? A. We hadn't gotten them in January." A. No, we have not got them yet.

Q. What did you mean by this testimony: "Q. Did you have licenses for those other cars in the name of the Undercliff Taxi Company at any time?" Your answer was, "Last year for these four cars, yes." A. Last year I understood they were all in the Undercliff Taxi Company.

Q. How did you understand that? A. Being continued or in other words, renewed from the year previous to that, I understood they would all be carried along as issued originally.

Q. Who did you tell them to license them in the year prior, 1915? A. In 1915? I guess we did not have more than five; in fact, I know we did not. In 1913, we only had one car, and in 1914, we got about three, and we began to get the rest.

Q. You testify positively that those four cars were licensed in the name of the Undercliff Taxi Company in 1915? A. I believe they were.

Q. You were mistaken about that? A. I was mistaken.

Q. You testify that your books would show when and from whom you bought cars, whenever you bought them, is that right? A. The record ought to be there.

Q. Will you kindly show me any entry in your books anywhere showing the purchase of this car that now bears license 60195, in August, 1915, from that young man whose name you don't know. A. (referring) Oh, that particular car was bought with a check from Mr. Wissel, $175; it would not appear there.

Q. So that is your explanation, by telling me on

this examination that it was in your book; when your book is brought here, you now say it was a check from Mr. Wissel? A. It was a personal check of Mr. Wissel.

Q. That is the best explanation you can make, is it? A. Yes, sir. I was not keeping the books at that time. That is Mr. Campbell's writing.

Q. That book you have there and this large book that I have here, constitutes the books kept in your business there, don't they? A. Yes, sir.

Q. Is there anything in this book anywhere showing that the Undercliff Taxi Company had any interest in that business? A. No.

Q. On the contrary, everything in here is in the name of William Godstrey, isn't it? A. No, sir; in the name of the Edgewater Garage. All them bills are printed as the Edgewater Garage.

Q. And those bills of the Edgewater Garage had the name of William Godstrey in, the same as reproduced on this examination? A. Just the same bill.

Q. So far as this book is concerned, they are all kept in the name of the Edgewater Garage, aren't they? A. Their bills are all printed as the Edgewater Garage.

Q. Then you are mistaken about the testimony you gave, that all that business there was run for and the taxi company got the benefit of it, aren't you? A. No.

Q. Do you still persist, in the face of these books, in saying that the Edgewater or Undercliff Taxi Company got the benefit of that business? A. The Edgewater or Undercliff Taxi Companys' bills all go out on those bill heads; it is all entered from that book and sent out.

Q. This is the ledger of your business, isn't it? A. Yes, sir, that is the ledger.

Q. Do you remember giving this testimony—is there any other ledger besides this one? A. No other ledger.

MR. KEPPLER — I ask that this ledger be marked for identification.

(Marked Exhibit P. 15, for identification.)

Q. Do you remember this testimony: "Q. Was there any record kept in any books showing when these cars were purchased? A. Yes. Q. What books? A. I have got a set at the office; my ledger would have it down when they are paid for. Q. Whose ledger? A. The book I am running; the ledger of the Undercliff Taxi Company." A. That would be that one (indicating).

Q. Does it show this particular car? A. No.

Q. You this morning stated that this is the only ledger that you have in your business? A. That is the ledger of the bills, and that came in existence after the other one was closed up.

Q. Do you remember this further testimony: "Q. Did William C. Godstrey keep a ledger? A. Me personally, no." Was that testimony true? A. Yes, sir.

Q. You consider that true, don't you? A. Sure.

Q. "Q. Didn't you keep a ledger for the accounts? A. What accounts? Q. For the people in the Edgewater Garage? A. No." You gave that testimony, didn't you? A. If it so shows there, I did.

Q. That was true, was it? You did keep a ledger? A. I did not quite get that.

Q. "Q. Was there any record kept in any book showing when these cars were purchased? A. Yes.

Q. What books? A. I got them at the office. My ledger would have to be taken when they were paid for. Q. Whose ledger? A. The book I am running; the ledger of the Undercliff Taxi Company. Q. Did William C. Godstrey keep a ledger? A. Me personally, no. Q. Didn't you keep a ledger for the accounts? A. What accounts? Q. For the people in the Edgewater Garage? A. No." A. That was wrong. They are all in that book.

Q. It was? A. Yes, that was wrong.

Q. Couldn't you be mistaken about your other testimony that you gave in this examination and before this jury? A. I don't think so.

Q. "Q. Well, how would you know who owed you money for work done in your machine shop? A. That was all run as the Undercliff Taxi Company garage business." You were mistaken about that, weren't you? A. No.

Q. Now, you gave this testimony: "Q. Who was the bookkeeper that kept those books? A. I kept them until the first of July. Q. Of last year? A. Of last year. Then I hired a man named Benjamin Campbell. Q. Is he still with you? A. No. Q. Where does he live? A. Some place in New York, I don't know. Q. Have you no idea? A. I have not the slightest idea." Was that true? A. That was true.

Q. You don't know exactly where Mr. Campbell lived? A. I did not.

Q. Didn't you keep his address when you hired him? A. No, sir.

Q. Wasn't he a man that handled a great deal of money for you? A. He was handling all the funds that come in the office.

Q. You knew he lived in New York? A. Yes, sir.

Q. You never made any effort to ask him what his address was? A. Yes, sir.

Q. You did? A. Asked him where he lived.

Q. Did he tell you? A. No, sir.

Q. Will you explain—you hired a man——

THE COURT—He is answering the question. What is the use of repeating it?

WITNESS—I don't know how you would find out. I could not find out.

THE COURT—Just answer questions.

Q. Do you remember this question and answer (page 6): "Q. Didn't you tell me that you personally conducted that garage? A. I don't think I did. Q. Well, do you say you testified correctly? A. I do. I own the garage and take care of it. Q. You mean the business in the garage? A. The business in the garage." Was that testimony true when you gave it? A. That was right.

Q. How do you reconcile that testimony with your contention that that garage now belongs to the Undercliff Taxi Company? A. I don't say now it belongs to the Undercliff Taxi Company.

Q. Whom does it belong to now? A. The business has been running through there——

Q. Who owns the Undercliff Taxi Company now?

MR. WRIGHT—I object to that.

A. Mr. Wissel, Mr. Morton and myself and Mr. Gantert.

Q. Mr. Godstrey, is it not a fact that neither Mr. Wissel nor Mr. Gantert nor Mr. Morton have the slightest interest in the company? A. It is not.

Q. You are sure of that? A. Sure.

Q. Didn't you tell anybody that you owned the entire business, and they have no interest in it? A. No, sir.

Q. That you gave them some notes? A. No, sir.

Q. Did you give them any notes? A. Yes.

Q. Any of them? A. Yes, sir.

Q. You and Mr. Wissel are interested in other matters, together, aren't you? A. No, sir.

Q. Aren't you interested in the matter of the estate of your nephew? A. No, sir—sure I am interested in that.

Q. Isn't he interested in the matter with you? A. No, sir.

Q. Sure of that, aren't you? A. Yes, sir.

Q. Do you remember this testimony: "Q. Has the Undercliff Taxi Company a bank account? A. Yes. Q. Where? A. The First National Bank, Edgewater." A. Yes, sir.

Q. When was that account actively resumed? A. Actively resumed?

Q. Yes? A. It has always been open; did not resume any old book if there was a new book put in; it was never closed.

Q. I understand; but the account was inactive from the early part of 1914 until January, 1916? A. Yes, along early in the year.

Q. And then in February, 1916—February 8th, 1916, or, rather February 21st, 1916, you made a deposit in that account, didn't you? A. Yes.

Q. And since then you have been making deposits in that account? A. Yes, sir.

Q. Why didn't the inconvenience of having Mr. Wissel and Mr. Gantert sign checks apply since February 21st, 1916, the same as it did in the early part of 1914? A. We had a meeting in January—

the company had a meeting in January, and they insisted on starting that account, and that was before this action was started, and insisted on running that.

Q. The fact that this account was resumed on February 21st—of the Undercliff Taxi Company—after having been inactive for over two years was just a coincidence and had nothing whatever to do with this accident? A. It was a result of this accident.

Q. Had nothing to do with this accident, though? A. No, was not considered at all.

Q. Do you remember this question: "Q. And the moneys that go into that garage are deposited in your personal account? A. No, sir. Q. Never? A. Never has been." That testimony was not true? A. That was not true, no. If that is there, that is wrong.

Q. Then you admit that you testified falsely? A. That is an error of some kind.

Q. You admit that you testified falsely on that proposition? A. If that is what it says, if it is down there; it was not understood by me at the time, because I would not say that.

Q. The fact that we produce a transcript of the facts of the matter—— A. Oh, yes, I admit that; no getting away from that. If that is there, that is wrong.

Q. It doesn't affect your testimony in the slightest——

MR. WRIGHT—I object, because in the same testimony which the plaintiff put in evidence, he testified to that very fact.

MR. KEPPLER—I object to counsel summing up now.

MR. WRIGHT—The same testimony he introduced evidence himself, Mr. Godstrey testified a few pages ahead, that he had deposited moneys and paid bills with his checks. On the face of it, it is an error or mistake somewhere. He misunderstood the question or something.

MR. KEPPLER—I do not desire to enter into a colloquy, but I will ask him on summing up to point out such a thing if it exists.

Q. Where are these licenses kept of these cars? A. Under the seat.

Q. You watched them clean those cars out every day, didn't you?

MR. WRIGHT—I object to this as not proper.

THE COURT—He has testified to it, that the licenses were under the seats and that he examined the cars at least weekly to see that they were in proper condition and clean.

Q. The seats were taken out when they were cleaned, weren't they?

MR. WRIGHT—I object to that.

THE COURT—Let him answer.

A. Generally.

Q. You still maintain that you never saw those licenses, is that right? A. No, I did not say I never saw them. You asked me what did I do with them when I brought the book over to Hackensack; I did not see them, no. I seen them since then.

Q. Be tween the time you brought the book over to Hackensack and the time I told you, as you claim, about the license, you never saw any of them, did you? A. I had not seen them up to that time, no.

Re-direct examination by Mr. Wright:

Q. This book which I show you is what? A. That was a ledger at the beginning of the Undercliff Taxi Company's business.

Q. And continued how long? A. Until July of 1915.

MR. WRIGHT—I ask that the book be marked.

MR. KEPPLER—I do not see that it is competent evidence.

THE COURT—You called for it, Mr. Keppler. You called for it and examined it and under the rules you are obliged to put it in, if the defendant requires it.

MR. KEPPLER—I have not examined this book. I asked him about a certain entry in the book.

THE COURT—Is there any objection to putting it in?

MR. KEPPLER—Yes, I object on the ground that it is incompetent, immaterial and irrelevant.

THE COURT—Objection overruled.

MR. KEPPLER—I respectfully except.

(Marked Exhibit D. 2.)

Q. The first series of entries in this book after the beginning on page 1, shows what? A. Receipts and disbursements of the Undercliff Taxi Company.

Q. And that continues page after page, up to——

THE COURT—What is the date of that account?

WITNESS—May 18th, 1913.

Q. That continues continuously on every page, up to page 49? A. Page 49.

Q. That last date, on page 49, shows receipts and disbursements as of the 31st day of August, 1915? A. Yes.

MR. KEPPLER — I object to his testifying. The book speaks for itself.

Q. I call your attention to page 217 of the book; there is a continuation, is there not, beginning September 1st, 1915, receipts and disbursements? A. Yes, sir.

Q. And that runs consecutively on pages from page 217 to page 227, is that correct? A. That appears to be correct. I wasn't keeping books at this time. That is Mr. Campbell's writing.

Q. The last date, on page 227, is December 31st, 1915? A. Yes, sir.

Q. I call your attention to the items in the receipt column generally; for instance, here is taxi; that means taxi receipts? A. Yes, sir.

Q. Misc. abbreviation for miscellaneous? A. Miscellaneous receipts, gas, oil and stuff at the garage.

Q. I call your attention to December 30th, an item in the expense column, licenses W. F. G.? A. That is Walter Godstrey.

Q. Do you know what that was for? A. That was for licenses that are in question now, issued to me.

Q. I call your attention to item entry December 1st, on page 225, under expense column, where it

says "Account accident"? A. New York accident account.

Q. What does that mean? A. That is the New York accident account.

Q. Which one do you mean, the one that you testified to? A. The ones that Mr. Keppler wanted to know if I saw.

Q. You mean the accident that happened in September or October? A. Yes, sir, that is it. The taxi receipts are all in there, and garage stuff.

MR. KEPPLER—I object to the witness volunteering any statements.

THE COURT—Strike that out.

Q. I call your attention to the entry which appears occasionally down the column of receipts, speaking generally of it, where it shows "Credit" under the receipt column; for instance, the one I point out is under date of October 9th, 1915——

THE COURT—"W. C. G."

Q. What does that mean? A. That means money that I advanced to the business.

Q. And that appears frequently in these books, the receipt column? A. Seems to be all through.

Q. On the same page I call your attention to October 5th and 6th, where there are items covering apparently 1914, marked in the same way? A. That is money I advanced the company.

Q. This book, in addition to the receipts and disbursements, also contains some other accounts; what are they? A. They were ledger accounts. All the bills went through here.

Q. Well, this book, I understand, you had in existence before you had the other? A. Yes, this

is the only one we had until the 1st of July—until after Mr. Campbell came with us; then he got this book, so that when he wrote up the bills, he would have a bill and copy all at once, so that it would save him entering it twice. He did that all in one way.

Q. These individual accounts contained charges for what? A. Repairs, gas or oil.

Q. How about storage? A. Also storage.

Q. Just one other thing that I want to call your attention to in these receipts and disbursements. Page 42, under the expense column, under date of April 15th, 1915, there is an item of 1913 Cadillac, what does that mean? A. That is——

MR. KEPPLER—I object to his continuing indefinitely going through this book and explaining every item about their business. I don't think it is material in this case.

THE COURT—He has been asked about cars stored.

A. That was a car that we bought——

THE COURT—Accounts and everything. He may answer the question.

A. That was a Cadillac car we bought.

Q. Now, I want to call your attention to the book which is marked for identification, P. 15, which is the book which you say was started in July? A. Yes, sir.

Q. Started with Mr. Campbell, after you employed him? A. Yes, sir.

Q. This is what is known as a loose leaf bill

book or ledger? A. It has got both ledger leaf and loose leaf.

Q. I notice in every case, Mr. Godstrey, there seems to be a white sheet and also a yellow sheet, which seems to be a carbon; is that part of the system? A. Last night I worked on this book and took out all of the bills as far as the letter P. The yellow leaves here are the ledger leaves. There (indicating) is a ledger leaf. When this side is filled up, they turn up this way (indicating), and that side will be the side of the account. There (indicating) is a bill which is not torn out. There (indicating) is a copy of it, in the ledger page.

Q. That is what I want to find out. Under the letter R in this book there is a sheet, a heavy white sheet, marked in print, the name "Lady Robinson" that is what sheet? A. That is the ledger leaf, belongs to that account.

Q. The following page is a lighter white page, ruled differently, with the words "Sold to Lady Robinson; statement for May, 1915," what is that? A. That would be anything that she had got during the month.

Q. What do you call that sheet? A. That is the bill. That is the one that will be torn out and sent to her.

Q. On the following page is a yellow sheet, and this one which follows is marked, "Work Lady Robinson, May, 1915," and those two items are in pencil? A. That is a carbon copy that I put on file to keep.

MR. WRIGHT—This has not been offered in evidence. I offer this in evidence, which was marked P. 15 for identification.

THE COURT—If there is no objection, it will be marked in evidence as defendant's exhibit.

(Exhibit D. 3.)

Q. I show you a bill-head, is that a bill-head which was in use in your concern? A. (referring) Yes, sir, that was the original bill-heads.

Q. When did you cease using those? A. When this came in.

Q. That would be about July, 1915? A. July of 1915.

MR. WRIGHT—I offer this in evidence, if the Court please.

THE COURT—Any objection?

MR. KEPPLER—I object to it on the ground that anything back in December, 1915, to begin with, is a self-serving declaration, on the ground that it is entirely incompetent, immaterial and irrelevant; on the ground, furthermore, that he has already testified that everything was done in his name; all moneys received and paid out were in his name, and all bills were in the name of the Edgewater Garage, and therefore he is contradicting his own witness, impeaching his own witness by these things.

THE COURT—It may be admitted and marked.

MR. KEPPLER—I except.

(Marked Exhibit D. 4.)

MR. WRIGHT—This bill-head is dated Edgewater, N. J. (reads).

Q. I show you a yellow slip, what is that? A. (referring) The Standard Oil Company's sales tickets.

MR. WRIGHT—I offer that in evidence. This is dated April 1st, 1915.

THE COURT—Any objection?

MR. KEPPLER—I object on the ground that anything on October 1st, 1915, is too remote, does not cover the period of the accident; it is too far away; it is incompetent, immaterial and irrelevant; no foundation laid for this.

THE COURT—Is there any objection to the manner of the proof?

MR. KEPPLER—Both the manner and on the ground that it is incompetent, immaterial and irrelevant.

THE COURT—Where does this come from?

MR. KEPPLER—I object to the form of the question.

THE COURT—You may answer the question.

WITNESS—The driver for the Standard Oil Company give them to us when we take gasoline and oil and pay him; that is the receipt that he is paid.

MR. KEPPLER—I move to strike that out.

MR. WRIGHT—I now offer that in evidence.

MR. KEPPLER—I except on the ground that we are not bound by any paper made out by a driver for any company.

MR. WRIGHT—The only reason it is clearly competent is this——

THE COURT—It has not been properly proved.

MR. WRIGHT—He received it from the Standard Oil Company.

Q. Did you receive this? A. I did.

MR. KEPPLER — I object to counsel telling what the defendant testified to.

MR. WRIGHT—I offer it.

THE COURT — The objection will be overruled. You received that particular slip?

WITNESS—I did.

Q. And also these other slips which you have just handed to me out of your pocket? A. I did.

THE COURT—In whose handwriting are the slips?

WITNESS—They are in different men's handwriting that come there, the Standard Oil Company's representatives.

THE COURT—Who ordered the goods that were received?

WITNESS—They drive around three times a week and dump gasoline in the tanks, and we pay them for it. That is all they give.

THE COURT—That may be admitted in evidence.

MR. WRIGHT—I offer the four of them, numbered 3399-B, 6631-F, 6959-F, 6952-F.

MR. KEPPLER—I also desire, furthermore, to object on the ground that there is no evidence showing that any driver made those out in that way, or when they were made out; no explanation by the driver, who made them out; he isn't here to give evidence and his testimony would be the best evidence.

THE COURT—Objection will be overruled.

MR. KEPPLER—I wish to respectfully except.

MR. WRIGHT—(to the jury) These slips, gentlemen, are printed at the top, "Standard Oil"—this one that I call your attention to, marked Exhibit D. 5, shows "Sold to Undercliff Taxi Company, Edgewater, 50 gallons Standard motor gas, N. J. 69450." Receipted.

Here is 5-15-16, Undercliff Taxi Company, Edgewater, signed by James Murray.

MR. KEPPLER—I object to that.

THE COURT—They are in evidence; he is reading them.

(Marked Exhibits D. 5, D. 6, D. 7, and D. 8.)

Q. Have you got any more of these slips with you? A. (Referring.)

By Mr. Keppler:

Q. Mr. Godstrey, are you sure that you received these little tickets at the time of those transactions? A. I am.

Q. Have you brought any of the drivers of the Standard Oil Company here? A. No, sir.

MR. WRIGHT—Objected to as immaterial.

THE COURT — He has answered no; let it stand.

Q. About how many of those slips do you get a week there? A. Sometimes two; sometimes three.

Q. Then you have been getting them for a long time, every week, haven't you? A. Yes, sir.

Q. Now, show us those made out to Wiliam C. Godstrey? A. I don't think I have got any of them. I gave him the whole bunch I had, just as they come.

Q. Were none of them ever made out to William C. Godstrey? A. Yes, there are some of them.

Q. Why, don't you produce them? A. In 1914, I believe they were made out to me.

Q. None since 1914 were made out in your name? A. No, I think 1915, they ran through the Undercliff Taxi Company—1915, 1916.

Q. Since 1914, William C. Godstrey has not taken any gasoline from the Standard Oil Company at all? A. Yes, sir, it has been coming to me just the same, but they charge it all to the Undercliff Taxi Company. It was originaly taken in the name of the Undercliff Taxi Company, and when I started to give my personal check, they made it out to me.

Q. When did you start to give your personal check? A. Early in 1914.

Q. Then you have been giving your personal check from 1914 down to February, 1916, haven't you? A. In 1915, we started to pay them cash, when they come around there, and then it was the Undercliff Taxi Company, and those are the receipts I got for the money.

Q. Now, let us see: Do you remember this testi-

mony (page 8) "The bills for the supplies bought in your garage are made out to William C. Godstrey, are they not? A. Stuff that I buy, yes; like gasoline. Q. From whom did you buy your gasoline? A. From the Standard Oil Company." Was that testimony true when you gave it? A. That was right.

Q. You stated that those bils were made out in your name, in your own name? A. Some were made out in my name and some in the taxi company's. Part of the time they were made out to me and part of the time they were made out to the Taxi Company.

Q. In other words, you could find just as many of those things made out to William C. Godstrey as you found made out to the Undercliff Taxi Company? A. Yes.

Q. But you brought the Undercliff Taxi Company bills, but did not bring the William C. Godstrey bills, is that correct? A. I did not look for any that was four or five years old, for the simple reason that you objected to 1915.

Q. But you did not bring a single one made out to Wiliam C. Godstrey? A. I guess there may be some among them; I don't know.

Q. You told us a little while ago that Mr. Wissel closed that deal to buy that car from that young man whose name you don't know?

THE COURT—He said Mr. Wissel gave his personal check for it.

Q. Who did he give his check to? A. Gave it to me.

Q. You closed the deal? A. Yes.

Q. That is why you left that particular transaction—— A. Yes, sir.

Q. That is how you account for the fact that it is not in the book? A. Yes, it would not appear.

Q. Well, did it appear as a loan? A. It would appear as a loan from Mr. Wissel.

Q. It does not appear in the book? A. I don't know. We would trade checks in a case of that kind, so as to cancel it. He gave me his check for $175, and I gave him my own check.

Q. Where did you handle the transaction when you closed that deal? A. Down at the house—down at the grandmother's.

Q. Do you remember this testimony: "Do you get a bill of sale when you buy a car? A. Not always. Q. Did you get a bill of sale when you bought this car? A. No. Q. Could you give me the exact address of this young gentleman from whom you bought this car? A. No. Q. Did you personally conduct this transaction when that car was bought? A. No. Q. Who did? A. Walter. Q. Your son? A. Yes." Which line of testimony is true, that you conducted it or your son conducted it? A. I did not say I conducted it.

Q. Didn't you testify here within two minutes at the outside that you conducted it and that you received a check from Wissel? A. No.

Q. You did not? A. No.

Q. Why was it that last night you went over that book and tore out all those pages you have referred to? A. Because it happened to be the first of the month. They are torn out as far down as the letter P. From the letter P, they are in there, and a carbon copy of them all the way through.

Q. This ledger only represents open accounts, doesn't it? A. Yes.

Q. It doesn't represent any closed accounts at

all? A. Some of them were balanced and are closed, that is all.

THE COURT—Just the bills that were sent out, that were mailed to customers, you mean were torn out?

WITNESS—Yes, that is all the bills; the carbon copy is there.

THE COURT—Delivered them to each one.

WITNESS—To each one.

THE COURT—You did not take out any leaves with your reports upon?

WITNESS—No; no ledger leaves nor none of the carbon copies. The white sheet is gone, the one that the customer gets. We get them out promptly, so that we get the money promptly.

Q. Mr. Godstrey, you stated that you gave some notes in the matter of this taxi company to Gantert and to Wissel; when did you give them those notes? A. That I gave notes to them?

Q. Yes? A. I don't think I stated so. I said the company gave notes for cars they bought.

Q. To Gantert and Wissel? A. The company themselves—Gantert, Wissel, me and Morton.

Q. Didn't you ever give any notes to either Gantert or Wissel, in connection with any matter in relation to this taxi company? A. I have borrowed money from them; I loaned money to them, on paper.

THE COURT—In connection with the taxi company?

WITNESS—Well, generally, yes; it would be for the taxi business.

Q. As a matter of fact, did you expect to help each other out and in drawing notes, making notes for each other, that you discount at the bank? A. Sure we did.

Q. And you do those favors for them and they do them for you? A. I might have gotten a note from them; don't always go up there to them and ask them to go on a note for me.

MR. KEPPLER—I want to offer in evidence the transcript of the accounts in the bank of the Undercliff Taxi Company and William C. Godstrey.

THE COURT—Any objection?

MR. WRIGHT—I object to the Godstrey account going in evidence. I don't object to the other one.

THE COURT—They both may be admitted.

(The Godstrey account is marked in evidence Exhibit P. 16 and the Undercliff Exhibit P. 17.)

Q. This book here is what is known as the cash book and ledger, isn't it? A. Yes sir.

Q. How long was this book kept? Up until when? A. About July 1st, 1915, when this other book came into existence.

Q. Is there any record of receipts and disbursements in here from 1915? A. Yes sir.

Q. Who gave you this book? A. I got it from Merriman, the manager that had the company ahead of me.

Q. When you built your garage, did you have any

conversation of any kind with Gantert or Wissel? A. Have any conversation with them?

Q. Yes? A. I saw them there.

Q. I mean relative to the garage? A. No sir.

Q. You never asked their permission or advice or knowledge in building it? A. No.

Q. Never discussed the matter with them at all? A. No sir, I told them I was going to do it. I don't think I asked their advice.

MR. WRIGHT—I desire to offer in evidence some more of these slips running through the years 1915, the early part of 1916—the latter part of 1915 and the early part of 1916.

MR. KEPPLER—I object for the same reasons as already objected to.

THE COURT—The same kind of slips for gasoline and oil in the garage?

MR. WRIGHT—The same kind of slips.

THE COURT—And received by whom? These slips were received by whom?

MR. WRIGHT—The slips are the same as the other slips; I don't want to take the time to go through them.

THE COURT—It will be the same proof and subject to the same objection and exception.

By Mr. Wright:

Q. This bunch of slips were made out in part to the Edgewater Garage, but I don't see any of the Undercliff Taxi Company's? A. Different drivers that come there.

Q. Those are the slips that you received during this time? A. Yes, those are the slips given; when we paid for that, we got these slips.

Q. From August, 1915, on down to February, 1916? A. Yes sir.

(Slips marked Exhibit D. 9.)

By Mr. Keppler:

Q. This book is a true record of all the moneys received and paid out? A. I believe so.

Q. This book, marked defendant's Exhibit D. 2? A. Up to the 1st of July, I believe that is absolutely correct.

Q. Show me any record in there of any moneys due you? A. (referring) Here is $20 on October 7th.

Q. Show me the account; just show me your account? A. The ledger account?

Q. Yes? A. This was in October of 1915; that was after the latter part of this book was closed up; the latter part beginning from July 1st, 1915, starts in that one (indicating).

Q. Mr. Godstrey, you have testified that in 1914 you quit keeping the bank account of the Undercliff Taxi Company because they had no money and because you had advanced the money for them? A. I have been advancing it to them, yes; there is a lot of advances right in this book.

Q. I would like to have you kindly show me any account in that book in 1914, where you have loaned that company a nickel, or show me any account in the name in 1915? A. I was just showing you some in 1915.

Q. I am asking for the account; you have stated,

Mr. Godstrey, that these books were properly and correctly kept? A. They are all——

Q. If you were lending money in 1914 and 1915, there must be a ledger account for William C. Godstrey in that book, if that was the book of the Undercliff Taxi Company? A. This was the book.

Q. Will you kindly show me the ledger account of William C. Godstrey as banking money to that company in 1914 and 1915, or 1913, any time? A. This small account started here (indicating); small expense account.

Q. Mr. Godstrey, we are not talking about that. You said that those books were properly kept. You said that you had to close the account and put it in your own name because they had no money——. A. Yes, I said I had to close the account; I did say so.

Q. You had to have the account book in question? A. Sure, they had no money to put in; I had to go down in my pocket to carry them along.

Q. So that you had to have your own bank account. If those books were properly kept, and were not your books but the books of the Undercliff Taxi Company, show me your account with the Undercliff Taxi Company showing debits and credits of William C. Godstrey? You cannot do it, can you? A. Suppose there isn't any?

Q. There is no such account, is there? A. No.

Q. You have looked through the records and there is no such account? A. (No answer.)

MR. WRIGHT—I offer in evidence certified copy of Certificate of Incorporation of the Undercliff Taxi Company, certified by the Secretary of State.

MR. KEPPLER—I object to it as entirely incompetent, immaterial and irrelevant. We are not trying the question as to whether or not there is an Undercliff Taxi Company in existence; that is a collateral matter.

(Marked Exhibit D. 10.)

MR. WRIGHT—This is a certified copy of the Undercliff Taxi Company, and sets forth the object and so forth, with the names of the incorporators. The proof shows that it was subscribed by each, Joseph F. Gantert, Lance Morton, Dyckman Street, New York, Joseph H. Merriman, 2½ shares, signed by the same gentlemen, acknowledged by them. Filed in the office of the Secretary of State on May 28th, 1913.

HENRY WISSEL, sworn for the defendant, testifies as follows:

Direct examination by Mr. Wright:

Q. Mr. Wissel, you live in Edgewater? A. Yes sir.

Q. You are one of the incorporators of the Undercliff Taxi Company? A. Yes sir.

MR. KEPPLER—I object. The certificate of incorporation speaks for itself, and is the best evidence.

THE COURT—It is a question of identification.

MR. WRIGHT—There might be two Henry Wissels in the world.

THE COURT—Proceed.

Q. You have been identified with that company from the time of the incorporation down to the present time? A. Yes sir.

Q. How long have you known Mr. Godstrey? A. Oh, twenty some odd years; over twenty years.

Q. Was Mr. Godstrey interested in this company at the time of its organization? A. No sir.

Q. When was the first he became interested in the company? A. In the Fall of 1913, I think it was.

Q. Under what circumstances? A. He came in as manager, bought up the stock of Merriman, Merriman's stock.

Q. At that time, what was the condition of the company?

MR. KEPPLER—I object to going into the history of the company.

THE COURT—How is it material?

MR. WRIGHT—Shows the reason for the changing of the bank account by Mr. Godstrey, that is all. I want to show what position the company was in.

THE COURT—I will allow the question. Take your exception.

A. At that particular time Mr. Merriman proved to be a very poor manager. The company was in very bad financial condition. Mr. Godstrey came in as manager, in order to put new life into it. He was a better handler than Mr. Merriman.

Q. Who were the officers of the company? A. I was President; at that time, Mr. Gantert was Treasurer.

Q. Was Mr. Godstrey an officer at all at any time? A. Mr. Godstrey was manager of the company.

Q. You, as officer of the company knew when the change in the system of banking accounts took place? A. Yes sir.

Q. It was done with your knowledge and consent? A. Done with my knowledge and consent.

THE COURT—Which account is this?

MR. WRIGHT—Taking the account of the Undercliff Taxi Company and putting it in the name of Mr. Godstrey.

WITNESS—Mr. Godstrey's personal account.

Q. Why was this done? A. In order to continue business. It was impossible to meet our bills. I would be out of town for a day; expenses would be coming in; we were not receiving money enough to pay; we had a small number of cars and it was necessary to keep them on the road at all times. Our first equipment was very poor equipment.

Q. Do you know whether the company was obliged to borrow any money or not? A. They were.

Q. In 1913, on down? A. I could not say when, but we were obliged to borrow money at different times during our existence. I could not specify the date.

Q. I mean since 1913, has the company borrowed? A. Since 1913, yes, we have. I have loaned money personally myself.

Q. Last Summer did you advance any money to buy a car with? A. I advanced money on two cars, I think. At the present time the company owes me some two hundred and some odd dollars also.

THE COURT—Do you remember signing a check for $195, testified to as having been given to buy a car?

WITNESS—I don't believe it was $195; $175. I gave my personal check to Mr. Godstrey. I believe he negotiated the purchase on Sunday morning; I don't think we got hold of the car until Monday. The people wanted to use the car that Sunday.

Q. You knew about the purchase of this particular car then? A. Mr. Godstrey spoke to me and asked me to purchase it. I advanced $175 to the company, my personal money.

Q. Do you remember the Sunday morning or afternoon of the accident, Sunday or Monday after the accident, last January? A. I don't remember what particular day it was. I remember the following morning of the accident. Mr. Godstrey came to me and told me about it. He was authorized then to act as agent of the company to proceed and see what he could do to settle the matter. I believe he spoke to two or three; he spoke to me outside of the rail of the car.

Cross-examination by Mr. Keppler:

Q. This company has from time to time rendered bills for work done for the various departments of the Borough of Edgewater, hasn't it? A. Yes.

Q. For what department?

MR. WRIGHT—I object to that as immaterial and irrelevant.

MR. KEPPLER—It is very material.

THE COURT—Let him testify.

A. For the different departments, such as the police department, fire department and Board of Education.

Q. Any other department? A. I don't remember any others.

Q. You are the Mayor of Edgewater, aren't you? A. I am.

Q. Have been for how long?

MR. WRIGHT—I object to that as immaterial. I do not see that it is competent or relevant.

THE COURT—What is the object of this line of testimony?

MR. KEPPLER—We want to find out as to whether or not, as Mayor of the Borough of Edgewater, he is interested in the Company and doing work for the Borough of Edgewater; we ought to know it.

THE COURT—Objection sustained.

MR. KEPPLER—I respectfully except.

THE COURT—You may have your exception.

MR. KEPPLER—May I know whether your Honor sustains the objection on account of the form of the question or on the ground that it is incompetent?

THE COURT—In fact, the Court does not believe you are sincere in pressing this line of question to affect his credibility.

MR. KEPPLER—I assure you, your Honor, if your Honor cares to take my word, I am very sincere. I think that relates to this case. In other words, it would amount to a negative proposition. The reason I offer that now is this, your Honor: It hardly seems likely that the gentleman would be Mayor of the town and still have an interest in this corporation, which was doing work for the Borough, and that is the reason I say it strikes me—I may be in error, it strikes me as a reasonable proposition, that it would affect his credibility.

THE COURT—The Court has ruled, proceed.

MR. KEPPLER—I respectfully except to your Honor's ruling.

THE COURT—You may have your exception.

Q. Mr. Wissel, you took no cash whatsoever in the running of this business, did you? A. I did not.

Q. You regard Godstrey as a warm personal friend of yours, don't you? A. Certainly.

Q. At the present time you are interested in raising some money in the matter of the estate of his nephew, aren't you? A. I am not.

MR. WRIGHT—I object.

Q. Haven't you been conducting negotiations in a matter of the estate of Mr. Godstrey's nephew? A. I have not.

Q. With anybody in which Mr. Godstrey is interested? A. No sir.

Q. Didn't you know about the existence of such a matter?

MR. WRIGHT—I object to that.

THE COURT—The last question will be sustained.

MR. KEPPLER—I respectfully except.

THE COURT—You may have your exception.

Q. Have you any business interests with Mr. Godstrey? A. Outside of the taxi company.

Q. None? A. No sir.

Q. You received some notes from Mr. Godstrey personally? A. I have not.

Q. Is it not a fact that at this time you have no interest of any kind, nature or description in the Undercliff Taxi Company? A. That is not so.

Q. Did Mr. Godstrey give any bond for the handling of this money?

MR. WRIGHT—I object to that.

A. No bond whatever.

THE COURT—He has answered; let it stand.

Q. Did you ever have an auditor go over those books? A. I did.

Q. In 1914? A. 1915.

Q. Anyone in 1913? A. 1913 or 1914.

Q. Anyone in 1914? A. No sir.

Q. No one in 1916, but one in 1915? A. In the Spring of 1916, the closing of the 1915 account.

Q. The closing of what? A. The closing of 1915, running along in 1916. I think it was in the Spring of 1916.

Q. As a matter of fact, didn't that auditor make that audit for Mr. Godstrey? A. No sir, did not; made it for the company.

Q. What is that? A. Made it for the company. He was ordered to make the audit at a meeting of the company.

Q. After that meeting, didn't Mr. Godstrey give you a note? A. No sir.

Q. Did he give anybody a note? A. I don't know.

Q. Was there any discussion about a note? A. No discussion in my presence.

MR. WRIGHT—I object to that.

THE COURT—He has answered, no discussion; no argument. The negative answer is in.

Q. When did you first know that you were going to be a witness here to-day?

MR. WRIGHT—I object to that as immaterial.

THE COURT—He may answer.

A. What is that?

Q. When did you first know that you were going to be a witness here? A. I never was served with a subpoena, I came over this morning myself.

Q. In this room? A. I was over here yesterday and never appeared in the court room.

Q. You were not here the last time the case was on trial, were you? A. No.

Q. Did you discuss with anyone the testimony you would give to-day? A. No.

Q. Not with Mr. Wright? A. No sir.

Q. Or with Mr. Godstrey? A. No.

Q. Or anyone in their behalf? A. No.

Q. They had no idea what you were going to testify to? A. No.

Q. Didn't ask you what you would testify to? A. No.

Q. You were not told the questions you would be asked. A. No sir.

Q. And never told anybody what answers you would make? A. No sir.

By Mr. Wright:

Q. You and I have discussed generally the whole situation from time to time, have we not? A. Never discussed any point or anything that came up, only the matter of talking over the business of the company.

MR. KEPPLER—I object. Counsel is impeaching his own witness.

THE COURT—He is cross-examining on matters that you brought out. He may ask the question.

MR. WRIGHT—He has answered.

By Mr. Keppler:

Q. You say you did, from time to time, discuss matters with Mr. Wright? A. Just the officers of the company, that is all. You asked me before——

Q. What did Mr. Wright have to do with the business of the company? A. Mr. Wright was called in as attorney.

Q. Is it not a fact that Mr. Maitland was attorney for this concern until this case, and this is the first piece of legal business that Mr. Wright has ever handled?

MR. WRIGHT—Objected to as immaterial.

Q. In connection with this garage, what you call the taxi company——

THE COURT—Let him answer.

Q. Isn't that a fact? A. Mr. Maitland had done business for this company.

Q. And this is the first piece of legal business that Mr. Wright has handled for the garage, the business of this case? A. I don't know; that is all I know of. I could not say what Mr. Godstrey had.

Q. Mr. Wissel, you have told us that you and Mr. Wright discussed the business of this company, from time to time, as attorney; you must know whether or not there was any legal business that you discussed with him? A. I discussed business; I discussed business with Mr. Wright; I think twice.

Q. You have stated that you discussed business of the company with him as attorney? A. Mr. Wright.

Q. You mean in his professional capacity? A. Yes sir.

Q. Now, you said that this is the first piece of legal business he ever did, in connection with that garage or company, isn't that right? A. Well, I guess that is so. We talked over some other matters, which did not relate to this matter at all.

Q. But this matter you have never discussed with him? A. Never discussed.

Q. Mr. Wright is mistaken when he says that he did discuss the matter with you generally? A. Only at the start of the thing, when he was retained as attorney for this case.

Q. But you never discussed evidence with him? A. No sir.

Q. This company isn't sued in this case, is it? A. I don't know; I have never been served that I know of.

Q. You don't know whether the company is sued or not? A. No, I don't know.

JOSEPH GANTERT, sworn in behalf of the defendant, testifies as follows:

Direct examination by Mr. Wright:

Q. Mr. Gantert, you live in Edgewater? A. Yes sir.

Q. Are you the Joseph F. Gantert, one of the incorporators of the Undercliff Taxi Company? A. Yes sir.

Q. You have been identified with the company ever since that time? A. Yes sir.

Q. When did Mr. Godstrey first become interested in the company? A. Why, about the Fall of 1913.

Q. How did he come to be interested? A. Well, we had a manager by the name of Merriman, and the company had gone bad; so we spoke to Godstrey one day; wanted to know if he would buy Merriman's stock; he said, "Yes, I think I will." So we had a meeting of the company, and Godstrey bought Mr. Merriman's stock, and at that time we made him manager of the company.

Q. Has he been manager ever since? A. Yes sir.

Q. After the accident last January, did Mr. Godstrey speak to you about that accident? A. Yes sir, he did.

Q. When do you remember? A. Why, I believe in the afternoon; Sunday afternoon, I believe.

Q. Did you give him any instructions? A. I told him to fix it up the best way he could.

Q. In January, or at the time of the accident, who was operating the taxi cab?

MR. KEPPLER—I object to that.

A. The Undercliff Taxi Company.

MR. KEPPLER—I object to that on the ground that it calls for a conclusion. That is a question for the jury to decide.

THE COURT—He may answer the question.

MR. KEPPLER—I except.

A. The Undercliff Taxi Company corporation.

Cross-examination by Mr. Keppler:

Q. Mr. Gantert, you are a tenant of Mr. Godstrey, aren't you? A. Yes sir.

Q. You are in the liquor business down at the ferry? A. Hotel business.

Q. I don't mean the liquor business; I understand you have a Cafe down there. You have a hotel down there at the ferry? A. Yes sir.

Q. Mr. Godstrey spends most of his time down there, doesn't he? A. What do you mean, in my place?

Q. Yes? A. No sir.

Q. He is down at the ferry all day long, isn't he? A. I don't know where Godstrey is. I guess he is attending to business.

Q. His business is down at the ferry? A. At the garage, I guess.

Q. Don't you see him down around the ferry or in your place the largest part of the day? A. No sir.

Q. You are not unfriendly with Mr. Godstrey, are you. A. No sir.

Q. Has he any interest in your business? A. Only as a landlord.

Q. He is your landlord? A. Yes.

Q. How long does your lease run? A. I don't know.

Q. Is that the best answer you can make? A. Yes.

Q. Mr. Gantert, you were a Freeholder for how long?

MR. WRIGHT—I object to that as immaterial.

THE COURT—Answer it.

A. Two years.

Q. When did your term expire? A. Last January.

MR. WRIGHT—I object to that.

THE COURT—How is it material?

MR. KEPPLER—It is material to find out whether or not, in the capacity of Freeholder, there was work awarded to this taxi company; whether bills were rendered and paid while he was Freeholder and whether he was interested in it.

THE COURT—The objection will be sustained.

MR. KEPPLER—I respectfully except. I would like to have the bills marked for identification.

MR. WRIGHT—They have not been identified.

MR. KEPPLER—I would like to have the papers marked for identification.

THE COURT—Yes, you may have them marked.

JOHN J. GOULD, sworn in behalf of the defendant, testifies as follows:

Direct examination by Mr. Wright:

Q. Mr. Gould, you are a police officer of the Borough of Edgewater? A. Yes sir.

Q. And were on January 16th, 1916? A. Yes sir.

Q. Do you remember seeing Mrs. Nell in the early morning, of Sunday morning, the 16th, I think it was—Sunday the 16th or the 15th? A. Yes sir.

Q. What time did you see her? A. About a quarter to four.

Q. Where did you see her? A. In the ferry house.

Q. Did you speak to her or she speak to you? A. No sir, I had occasion to go and pull my police box —box 22, Hudson Avenue. I met the colored porter on his way down. I said good morning to him.

Q. You met the colored porter; what did you do? A. I bid him good morning. I asked him where he had been. He said he was up to the taxi company's garage. He said he had two ladies down at the ferry house that could not get home. I said—he was up to see if he could get somebody; I said, "Didn't you see anybody?" He said, "No." I said, "I guess there is somebody there." So I went up; I found this Paddy here—I don't know his second name—and told him about it. "Well," he said, "all the cars are all in; the chauffeurs have all gone home, and, well," I said——

MR. KEPPLER—I object to any more conversation between him and Dowdell.

MR. WRIGHT—That is a part of the res gestae, if the Court please. I think it is perfectly competent, particularly under

the case just decided, of somebody against Okin, which was reversed for the rejection of a very similar question.

THE COURT—The jury will be excused until Monday morning at 10 o'clock. If you want to argue the question out now, I will take your argument at the present time.

Hackensack, N. J., June 5, 1916, 10 A. M.

JOHN J. GOULD resumes the stand.

THE COURT—I am going to allow the question over your objection. You may have your exception.

MR. KEPPLER—I respectfully except.

A. (The pending question having been read to the witness.) Well, it is just this way: I asked him, and he said the cars were all out and the chauffeurs had all gone home. I told him that there were two ladies down there that wanted to get home. "Well," he said, "I cannot go out. I don't like to do it." I said, "All right, I will tell them." So he just turned around, hesitated a little bit and said, "Well, I will take them." I said, "All right." I went down to the ferry house and told the ladies that the taxi would be there. She came right out and got in. That is all I know.

Q. That was the first time you had seen the lady when you went back and got the taxi cab? A. Yes sir.

Q. You are a police officer in Edgewater? A. Yes sir.

Q. Were you around all day, most of the time?

MR. KEPPLER—I object to that.

A. I wasn't around all day.

MR. KEPPLER—It is entirely immaterial and irrelevant.

Q. Did you ever see Paddy driving a car? A. No, sir.

MR. KEPPLER—I object to that, on the ground that the evidence already is that this man only worked at certain hours of the night, and this man is a day man.

MR. WRIGHT—Who is a day man?

MR. KEPPLER—I furthermore object whether he saw him drive a car on the ground that it is incompetent no foundation laid, entirely incompetent and immaterial.

THE COURT—I will sustain the objection.

MR. WRIGHT—You ruled against me?

THE COURT—Yes.

MR. WRIGHT—Exception, please.

THE COURT—You may have your exception.

Cross-examination by Mr. Keppler:

Q. What time was that, do you know? A. About twenty minutes after four, when she left the ferry.

Q. Mr. Gould, aren't you in error about that being twenty minutes after four? A. No sir.

Q. Do you remember signing this statement (showing paper)? A. (referring) Yes, I signed that.

MR. KEPPLER—I offer that in evidence.

MR. WRIGHT—I object to it going in evidence, as not proper evidence, in competent.

THE COURT—How can it be material?

MR. KEPPLER—In a statement he says——

THE COURT—Well, you can use the statement to dispute the testimony, but you cannot put it in.

Q. You signed a statement on February 11th, reading as follows: "Two ladies, Mrs. Nell and Miss McGintee, came there on the 3 o'clock boat——

MR. WRIGHT—I object to that.

WITNESS—Never said anything of the kind, because I did not know she was in the ferry house until I met the colored man; did not know she was there.

Q. You read English, don't you? A. Yes, sir.

Q. You have been a police officer for how long? A. Ten years.

Q. Prior to that you had a business concern, didn't you? A. No.

THE COURT—Mr. Keppler, there is no question in this case, under all the testimony, as far as the Court recalls, but what it indicates that she came over on the 3.55 boat, and that she got the taxi cab there, as she says, waited about 15 minutes for it, and your own witnesses testify that the accident occurred about two miles away from the station, at 4.30.

MR. KEPPLER—I don't know what time the boat went over.

MR. WRIGHT—About 3.55, from all the evidence.

MR. KEPPLER—I don't know when they got over.

THE COURT—Fixing the time, under all the circumstances, it is indicated from the testimony in the case that she must have left the ferry about a quarter after four.

Q. Well, the last car starts out at 3 o'clock; what time does the last car go out, Mr. Gould? A. The last car? At that time?

Q. Yes? A. I guess it was around 3 o'clock.

Q. And do you know what time the ferry boats ran at that time, the hours they went? A. I believe every hour then.

Q. Do you know whether a person who missed the 2 o'clock boat would have to wait until 3 o'clock? A. Yes.

Q. There was a little ice in the river at that time, wasn't there? A. That I don't know.

Q. Your memory as to time was better on the 11th of February, than it is to-day, wasn't it? A. Well, there was nothing to blow about. It could run better.

Q. Your memory as to what boat it was was better on the 11th of February than it is to-day, wasn't it? A. Well, I don't know.

THE COURT—Do the cars wait for boats?

WITNESS—Yes sir; but that happened to be Sunday morning, you know.

THE COURT—I mean the cars that meet the boats; if the boats are delayed by the ice a few minutes, do the cars wait for the boats?

WITNESS—Yes sir.

Q. If a person came over on the 3 o'clock boat, they would miss the car, wouldn't they, because the last car goes out at 3 o'clock and the boat leaves New York at 3 o'clock? A. Well, I don't know.

Q. You stated on the 11th of February that they came over on the 3 o'clock boat—— A. I did not state that, because I did not know what time they came over. I did not know they were in the ferry house at all.

Q. You did sign a paper on the 11th of February? A. Yes, but I did not sign that.

Q. Well, isn't this (showing) your signature? A. This is my signature, but I never said that.

Q. Did you read this before you signed it? A. No, I don't think I did.

Q. Do you sign papers usually without knowing the contents of them? A. I was in a hurry at the time to go on duty.

Q. Didn't you tell Mr. Sheehy they came over on the 3 o'clock boat? A. I didn't because I could not say so; I did not know they were in the ferry house; I did not know they were in the ferry house.

WHITMORE ROBINSON, sworn for the defendant, testifies as follows:

Direct examination by Mr. Wright:

Q. Mr. Robinson, where do you live? A. Hackensack.

Q. Where did you work on the 16th of January, this year? A. Fort Lee ferry.

Q. That is at Edgewater? A. Yes, Edgewater.

Q. Doing what? A. Porter.

Q. Were you in the ferry house? A. In the ferry house.

Q. Were you on duty that morning of the 16th? A. I was.

Q. Did you see this lady, Mrs. Nell, that morning? A. I did.

Q. Do you remember what time it was when you first saw her? A. About five minutes after four.

Q. Can you tell us at what time the ferry boat arrived from New York? A. Arrived about five minutes after four.

Q. What was the time they were supposed to get in, from one or two o'clock on? The boat got in there at what time near 2? A. The boat left New York at 2 o'clock and arrived in Jersey about 5 minutes after 2.

THE COURT—Does that catch the car?

WITNESS—That catches the last car from the ferry.

THE COURT—The 2.05 is the last car?

WITNESS—2.05 is the last car; the car leaves at ten after two; schedule for the car to leave the ferry.

THE COURT—Ten minutes after two?

WITNESS—Ten minutes after two.

Q. Then there is no car from that time until when? A. No car from that time until 5.40, 5.55 and 6.25.

Q. The first one is what, 5.40? A. That is the boat Englewood.

Q. What is the first car to Hackensack? A. 6.25 on Sunday morning.

THE COURT—How do the boats run after 2 o'clock?

WITNESS—The boats from New York is 2 o'clock; next one is 2.45, next one is 3.55; that is the last boat.

Q. Where did you first see this lady? A. First saw her passing out the gang-way.

Q. That is coming out on the—— A. Coming up to the street.

THE COURT—At what time?

WITNESS—4.05. At 4.05.

THE COURT—4.05?

WITNESS—Yes sir.

Q. She spoke to you? A. She did not; not on passing out.

Q. Did she afterwards speak to you? A. After they all passed out. There was about a dozen or more people that same time coming from the boat—I opened the gate and closed the gate after they all passed out. After they all passed out, they all stopped in front of the ferry house, seemed to be looking around for cars. Of course the cars are in.

They did not seem to know which car to take or whether there were any going out. They all stopped in front of the ferry house. I said there would be no cars here for a few minutes. I noticed them, because they were looking for information about cars, walked on out in front of the ferry house, and the two ladies—I noticed they were looking around, so I told them that there was no more cars until 5.40, 5.55 and 6.25. So they said, "Any taxi cabs?" I said, "Well, there was a taxi around here." I looked around to see if I could see the chauffeur. I did not see anything of him. So then I said, "I will go up and see if I can find the chauffeur." She said, "All right, I thank you." So I turns off from them and started up, off to the garage, and after walking on, I met Mr. Gould.

Q. Who? A. Mr. Gould, the policeman, asked him, "Is Whitie around?" He said, "I don't know; I don't think he is."

THE COURT—Who do you mean by Whitie?

WITNESS—The chauffeur.

THE COURT—Is that Dowdell?

WITNESS—No sir, that is Whitie.

Q. Bob White, is that the man you mean? A. That is the man. He was on duty that night, the chauffeur that night. I asked him if Whitie was around; he said, "No, I don't think he is; that he had trouble in Englewood, and I don't know whether he got back. When he gets back, I guess he will turn in." I went up anyway, and when I got up to the garage, I could not find anyone at the garage; turned around and came back.

Q. You did not see anybody at the garage? A.

Not any one at all. I come back to the ferry, and then before I could get to the ferry, I saw Mr. Gould; I said, "I could not find him." He said, "No." I said, "No, I could not find him." I went over to the ferry house; went on in and informed the two ladies that I could not find anyone. This lady here (indicating) she gave me a quarter and I thanked her and she passed my gate, and I let her go in; she wanted to go in the ferry house. I let her in the ferry office, she went in to telephone and I went on about my business. A few minutes later she called to me and I went over to her; she said, "He don't believe what I say; will you come here?" I said, "I will." I went inside the ferry house.

THE COURT—What did you say, "He don't believe——

WITNESS—He don't believe what I say.

Q. She said that to you? A. She said that to me.

Q. What was she doing then? A. She was going to the telephone booth, to telephone to some one. "He don't believe what I say." I went over in the ferry house; there was a turnstile there, and went in the telephone booth, and picked up the receiver. She spoke in the telephone, she said, "John, here is the colored porter." He said, "There is no use, I don't want to speak to any God damn nigger." I said, "No, I dont care to speak to him." And laid the receiver down and I went on about my work as usual. A few minutes later Mr. Gould came in. He said he had found a man; he would be there. So they said, "All right," and I left them at the ferry house, and went around through the office

again, and at that time, the man came down for them, and they went on their way.

Cross-examination by Mr. Keppler:

Q. You do housework for Mr. Godstrey, don't you? A. No, sir.

Q. Don't you ever do any work for him at all? A. No, sir.

Q. Sure of that? A. Certainly.

Q. Well, why did you hesitate? Didn't you know whether you do any? A. I said I did not.

Q. How long have you been working for the ferry? A. Two years.

Q. During that time, you saw Mr. Godstrey every day, didn't you? A. I don't know whether I saw him every day. He came over there and I saw him there.

Q. You are very intimate with him, aren't you? A. I see him around there.

Q. You know him very well? A. I know him whenever I see him, and never transacted any business or anything with him.

Q. Isn't it a fact that when you quit work there —you work at night, don't you? A. Work on 24 hours shift.

Q. Isn't it a fact that when you get through you go up in his place and tidy things up for him? A. No, sir.

Q. Never been in his house? A. No, sir.

Q. Don't even know where it is? A. Oh, yes, beg pardon. I was in his house once, in the house he lived in, but I was up to see a captain by the name of Sohn; not to see him.

Q. You knew where his house was, didn't you? A. I did.

Q. You say that you looked around for Whitie; he was the chauffeur? A. I did.

Q. Did you expect to find him there? A. I did.

Q. Aren't you in error when you say this was 4 o'clock instead of 3 o'clock? A. No, sir.

Q. How did you expect to find the chauffeur there after it was 4 o'clock? Didn't you know that those chauffeurs all go home at 3 o'clock in the morning? A. No, sir.

Q. You have been there for two years? A. I have been there for two years.

Q. Did you hear the testimony of Mr. Godstrey that they all got in at 3 o'clock? A. Well, I heard the testimony all right, but they all don't get in at 3 o'clock at all times.

. You mean that they are often busy and don't go in, is that it? A. Well, the reason I say that they all don't go in at 3 o'clock is that last night the man was there until 4 o'clock. Sometimes they are there until 4 and sometimes they leave there earlier. I don't know just the hours they leave.

Q. The fact that he referred to you as a nigger, that did not make any difference to you at all? A. Well, I tell you, I did not feel so good over it.

Q. Has that got anything to do with the fact that you say it was 4 o'clock instead of 3? A. Not anything at all.

Q. Aren't you mistaken when you put in the words "God damn"; isn't it a fact that he said he did not want to talk to a nigger? A. Did not want to talk to any damn nigger; that is his words.

Q. Then you change it to damn, don't you? A. I don't know as I change it any.

ROBERT W. WHITE, sworn for the defendant, testifies as follows:

Direct exanination by Mr. Wright:

Q. Mr. White, where do you live? A. Edgewater.

Q. What is your business? A. Chauffeur.

Q. Who do you work for?

MR. KEPPLER—One moment, I object to that as a conclusion.

THE COURT—What? Whom he works for?

MR. KEPPLER—Yes, he can give the conversation, who hired him and what was said. Further, I object on the ground that it is entirely immaterial who he is working for.

THE COURT—The question will be allowed.

MR. KEPPLER—I respectfully except.

A. The Undercliff Taxi Company.

Q. How long have you been working for that company? A. Working since the 20th of April, last year, 1915.

Q. Were you working on the 16th of January this year? A. Yes, sir.

Q. Were you on duty that night, on the 15th or the early morning of the 16th? A. Yes, sir.

Q. What time did you leave the stand at the ferry to go home? A. About 3.45.

Q. Did you leave before the 4 o'clock boat came in? A. Yes, sir.

Q. Were you there when the 3.05 boat came in or the 3 o'clock boat?

MR. KEPPLER—I object to that as leading the witness.

A. I came away after that boat.

MR. WRIGHT—I am not leading.

THE COURT—It is very close to it. I will allow it.

Q. Were you there with your taxicab at that time? A. Yes, sir.

Q. How long had Dowdell been working around the garage, do you remember, at that time? A. I don't just remember the length of time he had been working there.

Q. What was he doing around there? A. Washer; washed cars.

Q. Ever see him doing anything else? A. No, selling gas and oil; that is about all I seen him do.

Q. Did you ever see him driving cars? A. No, sir.

MR. KEPPLER—I object to that. There is no evidence that he was around working and could have seen him.

THE COURT—He has answered the question. The question was whether he ever saw him driving a car.

MR. KEPPLER—That is the question I object to.

THE COURT—The objection will be sustained.

MR. WRIGHT—Exception.

THE COURT—You may have your exception.

Cross-examination by Mr. Keppler:

Q. Mr. White, did you ever have any breakdowns?

A. No, sir.

Q. Your car never broke down? A. No, sir—outside of tires.

Q. What is that? A. Outside of tires.

Q. These little slips that you get in your business, they represent the Edgewater garage, don't they? A. The Undercliff Taxi.

Q. They represent the Undercliff Taxi? A. Quite sure.

Q. Since when? A. Always.

Q. You mean to say that—— A. We have our slips made out to the Undercliff Taxi; all slips made out to the Undercliff Taxi.

Q. Since When? A. Ever since I have been working there.

Q. Have you got any of them with you? A. No, sir.

Q. Isn't it a fact that they all represent——

THE COURT—What slips are you referring to?

MR. KEPPLER—The slips the customers have.

WITNESS—The customers don't have no slips.

Q. When you make your reports, don't you make your reports on a little sheet that represents the Edgewater Garage? A. No, sir, we make them on a big sheet.

Q. Did you get any different sheets than Mr. Moore received? A. Than what?

Q. Than the other—you know Moore, don't you? A. Jack Moore?

Q. Yes? A. Yes.

Q. You heard his testimony here, didn't you? A. Yes.

Q. Who hired you? A. The Undercliff Taxi.

Q. I know that; I mean what person hired you? A. Walter Godstrey.

Q. You are still working for the same company, aren't you? A. Yes, sir.

Q. Who gets you your report sheet? A. They are in the office; take them.

Q. What did you do with the tickets that you made your reports out on? A. Left them in the office there at all times.

Q. Do you remember the day that Dowdell towed you in? A. Dowdell never towed me in.

Q. Don't you remember having a breakdown and you telephoned and Dowdell towed you? A. Dowdell never towed me in.

Q. What time do you usually quit working? A. All times.

Q. According to whether you have a fare or not, don't you? A. We have four different shifts.

Q. The last shift is—— A. Three o'clock; supposed to get in.

Q. If you have a call to make, then you do not go in, is that right? A. Yes, sir.

Q. Did you ever see any sign anywhere of the Undercliff Taxi Company? A. What do you mean, sign?

Q. Any sign, any trace at all of the Undercliff Taxi Company? A. Never seen any sign, no.

Q. There is a sign on the outside of the garage, which reads, "Taxicabs for hire," some words to that effect? A. No, sir.

Q. Isn't there any words like "Taxicab" on the outside of the garage? A. No, sir.

Q. Isn't there anything on the outside of the garage that refers to the fact that automobiles may be hired there? A. No, sir.

Q. You are positive of that? A. Quite positive.

By Mr. Wright:

Q. Does the condition of the weather have anything to do with the time you stop work at nights when you are on duty? A. No, sir, we go through rain or anything; keep our hours.

PATRICK DOWDELL, sworn for the defendant, testifies as follows:

Direct examination by Mr. Wright:

Q. Mr. Dowdell, where do you live? A. West Fort Lee.

Q. Where are you working? A. For the Undercliff Taxicab Company, Edgewater.

Q. How long have you been working there? A. Since last September.

Q. Doing what? A. Washer.

Q. What were you hired to do?

MR. KEPPLER—I object to that.

THE COURT—Let him give the conversation.

A. I was hired as a washer.

Q. Have you ever done any driving? A. I drove out of the Edgewater Garage twice; two mornings in September for Doctor Beckley.

Q. In September? A. Yes, sir.

Q. For whom? A. Doctor Beckley.

Q. Doctor Beckley? A. Yes, sir.

THE COURT—What kind of car?

WITNESS—Ford.

THE COURT—Whose car was it?

WITNESS—Edgewater Garage.

Q. Since that time, did you ever drive? A. No, sir, excepting on the 16th of January.

Q. Why didn't you drive? Did anybody tell you not to——

MR. KEPPLER—I object to the form of the question, as leading and suggests an answer.

THE COURT—The last one, yes; you may answer the question why didn't you drive.

WITNESS — Mr. Godstrey told me never to take a car out of the garage because I was hired as a washer, and must be on there at all times during the night.

Q. Was there anybody else in the garage all night besides yourself? A. No, sir.

Q. On this particular night who first came to you about taking these ladies to Bogota? A. The first man I saw was Officer Gould.

Q. How did you come to take the ladies? A. The officer came up——

A. The officer came up——

MR. KEPPLER—I object to that.

THE COURT—What is the objection?

MR. KEPPLER—On the ground that it is entirely immaterial, and calls for the operation of the witness's mind; doesn't relate to the conversation or what he did.

THE COURT—It relates to the facts as to how he entered into this drive. I will allow the question. You may have your exception.

A. Officer Gould asked me if there were any drivers around. I says no. "Tell us what you have." He said, "Two ladies down at the ferry want to go to Leonia." He said, "You are not supposed to go off, are you?" I said, "No." "Well," he said, "I will go back and tell them." I said, "No, I will take a chance and go."

Q. You went down and got them, did you? A. I went down and got them.

Q. Tell us how the accident occurred; where did it happen first? A. I went down to the ferry and got them, went up the River Road, and as we were going up the Fort Lee hill——

Q. When you say the Fort Lee hill, what do you mean? A. Main Street.

Q. Up Main Street? A. Main Street.

Q. Just above the garage there? A. Just above the garage; south of Beekman Street.

Q. I show you Exhibit P. 5; that shows the hill? A. That shows the hill, yes.

Q. You were going up about where, when the trouble started? A. Right there (indicating); I could not make that hill; about the middle of that hill.

Q. Make a little circle there with a pencil about where you were? A. (Referring.)

MR. WRIGHT—(to the jury) This is the picture that shows the entire hill; marked about half way up that hill.

Q. Now, go ahead and tell us what happened? A. The car began to stop, stall, and it backed on that; I knew it wasn't getting gas. I backed the car down the hill and put the hind wheels against the curb.

Q. Against what curb? A. The south side of the street.

Q. Can you show us on this picture approximately where you backed the hind wheels against the curb? A. (Referring.)

Q. I refer to Exhibit P. 5? A. Must be right about there (indicating).

Q. You made a straight line against the curb? A. Yes, sir.

Q. Indicating approximately the point? A. Yes, sir.

Q. That was just a little bit over south of the place where the trouble started? A. Yes, sir.

Q. Go on? A. I had the front wheels facing up the hill; I cranked the car over for a couple of seconds, and she would not start. I stood still, to give it a chance to get in the carburetor and as this Italian fellow came up, he said, "What is the matter, Jerry? In trouble?" I said, "No, not in trouble; the carburetor ain't getting gas that is all." So this Italian fellow went on a little while and I waited to give the gas a chance to get down in the carburetor, and Mrs. Nell said, "Driver, will you open the window for me, I feel faint?" I went around to open the window, and as I was going around to open the window, my overcoat catches on the valve cap on the front right wheel. I don't know what was holding my car; I gave my coat a pull, and that swung the car down the hill. The car began to work down the hill; my coat went

around the hub. I pulled and jerked on my coat and after I got my coat loose, I jumped in the seat and got in the seat, and Mrs. Nell jumped out. There is a fork of the road there, and at the fork of the road, I had to swing the car down the hill toward Edgewater, and I had that car stopped in front of the garage. I looked back and found——

Q. Show us on that same picture, P. 5, about where the car stopped. Mark that with an X. A. There (indicating) is where I think I turned the car over.

Q. Where was it stopped? A. Right about here (indicating).

Q. The X in the middle of the road, about opposite the door of the garage. Go ahead?

MR. KEPPLER—Where did you say the car stopped?

WITNESS—Right by the door of the garage.

MR. KEPPLER—Where did it start?

MR. WRIGHT—I object to interferring with the witness.

THE COURT—Proceed.

Q. Go on, Mr. Dowdell? A. Then I looked back and seen this young girl, that she had jumped out. I stopped the car and ran back. She said, "See how my sister is." I went back. I said, "She is hurt, but she is not very bad, as I can see." I came back. She said, "Will you take me back to my sister? Maybe I can help her." I takes her up and puts my hand around her arm, this way, and raised her up, and lifted her off the ground. I carried her back and put her by her sister. She asked me if I could go back and get her hat and muff. I

went back and got them. Then I went back and got the car. After I started the car, I got in the seat, released the brake and turned on the switch, and while the car worked off a few feet on the power it started itself and as I backed the car up, I seen the two officers coming down the hill.

Q. Then what happened? What did you do with the car? A. Then the officer here——

Q. What is his name? A. (Indicating.)

Q. Which one is that? A. The one on the right. He asked me what was the trouble. I said, "I could not make that hill; ain't got enough gasoline." He said, "Instead of going up that hill, go up around the sawmill and go up to Doctor Wyler's." We put them in and I went up to Doctor Wyler's.

Cross-examination by Mr. Keppler:

Q. What would you have done with the money that you would have gotten for that trip if the thing had gone all right?

MR. WRIGHT—Objected to as immaterial, incompetent and irrelevant; calls for a conclusion.

THE COURT—How is it material?

MR. KEPPLER—I will change the form of the question.

Q. What did you intend to do with the money?

MR. WRIGHT—I object to that; calls for a conclusion; immaterial.

THE COURT—I will allow him to answer.

MR. WRIGHT—Exception.

A. I intended to make a slip of it and put it in the cash book for the bookkeeper.

Q. The same as you had done before? A. The same as I had done on two occasions with Doctor Beckley.

Q. You drove Doctor Beckley late at night? A. No, early in the morning; between 5 and 7.

Q. Did you make emergency calls? A. Where a man had a broken leg and another had a paralytic stroke, I helped the doctor to take care of them.

Q. He had no objection to that? A. I told him there was no objection.

Q. And you turned in the money for those women? A. I turned in a slip.

Q. When was that? A. In September.

Q. After you had the accident in New York? A. That was last September.

Q. When did you have the accident in New York? A. In September.

Q. How long away was that from the time you had the accident in New York, that you drove Doctor Beckley? A. The accident happened in New York about a week before that.

Q. You drove Doctor Beckley the first time a week after you had the New York accident? A. Yes.

Q. And the second time? A. About a week after that.

Q. About what day in September did you go to work there? A. I think it was around the 8th; I just don't know the date it was.

Q. How long after you started to work there did you have that accident? A. About a week.

Q. How long had you been a licensed chauffeur? A. One year.

Q. New Jersey? A. No, sir.

Q. What is that? A. Not in New Jersey. I had a 1915 license in New Jersey; I got that in September.

Q. Who got you the license? A. I got it myself.

Q. Who paid for it? A. I paid for it myself.

Q. You got it when you came over to Jersey to work, didn't you? A. Yes, sir.

Q. You had a license in New York, before that, hadn't you? A. Yes, sir.

Q. You told Mr. Godstrey that you had made those calls for Doctor Beckley? A. No, sir, I did not; I believe the bookkeeper, Mr. Campbell.

Q. What did Godstrey say to you about it? A. He did not say nothing to me about it.

Q. What did he say when he found out that you made the calls? A. I don't know whether he found out or not.

Q. You are still working for him, aren't you? A. I am, yes, sir.

Q. Just what did you do in that garage, Dowdell? A. Washed automobiles, polished the brass, sell gasoline and oil, if necessary. In the Winter time I had to take care of the fires.

Q. Suppose a man came by with a flat tire at night, you would fix it up for him, wouldn't you? A. If he wanted me to fix it, I would run it in the garage and would fix it up, and that would be mine.

Q. Any little thing that might have to be fixed up any time, that you could fix up, you would fix up? A. I did, and that would be mine.

Q. You were alone in that garage from the time those cars came in at 3 o'clock, whatever time they came after 3 o'clock until the men came to work in the morning? A. Yes.

Q. What instructions did you get about any emergency that might come up at night? A. I did not get no instructions.

Q. I mean, if there was a party in trouble, wasn't it your duty to take care of whatever occurred in that garage? A. One time there was a fire and the chief called for a car; I told him there were no drivers here; he said, "This is a hell of a garage." I said, "Well, there are no drivers here; let them walk."

Q. I mean outside of that. I don't mean any emergency calls for automobiles; I mean for anything that came up there at night, you used your best judgment to take care of it?

MR. WRIGHT—I object to that.

A. If a car came for to get gas or water, why——

MR. WRIGHT — Objected to as immaterial, calls for a conclusion, what he did.

THE COURT—He has answered; it won't do any harm. Proceed.

Q. Who hired you when you went to work there? A. Mr. Godstrey.

Q. Mr. William Godstrey? A. Mr. William Godstrey.

Q. This night was a cold night, wasn't it? A. Yes, it was.

Q. You stated to this jury that Officer Gould told you—what, when he came up there? A. He said there were two ladies down at the ferry; would like to go to Leonia, and asked me if there were any drivers around. I said, "No, Bob just pulled in and has gone home." He said, "Well, they can't get it then." I said, "Well—" He said, "You are not

allowed to go?" I said, "No." He said, "I will go back and tell them," and I said, "I will go and take a chance."

Q. Who have you discussed the case with, Dowdell, before you took the witness stand to-day? A. Nobody.

Q. Do you mean that? A. I mean it.

Q. Do you mean to say you never discussed the testimony that you were going to give here with a living human being? A. No, sir, I have not.

Q. You understand my question, don't you? A. I understand. I was called to give information.

Q. You understand you were asked to come here and tell the truth? A. Yes, sir, I know it.

Q. You still persist in making your answer, that you never discussed the testimony you have given here with a living human being? A. Not this morning. One time I talked with Mr. Godstrey about the accident, and also with Mr. Sheehy on five different occasions.

Q. That is the only conversation you had with anybody? A. That is all.

Q. Did anybody ever tell you to say that Officer Gould said to you, "You are not allowed to take the car out?" A. They did not.

Q. What did Gould know about your previous business? A. Because Mr. Godstrey had given the officer that information.

Q. Were you there when he gave it to him? A. No, sir, but I had found that out.

Q. Who told you that? A. One of the drivers—Fitzpatrick.

Q. You remember Gould's testimony, don't you? A. I do.

Q. You did not hear Gould make any such state-

ment, did you? A. No, I did not; but that is what he told me.

Q. You are positive he told you that you were not allowed to take a car out? A. He said, "You are not allowed to take a car out, are you?" I said, "No, I am not." "I will go back and tell them that." I said, "I will take a chance, Jack." Those are the words I said to him.

Q. You usually obey your employer's instructions? A. I am supposed to obey them.

Q. On this particular occasion you want the jury to understand that you disobeyed your employer's instructions? A. I do.

Q. You have not been told by anybody that the whole case may be decided on a question whether or not you disobeyed your employer's instructions? A. I disobeyed them.

Q. You have not been told by anybody? A. No, I have not.

Q. Do I understand you correctly as stating that you took an automobile from your employer without his knowledge and permission and against his instructions? A. I have—to accommodate these two women.

Q. You never saw the women, did you? A. I did not.

Q. Did not know who they were? A. No.

Q. Did not know anything about them? A. No.

Q. And you still persist in saying that you disobeyed your employer's instructions to oblige the two women? A. I do.

Q. After the officer had called to your attention that you were not allowed to do that? A. I did.

Q. You could not be mistaken about that, could

you? A. No, sir; I remember it just as well as though it happened this morning.

Q. What fixes in your mind so distinctly the words that Officer Gould used? A. Because I remember just as well as if it happened this morning.

Q. Give me the exact words that he used? A. He said, "Is Bob around?" I said, "No, Bob has just pulled in and gone home." This was 4 o'clock. He said, "Well, there are two ladies down there that want to go to Leonia." He said, "You are not allowed to take them, to go out?" I said, "No," and he said, "Well, I will go back and tell them that." I said, "No, Jack, I will take a chance."

Q. How many other times before that had you been taking chances? A. I did not take any chance at all, only a few days, with Doctor Beckley, and then I was instructed not to take them out for anybody.

Q. When were you instructed? A. After I had the accident in New York.

Q. You did go out and make two calls after you had the accident? A. Only when I went out with Doctor Beckley.

Q. Contrary to instructions? A. No, it wasn't contrary; there was nothing said then about it.

Q. How many times were you told not to take a cab out? A. Only on one occasion.

Q. That was the only time Godstrey ever told you not to take a cab out? A. That is all.

Q. Where was it he told you that? A. In the garage.

Q. When. A. Some time in September; I don't know just the date.

Q. What part of the day was it? A. Six o'clock at night, when I started to work.

Q. Where was that he told you, what part of the garage? A. Front door of the garage.

Q. Out in the street? A. No, inside of the garage.

Q. When you came to work he told you never to take a car out again? A. Yes.

Q. There was nobody present but you and him? A. There was Campbell there; half a dozen fellows sitting in the office.

Q. Half a dozen fellows? A. Yes.

Q. Who were they? A. One fellow there, a long-haired fellow, and another driver. I was turning in money; Campbell was there. I did not know the other fellows that was there.

Q. And despite the fact that he told you in the presence of these people, you went and made those calls with Doctor Beckley? A. That was after I got the call from Godstrey.

Q. Have you received any other calls at night? A. I received a call from the fire chief.

Q. Any other? A. No.

Q. It is a rare thing for you to get a call at night, isn't it? A. No, wouldn't find a call there once a month for 3 or 4 o'clock in the morning.

Q. So that the only requests ever made to you were the two of Doctor Beckley, one of the fire chief and the one for these two women? A. There was a party that wanted to go up to Englewood about a month ago, one fellow with two women. I told him it was impossible.

Q. You mean last May? A. About April, the latter part of April.

Q. Just about the time this case was on the calendar? A. I don't know what time it was put on the calendar.

Q. Can you point out on these pictures where

Miss McGintee lay when you first came up to her? Show us and point out the spot where Miss McGintee lay? A. She laid in between here (indicating) and there.

MR. WRIGHT—The witness is now referring to Exhibit P. 5.

WITNESS—There (indicating) is where Mrs. Nell lay, right at the fork; and about there (indicating) is where Miss McGintee lay. There (indicating) is where I brought my car to a stop.

MR. WRIGHT — (referring) The one marked where you say Mrs. Nell laid is on the north curb, just a little ways north of the fork, is that right?

WITNESS—That is right.

THE COURT—And the point where Miss McGintee laid is a little further south, right where the limb crosses the street in the picture?

WITNESS—I don't know; it was different with me on the street ahead.

MR. WRIGHT—That is the place you made the mark?

WITNESS—That is it.

MR. WRIGHT—Right near the limb of the tree, where it crosses the street?

WITNESS—That is it.

MR. WRIGHT—About where the south curve makes the turn?

WITNESS—Yes, sir.

Q. Now, Dowdell, you never carried Mrs. Nell from where she fell originally, did you? A. I did.

Q. Mrs. Nell? A. Yes, Mrs. Nell. I sat her up on the curb there.

Q. And then she remained where she fell until she was taken up to the hospital, is that right? A. No, I moved Mrs. Nell over to the curb and sat her on the curb.

Q. Exactly. And she remained in that position? A. Yes.

Q. And she was sitting on the curb right near where she fell? A. Yes.

Q. When you went up the hill, you did not go up the same way; you went around the hill? A. No, went around.

Q. And came back through Bigler Street? A. That is right.

Q. When you came to Bigler Street, you stopped at the corner of Bigler, didn't you? A. I did not.

Q. Where did you go? A. Went to Doctor Wyler's.

Q. I mean where did your automobile go to meet Mrs. Nell? A. At the fork of the road.

Q. Went down all the way to the fork of the road? A. I backed up to the fork of the road.

Q. You spoke about an Italian; he passed you going down the hill, is that right? A. Yes.

Q. That is the same Italian that was a witness here in Court? A. Yes.

Q. Where were you standing at the time the Italian saw you? A. I was standing on the side of the hill, on the south side of the street.

Q. Did you ever tell anybody about your brakes being bad? A. I did not.

Q. Did you say you had to stop your car with the

reverse pedal because your brakes were bad. A. I did not.

Q. They were all worn out? A. I did not.

Q. Did you tell Mr. Sheehy a day or two after the accident that some brake bands that you pointed to on the floor were the brake bands that come out of that car because they would not work? A. I did not point to any brake bands, because I did not see Mr. Sheehy until two or three days after the accident, except at my house.

Q. Did you put the brakes on when you stopped the car? A. I did; I thought I did.

Q. Do you want the jury to understand that despite the fact that you had the brakes on that car, that car ran down hill? A. I had them on, but did not have them on all the way, because you have to put the brake on to keep it out of speed.

Q. What do you mean, you did not have the brake on all the way? A. I did not have the brake all the way back; did not pull the brake all the way back.

Q. Why not? A. I had the hind wheels against the curb and the front wheels facing up the hill; I could not go back any further and could not go up.

Q. Your front wheels were pointed down the hill? A. Up the hill.

Q. Let us see: Why did you put your car against the side? A. To give the gasoline chance to flow into the carburetor.

Q. That is a gravity feed, isn't it? A. It is.

Q. That means that the gasoline runs down hill from the tank into the carburetor? A. It does when the tank is on the level.

Q. Now, Dowdell, isn't it a fact that you pointed the car so that the radiator would point down the

hill to give the gasoline, which was low in the tank, a chance to flow down into the carburetor? A. No. sir, pointed it right straight across the road, with the two hind wheels plumb against the curb.

Q. Is it not a fact that you did that, pointed the front wheels down hill so as to give the gasoline chance to flow into the carburetor? A. I had the two hind wheels plumb against the curb, and with the two hind wheels plumb against the curb, your car is straight across the road.

Q. Wouldn't it help the gasoline to flow into the carburetor if the car was pointing down the hill so that you had a greater angle, pointing down the hill? A. It would, but it would not be safe.

Q. That is why you say you did not do that? A. I did not do that.

Q. If you had locked those brakes, if you locked them tight, your car would never have started, would it? A. I don't know; I thought it was all right, on account of the wheels being faced up the hill.

Q. Was the car in speed? A. It was not.

Q. What do you mean? How do you account for the fact that the car started forward at the moment that you started the motor? A. I had it in speed. I put it in speed.

Q. When did you put it in speed? A. After I took Miss McGintee back to Mrs. Nell, and took the pocketbook.

Q. I mean in cranking the car, when you were at the top of the hill and you succeeded in starting the motor? A. The motor did not start.

Q. You are sure about that? A. Positive.

Q. The only thing that started this car down the hill was—— A. My coat caught on the valve cap.

Q. What do you mean by the valve? You mean the hub on the wheel? A. The valve cap is the valve that comes out near the top of the rim of the wheel, my overcoat caught on the end of that, and it swung the wheel down the hill. As it swung the wheels, I pulled my coat and my coat began to wind around the hub. I tore the end of my overcoat off, and I jumped in my car.

Q. Your explanation is that your overcoat caught in the valve of the tire? A. Yes.

Q. And your overcoat got inside, in between the spokes of the wheel and caught on there? A. It did.

Q. Where, on what part of the valve was the overcoat caught? A. I don't just remember; did not look.

Q. Where was it, below or above? A. I don't know. My coat was caught there, my overcoat.

Q. You did not see where the coat caught? A. I know the coat caught on the valve, because I tore it off.

Q. When the car started, you hung on to the front of the car? A. No, jumped on the seat, over the mud guard.

Q. With this coat of yours caught in the valve, you jumped on the seat of the automobile? A. Yes, on the seat of the automobile.

Q. What part of your coat caught on the valve? A. The end.

Q. Which end? A. The right corner.

Q. How did you jump on, to the right or left? A. On the right hand side of the automobile.

Q. I mean from where the coat caught—to the right of where the coat caught or to the left of where the coat caught? A. To the right of where it was caught.

Q. Then you must have jumped on the mud guard: You say to this jury that although your coat was caught, the front part of your coat was caught in the valve—— A. Yes.

Q. Of the tire; that you managed to get your body up on to the right side? A. Yes.

Q. Of that automobile? A. I did.

Q. And you could not be mistaken about that? A. No.

Q. You have not stated that in an endeavor to create some explanation of why the car went down the hill so very fast? A. Those are the true facts I am telling.

Q. Do you remember signing a statement of how this accident occurred? A. For Mr. Sheehy?

Q. Yes? A. I did, but I told him I would contradict it.

Q. Do you mean to say, Mr. Dowdell, that you signed a paper for him and told him at the time you would contradict it? A. I told him since I would contradict it.

Q. Oh, since that? A. Yes.

Q. But you had no desire to make a lying statement to him, when you signed it? A. The reason I wrote the statement is this——

Q. Just answer my question, did you or did you not intend to make an untruthful statement at the time you signed this paper?

THE COURT—You may answer yes or no.

A. I don't understand your question.

Q. Did you have any reason to deceive Mr. Sheehy as to what the true facts of this case were? A. He told me that Mr. Nell and Mr. Godstrey had came

to a settlement and there was to be no case; they could not make no case out of it, and I would never see or hear from him again.

Q. Will you please answer my question. Did you have any reason to deceive Mr. Sheehy as to the true facts at the time you signed the statement? A. Did I have any reason?

Q. Yes? A. He asked me to sign it. I said, "I don't care if I do. You will want to see Mr. Godstrey?" He said, "No, we will not. I have looked it up and tried to make a case out of this, and we find it was too unfortunate; Mr. Nell is very sorry for what happened to him; could not make no case. You will never hear from us again." I said, "Why do you want me to sign it?" He said, "Matter of form."

Q. Let me understand: He told you that this case was settled? A. That Mr. Godstrey and Mr. Nell had made a settlement that morning.

Q. What was the object of signing any statement if the case was settled? A. That is the way it struck me. He said it was a matter of form.

Q. Will you answer me one other thing. If that was so, why should you have signed an untruthful statement? A. I did not see whether it made any difference to me if there wasn't going to be any case.

Q. You did not care whether you signed an untruthful statement or not? A. No sir, I did not, not in that case.

Q. Do you remember this statement: "I ran back to the front of the car and tried to stop it by grabbing hold of the mud guard and while doing that, my coat got caught?" A. No, I don't.

Q. Was that statement correct or incorrect? A. I don't remember saying that.

Q. Did you read the statement before you signed it? A. I read some; could understand some and some I could not.

Q. What do you mean, you read some? Why didn't you read it all? A. Very poor writing; I could not understand it all.

Q. Just read it to me, start reading anywhere on the page; see if you have any difficulty in reading any part of it. Just read it loud to me. Find any part that you could not read a single word, that you could not understand?

MR. WRIGHT—I object to that.

THE COURT—The objection to reading it will have to be sustained.

Q. You read any part of it and find any part of it that you could not understand? A. (referring) That part (indicating) wasn't in there. This was written in right afterwards, since then.

Q. What is that? A. That part wasn't on there (indicating). That was blank.

Q. You mean, "If she could?" A. Yes, "If she could."

Q. You mean the words, "If she could" have been added since, so that Miss McGintee might aid her, if she could. Those words have been added since? A. Yes.

Q. You remember that distinctly? A. I remember that wasn't in.

Q. Go ahead. Find me any part of that statement that you could not read? A. No, that is all right.

Q. You have read the whole statement through and there isn't a single word that you could not

read? A. At the time I was asleep and just got up.

Q. Couldn't you read after you slept? A. Not very well, sometimes.

Q. Your ability to read is impaired after you sleep? A. I was asleep and he came around that day and I had just one hour's sleep. He got me out. I signed it to get rid of him.

Q. You have sworn under oath that the reason that you did not know what was in this thing was because you could not read parts of it? A. (referring) That was very poor, I said.

Q. You can read every word of it now, can't you? A. Yes, sir.

Q. Then you were not correct in the explanation that you gave, were you? A. That explanation, I was not.

Q. You may be incorrect in the statement that you make now about getting your coat caught in the valve of your tire? A. What I told you about my coat now is true.

Q. Do you remember this part of the statement: "While doing that, my coat got caught. I started to climb up over the hood, thinking in doing that my coat might become loose. Instead of that, I tore or slit it off." A. No, I don't remember saying that.

Q. You don't remember? A. No.

Q. You do particularly remember the words about Miss McGintee would help Mrs. Nell if she could. You remember those words being written in there. How do you account for the fact that you can remember the contents of that instrument and what was added in if you did not read it? A. I remember Miss McGintee told me that in the morning, the morning of the accident.

Q. That is not the question I am asking you. How can you remember what was or was not in that paper at that time if you did not read it? A. In fact I don't remember what was in it to tell you the truth.

Q. Do you remember this particular statement: "While I was on the hood, Miss McGintee screamed to me, 'You will get killed.' I said, 'No, I will stay a few minutes if I can make the car,'" do you remember that? A. "If I can make the car?"

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

Q. Do you remember this particular statement: "She was very much excited and I in a very dangerous position, trying to save the car, and do not think I said for them to jump, but I was so excited trying to stop the car that I hardly know what I was saying." A. I remember that because I contradicted him about that. I said, "I don't think so." I know I did not tell Miss McGintee to jump.

Q. It is a fact that you were in a dangerous position at that time, isn't it? A. Not so very dangerous.

Q. You don't think you were in a dangerous position? A. No.

Q. You don't consider the fact that your coat was caught, as you say, in the valve of a wheel—how long did your coat continue caught in there before you freed yourself? A. About 20 feet.

Q. How do you explain to this jury that if your coat was caught in a valve, and you are stating the truth, that you were not dashed over as that wheel went around there and you were not killed? A. Because I was on the moving car.

Q. You testified that the car went 20 feet, and that your coat was in there for that 20 feet before

it stopped; please explain to the jury, if you are stating the truth, how that could have been possible? A. Because the two left wheels were rubbing against the curb, on the north side of the street?

Q. The reason that you were not pulled off that car, with your coat caught in the valve of a wheel going around 20 feet, was because the two wheels were up against the curb? A. Was running along on the North side of the street against the curb.

Q. Do you understand the testimony you have just given? A. I do.

Q. I understand that you have told this jury that this car was pointed at right angles? A. Yes.

Q. With the side-walk. And now you are telling the jury that in the 20 feet that the car went, your two wheels were against the curb? A. Yes, it was.

Q. That this car started to go down the hill and the car was at right-angles to the curb and the front wheels were pointed down the hill; didn't it start away from the curb when it started to go? A. And hit the North side of the street, the North curb.

Q. You mean that it run over to the other curb? A. Yes, and then went along that curb.

Q. And all that time your coat was caught in the valve? A. I had my coat loose by that time.

Q. What do you mean, you had your coat loose? A. My coat was torn off by that time, before it got to the curb, and I got back in the seat.

Q. How far did the car go before you got in your seat? A. I was in the seat when Mrs. Nell had jumped out.

Q. How far was that? A. It was at the fork of the road; I don't know just how many feet.

Q. How far did you carry Miss McGintee before

you got up to Mrs. Nell? A. From the curb to the fork of the road.

Q. In feet what? A. I don't know just how many feet it is.

Q. Give us an idea, in this court-room, how far you carried Miss McGintee before—— A. 25 or 30 feet.

Q. These two ladies were 25 or 30 feet? A. About that.

Q. And Mrs. Nell was lying nearer to the North curb? A. At the fork of the road.

Q. Miss McGintee was, you say, nearer the South curb? A. About opposite it.

Q. Which side of the car was open? A. The right-hand side.

Q. You mean on the South side? A. The South side of the car was open.

Q. You don't know how, if that is a fact, Mrs. Nell got to the left side of the street, do you? A. Because my car was on the left-hand side of the street coming down.

Q. Do you mean to tell this jury, working on there, in the front of that car, running down the hill, you were perfectly calm and that you could remember every word you said? A. Yes, just as if it happened this morning.

Q. Do you remember this thing: "I had come down about 200 feet; I got in the seat of the car and pushed in my reverse pedal as I was not sure my brakes would stop the car." Do you remember that? A. I remember that.

Q. You did stop the car with your reverse pedal, did you? A. I did not. I pulled on the emergency as quick as I could get in the car.

Q. Why was that statement put in here? Why

was that statement put in that—— A. He came over there with that all written out, asked me to sign it.

Q. He came over with this written out? A. And would he rectify it; made some rectifications.

Q. Is it not a fact that he wrote this out in your presence? A. No sir.

Q. In your presence? A. No sir.

Q. Every word of it? A. No sir.

Q. And according to your dictation? A. No sir.

Q. Where was this signed? A. Before a Notary Public in Fort Lee.

Q. That Notary Public was John H. Mannix, wasn't it? A. I believe so.

Q. Did the Notary Public ask you if you knew the contents of this paper? A. He did.

Q. What did you tell him? A. I told him I did; excepting a few mistakes, and that rectification he made. I picked the paper up to see what he wrote on.

Q. Then you picked up the paper? A. Then I picked up the paper and saw he wrote on their corrected as it was.

Q. You went before a Notary Public and made a solemn oath? A. I did.

Q. You did not deny it and say it was not true? A. No, because he told me there was not going to be any case. I did not see any reason why I should not sign it.

Q. Whether there was a case or not, if you swore to an affidavit, you would not swear falsely, would you? A. It did not concern me any; wasn't going to sue Mr. Godstrey.

Q. Would it make any difference whether there was any suit or not, if you made an affidavit? A.

Oh, if there was a suit, I would not have signed it.

Q. Wouldn't it make as much difference if there was not a law suit as if there was? A. Not that I know of.

Q. Do you remember this statement: "I stopped the car between the 400 and 500 feet from where I started." A. I said I don't know how many feet. He put that on there.

Q. Where is this Notary Public's place, Mr. Dowdell? A. Main Street, Fort Lee.

Q. Didn't you go with Mr. Sheehy into the police station to draw up this affidavit? A. No sir.

Q. Didn't Mr. Sheehy draw up this affidavit at the police station? Where do you say it was? A. Not that I know of. He had it ready when he came up to my house.

Q. Did you go to the police station that day? A. Yes, for a few minutes. I got a book and then got some postal cards.

Q. You don't remember this being written out in the police station? A. He had that all written out before he came to my house, when I was asleep. He had a couple more in his pocket besides that.

Q. Do you remember this part of the affidavit, Mr. Dowdell: "This affidavit is based upon an honest state of facts and is made without any reward, promise or compensation of any kind." A. I do.

Q. Was that true? A. Yes.

By Mr. Wright:

Q. Just when did you sign that statement? How long after the accident?

MR. KEPPLER—I object to that. The statement speaks for itself.

THE COURT—Let him answer. The statement is not in evidence.

MR. KEPPLER—I offer this affidavit in evidence.

MR. WRIGHT—I object to it going in evidence.

THE COURT—The objection is sustained.

MR. KEPPLER—To contradict this sworn statement, is to contradict him. I respectfully except and ask that the paper be marked for identification.

THE COURT—Take your exception.

Q. How long after the accident did you make the statement? A. Must have been about four weeks; two days before I was to be tried at Fort Lee.

Q. Two days before you was to be tried? A. Yes sir.

Q. So your hearing had not come off yet? A. No sir.

Q. At the time you were asked to sign the statement, was there anything said at that hearing? A. Told me there wasn't going to be nothing said; that Mr. Nell felt sorry, and that they could not make no case, and Mr. Godstrey and Mr. Nell made a settlement that morning.

Q. Was there anything said at that hearing about what was going to happen to you? A. Said he wasn't going to appear against me.

By Mr. Keppler:

Q. When was that said to you, after you signed the affidavit or before you signed the affidavit? A. Before I had signed the affidavit.

Q. Did that influence you in signing the paper? A. It did some, yes.

Q. You were swearing to a false affidavit in a criminal case after a settlement had been made? A. There wasn't going to be no case. I was going to be discharged, and I did not see where it was going to make any difference.

Q. Who told you that there had been a settlement? A. Mr. Sheehy.

Q. That morning? A. That afternoon, 4 o'clock.

Q. How long after the accident was that? A. Must have been two days, before I was to be tried.

Q. What day were you tried on, the 15th of February? A. It must have been the 12th or 13th.

ORLANDO H. SPEER, sworn for the defendant, testifies as follows:

Direct examination by Mr. Wright:

Q. Mr. Speer, where do you live? A. Edgewater.

Q. What is your business? A. Chauffeur.

Q. Who do you work for? A. The Undercliff Taxi Company.

Q. How long have you worked for them? A. Since the Spring of 1914.

Q. Do you know Dowdell? A. Yes sir.

Q. Do you know what Dowdell was doing there? A. Yes sir.

Q. What? A. Employed as night man, as night washer.

Q. Did he ever do anything else besides washing cars, that you know of? A. Sells gas and oil.

Q. Anything else he ever did that you know of? A. Not that I know of.

Q. Did you ever hear anything said to him about driving cars? A. I did, yes.

Q. What was that?

MR. KEPPLER—I object to the testimony on the ground that it is not binding upon us.

THE COURT—Let it go in as part of the res gestae.

MR. KEPPLER—I respectfully except.

Q. When? A. I don't just remember when it was; last year some time.

Q. Well, can you fix the date by reference to this accident spoken of in New York? A. Yes.

Q. Well, before or after that accident? A. Not the date, but it was shortly after.

Q. Where did this conversation take place? A. In the garage office.

Q. Who said anything about driving cars? A. Mr. Godstrey.

Q. What did he say to him about that? A. When he came to work, he said, "Paddy, don't never take a car out of this garage again." He said, "Under no consideration leave the garage alone."

Q. Since that time, have you ever seen him drive a car? A. No, sir.

Cross-examination by Mr. Keppler:

Q. Mr. Speer, you have made an arrangement with Mr. Godstrey to take all these taxi cabs over in your name, haven't you? A. No, sir.

Q. Have you made any arrangement of any kind with him to take these taxi cabs over in your name? A. No sir.

MR. WRIGHT—I object to that.

Q. Did you never have any talk with him?

MR. WRIGHT—Objected to as immaterial.

A. I have talked with him.

THE COURT—Let him answer.

Q. About that? A. About that, yes.
Q. When did you talk to him about it?

MR. WRIGHT—Objected to as immaterial.

THE COURT—What is the line of testimony?

MR. KEPPLER—They show the interest of the man, whether he is biased in any way.

MR. WRIGHT—The fact that he might want to buy out this business has nothing to do with this case; something that happened months after.

THE COURT—He may answer.

A. I forgot what you inquired about?
Q. (Read to the witness.) A. Where? When?
Q. Yes? A. When? Oh, probably a month and a half ago.
Q. How many times did he discuss the matter with you? A. Probably three or four.
Q. What arrangement did you come to?

MR. WRIGHT—Objected to as immaterial and incompetent.

THE COURT—Let him state the conversation.

A. He said, "I will let you know better after this case is over."
Q. Mr. Speer, isn't it the truth that you and Mr. Godstrey have made an arrangement that you are

to pretend that you are the owner of these taxi cabs—— A. No, sir.

Q. So that if there is a judgment in this case, you can pretend that you are the owner of them? A. No sir.

Q. You are quite positive about that? A. I am quite positive about that.

Q. Haven't you told any people you have made arrangements with him that you are supposed to be the owner of the taxi cabs? A. I have not, no.

Q. Have you discussed the matter with anybody? A. I might have, yes.

Q. You say that you are still working for him as chauffeur? A. I am, yes.

Q. How long have you been working there? A. Since the Spring of 1914.

Q. Who hired you? A. I put in an application with Mr. Gantert; he sent me to Mr. Godstrey; Mr. Godstrey hired me.

Q. What talk did you have with him when he hired you? A. He asked me what I could do. I said, "I haven't worked around a garage much; I am a chauffeur." He said, " Well, I haven't any chance for a chauffeur just now; but we can use you in the garage."

Q. What hours did you work there? A. Why, we have different shifts. I work from 7 to 7 one week—this very week; 7 to 7, 9 to 9 and 12 to 12 and 3 to 3.

Q. You mean from 7 in the morning to 7 at night? A. Yes.

Q. What other hours? A. 9 to 9.

Q. From 9 in the morning until 9 at night? A. Yes.

Q. And 12 o'clock in the morning until 12 at night? A. Yes.

Q. And from 3 o'clock in the afternoon until 3 at night? A. 3 in the morning.

Q. What time was this conversation in which you heard Mr. Godstrey tell Dowdell that he was never hired to drive a car again? A. One night as he came to work.

Q. What time was that? A. Oh, half-past seven probably.

Q. At night? A. Yes.

Q. Are you correct about that being half-past 7? A. Not just to the minute. I believe I pulled in then. We don't pull in to the minute if we have a call.

Q. In other words, when you are on a 7 o'clock call, you would not get in until some time after 7? A. No, wait until the 7 o'clock boat gets in.

Q. So that was when he reported for work? A. Why, no. I believe he was dressed for work.

Q. At any rate, when he came in and reported for work. A. I don't know whether he just came in or not. I came in from the back, after putting my machine in the garage.

Q. You heard him testify it was 6 o'clock, didn't you? A. No sir, I did not hear no time set.

Q. You heard all this conversation? A. I did.

Q. He talked rather loud? A. Yes, I heard all his conversation. I did not fix any certain point in my mind at all.

Q. You did not fix it at 7.10 because that is the only possible hour you could have been there? A. I could have been there at other times.

Q. In the evening? A. I might have been there at other times.

Q. You don't remember; it was when Dowdell

came to work? A. I don't know just the hour he did come to work.

(Defendant rests.)

JOSEPH ROSENSTANGLE, recalled in behalf of the plaintiffs, in rebuttal, testified as follows:

Direct examination by Mr. Keppler:

Q. Mr. Rosenstangle, were you present when Mr. Godstrey testified? A. When he testified?

Q. Yes? A. No sir, not when he testified.

Q. Were you there when Mr. Godstrey came up to the police station at Fort Lee? A. I was.

Q. How did he come to be there? A. He came up in an automobile, Tony Maione, his chauffeur, was driving him.

Q. Tony Maione, the chauffeur? A. Yes.

Q. How did he go home? A. I don't know how he went home. He was in the police station after I left.

Q. Who took the cab home? A. The taxi that was in the accident?

Q. Yes? A. Tony Maione.

Q. Not Mr. Godstrey? A. No sir.

Q. Did you have any talk with Mr. Godstrey when he came to the station house? A. Well, it was Recorder Sheehy there, and I. I think Officer Harnett was there. He was saying something to Paddy. He was talking about the accident——

MR. WRIGHT—I object to that.

Q. Tell us what he said?

MR. WRIGHT—It is not rebuttal. Counsel can ask the proper questions. He is

going into the general story and I object to it.

THE COURT—What is the line of the testimony?

MR. KEPPLER—I will change the question.

Q. Just tell us what he said about his relations with Dowdell?

MR. WRIGHT—I object to that, as part of the main case and not rebuttal.

MR. KEPPLER—In making out our prima facie case, we have put in this as evidence to show that there is a license in his name.

THE COURT—You have gone into the question of his statement in the police station, on your direct case.

MR. KEPPLER—When he took the stand, Godstrey swore that Dowdell was not his chauffeur. We want to have some testimony to rebut that.

THE COURT—That is a part of your direct case. You offered it in your direct case. That statement was made by Mr. Nell in his conversation with Mr. Godstrey. Is the objection pressed, Mr. Wright?

MR. WRIGHT—Yes sir.

THE COURT—The objection will be sustained.

MR. KEPPLER—I respectfully except.

THE COURT—You may have your exception.

Q. Mr. Rosenstangle, were you present when Mr. Dowdell came into the police station? A. At what time?

Q. Why, at any time, when Mr. Sheehy—— A. One time I was when I placed him under arrest. One time I was there when Dowdell was there.

Q. That is all you know about it? A. Yes.

By Mr. Wright:

Q. How do you know that Tony Maione drove this car down, back to the garage? A. Because I seen him. I seen him leave the police station.

Q. You seen him leave the police station? A. Yes, sir.

Q. How far did you see him go? A. Until he was out of sight, almost.

THE COURT—Anybody with him?

WITNESS—No sir.

Q. You don't know whether he came back to the police station or not? A. I was there three-quarters of an hour afterwards, after he left.

Q. You say Mr. Godstrey did not leave when you left? A. No sir.

Q. You went out before Godstrey did? A. I did.

Q. Where did you go? A. Home.

Q. You don't know whether Mr. Maione brought the car back there and Mr. Godstrey drove it down or not, do you? A. I seen him; I seen Mr. Malone drive the car back.

Q. You saw Tony Maione start the car down hill? A. Yes.

Q. You don't know what he went down for? A. Mr. Godstrey told him to go to work; take the car back and go to work.

Q. You remember Godstrey telling him that? A. Yes.

Q. You don't know whether he came back or not? A. No.

THE COURT—How many cars were at the station?

WITNESS—Two.

THE COURT—Both the same kind?

WITNESS—No sir, I don't know whether they were the same thing or not.

Q. You mean they were not the same kind? A. I don't know whether they were the same—could not tell what they were.

Q. They were taxi cabs, weren't they? A. No sir.

Q. One open car? A. Small car; I don't know what color it was; it had a top on.

Q. What do you mean by top on? Do you mean it had a regular taxi cab body on? A. No sir.

Q. You mean it had a canvas or rubber top? A. No, not a rubber top.

Q. Well, it had a body on, closed up? A. Partly; wasn't closed altogether.

Q. You mean the windows were open? A. No side to it; no front to it.

Q. What? A. Three sides to the body.

Q. Three sides to the body? A. Yes.

Q. Which one? A. One on the left and one on the right and one in the back.

Q. Which car were the three sides to? A. The one that Mr. Godstrey came over in.

Q. The other was an open car? A. The other was a taxi, that was in the accident.

Q. You distinguished them because one was closed and the Godstrey car had three sides? A. The one that Godstrey came up in was almost a new car; the other was an old one. The taxi was an old car.

Q. You don't know whether Maione came back or not? A. Not after I left, I dont.

Q. Did you ride up in the car from the police station? A. I did.

Q. Dowdell drove the car up around the—— A. All the way around the bend.

Q. Did he go up through Terrace Avenue and through Bigler Street? A. Yes sir.

Q. And up to Doctor Wyler's house? A. Yes.

Q. Doctor Wyler's house is how far from Bigler Street? A. About 8 blocks.

Q. Eight blocks is more or less uncertain.

THE COURT—How many feet?

Q. About how far, half a mile? Quarter of a mile? Three-quarters of a mile or what? A. Well, about three-quarters of a mile.

Q. Doctor Wyler's house is on Main Street, East of Bigler Street, is that right? A. East? No sir; West.

Q. West, I said. To get to Doctor Wyler's house, you have to go down quite a steep hill and come up quite a steep hill? A. Not a steep hill after you hit Main Street.

Q. Would you say it was as steep as a portion of the Fort Lee hill, which is below the fork of the road, down there by that garage? A. No.

Q. You don't think it is as steep as that? A. No.

HARRIET NELL, one of the plaintiffs, recalled in rebuttal, testifies as follows:

Direct examination by Mr. Keppler:

Q. Mrs. Nell, Dowdell has testified that you told him to open the window, that you was faint. Did you have any such conversation with him? A. No, it was a very cold night. We did not even have a blanket. The time I opened the window was when I asked him what was the trouble with the engine. The door——

MR. WRIGHT—I object to any further statements.

Q. Do you know whether or not the engine started when the car started? A. Yes, it did.

MR. WRIGHT—I also object to that.

THE COURT—She has already testified to that.

MR. WRIGHT—No questions.

MR. KEPPLER—In the absence of Mr. Miner—I think he was the only other witness I wanted to call; we have subpoened him—I would like to be given an opportunity to argue a question of law.

THE COURT—Suppose we take a recess at this time; that will give him an opportunity to get here.

MR. KEPPLER—Very well, we can do that.

Recess until 1 P. M.

1 P. M.

MR. KEPPLER—I have the information that our party was sent out by his firm and will not return until half-past 1. They say he is out doing some work covering a radius of 10 miles, and they have no idea where they can locate him. One of my two men is up there. I want to put Mr. Sheehy on for one matter. I fear that will last an hour or more.

THE COURT—What is the object of his testimony?

MR. KEPPLER—This witness will testify that this lady came over on that 2 o'clock boat, and that he saw Dowdell drive cars upon a number of occasions after September and October and November, across the ferry, upon a number of occasions. Any statement that contradicts what the defendant or any of his witnesses testified they may have stated to my man is rebuttal.

THE COURT—Not if it is a part of your prima facie case. You have got the time in evidence as to what boat it was. It can only be corroborative, to say the least, of what is already in the case.

MR. KEPPLER—In trying my original case, I am not required to put in all my evidence, because it would merely be cumulative.

THE COURT—Time is an element, the time of the occurrence, and that is in. You can see that it is cumulative or corroborative of what is already in. It is not new facts; no denial. You have got that issue in evidence, so far as it can be gotten in evidence as an issue.

MR. KEPPLER—Then I appeal to the discretion of the Court upon that view. I appeal to the discretion of the Court to permit us to introduce evidence that would contradict the testimony of the defendant.

THE COURT—The Court has already given you time, took an adjournment for the purpose of having your man here. To ask a further continuance to put in that testimony, I do not think would be proper.

MR. KEPPLER—Then I appeal to the discretion of the Court as far as the reasonableness of the testimony is concerned, because the Court always, in the interest of justice, has the discretion of admitting evidence out of its regular order.

THE COURT—You may make your offer, and under objection I will rule on it.

MR. KEPPLER—I state to the Court that one of my clerks served a witness named Miner, to appear in court this morning. He did not appear, and we have made inquiry to find out why he did not, and

Mr. Sheehy, one of my clerks, went to the place where he is employed and was informed that he is out somewhere taking care of some business and will not return until about 1.30 that it would take him about 15 minutes to get to the Court House, and I ask for an opportunity to issue an attachment or suitable process to bring the witness here, so that we may have the benefit of his testimony, and we intend to prove by him that the plaintiff left New York on a boat that left New York about 2 o'clock——

MR. WRIGHT—I object to the statement of what you intend to prove by a witness who is not here. I also object to the statement that he has been subpoened. The fact is that the case has been continued by taking an early adjournment to accommodate him, and I think the Court has gone as far as it ought to, under its discretion. If I object to a continuance, it puts me possibly in a bad light, although I am perfectly within my right to do so. If he is going to have him here by half-past one, I do not see how I can object but I should think he could prove that fact by other witnesses, that he was properly subpoened.

MR. KEPPLER—I have no desire to enter into conversation with the other counsel. Your Honor asked me to state what I intended to prove by the witness. I respectfully answered the question. I

respectfully ask counsel not to make any comments that I do not deserve.

THE COURT—Proceed.

JOHN SHEEHY, recalled in behalf of the plaintiffs in rebuttal, testifies as follows:

Direct examination by Mr. Keppler:

Q. Mr. Sheehy, you heard the testimony of Dowdell given in court this morning? A. Yes sir.

Q. Do you remember that portion of the testimony in which he stated that you told him the case between Mr. Nell and Mr. Godstrey had been settled that day? Did you have such a conversation with him? A. No sir, not like that.

Q. He stated that you told him that the signing of that affidavit was a matter of form; did you have such a conversation with him? A. No sir, I did not.

MR. WRIGHT—I object to it as incompetent.

Q. He stated that you brought the affidavit to him all drawn up; what are the correct facts about that matter?

MR. WRIGHT—I object to that question.

THE COURT—The objection will be sustained. I will permit you to deny any specific statements that the other witness is alleged to have made.

Q. Was that affidavit drawn up when you came up to him? A. No sir, it was not.

Q. Where was he when the affidavit was drawn up? A. He was with me.

Q. Who gave you the material to put into that affidavit?

MR. WRIGHT—I object to that; not proper rebuttal.

THE COURT—Let him answer.

MR. WRIGHT—Exception.

A. I took the statement of the facts from Mr. Dowdell speaking to me, telling me, almost word for word. There was a couple of places where Dowdell said to me, "Now, you have not worded this as I said it." I said, "Well, I will change it;" put a little mark there and wrote it out.

Q. Did he read the affidavit before it was signed? A. Yes sir.

Q. Have you attempted to produce the witness Miner in Court to-day? A. Yes sir, I left here about ten minutes to 12, got an automobile from here and went up to the Hackensack Coal and Lumber Company, quite some distance above the railroad tracks there. The girl in charge there told me——

MR. WRIGHT—I object to what the girl told you. What did you do?

THE COURT—Under objection it will be ruled out. You did not get him?

WITNESS—No sir, could not find him. They said he had gone away.

Q. Did you find out where you could get him?

MR. WRIGHT—I move to strike that out.

THE COURT—Yes, strike it out, any statement

somebody else made to him will not be admissible.

Q. Did you find out what time you could bring him here?

MR. WRIGHT—I object to that unless he saw Miner.

THE COURT—Objection sustained. I cannot see how it is going to be relevant at all; how you can put in any testimony as to what somebody else told him.

MR. KEPPLER—We don't intend to testify what he said. We only want to show the efforts he made to produce the witness; that is all.

THE COURT—You have shown that.

MR. KEPPLER—I respectfully except.

THE COURT—You may have your exception.

Cross-examination by Mr. Wright:

Q. How many times did you see Dowdell before you got him to sign that paper? A. Probably three or four or four or five times; I could not tell you exactly.

Q. You saw him the Monday after the accident, did you not? A. Really, as to date, I could not tell you; I don't know; Monday or Tuesday; I saw him Tuesday night, I think, in Court.

Q. Two or three times between that time and the time you got this statement? A. I don't know as I saw him two or three times; I only met him once or twice. I really could not tell you. I did not make any particular accounting of it.

Q. How many times have you seen him since you got the statement? A. Why, I suppose I seen him three or four times.

Q. You saw him at the time you served the subpoena for him about the time this case was to come on, about three weeks ago? A. I seen him when I served him.

Q. What? A. Sure, I saw him when I served him.

Q. What did you tell him about the testimony in this case at that time? A. What did I tell him about his testimony in this case?

Q. Yes? A. I did not tell him anything about his testimony. I did not know anything about his—what do you mean by your question, Mr? What did I tell him about his testimony?

Q. Didn't you tell him that you would get him a better job in New York than he had if he stood by you and took care of you, words to that effect? A. Why, of course I did not. How could I give him a job when I haven't got any?

Q. You did not say that or anything like that? A. No, sir, certainly not.

MR. KEPPLER—In view of the fact that it is about 20, 22 or 23 minutes after 1, and this witness could be here—we are informed it would be a little over twenty minutes—and in view of the fact that there was to be, as I understood, a lengthy argument upon the question of the disposition of this case, may I reserve the right to call this witness at the close of that argument?

THE COURT—If it is going to involve some of the points in the testimony, in connec-

tion with the argument. You had better make the argument when the case is closed. Any objection to taking recess for fifteen minutes, Mr. Wright?

MR. WRIGHT—I could not object; you understand. I still insist that counsel has not shown that the man has not been subpoenaed.

THE COURT—Has he been subpoenaed?

MR. KEPPLER—He was in court here——

THE COURT—Has he been subpoenaed?

MR. KEPPLER—I instructed Mr. Corrao to subpoena him, and later he informed me that he subpoenaed him. Corrao has been with me for eight or nine months. I don't think I ever found him to tell an untruth.

THE COURT—Is the clerk in court?

MR. KEPPLER—No, the man that subpoenaed him is not here. When he did not come, we telephoned to New York and had Mr. Corrao, who knows him well, go out and get him. I saw him in court one day last week, last Friday, but I understand he was also here under subpoena on Thursday. I remember distinctly he was sitting in that chair (indicating) right before the last chair, and we subpoenaed other witnesses here. There isn't a single witness that we have not subpoenaed regularly. We subpoenaed him too.

THE COURT—If there is any probability of his being here, the Court will give you the time. The mere statement that he will be back from his route at 1.30, might mean anything. I will give you fifteen minutes.

MR. KEPPLER—Perhaps it will be a waste of time of the court and jury——

THE COURT—Oh, no, I am not going to close your case before I take the testimony. You have had an hour to produce him. I will give you fifteen minutes more.

MR. KEPPLER—I don't think I can produce him in less than twenty.

THE COURT—You may have twenty minutes. We will take a recess until a quarter to 2. The jury may return to their jury room.

(After 20 minutes recess.)

WILLIAM L. MINER, sworn for the plaintiffs, in rebuttal, testifies as follows:

Direct examination by Mr. Keppler:

Q. Mr. Miner, where do you live? A. Hackensack.

Q. What street? A. Railroad Avenue and Berdan Place.

Q. Where are you employed? A. The Hackensack Coal and Lumber Company.

Q. Where were you employed in the early morning of Sunday, January 16th, this year. A. For the Public Service, 130th Street Ferry House.

Q. What were your duties? A. Porter.

Q. Do you remember seeing Mrs. Nell and Miss McGintee, these ladies, there that morning? A. I do.

Q. What time was it when you first saw them? A. They missed the 2 o'clock boat and come over on the 2.45.

Q. Do you know the chauffeur by the name of Dowdell? A. I knew of him. I seen him quite some, when I worked down there.

Q. Do you see him in court? A. Yes, sir, there he sits (indicating), right over there next to——

Q. Which man? A. This one (indicating).

MR. KEPPLER—Kindly rise, Mr. Dowdell?

Q. Which one of those men is it? A. The one right in the middle; the one standing up on the corner. I seen him quite often.

THE COURT—The one on the right?

WITNESS—Yes, sir.

Q. How about the man next to him? A. I don't remember him, but I seen him quite often.

MR. WRIGHT—You mean the third man?

WITNESS—Yes, I seen him on the cars there often.

Q. Have you ever seen the man next to him? A. No, I don't remember seeing him.

MR. WRIGHT—You were working on the New York side of this ferry?

WITNESS—Yes, sir.

(Plaintiffs rest.)

(Motion for Direction.)

MR. WRIGHT—I desire to make a motion for a direction of a verdict for the defendant on several grounds. The first is that there has no negligence been proven; no negligence on the part of the defendant has been proven. That the negligence specified in the complaint has not been proved. That if any negligence at all appears in the case, it is not that of the defendant. That Dowdell was not the agent of the defendant. Under the evidence, as it appears, Dowdell was acting, as the agent of the plaintiff, and that the defendant, Godstrey, was not the owner or operator of the cars, or under any circumstances, under the evidence in this case, liable for the alleged accident.

THE COURT—Do you want to be heard on it?

MR. KEPPLER—Yes, I would like to be heard, if your Honor wants me.

THE COURT—The point that has been troubling me all through the case is the question as to whether this driver has been acting within the scope of his authority in such a manner as to bind the defendant. That is the situation as I find it now. The burden of proof is upon the plaintiff to show by a fair preponder-

ance of the evidence that the driver was the agent of the defendant, and at the same time, the act performed was within the scope of his authority. That burden is upon the plaintiff to prove. That is without taking into consideration the other questions involved, of ownership or negligence. If that is disposed of in a manner negative to the plaintiffs' case, all the others would fall with it.

MR. KEPPLER—Then your Honor does not want me to discuss the question involving the question of ownership?

THE COURT—Until the other one is disposed of; that is the question of agency.

I will point, Mr. Keppler, to a decision of this State——

MR. KEPPLER—If your Honor will tell me what the decision is, I will be glad to discuss it with you.

THE COURT—You will find it in the case of Doran against Thomsen, in 71 Atlantic.

MR. KEPPLER—I have it right before me, your Honor.

THE COURT—Page 297. These are the doctrines laid down by the Court of Errors, in discussing the liability of "master and servant in its full sense invariably and only arises out of a contract between the servant and the master, yet such contract may be either express or implied. 'The real test as to third per-

sons,' taken from Master and Servant, P. 11, Section 7, is whether the act is done by one for another, however trivial, with the knowledge of the person sought to be charged as master with his assent express or implied, even though there was no request on his part to the other to do the act in question."

Down further is expressed this doctrine: "The doctrine of respondent superior applies only when the relation of master and servant is shown to exist between the wrong-doer and the person sought to be charged for the result of such neglect or wrong at the time and in respect to the very transaction out of which the injury arose." 'Justice Fort, speaking for this Court, says,' "The servant of the master cannot bind the master to respond in damages to the plaintiff unless it be shown that the act which the servant did which caused the injury was an act which was expressly or by necessary implication within the line of his duty under his employment."

That is the doctrine of this State. The only question is whether you can bring your case within that doctrine, the last part of which is peculiarly applicable. "The servant of the master cannot bind the master to respond in damages to the plaintiff unless it be shown that the act which the servant did which caused the injury was an act which was expressly or by necessary im-

plication within the line of his duty under his employment." That is the doctrine that governs this case in this State.

MR. KEPPLER—It also says, "If the defendant is liable for the negligent manner in which the vehicle was operated, then a jury question was presented, and, as to that negligence, the Court properly submitted the case to the jury."

THE COURT—That is as to the negligence. That is not as to the question of agency. You have three or four elements; one of ownership, one of agency and one of negligence; each one of which must stand or fall by itself, and each one, if it falls, is fatal to the case.

MR. KEPPLER — Under the case of Bennett against Busch, 75 N. J. Law, 240, "If there is any evidence in the case upon any proposition upon which reasonable men might differ, or any honest man could have a difference of opinion therefrom, then the element must be submitted to the jury."

THE COURT—I don't think so. If that was the case, why, then, we have nothing in the rule that a verdict is against the weight of the evidence. Understand, the duty here is to sustain the case by a fair preponderance of the evidence, even if a verdict is proper, if the Court was assured of the fact that the verdict was against the weight of the evidence, why,

then the verdict would be set aside. That is the condition of the Court now. If the Court is convinced that there is not enough evidence here to sustain the burden of proof, it is its duty to take it away from the jury.

MR. KEPPLER—Your Honor will permit me to go through the entire argument? I will be glad to do so.

THE COURT—Proceed.

(After argument.)

THE COURT—The motion to direct a verdict will be granted.

MR. KEPPLER—I respectfully take an exception. Is it necessary to make any formal motion to make a record to preserve my rights?

THE COURT—You may take an exception to the direction of the verdict of the Court.

10

20

PLAINTIFF'S EXHIBIT 1.

This is a map showing the hill where the accident took place, giving distances and grades.

30

40

PLAINTIFF'S EXHIBIT 2.



PLAINTIFF'S EXHIBIT 4.



PLAINTIFF'S EXHIBIT 5.



PLAINTIFF'S EXHIBIT 6.



PLAINTIFF'S EXHIBIT 7.



PLAINTIFF'S EXHIBIT 9.

This is the medical history of the case, and will be produced upon the argument.

PLAINTIFFS' EXHIBIT 10.

BERGEN COUNTY CIRCUIT COURT.

HARRIETT NELL and JOHN J. NELL,
Plaintiffs,
Against
WILLIAM C. GODSTREY,
Defendant.

UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY,

JOSEPHINE T. McGINTEE,
Plaintiff.
Against
WILLIAM C. GODSTREY,
Defendant.

Examination of William C. Godstrey before trial held at the office of Wakelee, Thornton & Wright, 50 Church Street, Borough of Manhattan, City of New York, on Saturday, April 15th, 1916:

Present:

Leroy Vanderburgh, Master in Chancery.

Tobias A. Keppler, of counsel for plaintiff.
Wendell J. Wright, of counsel for defendant.

Upon the consent of both attorneys, the following stipulation was placed upon the record:

The parties hereto waive holding the examination before trial of the defendant, William C. Godstrey, in the State of New Jersey, and consent that such examination may be held at the office of Wakelee, Thornton & Wright, this 15th day of April, 1916, with the same legal force and effect as if the examination had actually been physically held within the County of Bergen, State of New Jersey, and it is further stipulated that the testimony of the defendant herein before trial, shall apply to both the above entitled actions as if it had been separately taken in each of them.

STATE OF NEW YORK,
CITY OF NEW YORK,
COUNTY OF NEW YORK, } ss

WILLIAM C. GODSTREY, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, in the above two issues joined, by Leroy Vanderburgh, Master in Chancery, and also by Frances Grossbard, Commissioner of Deeds, City of New York, testified as follows:

By MR. KEPPLER—

Q. Mr. Godstrey, you are the defendant in this action? A. Yes.

Q. Where do you live? A. Edgewater.

Q. What business are you in? A. Keeping of a garage.

Q. Where? A. Edgewater.

Q. What is the name of the garage? A. Edgewater Garage.

Q. Do you own that garage? A. I do.

Q. And you owned that garage since the first day of January continuously? This year? A. Yes.

Q. Were you in any other business in January? A. I am manager for the Undercliff Taxi Company.

Q. That is a corporation? A. That is a corporation.

Q. A New Jersey corporation? A. A. New Jersey corporation.

Q. How long have you been the manager for the Undercliff Taxi Company? A. Since September, 1913.

Q. Continuously? A. Yes.

Q. Do they keep their cars in your garage? A. They do, at Edgewater. They do.

Q. And they have kept them there continuously since that corporation has been formed? A. No, because that garage is only seven months old, although I have had charge of their cars in there since I got in about five months after the incorporation.

Q. You are one of their stockholders? A. Yes.

Q. One of their officers? A. No.

Q. A director? A. There are only four. I don't know who are the other three. Joseph F. Gantert, Henry Wissell and Lance Morton.

Q. Where were the cars of your company kept before that garage was built? A. In a shed back of Gantert's Hotel.

Q. This garage is known as the Edgewater Garage, and is on what street? A. Yes, sir, River Road, Edgewater, New Jersey.

Q. Between what streets? A. Corner of Hudson Avenue.

Q. Do you know a man by the name of Dowdell? A. Yes.

Q. What is his first name? A. Patrick.

Q. He was employed in your garage in January? A. He was employed by the Undercliff Taxi Company.

Q. But in that garage, was he not? A. He was washing cars in that garage, yes, sir.

Q. How long had he been employed in that garage? A. I believe he came in September of last year, 1915. It may have been a little later. It may have been in October. I can tell by the time book.

Q. Do you keep a time book? A. I do.

Q. Of all help in that place? A. The drivers and every one, yes. I keep it of all of them.

Q. And what is the color of that book? A. It is a weekly time book, a little yellow book, a workman's weekly time book, about fifteen cents.

Q. And you have kept the same time book for how long a period? A. That is asking me something hard. The book I have in the office is a new one from December or January.

Q. But you have had the same book since December and you still use the same time book? A. Yes.

Q. And you have saved the time book that you had before the one you are using now? A. Yes, I could find it.

Q. You still have it? A. I think so.

Q. Who employed this man Dowdell? A. I did. I hired him.

Q. You personally hired him? A. I hired him.

Q. Did you own any automobiles in the month of January of this year? A. I have not owned an

automobile since the Fall of 1913. No personal cars.

Q. Did you make an application for a license to the Secretary of State of New Jersey for an automobile? A. When?

Q. (Continued) for which license 60195-1916 was issued to you? A. I did not personally, no.

Q. Do you know as a matter of fact that New Jersey State License No. 60195 has actually been issued to William C. Godstrey? A. Yes, I do now.

Q. Did you make that application? A. No.

Q. Who did? A. My son.

Q. And do you know that there are quite a number of licenses issued by the State of New Jersey to William C. Godstrey for automobile licenses? A. Four of them.

Q. This license 60195 covers a Ford car, does it not? A. Yes.

Q. Whom was that car bought from? A. Now you got a hard one on me. That particular car I believe was bought from a young man who lived on Undercliff Avenue.

Q. Do you remember his name? A. No.

Q. Have you personally bought any cars from the Ford Company within the last few years? A. No, sir.

Q. Have you bought any cars from the Ford Company for anybody else? A. Yes.

Q. For whom? A. We sold fifteen cars for the last six months.

Q. Are you a Ford Agency? A. Yes, sir.

Q. Have you bought any Ford cars for any person or persons that you are connected with? A. No.

Q. Or any corporation that you are connected with? A. No.

Q. For the Undercliff Taxi Company? A. Not from the Ford Company.

Q. In whose name was the license issued for this car that bears license No. 60195-1916, last year? A. That has got me again. I don't know.

Q. Is it not a fact that that license was likewise issued to you personally in 1915? A. If it was in my name, it was a transfer.

Q. From whom? A. From that young fellow.

Q. What is your son's full name? A. Walter.

Q. How old is he? A. 27.

Q. He lives with you? A. No, he is married.

Q. Is he in business for himself? A. No.

Q. Whom does he work for? A. He is working for me.

Q. In what business? A. He is handling the Ford Agency.

Q. Does he ever drive any cars? A. Not the hacking cars. He goes to Long Island, gets cars and delivers them to purchasers and breaks people in and sells cars. The first thing they say, "You have to learn me how to drive."

Q. Is he in partnership with you? A. No, merely works for a salary basis.

Q. And he carries out whatever instructions you give him? A. Not necessarily. He is acting as his own drummer and is taking care of the Ford Agency and he does not consult me very much.

Q. He got out these licenses in your name, according to your instructions? A. Well, I would not say it was according to my instructions. I simply said, "Walter, it is time to get more licenses out, go over to Hackensack and fix up these cars."

Q. Are those the exact words that you told him? A. Near as I remember it.

Q. How long is your son in business with you? A. Three years.

Q. How long have you had the Ford Agency? A. Nine months.

Q. How many cars did the Undercliff Taxi Company own in January, 1916? A. Seven cars. There may be eight now. Seven cars.

Q. How many did they have a license for in their own name? A. I licensed four cars the 1st of January in my own name.

Q. All Fords? A. I licensed a Packard and three Fords.

Q. Didn't you have a license for the other four cars? A. I had not gotten them in January.

Q. Have you since got them? A. No, the other cars are not running.

Q. Did you have licenses for those other cars in the name of the Undercliff Taxi Company at any time? A. Last year, for these four cars, yes.

Q. The four of them were all licensed in the name of the Undercliff Taxi Company? A. Yes.

Q. They have borne those Undercliff Taxi Company licenses for how many years? A. Now you are beginning to get into something again. One of the cars was bought probably in April, another in August and another in September or October.

Q. All in last year? A. Now you are beginning to ask some questions I cannot answer.

Q. Was there any record kept in any books showing when these cars were purchased? A. Yes.

Q. In what books? A. I could tell at the office. My ledger would have it down, when they were paid for.

Q. Whose ledger? A. The book I am running. The ledger of the Undercliff Taxi Company.

Q. Did William C. Godstrey keep a ledger? A. Me, personally? No.

Q. Didn't you keep a ledger for the accounts? A. What accounts?

Q. For the people in the Edgewater Garage? A. No.

Q. Well, how would you know who owed you money for work done in your machine shop or for storage or keeping of cars? A. That was all run as the Undercliff Taxi Company, the garage business.

Q. Who was the bookkeeper that kept those books? A. I kept them. Until the first of July.

Q. Of last year? A. Of last year. Then I hired a man named Benjamin Campbell.

Q. Is he still with you? A. No.

Q. Where does he live? A. New York some place, I don't know.

Q. Have you no idea? A. I have not the slightest idea.

Q. Who is your present bookkeeper? A. I am keeping them myself.

Q. Didn't you tell me that at the beginning of this examination that you personally owned the Edgewater Garage? A. I own the garage, building and land. It belongs to me.

Q. Didn't you tell me that you personally conducted that garage? A. I don't think I did.

Q. Well, if you did, you testified correctly? A. I do, I own the garage and take care of it.

Q. You mean the business in the garage? A. The business in the garage.

Q. Who owns the Godstrey Taxi Company? A. I never heard of it.

Q. There is no such concern, there never was?

Q. Has the Undercliff Taxi Company a bank account? A. Yes.

Q. Where? A. First National Bank of Edgewater.

Q. You personally have an account in the same bank? A. Yes.

Q. And moneys that come into that garage are deposited in your personal account? A. No, sir.

Q. Never? A. Never has been.

Q. Your books show a record of all moneys received and of all moneys paid out? Don't they? A. Sure.

Q. It accounts for every dollar received and paid out? A. Yes, sir.

Q. What I mean, if you were to take in $100 a day, partly in cash and partly by check, you would deposit that entire amount of money? A. Unless I had expense to pay, then I would write an expense ticket and deposit the balance.

Q. But your deposit plus the expense ticket for that day will show the disposition of the income of each day? A. Yes, sir.

Q. Now, you say that William C. Godstrey personally kept no books of any kind? A. I kept no personal books.

Q. Have you any other business besides that garage? A. No, sir.

Q. When you hired Dowdell to work for you, do you remember what you said to him? A. No.

Q. Did you tell him whom you were hiring him for? A. Whom I was hiring him for?

Q. Did you tell him who his boss was? A. He looked to me as his boss.

Q. To you personally? A. Yes.

Q. And you personally paid him his salary? A. Yes, sir.

Q. Have you never seen the name or a sign anywhere of the Godstrey Taxi Company? A. Never saw it.

Q. Didn't you personally hire a booth near the ferry for the renting out of taxicabs or automobiles? A. No, sir.

Q. Who did? A. The Undercliff Taxi Company.

Q. Was there an agreement for that hiring in writing? A. There is an agreement.

Q. Signed by whom? A. Henry Wissell, for the Taxi Company. I don't know who signed for the Public Service Corporation. Henry Wissell is on for the Undercliff.

Q. When was that agreement signed? A. It was the middle of Summer in '14. I don't remember.

Q. Has the Undercliff Taxi Company got any other stands it has hired? A. No, sir.

Q. What was your business before this garage was completed, Mr. ——? A. Builder.

Q. And when you built this garage, you went out of the building business? Isn't that right? A. I ain't out of that yet. I am going to build some more unless you break me. I have built all my life.

Q. Prior to building your garage, were you employed on a salary by the Undercliff? A. No.

Q. Were you employed in any capacity by the Undercliff prior to building your garage? A. Yes.

Q. In what capacity? A. Manager.

Q. Did you receive any salary? A. No.

Q. Do you receive a salary now? A. No, sir.

Q. Haven't you personal bill-heads in the garage

business under the name of William C. Godstrey? A. The Edgewater Garage, yes.

Q. How do these bill-heads read? A. I can't give you the words on it.

Q. Is the name of William C. Godstrey on it? A. My name is on it, so is Walter's name. I am not sure whether Walter's name is on it or not.

Q. As near as you can remember, tell me what is on those bill-heads? A. Edgewater Garage, River Road, corner of Hudson Avenue. William C. Godstrey, a line for the date.

Q. Is William C. Godstrey, proprietor, on it? A. I ain't sure whether proprietor is on it.

Q. There are a lot of those bills in Edgewater which have been given out to various people? A. Yes.

Q. And you also have a letter-head for that garage? A. Yes.

Q. And it has substantially the same wording as the bill-head? A. Yes.

Q. In whose name is the electric current furnished to that garage? A. I think it is mine.

Q. Is there gas in that garage? A. No.

Q. The bills for supplies bought in that garage are made out to William C. Godstrey, are they not? A. Stuff that I buy, yes.

Q. From whom do you buy your gasoline? A. From the Standard Oil Company.

Q. From whom did you buy your gasoline in December of last year and January of this year? A. Standard Oil Co.

Q. Of New Jersey? A. Of New Jersey.

Q. Which office did you do business with? A. Jersey City office.

Q. Where is that, near what street in Jersey City? A. I don't know.

Q. Have you personally got an account with them? A. William C. Godstrey, no.

Q. Whom do you buy your automobile accessories from? A. Weaver Ebling.

Q. Where is he? A. Bogota. No—80th Street and Broadway.

Q. Haven't you personally got an account with him? A. No.

Q. Didn't you ever have? A. I don't think so. I bought tires—when you say accessories.

Q. Haven't you personally any accounts with anybody or didn't you have within the past year for the purchase of oil, or automobile accessories of any kind? A. No.

Q. Are you positive of that? A. Yes.

Q. Haven't you with your own personal checks paid bills of that nature in the past year? A. Oh, yes.

Q. How do you explain that? A. The Undercliff Taxi Company with no money explains that.

Q. What do you mean? The Taxi Company had no money, so you paid the bills? A. Sure.

Q. You mean the Taxi Company owes you money? A. They do.

Q. What is this company capitalized at? A. $10,000.

Q. How much of the stock do you own? $250 worth.

Q. Any members of your family own any of it. A. Nothing.

Q. Who owns the balance? A. Mr. Wissell, Mr. Gantert and Mr. Morton.

Q. Didn't you own more stock than that at one time in that company? A. No, sir.

Q. Don't you get any salary from the company acting as its manager? A. No, sir.

Q. You do that gratis? A. I expect them to pay me some time.

Q. What record have you kept of loans that you made to the Undercliff Taxi Company? A. Only my checks.

Q. Did you write on the stub of every check you issued what the check is given for? A. Yes.

Q. Now, what did you do with those licenses when your son brought them home for these four cars, in 1916? A. I didn't do anything with them. I did not see them.

Q. You never saw them? A. No.

Q. You saw those cars go in and out every day? A. Sure.

Q. Didn't he get any paper from the Secretary of State when he got those licenses? A. A little card that goes with them.

Q. And what did you do with those cards when he gave them to you? A. He didn't give them to me.

Q. What did he do with them?

By Mr. Wright—If you know.

By Mr. Keppler—Do you know what he did with them. A. No.

Q. What talk did you have with him about the licenses after he got the licenses? A. No talk.

Q. Do you mean to say that of his own volition, and without any instructions from you, he went and got those licenses out in your name? A. No, I told him to go and get these licenses.

Q. In your name? A. No.

Q. Well, that is what I am asking you? A. I just told him to go ahead and get the licenses.

Q. How do you explain the fact that he took the licenses out in your name for those four cars in 1916?

Objection by Mr. Wright: I object to that. It calls for a conclusion on the face of it.

By Mr. Keppler:

Q. Well, can you explain why he took those licenses out in your name? A. No.

Q. Your son is a very intelligent young gentleman, isn't he? A. Yes.

Q. And he is the only child you have? A. Yes.

Q. And the relations between you and him are very warm and cordial? A. Yes.

Q. And he knows all about your business affairs, doesn't he? A. I guess he knows pretty well.

Q. And he knew all about this Undercliff Taxi Company? A. Yes, sir.

Q. And he knew of your arrangement with them? A. No, I can't say that he knows of that.

Q. Did you ever tell him anything about the Undercliff Taxi Company? A. Not very much.

Q. Didn't he ever ask you what your arrangement was with the Undercliff Taxi? A. No.

Q. He works in the garage every day? A. No.

Q. Doesn't he come there every day? A. Yes.

Q. When you say he doesn't work there, you mean he is out selling cars or demonstrating or teaching purchasers how to run them? A. Yes.

Q. You personally have the contract for the agency for the Ford Company? A. Yes, sir.

Q. Now, just what were Dowdell's duties in that

garage? A. He was hired to wash cars.

Q. What else? A. That is all.

Q. You stored cars for people that kept them in that garage? A. Yes.

Q. He has, however, on many occasions driven cars in and out of that garage? A. No.

Q. Never? A. When you mention occasions and then you say never, what do you mean?

Q. You have answered no for many occasions, and then I asked you didn't he ever drive a car in or out of that garage? A. He drove it once with my knowledge.

Q. When was that? A. One time when I sent him over to New York.

Q. How long ago was that? T. The first week he worked for me.

Q. Was that one of your personal cars? A. One of the Undercliff Taxi Company cars.

Q. Didn't that car bear license in your name? A. It did not.

Q. When about was that? A. End of September of 1915.

Q. Of 1915? A. Of 1915.

Q. Haven't you since January 15th, told any persons that you owned the car that bore the New Jersey license No. 60195-1916? A. No.

Q. Are you positive of that? A. Positive.

Q. Now outside of that time in September, you say that Dowdell has never driven a car? A. Not with my knowledge.

Q. Did he do any work in the machine shop? A. No, sir.

Q. You have a machine shop over there, haven't you? A. Yes, sir.

Q. Have you the same man working for you now

in the machine shop that you had in December of last year? And January of this year? A. No, sir.

Q. Did you have anybody working in the machine shop in December of last year and January of this year? A. Yes, sir.

Q. Who? A. A fellow by the name of John Mezzo.

Q. Do you know where he lives? A. New York, I don't know the address.

Q. Anybody else? A. John was the only mechanic at that time.

Q. Did you have anybody else working in that machine shop or around the garage from September of last year down to January 16th of this year, outside of Dowdell and Mezzo? A. Yes, by the name of Heftler.

Q. Where does he live? A. Fort Lee.

Q. Does he work for you now? A. Yes.

Q. Anybody else? A. Any other mechanic, do you mean?

Q. Anybody else, mechanic or anybody that works in the garage or the machine shop. A. Not from September to January, if that is what you mean.

Q. What chauffeurs have been employed either by you or the Undercliff Taxi Company between September of last year and February of this year?

BY MR. WRIGHT—I object to that. September has nothing to do with that.

By Mr. Keppler:

Q. What chauffeur did you have or the Undercliff Taxi Company employ in December of last year and January of this year? A. What chauffeur or chauffeurs?

Q. Chauffeurs? A. We had four.

Q. What are their names? A. John Moore, Robert White.

Q. Where does Moore live? A. He lives in Poughkeepsie, now. I don't know his address.

Q. Does he work for any company up there? A. Search me.

Q. How do you know he is there? A. It is reported around Edgewater that he went back to Poughkeepsie; that is where he came from.

Q. What is the name of the other chauffeur? A. Orlando Speer. He was Canadian.

Q. Is he working for you now and where does he live? A. In Edgewater.

Q. Whereabout? A. Right at the corner in front of the ferry.

Q. Bob White, where does he live? A. He lives in River Road, Edgewater. That is all that was in in January.

Q. Is he working for you now? A. Yes.

Q. Did you have anybody else in December? A. Yes, Tony Maione.

Q. Where does he live? A. Also in Edgewater on Undercliff Avenue.

Q. And those same men work for you in September, October and November? A. Yes.

Q. And they were the only ones you had, weren't they? A. That is all.

Q. This man Dowdell is a licensed chauffeur, isn't he? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. He had a license last year, not this. He had a license in 1915? A. Yes, sir.

Q. Have you a record showing from whom you bought every car you owned? When I say you, I

do not mean to trap you, I mean either you or the Undercliff? A. Yes.

Q. Do you get a bill of sale when you buy a car? A. Not always.

Q. Did you get a bill of sale when you bought this particular car? A. No.

Q. Could you give me the exact address of this young gentleman from whom you bought this car? A. No.

Q. Did you personally conduct the transaction when that car was bought? A. No.

Q. Who did? A. Walter.

Q. Your son? A. Yes.

Q. But by looking at your books, you can tell definitely the exact date that the car was bought, that bears the license No. 60195-1916, and from whom, can't you? A. I don't think I can find the name of the young man.

Q. Did the young man have the license for the car at the time you bought it? A. Yes.

Q. So that the records of the Secretary of State would show who the owner of the car was, wouldn't it? A. Yes.

Q. And the 1915 license for that car, was taken in your name? A. No, I don't think so.

Q. Did you continue his old license? A. With the transfer, continued the same numbers.

Q. I mean when it was transferred it was transferred to your name? A. No, to the Taxi Company.

Q. Didn't you ever see Dowdell drive a car except that time in September? A. That is the only time.

Q. What hours did Dowdell work? A. Six in the evening until seven in the morning.

Q. What other duties did he perform besides washing cars? A. Nothing.

Q. Did that take up all of his time? A. Yes.

Q. Well, in January of 1916, outside of the eight cars, you have described, how many more cars were there in that garage? A. Probably eight or nine.

Q. Were they all in active service? A. No.

Q. How many of the others were in active service? A. Probably six or seven.

Q. And they were customers that kept their cars in your garage? A. Yes.

Q. You say that he did absolutely no work of any kind except wash cars? A. That was his duties.

Q. But didn't he actually do anything else? I didn't stay up all night to find out.

Q. And the people that paid you for the store of these cars, they paid you personally, didn't they? A. Yes.

Q. Now, what system for inspecting the cars did you have in that garage? A. They were gone over weekly, grease cups filled by a mechanic.

Q. How did you know that? A. Because I was there.

Q. Well, what cars were gone over weekly? A. Every car had a weekly examination.

Q. What parts of the car were examined? A. All of it.

Q. Who examined these cars in December and January of 1916? A. A mechanic.

Q. That man Mezzo? A. That man Mezzo.

Q. Tell me, Mr. Godstrey, what books were kept by the Undercliff? A. I just ran a ledger with the receipts and expenses and my bill book, so that the bills went out promptly and I knew what I spent and what I took in.

Q. Have you got a purchase ledger showing the things you buy? A. It would appear in that book.

Q. In other words, every transaction of every kind of the Undercliff Taxi Company, showing all moneys received and all moneys paid out, are in that one book? A. Yes. Until I got Campbell, that was in July, that one book was all that I had run and he changed the system of slips.

Q. What do you mean by that? A. So that from July to now you won't find any book with all that record in.

Q. Well, what system of bookkeeping has there been since July showing all income and receipts of the Undercliff Taxi Company? A. The driver's slips for their rides and the ticket of all the expense that runs through a triplicating machine.

Q. Outside of the money from the rides the Undercliff Taxi Company had no income of any kind, did it? A. Yes. All the money taken in in the garage they received the benefit of.

Q. Well, then, since July, what record have you got of the income of the garage? A. The record made by the triplicating machine.

Q. Shows all moneys received, is that right? A. Yes.

Q. You have saved all the slips? A. Yes.

Q. Every one of them? A. I think so.

Q. And those slips are consecutively numbered on the machine, so that they are susceptible to verification, is that correct? A. Yes.

Q. And you have every one? A. I believe so.

Q. Do you keep them in the safe? A. Yes, not the safe, the desk.

Q. You have no intention of destroying them? A. Oh, no.

Q. And how about all the money paid out; what record have you got of that? A. If it was a check, I have the check, if it was cash, I have those tickets.

Q. What do you mean by those tickets? A. The triplicating tickets.

Q. You use the same system for moneys paid out where you didn't pay it by a check, as you use for moneys that come in? A. Yes.

Q. Was there no cash book kept during all the time the bookkeeper was there? A. No.

Q. And no journal or day book? A. Only the bill book.

Q. And no ledger? A. No.

Q. Well, what record did you keep of your charges, how could you tell what your customers owed you? A. There was a loose leaf bill book.

Q. Where are these licenses kept, Mr. —— A. What licenses?

Q. The licenses for the cars? A. The plates or the cards?

Q. No. The plates they are kept on the cars? A. And the cards are kept in the car.

Q. Did you ever ride in those cars? A. A little, I don't ride much.

Q. Do you remember what day in January these liceness were taken out? A. It was taken out in December.

Q. Did you ride in these cars between the first and the 16th of January? A. No.

Q. Did you go inside the cars to look at them? A. I was there every day. I examined them every day. I looked over them to see if they are cleaned.

Q. Did you do that between the first of January and the 16th of January? A. I believe I did.

Q. And what did you say to your son, when you

noticed that these licenses were taken out in the name of William C. Godstrey? A. I didn't notice it.

Q. What part of the car are these license cards put up? A. Under the seat, under the cushion.

Q. Mr. Godstrey, was there ever any written agreement between you and the Undercliff Taxi Company? A. No.

Q. Well, with whom did you make your arrangement? A. They were all there at the time I was hired as manager, Wissel, Gantert, Morton and myself.

Q. But there was no agreement as to how much you were to get? A. No writing, no.

Q. Have you ever made any written accounting to them of the income and expenses? A. Sure.

Q. From time to time? A. Every year.

Q. You have copies of those accountings? A. The copy would be—yes, I have a copy of the 1914, but not of that of the year 1915. That was by a certified public accountant.

Q. The Undercliff never paid you anything for storing their cars in your garage? A. No.

Q. And you personally paid for the fixtures and machinery in your garage, didn't you? A. No. Do you mean do I own it?

Q. Yes? A. No, that is part of the Undercliff Taxi equipment. That is in the accounting made by the public expert.

Q. What accounting is that? A. That was made this Spring.

Q. Who was the expert accountant that made that account? A. Henry M. Hardie.

Q. Where is he located? A. Hackensack.

Q. In the Summer time that garage is kept open all night, isn't it? A. Night and day.

Q. And gasoline and anything people want to buy and supplies can be bought at the garage? A. Only gasoline. I don't give the night man the key to my stock room.

Q. Doesn't he make any repairs if any repairs are necessary? A. No.

Q. Would he tow in a car if a car broke down? A. He would not.

Q. The only thing he could sell would be gasoline? A. That is all.

Q. He could not make any repairs of any kind? A. No, he could not.

Q. Did you personally get a release for an accident that Dowdell was involved in, in New York City, in September?

Question objected to by Mr. Wright as immaterial.

By Mr. Keppler—Who is going to pass on that objection?

By Mr. Wright—The Court, I suppose. Let him go ahead and answer it under objection.

A. Let me understand that, did I personally get one for me or for the company?

Q. Yes? A. No, personally I didn't get it.

Q. Wasn't your name included in the release? A. Let me see, what do you mean by a release?

Q. When you settled up the case, you got a paper, when you paid the money, that they had no further claim; that is what I mean by a release? A. I don't know how that is, I didn't get it.

Q. Who got it? You mean you personally didn't get the physical possession of it? A. I guess it is

in my safe, although Mr. Boedicker brought it to me.

Q. This letter-head that I show you is the regular letter head of the Edgewater Garage, is that correct? A. Yes, sir.

MR. KEPPLER—I offer it in evidence in this examination and mark it Exhibit A.

Q. This is a sample bill-head of that garage, isn't it? A. Yes.

MR. KEPPLER—I likewise offer that in evidence in this examination and mark it Exhibit B.

Q. And that bill-head is the type you have been using since the business started, is that right? A. No, that came in in July of 1915.

Q. Have you been using these two types constantly since July? A. Yes.

Q. And still using them? A. Yes, we are using them now.

Q. What was the date that you bought that particular car? A. As near as I can find out, it was August 15th, of last year.

Q. Whom did you buy that from? A. I don't know the name of the fellow.

Q. In whose name was it bought? A. Undercliff Taxi Company.

Q. Have you a written bill of sale? A. No.

Q. Isn't it a fact that you switch your licenses around and use the same licenses on various cars

in your garage as you find it convenient? A. No, sir.

Sworn to before me this 28th day of April, 1916:

LE ROY VANDERBURGH,
WM. C. GODSTREY.

Master in Chancery of New Jersey,

FRANCES GROSSBARD,

Commissioner of Deeds in and for the City of New York, No. 1047, Resident Kings County. Commission expires December 22nd, 1916.

PLAINTIFF'S EXHIBIT 11.

WM. C. GODSTREY — WALTER F. GODSTREY

EDGEWATER GARAGE

(Cut of automobile)	Agents for MARATHON ANGLE TREAD TIRES Guaranteed 5,000 Miles River Road EDGEWATER, N. J.	Telephone 96 Cliffside Renting Storing Repairing
FORD AGENTY		

EXHIBIT A.

Offered in evidence in examination of defendant before trial held April 15, 1916, at the office of Wendell J. Wright, 50 Church Street, New York City.

PLAINTIFF'S EXHIBITS.

PLAINTIFF'S EXHIBIT 12.

WILLIAM C. GODSTREY WALTER F. GODSTREY

EDGEWATER GARAGE

RENTING, STORING
AND REPAIRING
Edgewater, N. J.

RIVER ROAD
Cor. Hudson Ave.

Sold to.....

Statement for.....19....

EXHIBIT B.

Offered in evidence on examination of defendant before trial held April 15, 1916, at the office of Wendell J. Wright, 50 Church Street, New York City.

PLAINTIFF'S EXHIBITS 13 AND 14.

These are records of the office of the Commissioner of Motor vehicles, and will be produced in Court upon the argument.

PLAINTIFF'S EXHIBIT 16.

This is a transcript of the account of Wm. C. Godstrey in the First National Bank of Edgewater, N. J., and will be produced in Court upon the argument.

PLAINTIFF'S EXHIBIT 17.

This is a transcript of the account of the Undercliff Taxi Company in the First National Bank of Edgewater, N. J., and will be produced in Court upon the argument.

PLAINTIFF'S EXHIBIT 18 FOR IDENTIFICATION.

These are bills of the Bergen County Board of Chosen Freeholders to Edgewater Garage, and will be produced in Court upon the argument.

PLAINTIFF'S EXHIBIT 19 FOR IDENTIFICATION.

STATE OF NEW JERSEY,
COUNTY

PATRICK DOWDELL, being duly sworn, deposes and says:

I live in the Borough of Fort Lee with my family and am an employee of Wm. Godstrey, who runs a garage in Edgewater under the name of Edgewater Taxi Company. I worked as chauffeur, night watchman and handy man from 6:30 P. M. until 7 A. M. I was hired as a washer. On Sunday, January, at about 4:20 A. M. Patrolman Gould of Edgewater came to me in the garage and asked me to take Mrs. Nell and Miss McGintee to Bogota, as they could not get a car before 6:00 A. M. and Mrs. Nell was very anxious to get home to her children.

I took the car (a Ford) whose license number was 60195, and went down to the ferry station within the next ten minutes after I was called.

Mrs. Nell and Miss McGintee immediately came out of the station; they appeared very ladylike and

perfectly sober. They got into the cab and I started up towards Fort Lee.

On the last hill going up into Fort Lee Village about half way up, my car stalled on account of the low gasoline in my tank. I backed the car around sideways up against the curb and got out to crank it. It was quite a cold night and I couldn't start the car very easily.

Miss McGintee spoke to me and I started around to hear what she said and I raised the window in the car. Just then the car started off.

I ran back to the front of the car and tried to stop it by grabbing hold of the mud guard and while doing that my coat got caught. I started to climb up over the hood, thinking that doing that my coat would become loose. Instead of that I tore it completely off. While I was on the hood Miss McGintee screamed to me "You'll get killed" and I said, "No, I will stop it in a few minutes if I can make the of the car."

She was very much excited and I was in a very dangerous position trying to save the car. I do not think that I said for them to jump, but I was so excited trying to stop the car that I hardly knew what I was saying. When I had got down about two hundred feet I got into the seat in the car and pushed in on my reverse pedal, as I was not sure my brakes would stop the car. I stopped the car between four and five hundred feet from where I started. I do not know just when the ladies jumped out of the car, but when I looked back Miss McGintee was the nearest to me.

The car was stalled on the side, so I ran up to her. She begged me to take her to her sister, so I carried her up the hill to where Mrs. Nell was

lying, so that Miss McGintee might aid her if she could. Just then I saw a laborer (Frank Fannelli) going to work, so I told him to tell a policeman to get a doctor, that there had been an accident. About five minutes after a policeman came and we took the ladies to Dr. Wyler's house for treatment. Then I gave myself up to Patrolman Rosenstangle and he held me for a hearing.

This affidavit is based upon an honest statement of facts and is made without any reward, promise or compensation of any kind.

PATRICK DOWDELL.

Sworn to before me this ninth day of February, 1916.

JOHN H. MANNIX,
Notary Public,
New Jersey.

DEFENDANT'S EXHIBIT 1.

THIS AGREEMENT, made this ninth day of June, in the year of our Lord one thousand nine hundred and fifteen, Between THE RIVERSIDE AND FORT LEE FERRY COMPANY, a corporation and body politic of the State of New York, hereinafter called "Owner of the first part, And UNDERCLIFF TAXI COMPANY, a corporation of the State of New Jersey, hereinafter called "Licensee" party of the second part.

WITNESSETH: That for and in consideration of the mutual covenants and agreements herein contained the parties hereto do hereby agree as follows:

1. The owner hereby licenses unto the said Licensee the right, privilege and concession of permitting taxicabs, not exceeding six (6) in number, to stand upon the Owner's property at or near the Ferry Terminal in the Borough of Edgewater, County of Bergen and State of New Jersey, and also to maintain a taxicab booth with sign attached upon said property for a period of one (1) year from the date hereof at an annual price or license fee of Twenty-five Dollars ($25) payable in advance.

2, Said taxicab stand and booth and sign shall be located as may from time to time be directed by the proper officials of Owner and such locations may be changed from time to time, as the agreement is such that no such stand or both or sign, or the taxicabs thereon or the drivers thereof shall at any time interfere in any way with the Owner's business or with the public using or desiring to use the Owner's ferry, and the Licensee shall keep its said stands clean and shall not permit any loud calling or unnecessary noise or soliciting.

The Licensee shall not assign or transfer any privileges herein given without the written consent of Owner.

3. The Licensee shall protect, indemnify and save harmless the said Owner from any and all loss, cost, charges and damages by reason of any injury suffered or sustained by any person or persons by reason of the operation of this license by the said Licensee or by reason of the Licensee not fully complying with the conditions hereof.

4. The Owner expressly reserves the right to declare this agreement and license terminated in its entirety or in part whenever the Owner may decide to do so by giving the Licensee thirty (30) days notice of said intention to terminate this agreement.

5. Upon the termination of this agreement by giving the thirty (30) days notice above required or otherwise, the Licensee shall remove from said premises and shall thereafter have no further rights upon the property in question.

6. The Owner will not grant any License to any other person or corporation to maintain taxi stands at the terminal in Edgewater while this agreement is in force.

7. The Licensee agrees to maintain proper taxicab service to accommodate the patrons of the ferry of the Owner, and whenever it is necessary for the Owner to use a taxicab or taxicabs from the ferry at Edgewater, the Licensee agrees to furnish such taxicab or taxicabs without cost to the Owner, such use of taxicabs by the Owner, however, to be only in emergencies or some unusual occurrence which makes the use of such taxicab necessary and proper.

IN WITNESS WHEREOF, the parties hereto have caused their corporate seals to be hereunto affixed

and these presents to be signed by their Presidents or Vice Presidents and attested by their Secretaries or Assistant Secretaries the day and year first above written.

THE RIVERSIDE AND FORT LEE FERRY COMPANY,

By GEORGE W. ROBERTS,
Vice President.

(SEAL)

Attest:

H. C. STEVENSON,
Assistant Secretary.

UNDERCLIFF TAXICAB COMPANY,

HENRY WISSEL,
President.

(SEAL)

Attest:

WM. C. GODSTREY,

DEFENDANT'S EXHIBITS 2 AND 3.

These are two books and will be produced upon the argument.

DEFENDANT'S EXHIBIT 4.

This is a bill-head of the Undercliff Taxi Company.

DEFENDANT'S EXHIBIT 5.

This is a receipt from the Standard Oil Company of New Jersey.

DEFENDANT'S EXHIBITS 6, 7, 8 AND 9.

These are similar to Exhibit 5, except as to dates, numbers, amounts, and signatures.

DEFENDANT'S EXHIBIT 10.

This is a certified copy of the Certificate of Incorporation of the Undercliff Taxi Company, which sets forth its objects and powers.

The names of the incorporators are Joseph F. Gantert, Henry Wissel and Joseph K. Merriam, each of whom subscribe for two and one-half shares of the capital stock of the Company.

It is dated May 14th, 1913, acknowledged May 20th, 1913, and was filed in the office of the Secretary of State at Trenton, on May 28th, 1913.

New Jersey Court of Errors and Appeals.

HARRIET NELL *et al.*,
Plaintiffs-Appellants,

against

WILLIAM C. GODSTREY,
Defendant-Respondent.

BRIEF OF DEFENDANT-RESPONDENT.

Statement.

This is an appeal from a judgment in favor of the defendant entered in the Bergen County Circuit Court by direction of the Court. (Printed Case, pages 302 to 306).

The action was brought by the plaintiffs for damages alleged to have been sustained by them by reason of certain injuries which the plaintiff Harriet Nell received on the 16th day of January, 1916.

The complaint filed herein alleges (1) the marriage of the plaintiffs; (2) that the defendant was the owner of a certain automobile therein described; (3) that the defendant was in the business of hiring out taxicabs; (4) that the defendant had in his employ one Patrick Dowdell, who among other duties did drive taxicabs for the defendant, and that the defendant permitted the said Dowdell to conduct himself and hold himself out to the public as a taxicab driver; (5) that the defendant had permitted the aforesaid automobile

and the various parts thereof to become old, worn out and defective; (6) that on January 16, 1916 while Harriet Nell was a passenger in the aforesaid automobile which was owned, operated and controlled by the defendant or his agent, servant or employee, and more particularly the aforesaid chauffeur Patrick Dowdell, and because of the defective condition of said automobile and the parts thereof, the said automobile with great speed, and while not in the control of anyone ran down a steep hill; that said Dowdell instructed her to jump which she did, whereby she sustained certain injuries; (7) alleges the husband's damage.

The answer denied each and every paragraph of the complaint.

Thereafter on April 15, 1916, pursuant to the statutory notice, the plaintiff examined the defendant before trial, which examination was introduced in evidence by the *plaintiff* as part of the *plaintiff's* case. (Printed Case, page 125, line 15).

At the close of the whole case counsel for the defendant moved for a direction of a verdict on the following grounds (page 302, lines 10 to 28, Printed Case):

(1) That there had been no negligence proved.

(2) No negligence on the part of the defendant had been proved.

(3) That the negligence specified in the complaint had not been proved.

(4) That if any negligence appeared in the case it was not that of the defendant.

(5) That Dowdell was not the agent of the defendant.

(6) That Dowdell was acting as the agent of the plaintiff.

(7) That the defendant was not the owner or operator of the car in question.

(8) That the defendant was not under any circumstances under the evidence, liable for the alleged accident.

The Court after some discussion granted the motion without stating upon which ground or grounds it was granted. (page 306, line 20, Printed Case.)

It is apparent that the principal points in the Trial Court's mind was whether there was evidence that Dowdell was the agent of the defendant, and whether at the time of the accident he was acting within the scope of his employment (Printed Case, page 302, lines 28 to 40, and pages 303, 304 and 305).

Statement of Facts.

The plaintiff's testimony was briefly as follows:

Plaintiff Harriet Nell:

That on Saturday, January 15, about 7:30 P. M. she and her sister left her home in Bogota to go to Hackensack to do some shopping (page 41, lines 1 to 10, page 20, line 17). When they ascertained they could not purchase what they wanted they 'phoned Mr. Nell and told him that they were going to New York; that they went to New York; purchased what they wanted, and then went to call on some friends, a Mr. and Mrs. Burket in West 127th Street; that they arrived there about twenty minutes past ten and stayed until 1:30; when they left and went to get the 2:00 o'clock boat at West 129th Street, known as the Fort Lee Ferry; that they missed the boat and had to wait until 2:45; that they were accompanied to the boat by a Mr.

Schnell; that they caught the 2:45 boat and landed in Edgewater ten or fifteen minutes later; when they arrived in Edgewater they started to go out to get on the cars; a man told them that the car did not leave until five o'clock; they then got the colored porter (Whitmore Robinson) to show them where the telephone was and telephoned home, (pages 20 and 21, Printed Case). Her husband told her to try and get a taxicab and that thereupon she and her sister came out of the ferry house and *she* asked police officer Gould who was standing near if he could get them a cab; that he said if they waited fifteen or twenty minutes he would get them one, and he told them to go inside out of the cold, that he would call them when the cab arrived, which he did (page 221, lines 1 to 13). That a little later the chauffeur came with the cab and they got in, after she had made a price with him to go to Bogota (page 22, lines 15 to 20). That they rode for 15 or 20 minutes along the River Road until they came to a big hill; that when they came to this big hill and started up the hill, he (the chauffeur) had some difficulty in getting to this point and the car stalled and started to go backward; the chauffeur turned the wheel and stopped the car and backed it up against the curb so that the two back wheels were against the curb, and the two front wheels were slightly down hill, and he got out and started to crank the machine to make it go(page 23). That after 10 or 12 minutes she heard the engine going; while he was cranking the car she asked him what the trouble was and understood him to say the gasoline was low and something about the radiator being hot (page 24, lines 1 to 15). That at the end of ten or twelve minutes after the chauffeur had been cranking the car, the car gave a leap and started down the hill; the

chauffeur tried to hold it back and it kept going faster and faster; the chauffeur seemed to have his two hands around the radiator and as the car kept going faster he kept going down underneath the radiator, and every little second or so his face would come up in front of this rod, and he was scared to death; his eyes stuck out of his head; we were frightened; the car started to go from one side to the other; that she thought every minute it was going down the big bank. The chauffeur was terror stricken; they screamed and asked what to do, and as his face came up in front of this big rod, he hollered for us to jump; he said jump for your life; at that time the car was going very fast; then she jumped and did not remember anything afterward (page 24, lines 19 to 40).

Josephine T. McGintee:

Testified that she is a sister of Mrs. Nell; was with her; her testimony was substantially the same as Mrs. Nell's; she thought the car had gone about one hundred feet before Mrs. Nell jumped (page 50, line 38), and that she thought it went another hundred feet before she jumped (page 51, lines 1, etc.), that within five or six minutes after she had jumped the chauffeur came back to her and helped her back to her sister; she then sent him for her furs and a parcel, (page 51), that they were taken up from the place of the accident to a doctor's office in a taxicab which so far as she could see was exactly the same as the car she had been in (page 61, lines 1 to 15).

Frank Finelli:

Testified that he lived at Fort Lee about two minutes' walk from the place where the accident occurred (page 98, line 15), and that he left home that morning at half-past four and walked from

his home down toward Edgewater to his place of business; that about twenty-five minutes to five the accident occurred, (page 98, line 18), that he saw the taxicab at the top of the hill right opposite Bigler Street (page 98, line 20), that when he first saw the taxicab the chauffeur was working in front of it cranking it; he did not stop, just passed on; asked him if he was in trouble, he said no, went on walking about his business (page 96, lines 10 to 25), that he walked on down the hill; all of a sudden heard the car coming down; stopped, turned around, heard a cry, walked right back; the car stopped about two hundred feet from him; the first lady he found was Miss McGintee; walked back about one hundred feet to her (page 97, lines 1 to 18); Dowdell got out of the car, came right back, met him and went with him to Miss McGintee (page 97, line 10, also line 30), at Dowdell's request to get somebody, he went to the police station; that he left there and went on to his work; (page 97, lines 30 to 40); that when the car stopped it was near the *east side* of River Road *not quite up against the curb facing straight down hill* (page 100, lines 30 to 40).

Joseph Resenstangle, Police Officer:

Was on duty with officer Frate at about ten minutes to five; Frank Finelli came to the police station and told them there had been an accident; they went down the hill and found Mrs. Nell and Miss McGintee (page 101), that he looked down the street after he reached Mrs. Nell and saw Dowdell coming up; that Dowdell told him what the trouble was; that they put the ladies in the car that the accident occurred in and took them up to Dr. Wyler's Office (page 102, lines 20 to 30).

Luke Frate:

Officer Frate testified that he was with Rosen-

stangle; he went to Mrs. Nell and Rosenstangle went to help Miss McGintee; then he turned around and looked down the street to see where the machine was and that it was about a block and a half down the street coming up (page 103, lines 20 to 40); that they put the ladies in the machine and took them to the doctor; when the machine came up he asked the fellow if he had had these two women in the car and he said yes (page 104, lines 1 to 10).

Benjamin Campbell:

Testified for the plaintiff that he was employed in New York, and that in January, 1916, he was employed at the Edgewater Garage in Edgewater; that he worked there from July, 1915 to January, 1916; that Dowdell came to work there around the first part of September; that he never saw him drive a taxicab out or in (page 109, lines 30 to 40), that the system of records kept there to show whether or not a taxicab had been taken out of the garage was that there was a day slip kept at the taxi office which the drivers put their calls on; that there was not supposed to be any calls at night; that when Dowdell came to work there might have been one or two; that they should have appeared upon the regular slip; he did not know whether Mr. Godstrey got those slips or not, but as a matter of record they should be on the taxi slips (page 110), that the taxi business *was a corporation,* The Undercliff Taxi Company (page 111, line 10), that there was a sign on the taxi office down at the ferry bearing the name of Undercliff Taxi Company; that the officers of the corporation were President, Henry Wissell, Treasurer, Joseph F. Gantert; Mr. Godstrey had no office in the company so far as he knew, but was acting as Manager (pages 111 and 112), that the company operated taxicabs under

Mr. Godstrey's management as manager for the Taxi Company (page 112, lines 25 to 40), that there were no other taxicabs running from the Edgewater Garage; that when they were all working there were nine taxicabs in the garage, six taxis and three touring cars (page 113, lines 10 to 14); that the yearly income tax statements were made up by the Undercliff Taxi Company in the corporation's name (page 113, lines 10 to 20); that Dowdell worked there only at night; usually came to work about seven o'clock; that he was a washer; sold gas and oil and locked the place up at night; he was capable of fixing a tire, but not able to do mechanical work (page 113, lines 29 to 40), that he not only knew the two officers of the Undercliff Taxi Company but that he knew all the stockholders (page 115, lines 28 to 30), that the gasolene was bought in the name of Undercliff Taxi Company (page 113, line 8), that shortly after Dowdell came to work he was given orders *not to drive cars;* that he heard him given orders not to drive; that that was after he was arrested in New York the latter part of September; that after that time he did not drive so far as Campbell saw (page 118, lines 1 to 30).

John Moore:

Sworn for the plaintiff, testified that he worked in the garage before Dowdell and was there until February, 1916; that Dowdell came there sometime in September, 1915; that he worked there nights from 7:00 until about 7:00 or 8:00 in the morning; that he washed cars (page 120, lines 20 to 30), he washed cars that was about all; sold gasolene; once in a while had seen him drive cars on washstand, but don't think Mr. Godstrey ever saw him drive them (page 121), never saw Dowdell drive a car on the road, only inside the garage,

putting them on a washstand, etc. (page 121, lines 35, etc.). The examination of the defendant taken by the plaintiff before trial was offered in evidence (Printed Case, page 125, Testimony printed as Exhibit, beginning at page 314).

Godstrey at this examination testified that he was Manager of the Undercliff Taxi Company, a New Jersey Corporation, and had been Manager continuously since September, 1913; that this company kept their cars in the Edgewater Garage, a building owned by the defendant (page 316, lines 1 to 20), that the defendant owns the garage building and land, but that he does not own the garage business (page 321, lines 30 to 40), that all the money taken in at the garage belonged to the Taxi Company (page 333, lines 25, &c.), that the corporation owns all the fixtures and machinery in the garage (page 335, line 30), that the Taxi Company kept its cars in the building known as the Edgewater Garage owned by the defendant and equipped by the Taxi Company since the garage building was finished; prior to the building of the garage building the Taxi Company's cars were kept in a shed back of Gantert's Hotel (page 316), that Dowdell was employed by the Undercliff Taxi Company as a washer of cars; that he was employed in September of 1915 (page 317, lines 10 to 20), that Dowdell's duties were to wash cars; he was hired to wash cars, that was all (page 328, lines 1, &c.), that he drove a car *once* with the defendant's knowledge; that was the first week that he worked; he took a car over to New York; that was about the end of September, 1915 (page 328, lines 10 to 25), that since that time in September, Dowdell has never driven a car to his knowledge (page 328, lines 25, &c.), that Dowdell had a license as a chauffeur in 1915, but did not

have one in 1916 (page 320, lines 35, &c.); he never saw Dowdell drive a car except that time in September (page 331, lines 35, &c.); that Dowdell performed no duties other than washing cars; that took up all of his time (page 332, lines 1 to 5); that he did not know that the license for the car in question or any of the other cars of the Undercliff Taxi Company were taken out in his name until after the accident, when he was informed of that fact by Mr. Keppler, the attorney for the plaintiff.

John Sheehy:

Clerk in the Office of Mr. Keppler, Attorney for the plaintiff, was sworn and testified that two or three days after the accident he went to Edgewater and saw Mr. Godstrey and his son and talked about the accident and one thing or another; that the defendant said he had had poor luck about the cars; they also talked about Dowdell and Godstrey said that Dowdell was a sort of a poor unfortunate fellow that bad luck was following; that Mr. Godstrey had told him that Dowdell was working for him (see his testimony, page 93 and page 94); that he had made two trials to subpœna Mr. Schnell, once about a month prior to the day of his testimony when he thought the case was coming up for trial when he made just one effort, and again the day before he testified (page 90, lines 25, &c.); that he did not know Mr. Schnell; that he did not make any inquiry of Mr. or Mrs. Burket; that all he did was telephone to his mother and brother (pages 90 and 91).

John J. Nell:

One of the plaintiffs testified that he first met the defendant at Fort Lee at the Police Headquarters on February 15th, on the night the chauf-

feur Dowdell was arraigned on a charge of assault and battery (page 43); that he had a talk with Mr. Godstrey after he had dropped the charge against Dowdell; that Godstrey had said that the car was his, and that Dowdell was his chauffeur (see cross examination of this witness, pages 148 and 149).

It was also admitted that the license issued by the Secretary of State for the car in question for the year 1916, had been made out in the name of William C. Godstrey. Mr. Godstrey, however, testified in his examination before trial which was introduced in evidence by the plaintiff that it was not so issued with his instructions, and that he did not know it until after the accident; that he had said to his son Walter at the end of 1915, that it was time to get more licenses out, and told him to go over to Hackensack and fix up these cars (page 319, line 40); that he never had seen the license prior to the accident (page 326); that his son did not give the license to him; that he did not know what he did with them and had no talk with him about the license; that he did not tell him to get the license in his name; that he cannot explain why his son took the license out in the defendant's name (page 326 and page 327); the car in question was owned by and had been bought and paid for by the Company (page 337).

For the defense the defendant was called and testified substantially the same as he had previously testified in his examination before trial; he testified that when he became Manager of the Undercliff Taxi Company in September, 1913, the other people interested in the company were, Henry Wissell, Joseph Gantert and Lewis Martin; that they had a Manager there prior to his connection by the name of Joseph Merriam; that prior to Sep-

tember, 1913, defendant had not any stock in the company; that when he took hold of the company he bought Mr. Merriam's stock which was one-quarter of all the stock issued (page 158). In 1914, the company through its officers entered into a lease with the Public Service Corporation for a building to be used as a taxicab office near the ferry (pages 160 and 161). The lease is printed in the Case at page 343; that he had not personally owned or operated any taxicabs from September, 1913, down to the date of the trial and did not directly receive any returns from the operation of taxicabs operated in the Borough of Edgewater during 1915 or 1916, but the proceeds and money received from the renting out of the taxicabs was the property of the said Undercliff Taxi Company, (page 162), that when he took hold as Manager of the Taxi Company, the company was losing money and had no funds; that he had financed them through and advanced money which accounted for the fact that the moneys which came in were deposited in his account and bills paid by him; that he made statements to the other parties interested in the corporation of the condition of the business (pages 163 and 164); that he first ascertained that licenses for the cars were in his individual name about February 15th when Mr. Keppler brought it up to him (page 170, lines 20, &c.), that shortly after the accident in question occurred, he went up to Fort Lee to the Police Station; that this was shortly after seven o'clock Sunday morning; that he passed the scene of the accident on his way; there was apparently nothing on the road to distinguish the accident; no wreckage or marks of any kind (page 168, &c.); when he arrived at Fort Lee in front of the Police Station he saw the car in question; it was nothing different

than it was on Saturday; that he ran the car, drove it home; drove it down the hill where the accident occurred; down the steep hill; that he did not do anything to the car at all before he started; brakes were good; that he had occasion to use them (page 169); that after the car was taken back by him nothing was done to it; it went out on the road to work (page 170).

Henry Wissell:

Testified that he lived in Edgewater, was one of the incorporators of the Edgewater Taxi Company, had been identified with the company from the time of its incorporation down to the present time; that he had known Mr. Godstrey some twenty odd years; that Godstrey was not interested at the time of its incorporation; that he first became interested in this corporation in the Fall of 1913; that he came into the corporation and bought stock of Mr. Merriam; that Merriam had proved to be a poor manager, and that the company was in a very bad financial condition; that Wissell was the President, and that Mr. Gantert was the Treasurer (pages 224 and 225); that he as an officer of the company knew when the change in the system of banking accounts took place and it was done with his knowledge and consent (page 226); that the day following the accident Mr. Godstrey reported the accident to him, and that Mr. Godstrey was authorized to act as agent of the company to proceed and see what could be done to settle the matter (page 227).

Joseph Gantert:

Testified that he lives in Edgewater; that he is one of the incorporators, &c., and had been identified with the company ever since; that Godstrey became interested in the Fall of 1913; that the company had had a Manager by the name of Mer-

riam; that the company had gone bad; they spoke to Godstrey one day and wanted to know if he would buy Merriam's stock, so we had a meeting of the company and Godstrey bought Merriam's stock, and at that time we made him Manager of the Company, and he has been Manager ever since (page 234, lines 10 to 30); that on Sunday afternoon after the accident Mr. Godstrey spoke to him about it and he told him to fix it up the best way he could; that at that time the Undercliff Taxi Company was operating the taxicab in question (page 234, lines 30 to 40).

John J. Gould:

Testified that he was a Police Officer of the Borough of Edgewater; that in the early morning of the 16th of January, he saw Mrs. Nell about a quarter to four in the ferry house at Edgewater (page 237, lines 10 to 21). The colored porter told him that he had been trying to get a taxicab for someone; that he could not find anyone at the garage so he went up and found Dowdell there and told him about it; Dowdell said that all the cars were in; that the chauffeurs had gone home (page 237), that he told him there were two ladies who wanted to get home; that Dowdell said I cannot go out, I don't like to do it; he hesitated a little bit, and said, "Well I will take them" (page 238, lines 20 to 35).

Whitmore Robinson:

Testified that on January 16th he was working at Edgewater at the Fort Lee Ferry as a porter; that he was on duty at Edgewater; that he saw Mrs. Nell about five minutes after four when she came off the ferry boat which arrived about five minutes after four (page 243, lines 1 to 25), that the boats leave New York, one at 2:00 o'clock A. M., one at 2:45

A. M., and one at 3:55 A. M., which is the last boat. These ladies came over on the boat which arrived at Edgewater at 4:05 (page 244); that after they looked around, apparently looking for a car he told them that there were no more cars until 5:40; they said any taxicabs; he said there was a taxicab around here and looked around for the chauffeur but did not see him; he then said he would see the chauffeur, to which the ladies replied "all right, thank you" (page 245); went to look for the chauffeur, met Mr. Gould, the policeman; asked him if Whitie was around; Whitie's name is Bob White, the chauffeur, not Dowdell; he was on duty that night as chauffeur, went on up to the garage anyway and could not find anyone in the garage, so he turned around and came back (page 245); he then directed Mrs. Nell to the telephone in the ferry house, Mrs. Nell telephoned and attempted to have witness corroborate her conversation to the person at the other end (page 246).

Robert White:

Testified that he worked for the Undercliff Taxi Company since April, 1915, was working on January 16th; was on duty on the night of the 15th and in the early morning of the 16th; left his stand to go home about 3:45; left before the 4:05 boat arrived (page 249); was at the ferry with his taxicab when the 3:05 boat arrived (page 250); Dowdell had been working at the garage for some time as a washer, washed cars, had seen him sell oil and wash cars, never saw him drive cars (page 250).

Dowdell:

Testified to working for the Undercliff Taxi Company since September, 1915, as a washer; was hired as a washer; drove out of the garage twice, two mornings in succession for Dr. Beckley

(page 253); never drove again until the date of the accident because Mr. Godstrey had told him never to take a car out of the garage as he was hired as a washer and must be on there at all times during the night (page 254); there was no other person in the garage all night (page 254, line 25); the first he knew about the ladies was when Officer Gould came to the garage and asked him if any drivers were around; he told him no; the officer told him there were two ladies at the ferry who wanted to go to Leonia; Gould said to the witness, "You are not supposed to go off are you," to which the witness answered "No." The officer then said, "Well, I will go back and tell them." Witness said to the officer, "No, I will take a chance and go;" that he then went down and got them; he started up the road toward Fort Lee; on the hill known as the main street, the car stopped, stalled and backed; he knew he was not getting gas so backed the car down the hill and put the hind wheels against the south curb of the street (pages 255 and 256); had the front wheels facing up the hill, cranked the car for a couple of minutes; did not get it started; stood still to give the gas a chance to get in the carburetor when the Italian fellow came up and asked if he was in trouble, he said "No, not in trouble, the car ain't getting gas, that's all;" the Italian fellow went on a little while, and while he was waiting to give the gas a chance to get to the carburetor Mrs. Nell asked him to open the window for her; he went around to open the window and his overcoat caught in the valve cap on the front right wheel; gave his coat a pull which swung the front wheels down hill and the car began to start; coat got caught around the hub; he pulled and jerked at his coat and after he got it loose jumped on the seat, stopped the car in front of the garage (Exhibit P-5, pages 256

and 257); went back up to where the ladies were, met Officer Rosenstangle who asked what was the trouble; he told him he could not make the hill; did not have enough gasolene; put the ladies in the car and went to Dr. Wyler's going around another way (page 258).

Orlando H. Speer:

Testified that he was a chauffeur employed by the Undercliff Taxi Company; had worked for them since the Spring of 1914; knew Dowdell; knew he was employed as a night man as a washer; does nothing else that he knows of, except sell gas and oil (page 281, lines 25 to 39), shortly after the accident which Dowdell had in New York he heard Mr. Godstrey say to Dowdell, "Paddy, don't never take a car out of this garage again; under no consideration leave the garage alone;" since that time I have never seen him drive a car (page 282).

The grounds of appeal filed herein are numerous. The first relates to the direction of a verdict for the defendant. All of the remainder relate to the admissions or rejection of evidence.

The plaintiff in his brief has not argued any of the alleged errors with respect to the reception or rejection of evidence, but has apparently abandoned those grounds of appeal.

It is submitted that an examination of the case will demonstrate that the court did not erroneously exclude any evidence offered by the plaintiff or admit any evidence improperly.

In view of the apparent abandoment of these grounds by the plaintiff, the defendant will not attempt to discuss any of them in this brief.

The attention of the court is directed to the numerous erroneous statements of evidence made in the plaintiff's brief, which will be apparent upon a comparison of the case with the brief.

POINT I.

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

The court did not clearly state upon which ground or grounds mentioned in the defendant's motion, the direction was ordered; but if the judgment is sustainable upon any ground, it will not be reversed.

A.

THE EVIDENCE SHOWS THAT THE DEFENDANT WAS NOT THE OWNER OR OPERATOR OF THE TAXICAB IN QUESTION.

The evidence adduced by the plaintiff demonstrates beyond any question that the taxicab in question was owned and operated by the Undercliff Taxi Company, and not by the defendant.

The plaintiff by introducing in evidence the examination of the defendant taken before trial is bound by it and vouches for the credibility of the witness.

> Practice Act, Section 146, Compiled Statutes, Volume 3, page 4099.

Also the plaintiffs proved by their witness Campbell that the taxicab business conducted in Edgewater was conducted by Undercliff Taxi Company of which Mr. Wissell was President, Mr. Gantert, Treasurer, and Mr. Godstrey, Manager.

> See testimony of Campbell, pages 111 and 112.

Campbell's testimony was positive and complete.

From this evidence it is clear and certain who was the owner of the taxicab and who operated the taxicab business; Nell, one of the plaintiffs, endeavors to bolster up his case by remembering that at a talk he had with Godstrey at Fort Lee at the time he dropped the criminal charge against the chauffeur, Godstrey, had told him that it was his car and that Dowdell was his chauffeur, and that he did not want to go to Court. On cross examination, his memory of the conversation and what took place was very hazy, excepting that Godstrey had said that he had been very unfortunate and that Dowdell had been driving for him and had killed a man (page 149).

There is nothing in his testimony which would give the jury the right to infer, in view of the positive testimony of plaintiffs' witness Campbell and Godstrey's examination, which had been put in evidence by the plaintiffs, that when Godstrey used the personal pronoun in his talk with Nell that he meant in fact that the taxicab was *his* and that Dowdell was *his* chauffeur. It is a daily occurrence for officers of corporations to talk in the first person. The plaintiffs' testimony established beyond a doubt the fact that the real owner and operator of the cab was the Undercliff Taxi Company and not the defendant.

It is contended by the plaintiffs that because it appears from the records in the Secretary of State's Office that the taxicab in question was licensed in the name of William C. Godstrey, that, nothwithstanding the positive evidence of Campbell and the examination before trial of Godstrey introduced by the plaintiffs, there is a presumption which would justify the case going to the jury and the jury finding that Godstrey was in fact the

owner of the taxicab. The plaintiffs had rebutted any presumption which such record might have raised.

Plaintiff lays great stress upon the case of Edgeworth v. Wood, 58 New Jersey Law, 468, decided in the Supreme Court upon an opinion written by Mr. Justice Magie. It is respectfully submitted that this case is not in point. In that case, the evidence showed that the express company was engaged in the express business, and that the wagon which caused the injury was an express wagon bearing the insignia or device regularly used by that company upon its wagons. In this case the evidence does not show that Godstrey was engaged in the business of running taxicabs, but on the contrary the *plaintiffs'* evidence shows that it was the Undercliff Taxi Company which was engaged in the business of running taxicabs. In that case the *ownership of the express business* was not in question and the whole case turned upon the question of whether or not it was a wagon belonging to the express company.

Defendant does not attempt to argue that the production of a license for an automobile, properly applied for by a defendant, would not raise an inference that the automobile which bore the license number was the property of that defendant. In the present case the plaintiff did not rely upon any inference which might have been drawn but proved conclusively the fact itself.

Plaintiffs have also proven that the license in question was not the result of the affirmative act of the defendant; that the defendant had no knowledge that the license had been issued in his name. The attempt by the plaintiffs to raise any such inference in this case is in fact an effort to impeach the positive testimony of their own witnesses.

B.

IT DID NOT APPEAR THAT DOWDELL WAS THE AGENT OF THE DEFENDANT.

The plaintiffs proved by their own witnesses that Dowdell was in the employ of the Undercliff Taxi Company, the owner of the taxicab in question.

Witness Campbell called by the plaintiffs (page 109, lines 25 to 40; pages 110 and 111 and page 113, lines 28 to 40; also page 116, lines 10 to 30; page 113, lines 15, etc.).

This testimony of Campbell's is corroborated by the testimony of Moore called as a witness by the plaintiffs (page 120, lines 10, etc.):

> "Q. Did you see any other boss around there? A. No, there was one in there.
>
> "Q. Did you ever know while you were there of any other concern being there? A. I did hear something about that, but never paid any attention to that, because I always looked to Mr. Godstrey as my boss.
>
> "Q. Do you know Dowdell? A. After he came there to work.
>
> "Q. He came about September? A. Sometime.
>
> "Q. Did he work there all the time that you were there? A. Yes, sir.
>
> "Q. When did he work? A. Nights, 7 until about 7 in the morning. 8 o'clock.
>
> "Q. What did he do there? A. Washed cars."

Again on page 121, lines 25, etc.:

> "Q. Who paid you your salary, did you say? A. It came through Mr. Godstrey, I believe.
>
> "Q. Who paid it to you? Who gave you the money? A. Generally the bookkeeper Mr. Campbell."

We also have the testimony of Mr. Godstrey

taken before trial and put in evidence by the plaintiffs. From all of this testimony it clearly appears that Dowdell was an employee of the Undercliff Taxi Company and he was engaged in its business and had no connection whatever with Mr. Godstrey, except that Mr. Godstrey was the Manager of the Undercliff Taxi Company.

C.

DOWDELL'S ACT IN TAKING THE TAXI-CAB OUT AT THE TIME IN QUESTION WAS NOT WITHIN THE SCOPE OF HIS EMPLOYMENT.

We have above demonstrated that the defendant was not the owner of the automobile, and that Dowdell was not his servant.

Assuming, however, that these questions are not to be considered, an examination of the testimony clearly shows that under no possible theory of the case was Dowdell acting within the scope of his authority when he took the car out on the night in question. The testimony shows that he was hired only to wash cars.

In this connection I desire to point out that there is an error in the Printed Case, which I have only discovered at the present time; in two places the stenographer or printer has used the word "chauffeur" where they should have used the word "washer," but the subsequent context shows the mistake. The first error is at page 164, and the second at page 173. It is with much surprise that I find that plaintiffs in their brief at page 8 quote this apparent error in their brief.

At page 164, line 38, the case is made to read as follows:

> "I told him I was in need of a chauffeur and he could go to work."

On page 165, line 15, etc., the following appears:

> "Q. What were his duties? A. He was hired to wash the cars and keep the garage open nights for cars coming in or going out."

On page 173, line 25, counsel for the plaintiffs on cross examination asked Mr. Godstrey:

> "Q. Now you say that when you hired Dowdell, you really asked him, or rather he really asked you for a job as chauffeur, is that correct? A. That is right.
> "Q. You merely hired him as a washer; you said before you had no conversation except that, is that the truth? A. That is about the extent of it."

And the following twenty lines contain other questions and answers which indicate that the word "chauffeur" as used in the two places above mentioned should have been "washer."

Plaintiffs' witness Campbell testifies that Dowdell was employed as a washer (page 113, line 33).

Plaintiffs' witness Moore testifies that Dowdell was employed as a washer (page 120, lines 25, etc.).

Both of these witnesses testified that he was not a chauffeur and did not drive cars. The defendant in his examination before trial which was introduced by the plaintiffs likewise testifies that Dowdell was employed as a washer (page 327, line 40, page 328, lines 1 to 28).

All of these witnesses also testified that he did not in fact drive cars as a chauffeur and that it was not part of his duties so to do, but that his duties consisted of washing cars and looking after the garage and selling gasolene and oil. The defendant's witnesses also testified to that effect.

The case of *Doran* v. *Thomsen*, 76 Law, 754, is a leading case in this state upon this subject. Also see

Holler v. Ross, 68 N. J. Law, 324,
Dierker v. Hauxhurst Land Co., 79 At. Rep., 361,
Same Case, 80 N. J. L., 369,
Aycrigg v. Erie, 30 N. J. Law, 460.

It is true that in a great majority of cases the question of the scope of the servant's employment is a jury question, but in this case the plaintiffs proved that the act was not within the scope of Dowdell's employment.

D.

DOWDELL WAS THE AGENT OF THE PLAINTIFF.

If the plaintiff's story is to be believed it would clearly appear that Dowdell was her agent. She testifies: "I asked the officer who was standing near if he could get us a cab. He said if we waited he would, and told us to go inside out of the cold, and that he would call us when the cab arrived which he did" (page 22, lines 8 to 15). Clearly Officer Gould was Mrs. Nell's agent in engaging the cab. Gould testifies that Dowdell told him that "I cannot go out." That then Dowdell turned around, hesitated a little and said, "I will take them." He then said "All right" and went down to the ferry house and told the ladies the taxi would be there (page 238, lines 30, etc.).

Dowdell testifies that Officer Gould asked him if there were any drivers around; that he told him no; he then said, "There are two ladies down at the ferry who want to go to Leonia, you are not supposed to go off are you?" He then answered Officer Gould and said, "No," to which Gould replied, "I will go back and tell them." Thereupon Dowdell said to Gould, "No, I will take a chance

and go" (page 255, lines 10, &c.). The Porter Robinson testified that after he had been asked to find a taxi for the ladies he went up to look for Bob White the chauffeur, but could not find him; that he went back showed the ladies the telephone booth; a few minutes later Mr. Gould came in and said he had found a man, and that he would be there (page 246, lines 25, etc.).

As above pointed out Officer Gould was acting as the agent of Mrs. Nell and she must be charged with the knowledge which he had, namely, that Dowdell had no right to go out, but that he finally said he would take a chance, which emphasized his lack of authority.

E.

THE NEGLIGENCE ALLEGED IN THE COMPLAINT WAS NOT PROVEN.

The negligence alleged in the complaint consists of the defendant permitting the automobile and the various parts thereof necessary to operate the same to become old, worn out and defective (Paragraph 5 of the Complaint, page 6, Printed Case). And that because of the defective condition of the automobile and the parts thereof the car ran down hill and Dowdell told her to jump whereby the injuries occurred.

There is not a scintilla of evidence or anything from which any inference could be had that the automobile or any of the parts thereof were old, worn out or defective. On the contrary, it is undisputed that the car was operated immediately after the accident, and that there was nothing the matter with it.

The only inference as to how the accident occurred is that there was not sufficient gasolene in the car to feed the carburetor and thus get the

car up the steep hill referred to. By reason of this fact it stalled, and when it stalled Dowdell backed the car around so that the two rear wheels were against the south curb of the street to hold it in place and to prevent any accident.

Mrs. Nell and Miss McGintee say that when Dowdell got out to try to crank the car, the front wheels were pointed down the hill. However much these ladies may believe this to be the fact, the court must recognize that it cannot be true, because otherwise the car would have immediately started to go down the hill, particularly in view of the fact that Dowdell was cranking the car and thereby giving it a great deal of vibration for ten or twelve minutes. The only rational explanation is that given by Dowdell, namely, that when he went around to open the window his coat caught upon the valve cap or some other part of the wheel, and that in this manner he pulled the front wheels around and thus giving the car an opportunity to run downward. The car stopped by Dowdell on a very steep down grade about three hundred feet from where it started. It was not stopped by any obstruction, but was standing in the middle of the street. (See testimony of Finelli.)

The car remained in this position while Dowdell went backward and endeavored to help the ladies who had jumped out in the meantime.

Certainly there is no evidence whatever that the accident was due to defective, old or worn out parts of the automobile. That was the gravamen of the accident and no amendments were made. Consequently, even though there had been negligence of a different character, the direction of a verdict was proper.

There is no charge in the complaint that Dowdell was not a competent driver or that there was any negligence whatever in permitting him to drive the car; even though that had been a fact.

In the case of *Doran* v. *Thomsen, supra,* the court there indicated that in that case there might have been a liability upon the father upon a different theory than that alleged in the complaint and proven at the trial, and there are innumerable cases laying down the rule that the plaintiff must prove the negilgence alleged and cannot recover for an act of negligence which has not been fairly alleged.

F.

THERE WAS NO NEGLIGENCE ON THE PART OF THE DEFENDANT PROVEN.

The defendant himself had nothing whatever to do with this accident. He was not Dowdell's master and therefore was not liable for his negligence, if there had been any.

As has been above pointed out the plaintiffs failed entirely to prove any act of negligence of any kind or character, either that alleged in the complaint or otherwise.

The evidence shows beyond any controversy that the defendant had no interest in the taxicab in question other than as Manager and quarter owner of the Undercliff Taxi Company; that Dowdell was not the defendant's servant, but that he was the servant of the Undercliff Taxi Company; that his act in taking the taxicab out on the occasion in question was without the scope of his authority as a servant of the Undercliff Taxi Company; that there was no negligence whatever which could be imputed either to the defendant or to the company, and further that the negligence alleged in the complaint was not proven.

G.

THE JUDGMENT HEREIN SHOULD BE AFFIRMED WITH COSTS.

Respectfully submitted,

WENDELL J. WRIGHT,
Attorney for and of Counsel
with Defendant-Respondent.

New Jersey Court of Errors and Appeals

HARRIET NELL and JOHN J. NELL, Plaintiffs-Appellants, against WILLIAM C. GODSTREY, Defendant-Respondent.	On Appeal from Bergen County Circuit Court.

REPLY BRIEF FOR APPELLANT.

There are statements in the respondent's brief that the appellants feel compelled to answer.

The summarization omits, at page 2, item 6, a very essential part of plaintiff's complaint, to wit:

> "And also solely through the negligence of the said defendant, his agents, servants and employees, and without any fault or negligence on part of the said Harriet Nell, * * *."
>
> (See Case, p. 6, ll. 20 to 25.)

This omission gives the respondent a perverted viewpoint, and therefore he argues that although there is abundant evidence of negligence in the case, nevertheless the plaintiff failed to prove the defective condition of the car.

The appellants contend that under that portion of the complaint quoted, *supra*, the negligence

proved on the trial was competent and made out a case, and that the statement that not a scintilla of evidence is adduced to prove the defective condition of the car, is not the fact.

There is no question that Mrs. Nell testified that the engine started when the car started, and this in itself would prove the defective condition of the brake, for if the brake was in good condition and was on, or the car was in neutral, the mere fact that the engine started, could never start the car. Besides, there is further evidence of negligence, that is, the evidence of Mrs. Nell and the disinterested witness Finelli, that the car at the time the chauffeur was cranking it was facing downhill. Surely it was negligence for the chauffeur to endeavor to drive his car without any gas, and also to leave the car facing downhill, to create gravity, so that it made it possible to get gas while he was cranking it. Dowdell's whole story is incredible.

The appellants did not argue the question of negligence at length in their brief, because the Trial Justice assumed and the appellants believed that the question of negligence was sufficient to go to the jury. This contention is emphasized by the closing paragraph of the respondent's statement (see p. 3 of respondent's brief).

In Point C, page 22 of his brief the respondent makes the charge that either the stenographer or printer used the word "chauffeur" where "washer" should have been used. This accusation is eminently unfair to say the least. The state of case is exactly like the original transcript of minutes.

The respondent has neglected to quote, at page 164, the sentence immediately prior to line 38, to-wit:

> "He said he had been working at Bretton Hall Garage as a chauffeur."

He has studiously neglected to quote from the testimony those portions that would show clearly that there could possibly be no mistake as to the word chauffeur (see p. 165, ll. 29 to 38 of case, also p. 173, ll. 21 to 24 and ll. 30 to 40; also p. 174, ll. 1 to 10).

In addition to the testimony of the defendant, Godstrey, in pages mentioned, *supra,* Campbell testified at page 115 that he knew that Dowdell was a licensed chauffeur.

Dowdell testified that he had taken out a license in September, 1915. John Nell testified that Godstrey had told him that Dowdell was his chauffeur and the car was his, and the evidence shows that Dowdell had driven Dr. Beckley, and that it was necessary for him to be able to drive a car in order to get the automobiles in the garage in place.

Further reference to the testimony on this point is unnecessary.

The respondent has relied mainly upon the contention that the appellants were bound by the examination before trial of the defendant Godstrey to sustain the Trial Court's disposal of this case. His authority (see p. 18 of respondent's brief) is Section 146 of the Practice Act, no other authority is relied upon. He has misconstrued the meaning of that section, because it explicitly states:

> "The examination thus taken shall not be conclusive, but may be rebutted at the trial."

And this is exactly what happened in the case, Godstrey having been called as a witness for the defendant and cross-examined by the plaintiff.

The respondent claims that, at pages 111 and 112, Campbell testified that the sign on the taxi office was "Undercliff Taxi Company." This is erroneous, for on page 115, line 20, the testimony is:

"Q. And there wasn't a sign anywhere that showed the name of the Undercliff Taxi Co., was there? A. The bank book."

Also line 32:

"Q. But there is not a sign anywhere of the Undercliff Taxi Co., is there? A. Not that I know of."

At page 20 of his brief the respondent conceded that the production of a license for an automobile, in the defendant's name, would raise an inference that the automobile which bore the license number was the property of the defendant, if properly applied for by the defendant. There is no dispute in the case that the defendant, Godstrey, instructed his son Walter to go to Hackensack and renew the licenses. *Renewal for whom?* No license was ever taken out in the name of the Undercliff Taxi Company; the only licenses that were ever granted, as far as this case is concerned, were to the defendant Godstrey.

In addition, Campbell and Dowdell both testified that they were employed by the Edgewater Garage, and it was conceded upon the trial that the Edgewater Garage was owned by and was the trade-name of the defendant Godstrey.

The respondent further concedes in his brief, page 24, "that in a great majority of cases the question of the scope of the servant's employment is a jury question." That is exactly what we contend.

There is nothing in this case nor in respondent's brief to substantiate the defendant's deduction that Officer Gould was acting as agent for Mrs. Nell. It could not be claimed that an office boy or errand boy has authority to make a contract to bind the master. Gould only went on an errand as a messenger to call a taxi; he made no agreement

with Dowdell, and there is nothing in the case to prove that anyone communicated to Mrs. Nell the alleged conversation between Officer Gould and Dowdell.

The plaintiffs-appellants have not nor do they intend to abandon errors committed by the Trial Court on the various rulings of admission and exclusion of evidence, but they are so apparent that citation or argument in this court is unnecessary.

Respectfully submitted,

NATHANIEL KENT,
Attorney for Plaintiffs-Appellants.

GILBERT COLLINS,
Of Counsel with plaintiffs-appellants.

NEW JERSEY

Court of Errors and Appeals.

HARRIET NELL AND JOHN J. NELL,
Plaintiffs-Appellants,

against

WILLIAM C. GODSTREY,
Defendant-Respondent.

On Appeal from Bergen County Circuit Court.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

This is an appeal from a judgment entered in the Bergen County Circuit Court, founded upon a verdict for the defendant, directed by the Court, to which direction exception was duly taken (case page 306), and this appeal brings up errors committed by the trial Judge in receiving and excluding evidence and in such direction of verdict. (See Notice of Appeal, page 1.)

The action was brought by Harriet Nell and her husband, John J. Nell, for injuries she sustained while a passenger in a taxicab alleged to have been owned, operated and controlled by the defendant, or his agents. The testimony is digested at length infra.

The facts relating to the accident, which was the subject matter of this suit, were simple and were practically uncontradicted on trial.

The plaintiff, Mrs. Harriet Nell, testified that she was and still is married to John J. Nell, and

New Jersey State Library

that on Saturday night, January 15th, 1916, she and her sister, Miss Josephine T. McGintee, of Rochester, New York, who was visiting her at that time, went to Hackensack, and thence to New York, for the purpose of doing some shopping and visiting the family of one of her husband's employees. They left the home of the persons whom they were visiting at about 1:30 Sunday morning to catch the ferry going to Edgewater. (See pages 19, 20 and 21.) They missed the 2:00 o'clock boat and were compelled to take the next boat at 2:45 A. M. When they arrived in Edgewater they found that there would be no car leaving until 5:00 o'clock. (Page 22.) Mrs. Nell called a colored porter (Whitmore Robinson), and he showed her where she could find a telephone to communicate with her husband. She did so and he instructed her to hire a taxicab to take them home. (Page 22.) She then asked Officer Gould to get her a taxicab, and he said he would. Within ten or fifteen minutes thereafter Patrick Dowdell came with a taxi from the Edgewater Garage, and agreed to take them to Bogota for $3. (Page 22.) The plaintiff and her sister then entered the taxi and rode along the river edge for about fifteen or twenty minutes until they came to a large hill called the Fort Lee Hill. (Page 23.) When near the top of the hill the car stalled and commenced coasting backwards down hill, whereupon the chauffeur turned his wheel to make the car turn sideways towards the curb, and thus backed the car up against the South curb. After stopping the car he turned the front wheels facing down hill, so as to aid the gasoline, which was low, to run into the carbureter (Page 23.) and started to crank the machine. This he continued doing for about ten to twelve minutes, when she opened the window and asked him what the trouble was, and he said that the gasoline had run low and that

the radiator was hot. While trying to crank the car it suddenly started, with no one at the wheel, down the hill, the chauffeur trying to hold it back with his hands around the radiator. As it rapidly increased its speed, the chauffeur yelled to the plaintiff and her sister to jump for their lives. (Page 24.) After the car had gone some considerable distance, the plaintiff took the chauffeur's advice and jumped. She struck her head against the street and was rendered unconscious. It was an extremely cold night. (Pages 23, 24, 25, 26.)

The sister, Miss Josephine T. McGintee, corroborated the statements of the plaintiff. She said that the car had gone down hill at least one hundred feet before Mrs. Nell jumped, and another hundred feet before she jumped, and that both of them had jumped from the same side of the taxicab. (Pages 48, 50 and 62.)

The evidence as to the injuries that the plaintiff sustained were testified to not only by the plaintiff, but at length by Doctors Wyler, Auerbach, McPhilips and Tannenbaum, and there really was no dispute that the plaintiff was very seriously and permanently injured because of the accident. For the purpose of this appeal it is not necessary to further allude to their testimony. (Pages 73, 78, 125.)

Mr. John Sheehy called as witness for the plaintiffs testified that he had a conversation with the defendant's son in the presence of the defendant in the Boat House at Edgewater, and during this conversation he asked him whether he was a partner in the business, and the son said, "No"; that his father owned it all and that he was employed the same as the other men, to which statement Mr. Godstrey nodded his head. On other occasions after the accident he had met the defendant Godstrey at his place of business and Godstrey had

told him several times that Dowdell was working for him (p. 87), and on a cross-examination he testified that Godstrey had told him that he would settle up as best he could and that he was sure that Mr. Nell and he would come to some understanding as to what was the right figure and that the matter would be amicably disposed of. (P. 91.)

Frank Finelli was called as a witness for the plaintiffs and testified that he lived at Fort Lee and worked down at Edgewater in the Sugar House, and that on the morning of the accident, at about 4:30, he was walking down the Fort Lee Hill and saw a taxicab near the top of the hill on Main Street opposite the depot. The chauffeur was working in front of it and cranking it. He asked the chauffeur at that time whether he was in trouble and needed any help, and the chauffeur replied, "No." That the front wheels of the automobile at that time were facing down hill, and that its rear wheels were right up against the curb. He then proceeded down the hill about his business and about two minutes thereafter heard an automobile coming down the hill; heard a cry and looked about and saw that automobile coming down the hill. The car stopped about 200 feet away from where he was standing; that he then walked back with another man up the hill and saw Miss McGintee lying on the street; that she was from 100 to 120 feet away from where the automobile had stopped (p. 96-7); that then Dowdell came to him and asked him to help Miss McGintee up and told him to get somebody; that he went up the hill and got Police Officer Rosenstangle and left immediately thereafter.

Officer Rosenstangle testified that Finelli told him that somebody had been injured on the hill, and that he and Policeman Frate found Mrs. Nell and Miss McGintee. Officer Frate corroborated

the statement in every detail, and said that he went to the aid of Mrs. Nell as she was the nearer one to him, and Officer Rosenstangle went to help Miss McGintee, and he turned around and saw the automobile about a block and a half down the street; that the two injured persons were put into the car and that he told the chauffeur to try to take a roundabout way, instead of trying to go up the steep hill, so as to get into Dr. Wyler's office.

Benjamin Campbell testified that he had been employed at the Edgewater Garage as a bookkeeper, and that the Edgewater Garage was the defendant; that he was hired by the defendant and that the letterheads and billheads, marked plaintiff's Exhibits 11 and 12, were regularly used by him in the business of the defendant, and that these bills were sent out for work done in the garage and for taxi hire in the place, and that whenever a taxicab was taken out by the drivers, the drivers left a slip with his call on in the office, and that Dowdell, the chauffeur in this case, who also was a licensed chauffeur, had made two night calls in September, 1915, and had made slips for them, and turned them in to him, and that a record of those two slips should be on the taxi slips in the office.

On cross-examination he further testified that he had heard of the Undercliff Taxi Company, but that all the taxis run out of the Edgewater Garage were run under the management of the defendant, and all the bills for such taxis were sent out on Mr. Godstrey's billheads, as marked in evidence, and that he never saw an Undercliff Taxi Company's billhead, and that no taxicabs were run out of the Edgewater Garage except those whose hire was credited to the defendant, doing business as the Edgewater Garage; that there were six taxis and three touring cars in the

garage, and that these taxis were rented and the checks made payable to William C. Godstrey, the defendant. (Pages 107 to 113.)

On redirect examination he further testified that Dowdell worked at nights, that is, he came at about 7:00 o'clock each evening; that he had sole charge of the garage at night and that he washed automobiles as they came in, arranged them and sold and served oil and gasoline; that there was nothing else to do at night; that there was only one set of books used and that he had charge of those, and that all moneys that came in for taxi hire and for repairs were all deposited in the bank account of William C. Godstrey, and that every book and record in the place was kept in the name of William C. Godstrey, and that there was no sign at any place that bore the name "Undercliff Taxi Company" (Page 115.); that Godstrey was looked upon by everybody in the place as the boss, and that there really was nobody in the place that took any interest as proprietor except the defendant; that there rarely was an occasion for a night call, because the taxis generally waited down at the ferry for the last boat, which came in at 4:00 o'clock. (Page 117.)

During the testimony of Campbell a motion was made to amend the Complaint by substituting in paragraph 3 of the Complaint the words, "Edgewater Garage," which trade name the defendant used, instead of and in place of Godstrey Taxi Company, which motion was granted upon consent (p. 109).

John J. Nell, Harriet Nell's husband, who is also one of the plaintiffs in this case, testified that he had met the defendant (p. 143) Godstrey at the Fort Lee Police Headquarters on February 15th and had a conversation with him. During this conversation Godstrey told him that he had been

very unfortunate with Dowdell's accident, and that he greatly appreciated Nell's leniency in not prosecuting Dowdell; *that Dowdell was his chauffeur* (p. 145); *and that the car was his and that he did not want to go to Court and that he much preferred to settle this matter out of Court,* and when he could determine the final loss the defendant would meet him more than half way. Godstrey had asked him to leave his son Walter out of the case entirely (p. 151). This conversation was in fact admitted by Godstrey.

William J. Deardend, clerk in the Motor Vehicle Department of the Commissioner of Motor Vehicles, under subpoena testified that he had made a careful search of the records and that there were no licenses issued in New Jersey in 1915 or 1916 to the Undercliff Taxi Company. Thereupon there was offered in evidence licenses issued to William C. Godstrey to all the taxis used in the Edgewater Garage for the years 1912, 1913, 1914 and 1915, which were marked plaintiff's Exhibits 13 and 14; *also a license, No.* 60195, *for the year* 1916, *covering a Ford car, manufacturer's No.* 121132, *which was the very car that the plaintiff rode in at the time of the accident.*

There was offered in evidence an examination before trial of the defendant, which was received and marked plaintiff's Exhibit 10, in which he admitted owning the Edgewater Garage, and that Dowdell was employed by him. Thereupon the plaintiff rested and the defendant moved for a nonsuit, which motion was denied.

The defendant took the stand in his own behalf. His testimony is full of the most reckless contradiction of himself, and besides is in many ways inherently improbable. He testified that he became connected with the Undercliff Taxi Company in September, 1913, and that that company had

been in operation five months before that date, and that he had purchased $250 stock from Mr. Merriman, who had been manager of the company, and that when he first became connected with the company they had a garage in the shed in the rear of the lot occupied by Mr. Gantert, and that they continued there until the new garage was built. (Page 160.) Despite the records of the Secretary of State, personally and his own prior admissions in his examination before trial, he testified that he did not own or operate any taxicabs in Edgewater from September, 1913, to date (page 162), and that the reason that the bank account had been run in his own name was because every time he needed a check signed to pay a bill he had to see Mr. Wissel or Mr. Gantert to have the same signed; that from that time until the time of the accident he financed the entire business himself at a great loss (p. 163). THAT DOWDELL CAME TO HIM AND ASKED HIM IF HE COULD GIVE HIM A POSITION, AND THAT HE ASKED HIM WHAT HE COULD DO, AND THAT DOWDELL HAD TOLD HIM THAT HE HAD BEEN WORKING AS A CHAUFFEUR, AND THE DEFENDANT THEN SAID THAT HE WAS IN NEED OF A CHAUFFEUR AND THAT HE COULD GO TO WORK. (Page 164.) THAT HE HIRED DOWDELL TO WASH CARS AND KEEP THE GARAGE OPEN DURING THE NIGHT FOR CARS COMING IN AND GOING OUT. HE ADMITTED THAT HE TOLD MR. NELL (Page 166); THAT HE WANTED TO ADJUST THE DAMAGES IN THIS CASE OUT OF COURT, AND RELATED THE CONVERSATION WITH MR. NELL EXACTLY AS MR. NELL HAD STATED, EXCEPT THAT HE DENIED THAT HE TOLD HIM THAT DOWDELL WAS HIS CHAUF-

FEUR AND THAT HE OWNED THE CAR AND DOWDELL ASKED HIM FOR A JOB AS A CHAUFFEUR. (Page 193.) That he personally did not make any application for licenses during the years 1915 and 1916. That he personally ran the Edgewater Garage, and owned it and owned the business. (Page 194.) That he kept all the cars of the Undercliff Taxi Company and gave them all of his services, and all of his time, but never received any money from them, and that his only interest in that $10,000.00 corporation consisted of the $250.00 stocks that he had purchased from Mr. Merriman. (Page 175.) That he personally kept all the income; that he had never asked Mr. Martin or Mr. Wissel to give him authority to sign checks. In all the years that he had been connected with the Company he had never figured out what the Company owed him, and the were personal friends of his. (Page 176.) He further testified that he did not know of any reason why the licenses were not issued in the name of Undercliff Taxi Company for the years 1915 and 1916. That the regular drivers made a call at 3:05 A. M. and then put their cars in the garage, and that after that Dowdell *had entire* and absolute charge of the entire garage. That he knew that Dowdell had killed a man while driving one of his cars, and that he had injured the plaintiff in this case, nevertheless he retained Dowdell in his employ and allowed Dowdell to stay where he might again take out a car and repeat the same unfortunate performance. (Page 184.) That the first time that he had heard that the license for the car in question was issued to him was when the attorney for the plaintiff told him so. He admitted that he had instructed his son, Walter, to renew the licenses, although he was neither a director, stockholder nor officer of the Undercliff Taxi Company.

(Page 190.) That no dividends were ever paid by the Undercliff Taxi Company to any of its stockholders. (Page 192.) That all the money that came in was deposited in his own personal bank account and that there was no record in existence showing the amount of money that the Undercliff Taxi Company owes him. (Page 193.)

He testified the taxicab in this case was bought in August, 1915, and the defendant did not receive a bill of sale for it nor did he know the name of the person from whom he bought it. It was a touring car and he put a taxicab body on it (p. 197).

There was nothing in the books of the Company to show that the Undercliff Taxi Company had any interest in the business. Everything was in the name of the Edgewater Garage, and the bills were those as already marked in evidence bearing the name William C. Godstrey, Edgewater Garage (p. 200). He admitted that he did testify on examination before trial that the money that came into the garage was never deposited in his personal account and that such testimony was not true and was false (p. 205), and the licenses of the various cars were kept under the seats of the cars and that he examined them every week to see if the cars were properly cleaned and the seats were then taken out and cleaned—yet he never saw any of the licenses (p. 206).

Defendant at page 207 offered in evidence a ledger purporting to be the ledger of the Undercliff Taxi Company. There was also offered in evidence, loose leaf ledger marked defendant's Exhibit D (p. 212). There was also offered in evidence (p. 214) certain yellow slips purporting to come from the Standard Oil Company as sales tickets, and the defendant testified that the oil slips were made out to the Undercliff Taxi Company (p. 216),

although he testified at page 8 of the examination before trial that all the supplies were bought in his name and billed to him and paid by him, especially gasoline. That the item concerning the purchase of the automobile in this accident does not appear upon the books and that on examination before trial he testified that his son Walter had conducted the entire transaction relating to the sale and purchase of that automobile, but now (p. 218) he testified he had closed the deal. He also stated that he had borrowed money from Mr. Gantert and Mr. Whistle, and that they had made notes to each other to pay each other for the purpose of having the same discounted in their respective banks. (P. 219, 220.)

The defendant offered, at p. 221, slips from the Standard Oil Company similar to the slips that had previously been admitted for the year 1915 and the early part of the year 1916. All of these slips were made out to the Edgewater Garage, but as counsel for the defendant stated, there were none made to the Undercliff Taxi Company (p. 221). The slips were from August, 1915, down to February, 1916.

The defendant further testified that the books marked defendant's Exhibit No. 2 do not show any debit or credit as between the defendant and the Undercliff Taxi Company.

Henry Wissel testified that he was one of the incorporators of the Undercliff Taxi Company, and that he had known the defendant, Godstrey, for over twenty years, was a very dear friend of his, and that Mr. Godstrey had become manager of the corporation after Mr. Merriman had left. He authorized Mr. Godstrey to settle the case. (Page 224 to 227.) On cross-examination he testified that the Company had done work for the Borough of Edgewater, and particularly for the Fire Depart-

ment, Police Department and the Board of Education, and that he was Mayor of Edgewater. When the attorney for the plaintiffs endeavored to elicit information as to how long he had been a Mayor, and whether he as Mayor had contracted for the Borough with a firm in which he was interested, the Court excluded the testimony.

Mr. Gantert testified that he was one of the incorporators of the Undercliff Taxi Company, and that he had approached the defendant and asked him to purchase Mr. Merriman's stock, and that owed him, and that the officers of the Company he had also authorized the defendant to settle this case as best he could. On cross-examination he testified that he was a tenant of the defendant and that he was a freeholder of Edgewater at the time of the accident. (Page 237.)

Officer Gould, called by the defendant, testified that the colored porter had told him that the plaintiff Mrs. Nell and her sister wished to obtain a taxi to take them home, and that he had gone up to the Edgewater Garage and found that no one was there. That he (Officer Gould) thereupon went up to the garage and found Dowdell and that he had a conversation with Dowdell in which Dowdell said that he couldn't go out, he didn't like to do it, but that he would take them. (Pages 237 to 247.)

The only testimony of any importance of the colored porter, Whitmore Robinson, was that he saw the plaintiff, Mrs. Nell, at about 4:00 A. M. on the morning of the accident.

The chauffeur of the car in which the accident occurred, Patrick Dowdell, testified that he was employed by Mr. Godstrey as a washer; that he had driven out of the Edgewater Garage on two different occasions in September, 1915, for Dr. Beckley, and when interrogated by the Court as

to whose car it was that he drove, he answered, the Edgewater Garage. (Page 254.) He further testified that he had been admonished by the defendant never to take a car out of the garage. His version of the accident was entirely different from that given by the plaintiff and her witnesses. He said the car began to stall and back and when he got on the hill he knew that it wasn't getting enough gasoline, and he backed the car up against the curb and that the front wheels were facing up the hill; that he cranked the car for a couple of seconds and it wouldn't start; that he then waited to give the gasoline a chance to get into the carbureter, when the plaintiff said to him she felt faint; that as he ran around to open the window his overcoat caught on the valve cap of the right front wheel; he gave his coat a pull and the car swung down the hill, and his coat caught around the wheel; (Page 260.) that he pulled his coat free and got onto the seat of the car; that when he stopped his car he found that Mrs. Nell and Miss McGintee had jumped out of the car. (Page 257.) He then helped Miss McGintee over to where Mrs. Nell lay. He told the officer that he could not make the hill because he did not have enough gasoline. (Page 258 of state of case.) He *admitted that he intended to make a slip for the money that he would receive for this trip and put the cash in the box for the bookkeeper, as he had done on the other two prior occasions.* (Page 259.) He obtained a license in New Jersey in September, 1915, as a chauffeur. The defendant had never spoken to him about the calls that he made for Dr. Beckley, and he was alone in the garage every evening from the time the cars came in at 3:00, or a little after 3:00, until morning. (Page 260.) That the reason he disobeyed his employer's instructions in this particular instance was because

he wished to accommodate the plaintiff and her sister, although he never had seen either one of them before in his life. That the only time that the defendant ever told him not to take a car out of the garage was in September, 1915, when he had the accident in New York. (Page 264.) That there was only one call at night during the entire time that he worked for the defendant, and there probably wouldn't be a call once in three months after 3:00 o'clock in the morning. (Page 265.) He admitted that at the time of the accident he did not have his brakes all the way back. (Page 268.) He also admitted that he had signed a sworn statement for the witness Sheehy, but endeavored to explain that by saying that he subsequently told him that he intended to contradict that statement (Page 271), and that the only reason that he signed such a statement was that Mr. Sheehy told him that the defendant and the plaintiff had settled the matter and therefore he didn't care whether he signed a statement that was truthful or not, and that he did not remember upon the trial the statement contained in that affidavit that he had run back to the back of the car and endeavored to stop it by grabbing hold of the mud guard, and that while doing so his coat had been caught. (Page 272.) He further admitted that he did read the affidavit before he signed it, but endeavored to explain that by saying that he could read some parts of it and some parts he could not (Page 273), but upon the trial he admitted that he could read each and every part of that affidavit. (Page 274.) In fact, the witness summed up his recollection of the affidavit by saying that he did not remember what was in the statement. When asked how it was he wasn't killed if his coat was caught in the wheel of the car and the car was going down hill, he explained that the two left

wheels of the car were rubbing up against the curb of the street, and this, although a short time prior he had stated that his car was pointed at right angles to the curb of the street while he endeavored to crank it. (Page 276.) He admitted that he had read the affidavit and that he had signed it before a Notary Public, who had asked him whether he had read it and knew the contents thereof, and that he answered the Notary in the affirmative. (Page 277.) The plaintiff then offered the statement in evidence to impeach the credibility of the witness, but the trial justice excluded it.

ORLANDO H. SPEERS, a chauffeur, was called on part of the defendant to corroborate the statement that the defendant had instructed Dowdell not to take out a car. (Page 285.)

The defendant then rested.

In rebuttal the plaintiffs recalled Officer Rosenstangle, who testified that it was not the defendant but the defendant's chauffeur, one Tony Maione, who drove the car involved in this accident, and when the plaintiff endeavored to elicit further evidence as to conversations between the defendant and the officer as to the relationship between the defendant and the chauffeur Dowdell, upon objection the Court excluded such testimony. (Page 281.)

The plaintiff Mrs. Nell in rebuttal took the stand and testified that she did not ask the chauffeur to open the window because she was faint, but that she herself had opened the window to ask him what the trouble with his engine was, and that it was a cold and bitter night, and that she did not even have a blanket to cover herself, and that the engine of the automobile was going when the car ran down the hill.

GROUNDS OF APPEAL.

1. The Trial Court directed a verdict against the plaintiffs and in favor of the defendant when thereunto moved by counsel for the defendant, whereas said Court should have denied said motion, and should have submitted to the jury for decision the questions involved in the issues.

2. The Trial Judge committed error in excluding and receiving evidence.

BRIEF OF THE ARGUMENT.

I.

The plaintiff proved that the ownership of the taxicab involved in this action was in the defendant, or at least that was a question for the jury.

From a perusal of the testimony in this case, a digest of which is contained in the statement of facts herein, the Court will see that the plaintiff proved upon the trial in sequence, that the defendant owned the automobile in question, that the chauffeur was his chauffeur, regularly employed by him, and that the chauffeur at the time of this catastrophe was acting within the scope of his authority and for the exclusive benefit of the defendant, and that the injury occurred through the negligence of that chauffeur, while acting as agent for the defendant.

The following evidence was uncontradicted: That the defendant, Godstrey, owned the Edge-

water Garage; all the automobiles in that garage, including the automobile from which the accident occurred, were licensed in his name; that he personally engaged the chauffeur, Dowdell; that all moneys that came into the garage, either for taxi hire, storing, repairing or for the sale of gasoline and oil, went into his personal bank account, and that all expenses connected with the taxi business came out of his personal account, and that all bills and correspondence concerning the taxi business were sent out on the defendant's stationery. In fact every essential of ownership was made out by the plaintiff, and the appellants urge on this Court that under those circumstances it was a question for the jury to determine whether the flimsy story of the defendant, that the automobiles were owned by the Undercliff Taxi Company, although there was never an automobile license in that corporation's name, and that he was only the manager of that Company, was worthy of belief.

It was not the province of the Court, in view of the abundance of evidence adduced on behalf of the plaintiff on this issue in the case, to determine summarily that the Undercliff Taxi Company, and not the defendant, was the owner of the taxicab in question, for the direction of the verdict for the defendant really meant such a determination.

The case of Edgeworth v. Wood, 58 New Jersey Law, 468, which is the prevailing case on this particular issue, in this State, and has been cited with approval not only in New York State, but in a number of other jurisdictions, held:

> "All the witnesses who saw the accident and noticed the wagon which ran over the plaintiff, unite in declaring that it was painted as were the wagons of the

Company, and that it was marked with the Company's name and device. Considering the great improbability that any other owner of a wagon would thus paint and mark it, a plain inference could be drawn from the evidence that the wagon in question was in the ownership of the Company. If that inference be drawn, it is sufficient to establish prima facie that the wagon being owned by the Company, was in its possession, and that whoever was driving it was doing so for the Company.

In an action for an injury to a boat of plaintiff by a collision with a barge, there was evidence that the barge was marked by the defendant's name and number, and it was contended that this was sufficient to show that it was navigated by defendant's servant, as it might have been taken by some one else or have been on hire. But Lord Denman, at Nisi Prius, held that the bargeman was his servant, and cast on the defendant the burden of proving it was otherwise controlled.

Joyce v. Capel, 8 Car. & P., 370.

Proof of the ownership of a runaway pair of horses in defendant was held in New York to be sufficient to justify a jury in finding the persons who were in charge of the horses when negligently permitted to escape were defendant's servants.

Norris v. Kohler, 41 N. Y. 42.

A like view was taken in Srenson v. Atl. M. S. Co., 57 N. Y. 108.

Evidence less forcible than that before us has been held to be prima facie suf-

ficient to charge the master. Pittsburg, Fort Wayne & Chicago Railway Co. v. Callahan, 41 N. E. Rep. 909; Schulte v. Holliday, 19 N. W. Rep. 752.

The Edgeworth case is also followed in the case of Dennery v. Great Atlantic & Pacific Tea Co., 82 New Jersey Law, page 517.

> "First it was proved that the defendant's name appeared conspicuously on the wagon and we approve the doctrine as laid by the Supreme Court in Edgeworth v. Wood, 29 Vroom, 463, following Lord Denman's ruling in Joyce v. Capel, 8 Car. & P. 370, that 'evidence that the wagon which ran over the plaintiff was marked with defendant's name was sufficient to justify the inference that the defendant was its owner, and that such inference established prima facie that defendant was in possession and control of the wagon by the driver, its servant,' both were disputed questions of fact, and were solely for the jury to determine. Walton v. Ackerman, 20 Vroom, 234."

In the case of Rodiman v. New Jersey Street Railway Company, 71 New Jersey Law, page 44, one of the defendant's main contentions was that he was not the owner of the wagon that bore his name, and hence was not the master of the driver, and the Court held there that this was a question of fact for the jury to determine.

Relying upon the Edgeworth case, cited supra, the Court went further and said, as there was conflicting testimony, and the jury had decided that the defendant was the owner and master, no question of law was involved.

Can any difference arise in the application of the legal principles enunciated in the Edgeworth case and the cases following it, because in the case at bar the means of identification was the carrying of a license plate on which was inscribed the registration number of the defendant. At this point the appellants desire to call the Court's attention to the fact that every automobile in the Edgewater Garage was licensed in the name of the defendant, William C. Godstrey, and that at no time was there any one automobile licensed in the name of the Undercliff Taxi Company. But the plaintiffs went farther than would be sufficient under the Edgeworth case. For if there were no more in this case except the statement made by Mr. Nell, at page that Godstrey said that the automobile involved in this accident was his, and that the driver was his, and that he wanted to settle this case out of Court, and that he had hired an attorney to represent the chauffeur Dowdell in a criminal action arising out of this very accident, that alone would be sufficient to have sent the case to the jury under the rule of this court in the case of Bennet v. Busch, 75 New Jersey Law, 240.

> "We think the motion for a direction of a verdict for the defendant was properly denied, for these reasons:
>
> First: *The evidence as to the ownership of the automobile and as to the relationship of master and servant between the defendant and the driver was conflicting.*
>
> On behalf of the plaintiff there was evidence tending to show that the defendant was the owner of the machine and that the driver was his servant.

> There was evidence of a conversation between the plaintiff and the defendant immediately after the accident, and while talking about a settlement, in which the defendant said: 'My machine is injured probably quite as much as your wagon,' and the plaintiff replied, 'Then this is your machine, and this man was running it for you when this accident occurred?' To this the defendant answered, 'Yes.' There was also in evidence declarations of similar report made at the magistrate's office and elsewhere, and other testimony which need not be cited at length, all tending to show ownership in the defendant and that the driver was his servant. The defendant's denial, which there was evidence sufficient, was, in substance, as follows: That the automobile was the property of the Anheuser Busch Brewing Association, loaned to the Busch Bottling Company for the use of its treasurer and manager, the defendant in this case, and that the chauffeur was the employee of the Busch Bottling Company. The most that can be said for the defendant is that there was a conflict in the proof."

The mere fact that the automobile involved in this accident was in the name of the defendant Godstrey, and that his business was such that an automobile could be used in it, was sufficient to make out a prima facie case of ownership, and any explanation by the defendant should have been left to the jury to weigh with the evidence produced by the plaintiff. In this connection see McCann v. Davison, 145 App. Div. 524, where the only evi-

dence on the part of the plaintiff was that a certain automobile license number had been displayed on the automobile, and that that number was registered in the defendant's name in the office of the Secretary of State, and there was absolutely no other proof of operation or control by the defendant or his agent, and a motion was made to dismiss the complaint, which was denied; the Appellate Court held there was no error, and the question of ownership had to go to the jury. Among other things, the Court said:

> "The first question arising upon this appeal is whether the plaintiff by his proofs made out a prima facie case of operation of the vehicle by the defendant. The accident occurred on October 6th, 1907. *The statute then in force as to the registration of licenses for automobiles contained no provision that the registration should be presumptive evidence of operation by the license.* Unquestionably proof of the registration was competent evidence of ownership. But was it in itself presumptive evidence of operation by the defendant at the time of the accident? * * *
>
> "There is, of course, no common law rule on this question which applies differently to automobiles than to other vehicles. It is well settled, however, in this state, that ownership implies possession and control, and that proof of ownership of a vehicle, or other property, makes out a prima facie case against the defendant owner in an action to recover damages for injuries sustained through the negligent use of the vehicle, as it will

be presumed that the owner was, either in person or through this agent, in control of the vehicle at the time of the accident. Norris v. Kohler, 41 N. Y. 42, 45; Gulliver v. Blauvelt, 14 App. Division, 523, 525, 43 N. Y. Supp. 935; Isenman v. V. Miles & Co., 38 App. Div. 471, 56 N. Y. Supp. 420; Tuomey v. O'Reiley, 3 Misc. Rep. 302; 22 N. Y. Supp. 930; Hodgson v. Conklin, 50 App. Div. 804, 64 N. Y. Supp. 76; Baldwin v. Abraham, 57 App. Div. 67, 67 N. Y. Supp. 1079; Curley v. Electric Vehicle Co., 68 App. Div. 18, 74 N. Y. Supp. 35; Wylde v. N. R. R. Co., 53 N. Y. 156; Seaman v. Koehler, 122 N. Y. 46, 25 N. E. 353. In Norris v. Kohler, supra, the reason underlying the rule as applied in this case is stated thus:

"'The ownership of personal property draws to it the possession. The owner is entitled to have and to keep possession, and no other person can justly obtain possession until some act of authority from the owner is proved. Ownership implies possession, and possession is in subordination to title. No proof was given in the present case, separating the ownership from the possession, and the presumption of law is that the wagon and horses of the defendant were in use in his service and on his account.'

"The same rule has been applied in England and elsewhere. Joyce v. Capel, 8 Carr. & Payne, 370; Vonderhorst Brewing Co. v. Amrhine, 98 M. D. 406, 56 Hel. 833; *Edgeworth v. Wood,* 58 *N. J. Law,*

463, 33 *Atl.* 940. In many of these authorities the proof of ownership consists of simply a proof that the vehicle was marked with the name of the defendant. No difference can arise in the application of legal principles because in the case at bar the means of identification was the carrying of license plate on which was inscribed the registry number of the defendant."

In the case of Gulliver v. Blauvelt, 14 App. Div. 523, where the cow of the defendant was fastened by a chain near the highway, and the defendant denied that he had so fastened the cow, and his employees made a similar denial, and the plaintiff was injured because the cow had suddenly pulled on this chain, the Court held:

> *"We think the evidence of these two witnesses was not conclusive as to fact. Both were interested witnesses, and hence their credibility was a question for the jury.* Elwood v. Telegraph Co., 45 N. Y. 549; Honegger v. Wettstein, 94 N. Y. 252; Munoz v. Wilson, 111 N. Y. 295, 18 M. E. 855. The cow being the property of the defendant, it is to be presumed that she was placed on the highway in use for his benefit, and on his account. Norris v. Kohler, 41 N. Y. 42; Seaman v. Koehler, 122 N. Y. 646, 25 N. E. 353. *Despite, therefore, the denial of the defendant and his servant, this presumption raised a question of fact, to be determined by the jury."*

In the case of Isenman v. Miles, supra, 38 App. Div. 471, where the only evidence on the question

of ownershp and control was the fact that there appeared upon the wagon the defendant's name, and where the defendant testfied that he had only four servants or drivers in his employ, and each and every driver took the stand and swore that he was not involved in any such accident, the Court held, that the drivers were all interested to shield themselves, and that at least three of them must have told the truth, and that one of them might not have told the truth, and therefore the evidence was sufficient to go to the jury on the question of the defendant's ownership of the truck and sustain a verdict to that effect.

In the case of Tomey v. O'Reilly, supra, 3 Misc. 302, it was held that a truck bearing the name O'Reilly, Skelly & Fogerty was sufficient proof to sustain a finding that the truck was the property of the defendant, and the men, its servants and employees.

Seaman v. Koehler, 122 N. Y. 646.

> "The defendant testified that he did not own any truck at the time of the accident, but that the truck which formerly belonged to him had been sold before the accident to his wife. The driver testified that he was in the employ of the defendant's wife, but he admitted that he never received any pay from her, or any orders, and that all his orders came from the defendant, or some other employee. The fact that the name upon the truck had not been changed, but that it was still used with the defendant's name as owner; that the driver was working under the defendant's orders; that no papers or other documentary proof indicating a change in

> the ownership of the business was produced; that the wife of the defendant was not a witness, although residing at the time in the Borough of Brooklyn, where the trial was had; and the defendant's interest in that case required the submission to the jury of the question as to whether or not the driver was not in fact engaged in the defendant's business, and with the defendant's truck, at the time of the accident. The question was so submitted without exception, and the verdict and judgment were warranted by the proof."

In the latest cases decided in New York, namely Ferris v. Sterling, 214 N. Y. 249, the plaintiff intestate was killed by an automobile. Both the defendant and his son testified that the automobile was being used for the exclusive use and pleasure of the son at the time of the accident. The father and son also testified that the automobile had been given to the son on his twenty-first birthday. There was further corroboration of that fact by other witnesses. The license issued by the Secretary of State was made out, however, in the name of the father. The insurance policy and the accident policy were in the same form. Both father and son claimed that the form of the license and the policy was due to a mistake. The Court said:

> "The inference of control by defendant was helped out by the nature of his business. He was a livery stable keeper who for some years had been ill and because of his illness had left the management of his business in a large measure to his son. The father and son had gone to a physi-

> cian just prior to the accident, and then the father went home alone and the son went off with the car. The trial judge charged the jury that if the son owned the car, the defendant was not liable and that even if the defendant owned it, there was no liability unless the son was engaged in the father's business. These instructions must be accepted as the law of the case. *Accepting them, we must, none the less, hold that the plaintiff made out a case to be submitted to the jury. The license number of the car, coupled with evidence that the defendant held the license, was prima facie proof that the defendant was the owner. It was more than that; it was prima facie proof that the custodian of the car was then engaged in the owner's service.* (Norris v. Kohler, 41 N. Y. 42, 44.)"

The appellants have called this Court's attention to a number of New York cases thus far, but all of these cases are founded upon and cite the legal principles laid down in the case of Edgeworth v. Wood, supra, and the cases in this State following it, and the case of Norris v. Kohler, supra, decided in New York, which case was followed by this Court in the Edgeworth case, and the cases following it.

And according to the authorities cited supra, there can be no question at this time that the plaintiff's evidence was more than sufficient to present a question of fact for the determination of the jury whether the ownership in the car in question was in the defendant, William C. Godstrey, or in, as the defendant claimed, a corporation known as the Undercliff Taxi Co.

II.

The plaintiff proved that the chauffeur Dowdell was the agent of the defendant, and at the time of the accident was acting within the scope of his employment and for the advancement of the defendant's interests, or at least this was a question for the jury.

If the defendant, Godstrey, was the owner of the automobile, there can be no question that Dowdell was his servant.

The evidence is uncontradicted that he hired Dowdell, paid him, instructed him as to his work, and in this connection the testimony is interesting in that at the time Godstrey hired Dowdell he asked him if he was a chauffeur, and when he answered in the affirmative he said, "I need one," and he immediately hired him. Therefore, if there was any evidence from which the jury could find that Godstrey was the owner of the car, the question of whether the defendant was liable for Dowdell, his agent, would necessarily have to go to the jury for their determination under the authorities of this State.

The learned authors, Shearman & Redfield, in their treaties on negligence, paragraph 158, clearly explain the prevailing doctrine of law in the following language:

> "When the plaintiff has suffered injury from the negligent management of a vehicle, such as a boat, car or carriage, it is sufficient prima facie evidence that the negligence was imputable to the defendant, to show that he was the owner of the thing, without proving affirmatively that

> the person in charge was the defendant's servant. It lies with the defendant that the person in charge was not his servant, leaving him to show, if he can, that the property was not under his control at the time, and that the accident was occasioned by the fault of a stranger, an independent contractor, or other person, for whose negligence the owner would not be answerable."

In the case of Edgeworth v. Wood, 58 N. J. L., 463, supra. this court has approved of the New York doctrine in this particular, as laid down in the New York case of Morris v. Koehler, and the subsequent case of McCann v. Davison (supra), and in which both the Edgeworth case and the case of Joyce v. Capel, supra. are adopted as the law in New York. From these cases the law of this State is that the ownership of personal property implies possession, and where there is possession there is a presumption *that the vehicle of the defendant was in his use and his service and on his account.* In many jurisdictions, in fact, the proof of ownership need only consist simply of proof that the vehicle was marked with the name of the defendant, and, as it was said in the McCann case, supra., no difference can arise in the application of the legal principle, because in the case at bar the means of identification was carried out by a license plate, on which was inscribed the registry number of the defendant, which was exactly the case here. The registry number, showing, by proof of the Secretary of State, that the application for such license was made by and issued to William C. Godstrey.

The testimony in this case is clear that Dowdell, the chauffeur, was the only person in the garage

after three o'clock, and that on two prior occasions he had made calls, without obtaining prior permission of the defendant, naturally the calls being within the scope of his employment, and that he turned in the money for those calls made for one Dr. Beckley, and that the money was received by the defendant Godstrey and placed in his account and that Godstrey did not protest against, or in any way criticise the action of the agent in so doing, and this after Godstrey had admonished him not to take out a car. (Page 264.) That Dowdell was the only person in charge of the garage after three o'clock, and that, as he testified (Page), a call might not come in after three o'clock for three or four months, in fact, there was no call, with one exception, from September, 1915, until January, 1916, these dates marking the beginning of his employment and the date of the accident.

That part of the testimony of Dowdell, in which he states that his purpose was to make this call and *turn the money in to the defendant,* is very important, in this one respect. In most cases the defense is that the accident occurred while the agent was *doing something, either for his own individual benefit* or *purpose or was doing something that was in no wise beneficial to* or *connected with the defendant or his business,* but this is not the case here. Dowdell's purpose was to *earn money for his employer,* and the law is that the master is bound by the acts of his servant done in the interests of the master, although unauthorized, if the limitation or the scope of employment is not known to the plaintiff and is within the agent's apparent authority.

The Trial Judge below overlooked this salient fact in relying exclusively upon the case of Doran v. Thomson, 71 New Jersey Law (See Case, page 303) in granting the defendant's motion to direct

a verdict. That case holds that the mere relationship between parent and child does not necessarily create a presumption of master and servant.

It also says:

> "It will be noticed that the act must be done by the one for the other. That is not so in the case at bar, and there was no evidence upon which to find the existence of the relation if the daughter was not doing an act for her father. She was not even driving other members of the family; she was using the machine as a means of recreation and pleasure for herself and her own friends, and it would seem impossible to draw the conclusion that she could be regarded as an agent or servant of her father upon that occasion."

Here, Dowdell was doing something for his employer. His purpose was not pleasure or gain for himself, but gain for the defendant, Godstrey, so that the main contention of the appellant in the Doran v. Thomson case is obviated by the proof in this case.

There was some testimony that Dowdell was told by Godstrey never to take a car out of the garage, and that was only on one occasion; never afterwards was anything said on the subject to Dowdell. It is rather important at this point to remember that the alleged instructions were given in September of 1915, after Dowdell had had an accident in New York, and that *subsequently* he made two calls for Dr. Beckley, turned in the slips and paid the defendant the money that he had received. Those two calls were the only night calls that he ever got, with one exception, up to the time of this accident.

Assuming that the testimony of Dowdell and Godstrey on this point were taken as absolutely true, still the admonition having been given, and the agent having disobeyed it, and the master, neither by word nor act having criticized such conduct, and accepted the proceeds of that act, surely ratified the acts of the agent, and what more potent evidence than these facts could the plaintiff have adduced upon the trial to show that Dowdell was not only acting within the scope of his apparent authority as agent, but for the interest of the master in his employment?

In this connection see Philadelphia & R. R. Co. v. Derby (1852) 55 U. S. 14 How. 488, 14 L. ed. 502, a case in which the injury occurred to a passenger on the road, the court held the railroad company liable for the acts of its servants, although they were acting in disobedience of orders. The Court says:

> "Although among the numerous cases upon this subject some may be found in which the court have made some distinctions, which are rather subtle and astute, as to when the servant may be said to be acting in the employ of his master, yet we find no case which asserts the doctrine that a master is not liable for the acts of a servant in his employ when the particular act causing the injury was done in disregard of the general orders or special command of the master. Such a qualification of the maxim respondent superior would in a measure nullify it. * * *
>
> "The entrusting such a powerful and dangerous engine as a locomotive to one who will not submit to control and render implicit obedience to orders is itself an act of negligence, the 'causea causans'

> of the mischief; while the proximate cause, or the ipsa negligentia which produces it, may truly be said, in some cases, to be the disobedience of orders by the servant so entrusted. If such disobedience could be set up by a railroad company as a defense when charged with negligence, the remedy of the injured party would in most cases be illusive. * * * Any relaxation of the stringent policy and principles of the law affecting such cases would be highly detrimental to the public safety."

In the case of Bennet v. Busch, 75 N. J. L. 240, the Court held:

> "Whether the act of the driver was within the scope of his employment is a matter of doubtful inference. The rule which controlled the action of the Trial Judge on a motion to direct a verdict, was this, 'That where fair minded men meet, honestly differ as to the conclusions to be drawn from the facts, whether controvert or uncontrovert, the question at issue should go to the jury.' Penns. R. W. Co. v. Matthews, 7 Vroom, 531, D. L. & W. R. R. Co. v. Shelton, 26 id. 342; New Passengers R. R. Co., v. Block, id. 605; Nolan v. Richton Co., 45 id. 552."

The master may be liable for the act of his servant where he acquiesced in or assented to former like acts of the servant, or to the act in question. See East St. Louis Connecting R. Co. v. Reames, 173 Ill. 582, 51 N. E. 68 (holding)

> "That where employees of a railroad company customarily used its engine in

> going from their work to dinner, with its knowledge, it is liable for damages to third persons resulting from negligence in such use; Elder v. Bemis, 2 Metc. (Mass.) 599; Byram v. McGuire, 3 Head (Tenn.) 530; Fletcher v. Baltimore, etc., R. Co., 168 U. S. 135, 18 C. Ct. 35, 42 L. ed. 411."

Also see the case of Higes Sons v. Berger Auto Co., 75 N. J. Law, page 355.

In the case of McCann v. Consolidated, 59 N. J. Law, 481, cited supra, the Court held:

> "If a servant is acting in the execution of the orders of his master, and by his negligence causes injury to a third party, the master will be responsible, although the act of the servant was not necessary for the proper performance of his duty to this master or was even contrary to the orders of his master. Besides, the master is liable for all incidental acts of his employee in the course of his employment."

In the case of Hardegg vs. Willards, 33 N. Y. Supp. page 25.

> "It is no answer to an action against a master for an injury by his servant, in performing an act for the benefit of the master, that the servant's duties were in another department of the business, and he did the act without the express authority or direction of the master." (This is the syllabus by the court.)

In that case a picture had been placed in a glass show case, and the plaintiff had assented to that, but the picture was injured by the act of the boy in dusting it; the Court held "the boy was a servant of the defendant, but as his employment was in the manufacturing, and not in the exhibition room of the defendant's building, and as it was neither his duty or direction to dust the picture, the defendant contends that he is not responsible for his act. The general rule is that liability attaches to a master only for such acts of the servant as are committed in the execution and within the scope of his employment. But, adds an author of high repute, a master *"cannot limit his responsibility for any particular servant by employing him only with reference to a single branch of the business. If a servant under such limited employment, nevertheless undertakes to serve his master in any other matter connected with the general business, and the limitation is not known to the person with whom he deals, the master is responsible for the acts of such a servant, in such matters, as much as for those of any other servants engaged in the business.* 1 Shear & R. Neg. section 146. Accordingly, where a laborer in the hardware department of a blacksmith's shop, without the authority or direction of the master, undertook to shoe a horse—another and different employment—it was adjudged that the master was responsible for an injury to the horse from want of care and skill and of such officious intermeddler. Leviness vs. Post, 6 Daly 321."

III.

The plaintiff having adduced evidence as to the ownership of the automobile, and the agency of the chauffeur, in the defendant, it was the duty of the trial Court to submit the question of credibility of the witnesses and the weight of the evidence to the jury.

It is fundamental that if there is *any evidence* upon the issues involved in an action, a case is presented for the consideration of the jury, and even if the plaintiff fails to satisfy a court upon the evidence that he is entitled to recover damages, nvertheless, he is entitled to have his evidence weighed by a jury. A trial Court cannot assume or decide a material fact, to which a different conclusion might reasonably be reached.

The evidence in this case in the final analysis presented a sharp issue of fact.

After the defendant had admitted upon the trial that he owned the Edgewater Garage, that he personally hired Dowdell, who was a licensed chauffeur and at the time of such hiring asked Dowdell whether he was a chauffeur, and that Dowdell had on two prior occasions, after 3:00 o'clock in the morning, taken out taxis from the garage, and had turned in the money for such hire to the defendant, and that the chauffeur intended on this particular occasion to turn over the $3 he was to receive from the plaintiff to the defendant, and that all moneys that came in for taxi hire and from every other source in the business of Edgewater Garage went into the personal bank account of defendant; that all expenses of the taxi business, and the running of the garage, were paid out of the defendant's personal account; that all bills for taxi hire were

sent out on the defendant's billheads, all letters used in the taxi business were printed in the defendant's name, and all the taxis were licensed in the name of the defendant, and none ever licensed in the name of the Undercliff Taxi Company, and that the taxis were kept at the ferry until 3.00 o'clock in the morning and then returned to the garage, and that thereafter the chauffeur, Dowdell, was the only person in charge of the garage, and the only person who could answer a call that might come in after that hour, it then became a question for the jury to determine whether the story that the defendant told to offset these facts, namely, that he was only the manager of the Undercliff Taxi Company, and that the Company was the owner of the automobile in question, and that Dowdell had been instructed not to take out an automobile, and that the account was kept in his name because of convenience to him, and the explanation of how the automobiles came to be licensed in his name, were worthy of belief, and whether the contention of the plaintiff was not more plausible, probable and truthful.

If the jury disbelieved the defendant it was bound to give a verdict for the plaintiff. The material facts in the case were either admitted by the defendant or were in dispute; the plaintiff having adduced some evidence to prove them and the defendant some evidence to contradict them. Therefore, it became purely a question for the jury to determine, and not for the court.

A study of the evidence in this case must lead this Honorable Court to the conviction that no reasonable man could say, with any degree of certainty, that from the evidence it was not proved that the defendant owned, operated and controlled the automobile in question; that Dowdell was his chauffeur and that Dowdell was acting as his chauf-

feur at this time, and that it was the duty of the court to submit the facts to the jury, with the proper instructions of law, and not to intrude upon and usurp the constitutional prerogative of the plaintiff to a trial and determination of the issues by a jury.

This court is perfectly familiar with the authorities that sustain the legal principles just enunciated, but your appellants will briefly call the Court's attention to the following:

In the case of Bowell v. Public Service, 77 N. J. Law, 231, the Court held:

> "The rule is fundamental, and the decisions are numerous in this Court that if *there be any evidence upon the issue involved, a case is presented for the consideration for the jury.*"

In Weston v. Benecke, 82 Atl. 878, the Court held:

> "The plaintiff may fail to *satisfy* any court, upon the evidence, that he is entitled to recover; but he has a right to have *his evidence properly weighed.*"

In Rand v. Armm, 74 N. J. Law, 702, the Court held:

> "If a trial court, in directing a verdict, *assumes* or *decides* a *material fact* as to which a different conclusion might legitimately be reached upon the testimony, the resulting judgment will be set aside upon error."

In Brown v. Paper Co., 69 N. J. Law, 474, the Court held:

> "To warrant a non-suit at the trial, or the direction of a verdict, something more than the *mere weight of evidence must be involved. A verdict that is against the weight of evidence is sufficiently controlled by the subsequent power of the court over its own verdicts.*"

In Coxe v. Field, 13 N. J. Law, 215, the Court held:

> "*Where there is any evidence tending to support the issues in the case, although slight, it should be submitted to the jury,* and it is error to direct a verdict."

In Wilkins v. Standard Oil, 78 N. J. Law, 524, the Court held:

> "The rule of law which determines whether binding instructions to the jury are proper is that if the testimony presents dispute, *material facts,* or if reasonable, *divergent inferences,* may be drawn by fair-minded men from material facts which are not in dispute, then it is for the jury, not for the Court, to settle the conflict and to draw the inference. A long line of cases in this Court has settled this principle. Nolan v. Bridgeton, 45 Vroom, 559, Vandegrift v. Camden, 45 Vroom, 669, Haywood v. North Jersey, 45 Vroom, 678, Weston v. Pennsylvania, 45, Vroom, 484, McCarthy v. Metropolitan, 46 Vroom, 887."

In Bower v. Bower, 78 N. J. Law, 387, the Court held:

> "A judgment entered upon a directed verdict will be reversed on error if by such direction any material matter in issue concerning which there was a substantial conflict in the testimony resolved by the trial court adversely to the plaintiff in error. *To constitute such a conflict it is not necessary that the facts themselves be in dispute, for if the inference to be drawn from undisputed facts is one about which there may reasonably be an honest difference, it is for the jury, not the Court, to draw such inference.*"

In Dederich v. Central R. Co., 65 Atl. 833, the Court held:

> "On a motion to non-suit, where fair-minded men might honestly differ as to the conclusions to be drawn from the facts, whether controverted or uncontroverted, the question at issue should go to the jury."

In the case of Ferris v. Sterling 214 N. Y. 249, cited supra., the Court of Appeals said:

> "The property being proved to belong to the defendant * * * a presumption arises that it was in use for his benefit, and on his own account. (Norris vs. Kohler, supra.) This presumption was not destroyed as a matter of law, by the testimony for the defendant. *Even though his explanation of the use of the car would absolve him if credited, the question whether it should be credited was one of*

> *fact for the jury.* (Gulliver vs. Blauvelt, supra.; Cunningham vs. Castle, supra.) The defendant and his son were not called as the plaintiff's witnesses, *and their narrative was not without its suspicious or improvable features. The jury may not have believed the son's statement that as he went forth on this ride the father said to him, your time is your own, and the car your own. They may have thought that witnesses who would falsely disclaim ownership of a car, would falsely disclaim responsibility for its management. These and like considerations were for them.* The motion to dismiss the complaint was therefore, properly denied."

The appellants do not wish to burden the Court with further citations or elaborations on the argument in this point, except to call the Court's attention to the statement made by the chauffeur Dowdell, in answer to the question of the Trial Court. (Page 254.) "The Court: Whose car was it? Witness: Edgewater Garage." So that when asked point blank by the Court whose car the chauffeur had taken out on the two occasions mentioned heretofore, for Dr. Beckley, he immediately and spontaneously replied truthfully, the Edgewater Garage, which was admitted was the trade name of the defendant, William C. Godstrey.

IV.

The Court committed error in receiving and excluding certain evidence.

The appellants do not feel that this Court should be burdened with an elaborate argument on the various rulings of admission and exclusion of evidence made by the Court during the trial, because at this time it must appear to this Court that a venire de novo should be granted herein and the plaintiffs have their day in court and have the merits of their claim determined by a jury.

In the Notice and Grounds of Appeal herein (Pages 1 to 4) the plaintiffs have set forth thirty-six erroneous rulings, to which the Court's attention at this time is directed.

V.

The judgment of the Bergen County Circuit Court should be reversed and a venire de novo awarded.

Respectfully submitted,

NATHANIEL KENT,
Attorney for Plaintiffs-Appellants.

GILBERT COLLINS,
Of Counsel with Plaintiffs-Appellants.