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Summons.

(Filed August 8, 1934.)

STATE OF NEW JERSEY

10

To WILLIAM J. MEADOWS:

You are summoned to answer the annexed complaint of William Charles
[SEAL] Heilman in an action at law in the
Supreme Court of New Jersey. And
take notice, that unless you file your
answer to the said complaint with the
Clerk of the Supreme Court, at Trenton, New
Jersey, within twenty days after service upon you
of this writ, and the annexed complaint, the plain-
tiff may proceed in his suit and judgment may be
entered against you. 20

WITNESS, Honorable THOMAS J. BROGAN, Chief
Justice of our Supreme Court, at Trenton, this
thirty-first day of July, 1934.

FRED L. BLOODGOOD, 30
Clerk.

KATZENBACH, GILDEA & RUDNER,
Attorneys.

40

Complaint.

(Filed August 8, 1934.)

NEW JERSEY SUPREME COURT,
CAPE MAY COUNTY.

10

WILLIAM CHARLES HEILMAN,
*Plaintiff,**vs.*WILLIAM J. MEADOWS,
Defendant.

Action at Law.

20

Plaintiff, residing in the City of Wildwood,
County of Cape May and State of New Jersey,
complaining of and against the defendant says:

FIRST COUNT.

1. That on or about the 24th day of November,
1933, the defendant, William J. Meadows, was the
owner and operator of a certain Chevrolet sedan
automobile bearing New Jersey license and regis-
tration No. F-2148 for the year 1933.

30

2. On the said date at about 4:30 P. M., the
plaintiff had lawfully and in a careful manner
stopped his automobile on and along the extreme
right side or shoulder of a certain public highway
in the State of New Jersey known as State High-
way Route #4, at a point about a quarter of a mile
south of Bennet Railroad Station and about two
miles from Cape May in the County of Cape May
aforesaid, and at said time and place the plaintiff
was seated in his said automobile. Plaintiff's said
40 automobile was headed in a generally northerly

Complaint

direction and facing toward Wildwood, New Jersey.

3. On the aforesaid date and at said time and place the defendant was operating his said automobile in a generally southerly direction on the said highway in the said County, and said automobile was headed toward Cape May in said County. At said time and place the defendant operated his said automobile in a careless, reckless and negligent manner and thereby caused the same to collide with the automobile owned by plaintiff and which had been stopped as aforesaid and in which automobile the plaintiff was seated, and as a result of the collision and the impact ensuing the said plaintiff was violently and forcibly struck and thrown, whereby he suffered severe personal injuries hereinafter set forth.

4. The defendant was careless, reckless and negligent at said time and place in that he (a) operated his said automobile at an excessive rate of speed contrary to the Motor Vehicles Laws and the Traffic Act of the State of New Jersey existing at the time and applicable to the place and circumstances; (b) operated said automobile at a rapid rate of speed so as to lose proper control thereof; (c) suddenly and without warning changed the course and direction of his said automobile so that the same came over to the side of said highway on which the plaintiff was seated in his (the plaintiff's) said automobile and collided with the said parked automobile of the plaintiff; (d) failed to give any warning of his approach by blowing a horn or otherwise; (e) failed to look in the direction in which he was proceeding while operating his said automobile; (f) failed to make reasonable observation to establish properly the distance be-

Complaint

10 tween his automobile and the parked automobile
in which the plaintiff was seated so as to avert a
collision therewith; (g) operated his said auto-
mobile while the same was not in working con-
dition and while the mechanism was defective and
in want of repairs; (h) failed to observe the con-
20 ditions existing on the highway at said time and
place; (i) operated said automobile while the same
was inadequately equipped with efficient brakes;
(j) failed to have said automobile under such con-
trol so that the same could have been stopped with
a reasonable degree of celerity; (k) operated his
said automobile on his left hand side of said high-
way, and was in other ways reckless, negligent and
careless thereby causing the aforesaid collision
and resulting injury to the plaintiff.

20 5. By reason of these several acts of negligence
on the part of the defendant the collision aforesaid
occurred and the plaintiff was severely injured,
cut, wounded, bruised and contused in and about
his head, face, arms, hands, chest, limbs, eyes, and
other parts of his body, and he more particularly
suffered a mashed and splintered right femur, a
splintered right knee cap, a broken left ulna, a
concussion of the brain, fractured ribs, severe
30 lacerations of the face and forehead, a severe
laceration over his right eye resulting in the sever-
ance of the nerves thereof, the right side of his
head and face were paralyzed and the nerve cen-
ters connected therewith were permanently in-
jured, all of which injuries are permanent, and he
was otherwise internally and externally perma-
nently injured, and he has undergone great pain
and suffering, mental anguish, torture and nervous
shock, and will undergo the same in the future,
40 and his nervous system has been and will be im-

Complaint

paired in the future by virtue of the aforesaid injuries.

6. By virtue of the aforesaid injuries plaintiff has been unable to attend to his usual profession and employment and will be unable to attend to the same in the future. He was compelled to hire an assistant to take charge of his duties. He was obliged to lay out and expend and will be obliged to lay out and expend in the future large sums of money for medicines, medical, hospital, surgical, X-ray treatments and attention and surgical appliances in and about an endeavor to be cured of his said injuries, and has been otherwise damaged.

Plaintiff claims damages on This Count in the sum of Fifty Thousand Dollars (\$50,000) and costs of suit.

SECOND COUNT.

Plaintiff as and for his cause of action on this count says:

1. He repeats Paragraphs 1 and 2 of the First Count as if the same were fully and at length set forth.

2. On the aforesaid date and at said time and place the defendant was operating his said automobile in a generally southerly direction on the said highway in the said County, and said automobile was headed toward Cape May in said County. At said time and place the defendant operated his said automobile in a careless, reckless and negligent manner and thereby caused the same to collide with the automobile owned by the plaintiff and stopped in the manner aforesaid, and as a result of the collision and the impact ensuing the automo-

Complaint

bile of the plaintiff was greatly damaged and is beyond repair.

3. He repeats Paragraph 4 of the First Count as if the same were fully and at length set forth.

10 4. By reason of the several acts of negligence on the part of the defendant the collision aforesaid occurred and said automobile owned by the plaintiff was totally demolished and is beyond repair, and plaintiff has suffered the loss and use thereof, all to his damage.

Plaintiff claims as damages on the Second Count the sum of Two Thousand Dollars (\$2000) and costs of suit.

20 KATZENBACH, GILDEA & RUDNER,
Attorneys for Plaintiff.

Answer and Counterclaim.

(Filed August 25, 1934.)

NEW JERSEY SUPREME COURT,

CAPE MAY COUNTY.

30

WILLIAM CHARLES HEILMAN,
Plaintiff,

vs.

WILLIAM J. MEADOWS,
Defendant.

Action at Law.

40

Defendant, residing at Cape May, R. F. D. 1, in the County of Cape May, in the State of New Jersey, says that:

Answer and Counterclaim

FIRST DEFENCE TO FIRST COUNT.

1. Paragraph 1 of the First Count of the Complaint is admitted.

2. So much of Paragraph 2 of the First Count of the Complaint is admitted as alleges that, "On the said date at about 4:30 P. M., the plaintiff had * * * his automobile on * * * a certain public highway in the State of New Jersey known as State Highway Route #4, at a point * * * south of Bennet Railroad Station and about two miles from Cape May in the County of Cape May aforesaid, and at said time the plaintiff was seated in his said automobile. Plaintiff's said automobile was headed in a generally northerly direction and facing toward Wildwood, New Jersey." All the rest and remainder of said Paragraph 2 is denied.

3. So much of Paragraph 3 of the First Count of the Complaint is admitted as alleges that, "On the aforesaid date and at said time * * * the defendant was operating his said automobile in a generally southerly direction on the said highway in the said County, and said automobile was headed toward Cape May in said County." All the rest and remainder of said Paragraph 3 is denied.

4. Paragraph 4 of the First Count of the Complaint is denied.

5. Paragraph 5 of the First Count of the Complaint is denied.

6. Paragraph 6 of the First Count of the Complaint is denied.

Answer and Counterclaim

FIRST DEFENCE TO SECOND COUNT.

1. Paragraphs 1 and 2 of the First Defence to First Count are here repeated and made part hereof as though set forth at length herein as answer respectively to Paragraph 1 of the Second
10 Count of the Complaint, which repeats Paragraphs 1 and 2 of the First Count.

2. So much of Paragraph 2 of the Second Count of the Complaint is admitted as alleges that, "On the aforesaid date and at said time * * * the defendant was operating his said automobile in a generally southerly direction on the said highway in the said County, and said automobile was headed toward Cape May in said County." All
20 the rest and remainder of said Paragraph 2 is denied.

3. Paragraph 3 of the Second Count of the Complaint, which repeats Paragraph 4 of the First Count, is denied.

4. Paragraph 4 of the Second Count of the Complaint is denied.

SECOND DEFENCE TO FIRST AND SECOND COUNTS.

30 1. Plaintiff, at the time of the alleged occurrence complained of, was guilty of negligence, in that, while driving his automobile in a generally northerly direction on the public highway, he suddenly made a left turn with his said automobile on said highway, without signal or warning, and swerved almost directly in front of the automobile being driven by defendant in a generally southerly direction on said highway, and otherwise operated his said automobile contrary to law and the rules

40

Answer and Counterclaim

of the road, and without exercising reasonable care or taking reasonable precautions to avoid colliding with other vehicles on said highway, and did thereby, without any fault or negligence of defendant, strike, collide and come into violent contact with the said automobile so being driven by said defendant. 10

2. The negligence of said plaintiff was the proximate cause of the alleged injuries, loss and damage complained of by him.

3. Plaintiff is thereby barred of and from any right of action or recovery against defendant for any alleged injuries, loss or damage so complained of by him.

THIRD DEFENCE TO FIRST AND SECOND COUNTS. 20

1. Paragraph 1 of the Second Defence to First and Second Counts is here repeated and made part hereof as though set forth at length herein.

2. The negligence of said plaintiff contributed proximately to the alleged injuries, loss and damage complained of by him.

3. Plaintiff is thereby barred of and from any right of action or recovery against defendant for any alleged injuries, loss or damage so complained of by him. 30

BY WAY OF COUNTERCLAIM AGAINST THE PLAINTIFF,
THE DEFENDANT SAYS THAT:

FIRST COUNT.

1. On or about November 24th., 1933, at about 4:30 p. m. defendant, William J. Meadows, was the owner of a certain automobile which he was 40

Answer and Counterclaim

operating and driving lawfully and carefully in a generally southerly direction on a public highway, known as State Highway Route #4, at a point south of Bennett Station and north of the City of Cape May, in the County of Cape May, in the State of New Jersey.

10

2. At the last aforesaid time and place plaintiff was the owner of a certain other automobile which he was operating and driving in a generally northerly direction on said highway.

20

3. At said time and place it was the duty of said plaintiff, William Charles Heilman, to operate and drive his said automobile with reasonable care and prudence and in accordance with law and the rules of the road, which said duty said plaintiff owed to said defendant.

30

4. At said time and place said plaintiff, in violation and disregard of his said duty, operated and drove his said automobile in a careless, reckless, and negligent manner, without proper brakes or other equipment thereon or control thereof, at a high and excessive rate of speed, and suddenly made a left turn with his said automobile on said highway, without signal or warning, and swerved almost directly in front of the automobile so being operated and driven by defendant on said highway, without making proper observations of, or yielding the right of way to, others lawfully upon said highway, including said defendant, and otherwise in violation of law and the rules of the road, and without exercising reasonable care or taking reasonable precautions to avoid colliding with other vehicles on said highway, including defendant's said automobile, and did thereby, with-

40

Answer and Counterclaim

out any fault or negligence of defendant, strike, and collide and come into violent contact with said automobile so being operated and driven by said defendant, greatly injuring and damaging said automobile, and causing serious and permanent injuries and loss to said defendant.

10

5. As a direct and proximate result thereof defendant has been, and in the future will be, put to great expense and loss in towing, storing, repairing, replacing, and otherwise taking care of his said automobile, and in the loss of use, depreciation in value, and destruction thereof.

Defendant demands of plaintiff \$5,000.00 damages on the First Count, besides costs of suit.

SECOND COUNT.

20

1. Paragraph 1 of the First Count of the Counterclaim is here repeated and made part hereof as though set forth at length herein.

2. Paragraph 2 of the First Count of the Counterclaim is here repeated and made part hereof as though set forth at length herein.

3. Paragraph 3 of the First Count of the Counterclaim is here repeated and made part hereof as though set forth at length herein.

30

4. Paragraph 4 of the First Count of the Counterclaim is here repeated and made part hereof as though set forth at length herein.

5. As a direct and proximate result thereof said defendant sustained serious and permanent injuries to his head, face, back, body, and limbs, both externally and internally, and sustained severe and permanent nervous shock and injury

40

Answer and Counterclaim

to his nervous system, and thereby has been, and in the future will be, caused great pain and suffering, interference with the conduct of his business, occupation, and employment, loss of income, wages, and profits, put to great expense in obtaining medical and surgical treatment, attendance, nursing, and supplies, in endeavoring to be cured of his said injuries, and otherwise caused to sustain, and in the future will be caused to sustain, great injury, loss and damage.

Defendant demands of plaintiff \$50,000.00 damages on the Second Count, besides costs of suit.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant.

20

(Indorsed.)

Service of a copy of the within Answer and Counterclaim is hereby acknowledged this 27th of August 1934.

KATZENBACH, GILDEA & RUDNER.

30

40

Reply, and Answer to Counterclaim.

(Filed August 28, 1934.)

NEW JERSEY SUPREME COURT,

CAPE MAY COUNTY.

WILLIAM CHARLES HEILMAN, <i>Plaintiff,</i>	} Action at Law.
<i>vs.</i>	
WILLIAM J. MEADOWS, <i>Defendant.</i>	

10

Plaintiff by way of reply to the Answer filed
herein says:

20

1. He denies all affirmative allegations contained in the First Defense to the First Count, the First Defense to the Second Count, the Second Defense to the First and Second Counts and the Third Defense to the First and Second Counts.

ANSWER TO COUNTERCLAIM.

Plaintiff by way of answer to the Counterclaim
filed by the defendant says:

30

ANSWER TO FIRST COUNT.

1. So much of Paragraph 1 of the First Count of the Counterclaim as alleges that "on or about November 24th, 1933, at about 4:30 P. M. defendant, William J. Meadows, was the owner of a certain automobile which he was operating and driving * * * in a generally southerly direction on

40

Reply and Answer to Counterclaim

a public highway, known as State Highway Route #4, at a point south of Bennett Station and north of the City of Cape May, in the County of Cape May, in the State of New Jersey," is admitted. Plaintiff denies all other allegations contained in said Paragraph.

10

2. He denies Paragraph Two.

3. He denies Paragraph Three.

4. He denies Paragraph Four.

5. He denies Paragraph Five.

Plaintiff denies that defendant is entitled to damages against him on the First Count in any sum whatever.

20

ANSWER TO SECOND COUNT.

1. Plaintiff repeats his answers to Paragraphs 1, 2, 3 and 4 of the First Count of the Counterclaim as though set forth at length herein.

5. Paragraph Five is denied.

Plaintiff denies that defendant is entitled to damages against him on the Second Count in any sum whatever.

30

FIRST SEPARATE DEFENSE TO FIRST AND SECOND COUNTS OF THE COUNTERCLAIM.

The accident alleged in the Counterclaim and the damages and injuries, if any, sustained by the defendant were caused or contributed to by his negligence at said time and place, and the defendant is thereby barred from any right of action of recovery against the defendant for any alleged injuries or damages so complained of by him.

40

KATZENBACH, GILDEA & RUDNER,
Attorneys for Plaintiff.

Demand for Bill of Particulars.

(Filed September 1, 1934.)

NEW JERSEY SUPREME COURT,

CAPE MAY COUNTY.

 WILLIAM CHARLES HEILMAN,
Plaintiff,
vs.
 WILLIAM J. MEADOWS,
Defendant.

Action at Law.

10

To:

 KATZENBACH, GILDEA & RUDNER, Esquires,
 Attorneys for Plaintiff,

20

Sirs:

PLEASE TAKE NOTICE, That we hereby demand that you furnish us, within ten days after the date hereof, a Bill of Particulars of the facts constituting the alleged contributory negligence of defendant pleaded by you in bar in the First Separate Defense to First and Second Counts of the Counterclaim, in your Answer to Counterclaim of defendant in above cause.

30

Dated, August 29, 1934.

Yours, etc.,

 WALL, HAIGHT, CAREY & HARTPENCE,
 Attorneys for Defendant.

(Indorsed)

 Service acknowledged this 30th
 day of August, A.D. 1934.

40

 KATZENBACH, GILDEA & RUDNER,
 Attorneys for Plaintiff.

Bill of Particulars.

(Served September 1, 1934.)

NEW JERSEY SUPREME COURT,
CAPE MAY COUNTY.

10

WILLIAM CHARLES HEILMAN,
Plaintiff,

vs.

WILLIAM J. MEADOWS,
Defendant.

Action at Law.

20

The following is a Bill of Particulars of the facts constituting negligence of the defendant pleaded by the plaintiff in his First Separate Defense to the First and Second Counts of the Answer to the Counterclaim and furnished pursuant to the defendant's demand therefor:

30

1. Defendant at the time of the alleged occurrence complained of was guilty of negligence in that while driving his automobile in a generally southerly direction on the public highway mentioned in the complaint and in the counterclaim, he (a) operated his said automobile at an excessive rate of speed contrary to the Motor Vehicle Laws and the Traffic Act of the State of New Jersey existing at the time and applicable to the place and circumstances; (b) operated said automobile at a rapid rate of speed so as to lose proper control thereof; (c) suddenly and without warning changed the course and direction of his said automobile so that the same came over to the side of the highway on which the plaintiff was seated

40

Bill of Particulars

in his (the plaintiff's) automobile and collided with the said parked automobile of the plaintiff; (d) failed to look in the direction in which he was proceeding while operating his said automobile; (e) failed to give any warning of his approach by blowing a horn or otherwise; (f) failed to make reasonable observation to establish properly the distance between his automobile and the parked automobile in which the plaintiff was seated so as to avert a collision therewith; (g) operated his said automobile while the same was not in working condition and while the mechanism was defective and in want of repairs; (h) failed to observe the conditions existing on the highway at said time and place; (i) operated said automobile while the same was inadequately equipped with efficient brakes; (j) failed to have said automobile under such control so that the same could have been stopped with a reasonable degree of celerity; (k) operated his said automobile on his left hand side of the highway, and was in other ways reckless, negligent and careless thereby causing the aforesaid collision and resulting injury to the plaintiff.

Dated, August, 31, 1934.

KATZENBACH, GILDEA & RUDNER, 30
Attorneys for Plaintiff.

(Indorsed)

Service of the within Bill of Particulars is hereby acknowledged this 1st day of September, 1934.

WALL, HAIGHT, CAREY & HARTPENCE, 40
Attorneys for Defendant.

Reply to Answer to Counterclaim.

(Filed September 7, 1934.)

NEW JERSEY SUPREME COURT,
CAPE MAY COUNTY.

10	WILLIAM CHARLES HEILMAN, <i>Plaintiff,</i> <i>vs.</i> WILLIAM J. MEADOWS, <i>Defendant.</i> } Action at Law.
----	--

20 Defendant denies the First Separate Defense
to First and Second Counts of the Counterclaim.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant.

Postea.

(Filed October 18, 1934.)

30 This case was tried before Honorable Wilfred
H. Jayne, Circuit Court Judge, with a jury at the
Cape May County Circuit, on October 11th, 12th
& 15th, A. D. 1934.

The Jury rendered a general verdict against
the defendant, and in favor of the plaintiff for
FIFTEEN THOUSAND (\$15,000.00) DOLLARS.

WILFRED H. JAYNE,
Judge.

Judgment Final.

(Entered February 8, 1935, as of October
18, 1934.)

Subsequently to the rendition of said verdict, a rule to show cause why the verdict should not be set aside and a new trial granted was allowed to said defendant which said rule was argued before Wilfred H. Jayne, Circuit Court Judge, before whom the case was tried, and the Court having heard the argument of counsel and having duly considered the reasons filed, ordered said Rule to Show Cause discharged by order filed during the January Term, 1935, of the Supreme Court. 10

Whereupon it is adjudged that the plaintiff, William Charles Heilman do recover of the said defendant William J. Meadows the sum of Fifteen Thousand Dollars, damages, together with his costs which have been taxed at the sum of eighty-nine dollars and ninety-four cents, making in the whole the sum of Fifteen thousand eighty-nine dollars and ninety-four cents. 20

\$15,000.00

89.94

\$15,089.94

30

Judgment entered and signed February 8, 1935,
as of October 18, 1934.

THOMAS J. BROGAN,
Chief Justice.

Rule to Show Cause.

(Entered October 19, 1934.)

NEW JERSEY SUPREME COURT,
CAPE MAY COUNTY.

10

WILLIAM CHARLES HEILMAN,
*Plaintiff,**vs.*WILLIAM J. MEADOWS,
Defendant.

Action at Law.

20

Application therefor having been made to me,
the Judge before whom the above-stated cause was
tried, within six days after the rendering of the
verdict therein,—

30

It is ordered that the above-named plaintiff,
William Charles Heilman, show cause before me,
at Circuit Court Rooms, in Atlantic City, on Fri-
day, the 2nd day of November, A.D., 1934, at ten
o'clock in the forenoon, or as soon thereafter as
the Court may hear the same, why the verdict ren-
dered in favor of said plaintiff on October 15th,
1934, should not be set aside and a new trial
granted, reserving to the defendant, William J.
Meadows, all exceptions and objections noted and
allowed upon the trial of the cause, with leave to
take depositions, pursuant to the rules and prac-
tice of this Court, to be used upon the argument of

Rule to Show Cause

this rule; and that in the meantime and until the further order of this Court execution be stayed.

WILFRED H. JAYNE,
Circuit Court Judge.

Dated, October 19, 1934.

10

Entered October 19, 1934,
On motion of,

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant.

A true copy

FRED L. BLOODGOOD,
Clerk.

Affidavit of Service.

20

(Filed October 24, 1934.)

NEW JERSEY SUPREME COURT,
CAPE MAY COUNTY.

WILLIAM CHARLES HEILMAN,
Plaintiff,

vs.

WILLIAM J. MEADOWS,
Defendant.

Action at Law.

30

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

John A. Hartpence, of full age, being duly sworn according to law, on his oath saith, that on October 23rd, 1934, at the hour of 12:25 p. m., he

40

Affidavit of Service

served a certified copy of the Rule to Show Cause,
 of which the annexed is also a certified copy, on
 Katzenbach, Gildea & Rudner, Attorneys for the
 plaintiff in above stated cause, by leaving the
 same at their designated office, in the Trenton
 Trust Company Building, Trenton, N. J., with
 10 William J. Lee, an associate of said firm.

JOHN A. HARTPENCE.

Sworn to and subscribed }
 before me this 24th day }
 of October, A. D., 1934 }

ALAN B. PINKERTON,
 Attorney at Law,
 State of New Jersey.

20

Reasons.

(Filed October 29, 1934.)

NEW JERSEY SUPREME COURT,

CAPE MAY COUNTY.

30

WILLIAM CHARLES HEILMAN,
Plaintiff,

vs.

WILLIAM J. MEADOWS,
Defendant.

Action at Law.
 On Rule to
 Show Cause.

The defendant William J. Meadows sets down
 the following Reasons why the verdict in favor of

40

Reasons

the plaintiff in the above stated cause should be set aside and a new trial granted:

1. It is Excessive.
2. It is the result of bias, passion and prejudice of, and improper and illegal influence upon, the jury. 10
3. Evidence has been newly discovered material to the defendant and his legal rights in the case.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant.

Affidavit of Service.

(Filed October 30, 1934.) 20

NEW JERSEY SUPREME COURT,
CAPE MAY COUNTY.

WILLIAM CHARLES HEILMAN,
Plaintiff,

vs.

WILLIAM J. MEADOWS,
Defendant.

Action at Law.
On Rule to
Show Cause.

30

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

John A. Hartpence, of full age, being duly sworn according to law, on his oath says, that on October 29th, 1934, at the hour of 1:45 p. m., he served a true copy of the Reasons on rule to show

40

Affidavit of Service

cause in the above stated cause, of which the annexed is a copy, on Katzenbach, Gildea & Rudner, attorneys for plaintiff, by leaving same at their designated office, No. 1112 Trenton Trust Building, Trenton, N. J., with a person in charge thereof.

10

JOHN A. HARTPENCE.

Sworn to and subscribed before me }
 at Jersey City, N. J., this 30th }
 day of October, A. D., 1934. }

JAMES R. LAIRD, JR.,
 Master in Chancery of New Jersey.

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Continuance.

(Entered October 31, 1934.)

NEW JERSEY SUPREME COURT,

CAPE MAY COUNTY.

30

WILLIAM CHARLES HEILMAN,
Plaintiff,

vs.

WILLIAM J. MEADOWS,
Defendant.

Action at Law.
 On Rule to
 Show Cause.

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Upon good cause shown,— It is ordered that the rule to show cause why the verdict in above cause should not be set aside and a new trial granted, heretofore allowed and entered herein, returnable November 2nd, 1934, be and the same hereby is continued to Friday, November 16th,

Continuance

1934, at the same hour and place, and with like effect in all respects, as in said rule contained.

WILFRED H. JAYNE,
Circuit Court Judge.

Dated October 31, 1934.

Entered October 31, 1934,

10

On motion of,

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant.

STAMPED:

A true copy,

FRED L. BLOODGOOD,
Clerk.

20

Affidavit of Service.

(Filed November 5, 1934.)

NEW JERSEY SUPREME COURT,
CAPE MAY COUNTY.

WILLIAM CHARLES HEILMAN,
Plaintiff,

vs.

WILLIAM J. MEADOWS,
Defendant.

Action at Law.
On Rule to
Show Cause.

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STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

JOHN A. HARTPENCE, of full age, being duly
sworn, according to law, on his oath says that on 40

Affidavit of Service

November 5th, 1934, at the hour of 11:00 o'clock in the forenoon, he served a certified copy of the order of continuance of the rule to show cause why the verdict rendered herein should not be set aside and a new trial granted, heretofore allowed and entered in the above-stated cause, of which the annexed is a copy, on Katzenbach, Gildea & Rudner, the attorneys for the plaintiff, by leaving the same at their designated office, 1112 Trenton Trust Building, Trenton, N. J., with William V. Lee, Esquire, their associate who has been conducting the case.

JOHN A. HARTPENCE.

Sworn to and subscribed }
before me, this 5th day }
of November, A. D., 1934. }

JAMES R. LAIRD, JR.,
Master in Chancery of New Jersey.

Continuance.

(Entered November 20, 1934.)

NEW JERSEY SUPREME COURT,

CAPE MAY COUNTY.

WILLIAM CHARLES HEILMAN,
Plaintiff,

vs.

WILLIAM J. MEADOWS,
Defendant.

Action at Law.
On Rule to
Show Cause.

Upon good cause shown,—

IT IS ORDERED that the rule to show cause why the verdict in the above-stated cause should not

Continuance

be set aside and a new trial granted, heretofore allowed and entered herein, returnable November 2nd, 1934, and duly continued to this date, be and the same hereby is further continued to Friday, December 14th, 1934, at the same hour and place, and with like effect in all respects, as in said rule contained. 10

WILFRED H. JAYNE,
Circuit Court Judge.

Dated November 16, 1934.

Entered Nov. 20, 1934,

On motion of,

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant.

(Indorsed.) 20

A true copy,

FRED L. BLOODGOOD,
Clerk.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

John A. Hartpence, being duly sworn according to law, on his oath says, that on December 4, 1934, at about 9:30 a. m., he served a true copy of the Continuance of which the within is a copy, on Katzenbach, Gildea & Rudner, Attorneys for plaintiff, by leaving same personally with William J. Lee, one of their associates, at their office in the Trenton Trust Company Building, Trenton, N. J. 30

JOHN A. HARTPENCE.

Sworn to and subscribed before me, }
at Jersey City, N. J., this 8th }
day of December, A. D., 1934. }

GROVER J. CAREY,

Notary Public of New Jersey.

[SEAL] Commission expires May 11, 1937. 40

Continuance.

(Entered December 21, 1934.)

NEW JERSEY SUPREME COURT,

CAPE MAY COUNTY.

10

 WILLIAM CHARLES HEILMAN,
Plaintiff,
vs.
 WILLIAM J. MEADOWS,
Defendant.

 Action at Law.
 On Rule to
 Show Cause.

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The rule to show cause why the verdict rendered in above-stated cause should not be set aside and a new trial granted, heretofore allowed and entered herein, returnable November 2nd, 1934, and duly continued to this date, coming on to be heard before me; and it appearing that the depositions taken under said rule have not been completed, and that certain questions propounded to certain witnesses produced by defendant were objected to by counsel for the plaintiff; and I having ruled that said objections should be sustained in so far as they pertained to questions propounded to the jurors who sat upon the trial of said cause relating to proceedings within the jury room upon which their verdict was based, and to conversations which they may have had with persons other than their fellow jurors on said trial, but that said objections should be over-ruled in so far as they pertained to questions propounded to persons other

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Continuance

than said jurors relating to conversations or communications which such persons may have had with said jurors in the course of the trial; and counsel for the respective parties having arranged to proceed with the taking of said depositions in the meantime,—

It is thereupon ordered that said rule to show cause be, and the same hereby is, further continued to Friday, January 4th, 1935, at the same hour and place, and with like effect in all respects, as in said rule contained. 10

WILFRED H. JAYNE,
Circuit Court Judge.

Dated, December 14, 1934.

Entered December 21, 1934. 20

On motion of,

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant.

A true copy,

FRED L. BLOODGOOD,
Clerk.

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Continuance.

(Entered January 10, 1935.)

NEW JERSEY SUPREME COURT,
CAPE MAY COUNTY.

10	WILLIAM CHARLES HEILMAN, <i>Plaintiff,</i> <i>vs.</i> WILLIAM J. MEADOWS, <i>Defendant.</i> } Action at Law. On Rule to Show Cause.
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Upon good cause shown,—

20 IT IS ORDERED that the rule to show cause why the verdict in above cause should not be set aside and a new trial granted, heretofore allowed and entered herein, returnable November 2nd, 1934, and duly continued to this date, be and the same hereby is continued to Friday, January 18th, 1935, at the same hour and place, and with like effect in all respects as in said rule contained.

WILFRED H. JAYNE,
Circuit Court Judge.

30 Dated January 4th, 1935.

Entered January 10, 1935,
On motion of,

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant.

A true copy,

40 FRED L. BLOODGOOD,
Clerk.

Memorandum.

(Filed February 4, 1935.)

NEW JERSEY SUPREME COURT,
CAPE MAY COUNTY.

WILLIAM CHARLES HEILMAN,
Plaintiff,

vs.

WILLIAM J. MEADOWS,
Defendant.

On Rule to
Show Cause.

10

Katzenbach, Gildea & Rudner (William V. Lee) and Charles A. Bonnell, Attorneys for Plaintiff. 20

Wall, Haight, Carey & Hartpence (John A. Hartpence) and Robert K. Nell, Attorneys for Defendant.

JAYNE, C. C. J.:

The trial of this action resulted in a verdict in favor of the plaintiff. Damages were awarded to the plaintiff in the sum of \$15,000. The automobiles of the respective parties came into collision on November 24, 1933 on State Highway Route No. 4 within a few miles of Cape May. This mishap is the origin of the controversial issues submitted to the jury for determination at the trial of this action. The defendant has a rule to show cause why the verdict so returned by the jury should not be set aside and a new trial directed. In the prosecution of this rule, the defendant writes down the three following reasons: (1) It 30 40

Memorandum

is excessive; (2) it is the result of bias, passion and prejudice of, and improper and illegal influence upon, the jury; and (3) evidence has been newly discovered material to the defendant and his legal rights in the case.

10 It will be expedient to consider these reasons in the order in which they have been assigned. It is contended in behalf of the defendant that the award of damages is excessive. Testimony was introduced at the trial appertaining to the injuries of the plaintiff which would warrant the jury in concluding that the plaintiff suffered in this collision a severe shock, a laceration over his right eye from two to three inches in length, which, in healing, has resulted in a permanent elevation of the right eyebrow; a laceration of his right hip; 20 contusions of the chest; a transverse fracture of the ulna of the left arm; an injury to the patella of his right limb, and a transverse comminuted fracture of the femur of the right limb. The fracture of the femur was of such a nature and so comminuted that no union of the severed bone has yet resulted. The physicians have concluded that a union of the fracture can only be accomplished by a surgical operation, and the physicians decline to confidently forecast the result of any such proposed operation. Obviously the injuries of the 30 plaintiff were relatively severe and undoubtedly painful. Some of the injuries are permanent in character. The plaintiff is a man of middle age and a Minister of the Gospel by profession. He can now move about only with the aid of crutches. A prognosis in regard to his future use of his right limb is admittedly precarious. Moreover, the award of damages may be assumed to embrace the expenses incurred by the plaintiff in consequence

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Memorandum

of his injuries, as well as some allowance for the depreciation in the value of his automobile. The award of \$15,000. is not so excessive as to necessitate any reduction.

Secondly, it is asserted in behalf of the defendant that the verdict in favor of the plaintiff was the result of bias, passion and prejudice. A thoughtful review of the testimony adduced at the trial is not productive of any such conviction. A recitation of the testimony relating to the occurrence of this collision will not be undertaken. It will be sufficient to state that such testimony was divergent, conflicting and contradictory. In this posture of the evidence, the verdict of the jury, expressive of their solution of the questions of fact, should be accorded due and proper recognition. Assuredly, the verdict was not so manifestly against the weight of the evidence touching the alleged negligence of the defendant and its causal relation to the collision as to be patently indicative of bias, passion and prejudice. It is not cogently argued that the verdict is not adequately supported by the evidence, but the effort has been made to disclose that the jurors were perhaps materially influenced in their determination of this case by some extraneous information concerning insurance or the intemperate habits of the defendant. The rule to show cause embodied authority to take depositions. The privilege was granted to enable the defendant to disclose the existence of newly discovered evidence and thus fortify his third reason for a new trial. An examination of the depositions discloses that several members of the trial jury were summoned to appear before the Supreme Court Commissioner where they were in-

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Memorandum

10 terrogated relative to the subjects discussed by
 them and their fellows during their deliberations
 in the jury room, their knowledge, if any, of the
 liability insurance carried by the defendant, and
 whether or not they were aware that the motor
 vehicle driver's license of the defendant had been
 previously revoked. The utter futility of such a
 procedure is well settled. *Brewster v. Thompson*,
 1 N. J. L. 36; *Randall v. Grover*, 1 N. J. L. 175;
Kennedy v. Kennedy, 18 N. J. L. 450; *Tomlin v.*
Cox, 19 N. J. L. 76; *Deacon v. Shreve*, 22 N. J. L.
 176; *Hutchinson v. Consumers Coal*, 36 N. J. L.
 24; *Lindauer v. Teeter*, 41 N. J. L. 255; *Peters v.*
Fogarty, 55 N. J. L. 386; *Queen v. Jennings*, 93
 N. J. L. 353; *Bragg v. King*, 104 N. J. L. 4; *Mathis*
 20 *Co. v. Cranmer*, 9 N. J. Misc. 633. The deposition
 of a juror will not be received for the purpose of
 impugning or destroying the verdict in which he has
 joined or of proving the ground of the verdict.

 Perhaps it will not be inappropriate to here
 state that this Court undertakes to be scrupulously
 careful to guard trial jurors from all improper
 influences, and eager to detect and suppress any
 attempts to improperly or corruptly influence its
 jurors. It is gratifying to state that in this case
 the depositions of the jurors fail to exhibit any
 30 significant impropriety in their conduct or any cir-
 cumstance that would sustain any just suspicion
 that the jurors or any of them were improperly
 importuned to deviate from their sworn duty.
 Therefore, it is not apparent that the verdict in
 this case was the result of bias, passion and preju-
 dice or of any improper influence.

 Thirdly, a new trial of this action is requested
 to enable the defendant to introduce certain evi-

Memorandum

dence said to have been newly discovered. "New trials on the ground of newly discovered evidence are not favored. Not only must a court feel that the evidence would probably have changed the result, but it must be satisfied that due diligence was exercised by the party applying for a new trial to obtain the evidence for use at the former trial, and that the evidence discovered is not merely cumulative." *Christie v. Petrullo*, 101 N. J. L. 492, 494. 10

The evidence characterized as newly discovered evidence, is not of sufficient significance and weight to have been efficacious in producing a different verdict, and the defendant might easily have availed himself of this evidence at the trial. Whether the defendant was under the influence of intoxicating liquor at the time of the collision or not, was only an incidental circumstance. It was definitely pointed out to the jury that the mere circumstance that the defendant was intoxicated, if such was the fact, would not constitute adequate justification for holding him responsible for the injurious consequences of the collision. The jury was explicitly instructed that, whether or not the defendant was intoxicated, the plaintiff was obliged to prove that the defendant negligently operated his automobile and thereby proximately caused the collision. It is not apparent that the jury disregarded this instruction. The rule to show cause is discharged with costs. 20 30

Order Discharging Rule to Show Cause.

(Entered February 8, 1935.)

NEW JERSEY SUPREME COURT,

CAPE MAY COUNTY.

10

 WILLIAM CHARLES HEILMAN,
Plaintiff,
vs.
 WILLIAM J. MEADOWS,
Defendant.

 On Rule to
 Show Cause.

20

The Court having heard the argument of counsel on defendant's Rule to Show Cause why the verdict in favor of the plaintiff should not be set aside and a new trial granted, and having duly considered the reasons filed under said Rule to Show Cause,

It is, on this sixth day of February, 1935, on motion of Katzenbach, Gildea & Rudner, attorneys for the plaintiff, ORDERED that said Rule to Show Cause be discharged with costs against the defendant and in favor of the plaintiff.

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 WILFRED H. JAYNE,
 Circuit Court Judge.

Entered February 8, 1935,

On motion of,

 KATZENBACH, GILDEA & RUDNER,
 Attorneys.

A true copy,

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 FRED L. BLOODGOOD,
 Clerk.

Notice of Appeal.

(Filed February 18, 1935.)

NEW JERSEY SUPREME COURT,

CAPE MAY COUNTY.

WILLIAM CHARLES HEILMAN,
Plaintiff,

vs.

WILLIAM J. MEADOWS,
Defendant.

10

Action at Law.

To:

KATZENBACH, GILDEA & RUDNER,
Attorneys of Plaintiff,

20

TAKE NOTICE, that the defendant appeals to the
Court of Errors and Appeals of the State of New
Jersey from the whole of the judgment entered in
this cause.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys of Appellant.

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Affidavit of Service.

(Filed February 18, 1935.)

STATE OF NEW JERSEY }
 COUNTY OF MERCER, } ss.:

10 Ruth Rowley, being duly sworn according to law, upon his oath says that on February 18, 1935, at the hour of 11:15 o'clock in the forenoon, she served a true copy of the annexed Notice of Appeal on Katzenbach, Gildea & Rudner, Attorneys for the plaintiff in the within stated cause, by leaving the same at their designated office, on the 11th floor, Trenton Trust Company Building, Trenton, N. J., with a person in charge thereof.

RUTH ROWLEY.

20 Sworn to and subscribed before me, }
 at Trenton, N. J., on this 18th }
 day of February, A. D., 1935, }

HERVEY S. MOORE,
 Master in Chancery of New Jersey.

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Grounds of Appeal.

(Filed, March 16, 1935.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

WILLIAM CHARLES HEILMAN,
Plaintiff-Respondent,

vs.

WILLIAM J. MEADOWS,
Defendant-Appellant.

10

On Appeal from
New Jersey
Supreme Court

William J. Meadows, the above-named Defendant-Appellant, sets down the following Grounds of Appeal from the judgment of the New Jersey Supreme Court in the above-stated cause: 20

1: Said Supreme Court denied defendant's motion for a non-suit.

2: Said Supreme Court denied defendant's motion for the direction of a verdict in his favor.

3: Said Supreme Court denied defendant's application to set aside the verdict in favor of plaintiff and against defendant. 30

The following question was overruled:

4: To the witness J. LeRoy Wilson.

"Q. What did he say about his driving?"

The following questions were admitted:

5: To the witness Noble Bright.

"Q. What did you see?"

"Q. What else did you see him do that day?" 40

Grounds of Appeal

“Q. Not what you said. What you did?”

6: To the witness Marion Bright.

Q. What did you see him do, not how you felt about it, just the moves he made?

10 Q. Just state what he did. Not what you thought, but what he did, what you saw him do?

7: To the witness Jesse Souder.

Q. What called your attention that he might possibly be under the influence of liquor?

The Court denied defendant's motions to strike out the following testimony:

20 8: Of the witness Noble Bright.

Q. What did you observe and see at that time, and where?

30 A. Why, I was on the back road in to West Cape May, had crossed over at Bennett off of the concrete highway, and there is a bungalow about quarter of a mile in a northerly direction from Charles Bowen's farm, and when I pulled up towards this bungalow there was a little driveway on the side and there was a car parked there, and I got within about one hundred or one hundred and fifty feet of that and this car backed out and I put on my brakes to stop, and all of a sudden the car came to a stop and I shifted gears and was going to start again when the car started up again with a jerk and the wheels spun around and the car went all the way across the road backing up, made a complete turn while it was backing up, and backed

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Grounds of Appeal

in right in front of my car up on to a little like a knoll there probably a foot or so, and I thought maybe he would stop then. The front of his car was then facing in an easterly direction, and I again shifted gears and started to turn out this way to go around him, and I observed the gentleman driving the car with his hands on the wheel and he was hanging down like this, and I says—when he first started out there I said, “That fellow’s foot must have slipped off the clutch,” and when I observed the condition he was in I said, “He is drunk.” I had a wife and baby— 10

Mr. Bell: I don’t think this is at all material. It is not responsive to the question that has been asked. 20

Mr. Bonnell: I asked him what he saw Mr. Meadows do at that time.

Mr. Bell: He has not testified that he saw Meadows do anything yet.

The Court: Who was the man you observed?

A. It was a maroon car and my wife knows the man personally and said it was Mr. Meadows. 30

Mr. Bell: I move to strike it all out.

Q. Was it this gentleman here?

A. Yes.

The Court: These statements you made, do you mean you made those statements to your wife?

A. Yes, sir. She was sitting alongside of me in the car holding the baby. 40

Grounds of Appeal

The Court: The statements may be stricken out.

Q. What did you see.

A. Well I went to go around this car and—

10 Mr. Bell: I still object to all of this testimony unless it is connected up as concerning the defendant in this case.

Mr. Bonnell: He has identified him.

Mr. Bell: The only thing is that prior to this accident—

The Court: Half an hour, he said.

Mr. Bell: He has not stated definitely the time.

A. I said four-thirty.

20 Mr. Bell: He said that he left Cape May at a certain time.

The Court: He was asked where and when and gave the place and said the time was four-thirty. The testimony is that this accident occurred at about that time, as I recall the plaintiff's testimony.

Mr. Bell: If your Honor is going to allow this to go in, may I have an exception?

30 The Court: It does not seem to me to be sufficiently remote to prevent its admission.

(An exception was noted for the defendant.)

Q. What else did you see him do that day?

A. When I started to go around him, the car started up again and shot across the road in an easterly direction and then made a complete turn and headed towards Cape May or West Cape May and went far to the right

Grounds of Appeal

side of the road again, and I said, "Well, I will stay back of this fellow"—

Q. Not what you said. What you did.

A. I stayed back of this car and followed it and while I was following it the car zigzagged on the road up to a gas station which is beyond—I would say south of Bowen's farm toward West Cape May, where the car came to a complete stop again with one wheel on the gravel and one rear wheel on the concrete, and where he stopped made quite a track in the gravel where the brake took hold, and it shot right across the road again, so I stopped my car again and when he pulled off to the side I went around him and went into West Cape May and looked for an officer.

10

20

Mr. Bell: I would like to move to strike all of that testimony as absolutely immaterial and not responsive to the question, and I don't think it has been properly connected up with the time, the place or the defendant.

The Court: The motion to strike will be denied.

(An exception was noted for the defendant.)

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9: Of the witness Ada C. Lafferty.

Q. Where do you reside, Mrs. Lafferty?

A. West Cape May.

Q. Do you know where Levi Dickinson lives in Irma?

A. Yes, sir.

Q. Were you at Levi Dickinson's on November 24, 1933?

A. I was passing there in a car.

40

Grounds of Appeal

Q. What time in the afternoon, Mrs. Lafferty?

A. Between four and four-thirty.

Q. Whom did you see there at that time?

A. I saw a car at the side of the road, and Mr. Meadows at the side of the car.

10 Q. What was Mr. Meadows doing at that time?

A. He was standing about two feet from the—or three feet, probably, and he was in a staggering condition.

Q. In what condition?

A. He was staggering, or very unsteady on his feet.

Q. Just state what he did to the jury. State what actions he was going through.

20 A. Shall I stand and just show you?

Q. Yes.

A. He seemed to be just this way (Indicating).

Q. That was about four-thirty in the afternoon?

A. Between four and four-thirty. I didn't notice just exactly the time, but I know about that time.

30 Q. Was that just prior to this accident?

Mr. Bell: I object to that unless she can tell.

Mr. Bonnell: I mean if she knows about the accident.

Mr. Bell: She has not been able to tell definitely what time this was, and unless she can I move to strike it.

40 A. I was on my way home to start my supper, and I know it was after four o'clock.

Grounds of Appeal

Mr. Bell: I move to strike this testimony because it was sometime prior to this accident and the witness does not know exactly when it was, and it is irrelevant and immaterial and too remote.

The Court: I do not think I can say it is too remote, having in mind all of the testimony relating to the time this accident occurred. The testimony differs to some extent. It covers a larger period of time. The plaintiff testified that to his recollection the collision occurred sometime between four and five, a difference of almost an hour. 10

Mr. Bonnell: The purpose is rebuttal. The defendant testified that he was not at Dickinson's place that afternoon, and this witness places him there, 20

The Court: Yes, but you are asking her now as to his condition. The motion to strike will be denied.

(An exception was noted for the defendant.)

The Court charged the jury:

10: There is testimony in this case that the plaintiff had stopped his car facing north on the easterly shoulder of the highway, and having attempted to make some repair or adjustment of the fan on the car, had resumed his seat behind the wheel and was engaged in the act of releasing his emergency brake when the automobile of the defendant crashed into his, the plaintiff's car. If that is the true picture of this mishap, it discloses that the 30

Grounds of Appeal

plaintiff's car was well over to its right-hand side of the road and was not in fact in motion at the time of the collision.

10 11: Additionally, there is some testimony from which you might infer that the defendant was under the influence of intoxicating liquor, although the defendant himself has denied it, and while other witnesses have testified that they detected the odor of alcohol upon his breath and have described to you the manner in which he acted a short time before the occurrence of the accident and immediately after the accident, on the other hand, you have some testimony of witnesses who say they observed him after the occurrence of the accident and found no evidence whatever of his use of alcohol. It is suggested in this case that those who detected an odor of alcohol may have been mistaken in concluding that it came from the breath of this defendant, and it is suggested that the odor, if present at all, may have come from the solution that was seeping or dripping from the radiator of the defendant's car.

20
30 All of this conflict in the testimony creates what we speak of as questions of fact, and it is your exclusive duty, members of the jury, to solve these questions of fact.

40 12: Was the plaintiff's car standing on the easterly side of the highway, or was it being operated on the highway at the time of the collision? Did the plaintiff's car, that is, Dr. Heilman's car, swing to its left in front of the defendant's car? Or did the defendant's car cross to the easterly side of the

Grounds of Appeal

highway and collide with the standing car of the plaintiff? These are certainly some of the questions of fact which you yourselves must determine.

It is, of course, as you appreciate, essential that you analyze the testimony relating to the circumstances, thoughtfully consider it, in order that you may visualize, so to speak, just how and in what manner and under what circumstances this collision in fact occurred. Having settled the facts, you can then undertake to apply to those facts as you find them to have existed the rules of law to which I shall refer. 10

13: But what were the true circumstances under which this collision occurred? If you conclude that the defendant, Meadows, was intoxicated, that he failed to have his vehicle under proper control as he was proceeding down this highway, and that he crashed into the plaintiff's standing automobile, and that it, the plaintiff's car was on the easterly side of the highway, then I surmise that you will determine under such circumstances, if you conclude they were the circumstances, that the defendant was negligent and careless. 20 30

14: I pause here to say to you that intoxication is no excuse in a case of this nature. One cannot voluntarily become intoxicated and attempt to operate an automobile over the public highways of our State and then escape responsibility for the injurious consequences of his carelessness and his neglect. There is, perhaps, no more serious menace to the lives and safety of travellers on the highway than 40

Grounds of Appeal

the drunken driver of an automobile. But
mind you, I do not say here that this defend-
dant was intoxicated on the occasion of this
collision, nor do I say that if he was intoxi-
cated, he was negligent in the manner in
which he operated his automobile on this oc-
casion; because these are questions for you
to determine and not for me. It is my duty
to rule upon the legal question presented
throughout the progress of this trial and to
instruct you with regard to those rules of law
which may be applicable to the facts as you
may find them. It is your duty, and indeed
exclusively yours, to pass upon all questions
of fact which arise out of a conflict of testi-
mony. And let me add that this is not a case
in which the defendant is being prosecuted
for driving an automobile while under the
influence of liquor. You are not concerned
with that phase of it at all. The question
in this case is, in its relation to the condition
of this defendant, whether or not he was
negligent in the operation of his automobile.
And so if you conclude that the defendant
was under the influence of liquor on the after-
noon of the occurrence of this collision, should
you also conclude, if you should, that the
plaintiff here has failed to prove that the de-
fendant was negligent in the operation of his
automobile, then, even though the defendant
was intoxicated, if the plaintiff has failed to
prove that he was negligent in the operation
of his automobile, the plaintiff cannot re-
cover; because to recover against the defend-
ant in this case the plaintiff must prove, re-
gardless of the cause being a state of intoxi-

Grounds of Appeal

cation or not, that the defendant was negligent. If, however, the plaintiff has satisfied you by a fair preponderance of the evidence that this defendant, perhaps, due to his state of intoxication or over-indulgence, negligently operated his automobile, and thereby solely and proximately caused this collision, then the defendant should be held fully accountable in damages for the injuries and losses sustained by this plaintiff as a proximate result of his negligence. 10

It is not necessary that the plaintiff should satisfy you that the defendant was intoxicated. It is only incumbent upon the plaintiff to prove by a fair preponderance of the evidence that the defendant was negligent in the manner in which he operated his car on this occasion and thereby proximately caused this collision. 20

15: Having considered these elements, you will then award to such injured party in whose favor you have determined to render a verdict such sum in damages as in your sound judgment will fairly and justly compensate such injured party for the bodily injuries and for the elements of damage to which I have referred. 30

16: But let me say here that my reference to this testimony, as well as to all other testimony in the case, are made with the distinct understanding that it is your recollection of the testimony by which you are to be entirely guided and influenced, in not only the determination of all questions of fact but in the determination of the damages to be awarded. 40

Grounds of Appeal

10 17: Said Supreme Court, on the rule to show cause why the verdict should not be set aside and a new trial granted sustained the objections of plaintiff to the interrogation by defendant of the members of the jury who sat on the trial of the cause respecting their conduct during the course of the trial and the considerations upon which their verdict was based, and ruled that such interrogation was incompetent.

20 18: Said Supreme Court, on the rule to show cause why the verdict should not be set aside and a new trial granted, sustained the objections of plaintiff to the proofs offered by defendant to establish alleged improper conduct of the jury in the course of the trial and in the considerations upon which their verdict was based.

19: The refusal of said Supreme Court to set aside the verdict and grant a new trial, on the rule to show cause, was not a sustainable exercise of its discretionary power in that respect.

WALL, HAIGHT, CAREY & HARTPENCE,
Attorneys for Defendant-Appellant.

(Indorsed)

30

Service of the within Grounds of
of Appeal is hereby acknowl-
edged this 16th day of March,
1935.

KATZENBACH, GILDEA & RUDNER,
Attorneys of Plaintiff-Respondent.

40

Testimony.

(On Trial)

NEW JERSEY SUPREME COURT,
CAPE MAY COUNTY.WILLIAM CHARLES HEILMAN,
*Plaintiff,**vs.*WILLIAM J. MEADOWS,
Defendant.

Action at Law.

10

Cape May Court House,
October 10, 1934.

20

Before:

Hon. WILFRED H. JAYNE, Judge, and a jury.

Appearances:

For Plaintiff: Messrs. Katzenbach, Gildea and
Rudner, (William Z. Lee, Esq. and Charles
A. Bonnell, Esq., appearing) .For Defendant: Messrs. Wall, Haight, Carey
and Hartpence (Mr. Hartpence and Robert
K. Bell, Esq. appearing). 30(The jury was impanelled and sworn at three-
forty-five P. M.)(Mr. Bonnell opened the plaintiff's case to the
jury. Mr. Bell opened the defendant's case to the
jury.) 40

William Charles Heilman—Direct

A recess was taken until 10 A. M., Thursday,
October 11, 1934.

Cape May Court House, N. J.
October 11, 1934.

10

Trial of the cause resumed at 10 A. M.

WILLIAM CHARLES HEILMAN, sworn:

Direct examination by Mr. Bonnell.

Q. Mr. Heilman, you are the plaintiff in the case? A. I am.

Q. Where do you reside? A. 206 East Maple, Wildwood.

20 Q. How long have you been a resident of Wildwood? A. Three and a half years.

Q. What is your occupation? A. Rector or pastor of the Episcopal Church.

Q. Were you on highway route number 4 in November 1933? A. I was.

Q. Do you remember what date? A. I do.

Q. What date? A. Friday before Thanksgiving.

Q. Did anything at that time happen out of the ordinary? A. Yes, very much so.

30 Q. What happened at that time and where? A. By reason of a slight scraping sound under the hood of my car, caused by a loose fan from the shaft, I stopped to attempt to fix it—

Q. Whereabouts was that on the road, if you know? A. I think it was some distance below the place called Bennett Crossing or Bennett Station. Just how far below, of course, I don't know.

40 Q. Whereabouts did you stop your car at that time? A. On the right-hand side of the road, off the road.

William Charles Heilman—Direct

Q. Off the cement entirely? A. Yes. I looked for a place where—I looked for a part of the road where there would be sufficient space for the car to be off the road. That is why I stopped there.

Q. While you were stopped there did anything then occur? A. I got out of the car, tried to fix this fan and found out that it had come entirely loose from the shaft, which had happened before, and I as an amateur monkeyed around with it, trying to get it back on or tighten the belt as best I could. 10

Q. What happened at that time while you were doing that? A. I was ready to start back in the car, thinking I would continue my way to Wildwood and take it to a garage, and I did get started and something happened, and the next thing was like a dream. I found myself— 20

Q. Were you struck by anyone? A. Apparently so.

Q. What do you remember as to that? Where were you when you were struck? What part of the car? A. Well, I was sitting in the car, having just seen that my brake was open entirely, hadn't started the engine yet, so far as I can remember, I am quite sure I didn't, and leaning over—my arm is rather short and the brake is on the left-hand side pretty well front—leaning over the wheel to see that the emergency brake was open, and that is the last action I know of. 30

Q. Where did you find yourself right after that? A. Well, semi-consciously—I thought it was in a dream, I was dreaming I was helping somebody out of a car, and I had a kind of a vague dream about being taken into—taken away on a long trip to a hospital, and I didn't wake to full consciousness until—well, I remember distinctly it was mid- 40

William Charles Heilman—Direct

night, because it was at Dr. Mace's hospital, and the first thing that came under—brought me to consciousness was the feeling of something soft going down my throat, and I recall hazily that Dr. Mace was feeding me some what I believe was soft-boiled eggs; I am not sure.

10 Q. You are sure, then, at that time when this happened that you were not moving your car? A. I am positive.

Q. After you got in the hospital what happened then? A. Well, you mean that I fully know of?

Q. Yes.

Mr. Bell: I object to that. I do not see that it matters what happened in the hospital. He can show the injuries that he sustained.

20 Mr. Bonnell: I want to show when he came to.

Q. How long were you in the hospital before you realized what was going on? A. Well, I didn't even fully realize at twelve o'clock what was going on. I knew I was hurt. Up to that time I was under—

Q. What day was that? The same day? A. That was midnight of Friday.

30 Q. About what hour in the afternoon was this that you were on this road, if you remember? A. It was after four, but I think before five. Somewhere between four and five o'clock.

Q. Have you suffered any pain from that time on? A. Certainly have.

Q. Where were you injured, if you know? A. Well, my first impression when I was taken to the hospital in Philadelphia—

Q. When was that? A. That was Saturday morning.

40

William Charles Heilman—Direct

Q. How long were you in the Mace Hospital, then? A. I was in the Mace Hospital Friday night and I was injured too severely and Dr. Mace told me that she thought I had better get to a hospital with better facilities.

Q. In other words, you stayed in the Mace Hospital until Saturday morning? A. Saturday morning. 10

Q. Then what was done? A. Saturday morning an ambulance took me to the Episcopal Hospital in Philadelphia.

Q. How long were you in the Episcopal Hospital in Philadelphia continuously? A. From that time until the second week in March.

Q. Then were you out for some time? A. Well, I thought I was going to be out—my impression was that I would be out almost any week. As a matter of fact, I wrote home and told my congregation I would be with them for Christmas. 20

Q. In other words, you were let out in March, and then did you have to have treatments at home then? A. Continuously, and I returned to the hospital every three weeks for observation. I was sent home in a body cast, by the way, a plaster cast from the armpits down.

Q. Did you go back to the hospital again? A. Yes. 30

Q. When was that? A. Three weeks after that.

Q. How long did you stay that time? A. That time I think I stayed a day. Every three weeks I went, but on one of those occasions I was kept there for a week for further observation.

Q. After you got to the Philadelphia Hospital what did they do to you there, if you know? A. I was in such pain the greater part of the time that towards evening they kindly put me under—the 40

William Charles Heilman—Direct

lay name is dope. In other words, they injected something to put me to sleep, and it was in that way that I was kept for about a week, and then my first vivid recollection of really anything different was on Thanksgiving Day. I remember that because one of the doctors then gave me the
10 glad news that I was to be given something better to eat, inasmuch as they found out I was going to live. He said it with a smile.

Q. Did they at any time perform any operations on your body while you were there? A. It seemed to me they were doing that almost continuously. They used various forms of getting this broken femur together, but apparently they weren't able to do it. As they explained to me, the thing was splintered and ordinary methods could not be
20 used, so they put weights on, but they were hindered in their work by reason of the fact that the leg was open, an open wound here at the side and they couldn't get the proper tension on the weights without covering those wounds or hurting those wounds more.

Q. Then did they do anything else? A. Yes. After a matter of several weeks they placed a large roll under the hip bone and weights of lead bullets on top, so as to hold the top fragment down,
30 I imagine, but I know I was weighted down at the top and held up at the bottom. A most painful proposition, one under which they kept me only for about ten days or two weeks because it was too painful for me to stand.

Q. Did you suffer continuous pain during all the time you were in the hospital in Philadelphia up to that point? A. Yes, I did; continuous pain.

Q. Then what did they do after that? A. They removed that and put up a wooden frame which
40

William Charles Heilman—Direct

pulled the leg and elevated it at the same time. Kept me flat on my back continuously, of course. Incidentally, that pain was not only the leg. I was hurt in other places, as well. The chief pain was in the leg.

Q. What other places were you injured and what were those injuries? A. Well, the head, lacerations across the head and above the eye. One eyebrow now is very much elevated. I believe quite a gash was in there. A small gash was in the forehead, most of the scars of which have been gone except this. I was cracked in the chest, I believe a cracked rib. 10

Q. Did they do anything to your chest while you were in the hospital? A. Oh, yes, they bound it up with adhesive, big adhesive strips.

Q. How long was that kept on your chest bound up that way? A. I am not sure whether it was Christmas or New Years or the day upon which Bishop Tait visited the hospital, but I believe it was on the day that Bishop Tait visited the hospital for Christmas, which would mean somewhere around the 28th. I believe they said inasmuch as the patients would be given ice cream at that time, they would celebrate by removing that for me. 20

Q. Then what did they do after that? A. They also removed the splint from my broken left arm at the same time. They kept me in that other position, of course, taking X-rays every once in a while and changing the tension or increasing the weight or reducing it as they saw fit, until sometime in February, when they thought that the—well, I understood I was improving, and the doctor came in one day and told me they had to devise some other method, they thought perhaps they would have to put me in an entire, complete body 30 40

William Charles Heilman—Direct

cast immediately. I objected to that, because I understand that that is quite an inconvenient and painful process, inasmuch as my injuries were on both sides of the back, as well as the front and legs. I asked the doctor whether he couldn't possibly devise some other means.

10 Q. Did they put you in a cast at any time? A. Yes.

Q. When was that? A. The first week in March. That is, a few weeks after I asked him to hold off. He said he would hold off for a few weeks longer and if any improvement would come he wouldn't put me in a cast, but if any improvement didn't come, he would.

Q. He did finally put you into a cast? A. He put me into a body cast, which means a plaster cast of the entire right side. The thing goes up, goes to the armpits, covering the back and the chest, and this is held entirely rigid.

Q. Did that make you suffer any pain by putting the cast on? A. Yes, it did.

Q. Did you suffer extreme pain at times with that cast? A. Almost continuous pain. A pain that I thought was going to drive me crazy.

Q. Has the femur bone or the injury of the hip healed as yet? A. No.

30 Q. Are you still being treated for that? A. Yes.

Q. What other injury did you have on that leg? A. A cut knee-cap. I mean splintered or cracked or whatever it is. Broken, fractured, I guess you call it.

Q. In other words, you had a splintered knee-cap, in addition to the splintered femur bone? A. Yes.

Q. What is the condition of your knee-cap to-day? A. Well, the outside has healed. Whether

William Charles Heilman—Direct

or not the inside has healed I don't know, because I haven't as yet been allowed to put any weight on the leg, and this steel brace which was put on in the latter part of June, when the body cast was removed, this steel brace doesn't permit me to try to bend the knee.

Q. Are you still being treated by physicians? 10
A. I am.

Q. What physicians have treated you? A. Dr. Mutschler, with his assistant, Dr. Arbuckle, in the Episcopal Hospital, and Dr. Dandois of Wildwood, takes a look at me occasionally and reads the hospital reports and looks at the X-rays and makes suggestions.

Q. Dr. Arbuckle, then, in the Episcopal Hospital has attended to you in the Episcopal Hospital under the direction of Dr. Mutschler, and Dr. Dandois during the whole time? A. Correct. 20

Q. And you are being treated now, at the present time? A. Yes.

Q. Doctor, do you have any defect of vision or trouble with your eyes since that time? A. Well, I used glasses before for reading, but now I have a little bit more trouble, perhaps because I do read more, having more time to read, not being able to do any work. Of course, my eyes do hurt more, and of course I cannot read as long. 30

Q. Do you suffer with any more headaches than usual? A. Yes.

Q. About how often do you suffer with headaches since that time? A. Well, I used to be good for eighteen or twenty hours work, most of it at my desk, and now half an hour at my desk and I am finished until I take a rest for another hour or so.

William Charles Heilman—Direct

Q. In other words, you can't work— A. Can't continue. The pains in the head and the eyes are too severe.

10 Q. Do you know what you have paid for expenses to the hospital to the present time? A. I don't know exactly. My chief object in the hospital was to recover. My first thought was, of course, that I wasn't recovering at all—

Q. Have you ever received a bill from the hospital? A. Yes, for such portion of it as has not been paid.

Q. How much is that bill at the hospital that you have now that hasn't been paid? A. I believe it is \$854.00.

20 Q. Do you remember what you have already paid the hospital? A. I am afraid I do not, inasmuch as I kept no account of it. I was—

Mr. Bell: I think that is subject to definite proof. I don't see why the witness should have to say he doesn't remember.

Mr. Bonnell: The doctors probably will prove that later, if he doesn't remember.

Q. Did you also have to pay a nurse, in addition to the hospital bills? A. Not at the hospital.

30 Q. Did you pay a nurse at any place? A. When I came home I hired a young man to stay with me. He wasn't a nurse, but he was an attendant, to help undress me and put me to bed and get me up in the morning and arrange, of course, to have me placed properly. At that time I couldn't sit down like this. I had to stand up to do my eating.

Q. It was necessary, then, for you to have an attendant? A. A twenty-four hour attendant, yes.

40 Q. How long have you had him? A. I believe he was with me until close to the last of June, when

William Charles Heilman—Direct

the body cast was taken from me and this steel brace put on, at which time I could help myself to greater advantage because I could bend.

Q. Do you remember how many weeks that was?

A. I believe it was approximately one hundred days.

Q. What did you pay him? A. I haven't paid 10
him as yet.

Q. What was the agreement to be paid? A.
The agreement was that he wasn't to receive less
than a dollar a day, which was at least the price
of an orderly at the hospital.

Q. In other words, you contracted to pay him
\$1.00 a day? A. Yes.

Q. And it was one hundred days? A. I have so
figured it, yes.

Q. Did you also board him at that time, as well? 20
A. I did. He stayed with me and ate at our house.
He used to be with me all the time.

Q. In other words, he was to receive a dollar a
day and his board? A. Yes.

Q. What is the price of board? A. I really
don't know. I don't know what it cost me.

Q. Did you have to buy any equipment, braces
or anything of that kind? A. I did, certainly.

Q. What was the price of the brace that you had 30
to buy? A. This brace I recall distinctly was
exactly \$48.00. The bill came for \$75.00 and the
doctor asked the man who made the brace to be
easy on this, and the man who made the brace re-
duced it to forty-eight, which he said was actual
cost.

Q. So that the brace you paid \$48.00 for? A.
Yes.

Q. What kind of car did you have? A. Essex
Terraplane.

William Charles Heilman—Direct

Q. What was the year? A. Well, I don't know the year of its make. I bought it January 1st or December 31st. Well, it was just exactly ten months old. I should say I bought it between Christmas and New Years previous to the accident.

10 Q. In other words, the car was then about ten months old at the time of the accident? A. Yes.

Q. What was the cost of the car when you purchased it? A. Between \$550.00 and \$600.00. I believe about \$600.00.

Q. What was the condition of the car as to general shape at the time of the accident? A. Good in every respect except that fan which had been coming off.

20 Q. After the accident what became of that car? A. I believe it was towed into a garage and I still owed the Finance Company two months on it, which would be something like \$72.00, I believe, for which they dunned me for payment and I couldn't pay it, and I believe they sold the car for \$50.00 and billed me for the difference.

Q. In other words, you got \$50.00 out of the wrecked car? A. I didn't get it. The Finance Company did.

30 Q. I mean you were allowed that? A. Yes.

Q. What was the value of that car in your opinion at that time?

The Court: At what time?

Q. At the time of the accident. A. Before or after the accident?

Q. At the time of the accident. Just prior to the accident. A. Why, I don't know how much a car deteriorates, but I don't imagine that ought to deteriorate more than a hundred dollars—

40

William Charles Heilman—Direct

Mr. Bell: I object to this testimony.

The Court: Can you express your own personal opinion as to what the value was immediately before the accident?

The Witness: Yes. Still worth over \$400.00.

10

Q. After the accident you received \$50.00. Was the car badly smashed, do you know, or didn't you see the car? A. I didn't see the car. I saw photographs of it, but I had men come up to the hospital who offered me \$25.00 for it, and I wasn't in a position to sell by reason of the fact that I hadn't paid the last two payments which were due after the accident. I had no right to sell it.

Q. In other words, the best offer you had outside of the \$50.00 the Finance Company allowed was \$25.00? A. Yes. 20

Q. During the time that you were confined in the hospital and at other times as a Minister of the Gospel did you have to substitute another Minister? A. I had to hire another man, of course.

Q. What was the cost that you had to pay out for that? A. Well, they were various costs. I didn't always get the same man.

Q. What did they total to? A. I can't tell you that. It was quite high. For the Christmas holidays alone I recall the bill for Christmas Day was \$62.00 and some cents. 30

Q. How many Sundays were you unable to preach after the accident? That is, when were you able to preach after November 1933. A. Well, preaching isn't the whole of our task. Even though I could go into the pulpit and preach, I wasn't able to go to the altar and serve communion. 40

William Charles Heilman—Direct

Q. Are you able yet to do that? A. Only to a partial extent.

Q. You still, then, have to employ others— A. I have now been able to get some of the laymen to help me in such a way that I do not need any help except upon special occasions.

10 Q. When did you become so that you could do anything yourself in the church? A. I don't know that I am doing very much now. You mean anything at all?

Q. Yes. How long were you out altogether so you had to hire aid in the church? A. Well, this summer I had a helper. It is only since the third Sunday in September that I have been relying on lay help. Up to that time I had clerical help.

20 Q. Do you pay your lay help anything? A. No.

Q. Only the ministers? What salary did you receive per year? A. \$2750.00, plus the rectory.

Q. Do you know whether or not when you obtained other ministers to come there you had to pay the man the full salary you were receiving, or did you have sometimes to pay more? A. No. They were usually rather considerate, with the exception of one or two occasions where they didn't take anything into consideration at all and gave a bill which was, I thought, rather highly un-
30 reasonable.

Q. Was it beyond your salary? A. I should say \$50.00 a day was more than I was drawing, yes.

Q. In almost all instances, though, did it amount to your salary, the amount that you paid out to them? A. No.

Q. What portion of your salary would they take? A. You are asking questions that really never came to my mind before. I hesitate to answer, for the very simple reason that all during
40 that time my object was in getting well.

William Charles Heilman—Cross

Q. You don't know exactly, then, what you paid out? A. I do not.

Q. But you were not able from November, the time you went to the hospital, until recently to attend to that work yourself? A. I only attend to part of my work now.

Q. Attend to any of it, I mean? A. On the third Sunday in September I started alone. 10

Q. From last November, 1933, to the third Sunday in September, then,— A. I had help.

Q. —you had to have somebody to do your work? Do you do any other work outside of the work you do at the rectory and in the church? A. Yes. The chief work of a clergyman is on a week day and not on Sunday. I say that despite popular opinion.

Q. I mean do you do any other work in addition to that? A. There is visiting the sick, of course, taking communion to the sick; there are week day communion services, or should be, and calls for help in a parish like Wildwood are usually very many, all of which, of course, I couldn't attend to since I haven't been able to visit. 20

Q. In other words, then, it will be necessary for you still in your condition to have assistance and help to do your work there? A. Yes.

Q. And will some of that have to be clerical work which you will have to pay for? A. Yes. 30

Cross examination by Mr. Bell.

Q. Reverend Heilman, where had you been on the day of the accident? A. I had been at a number of places. I left the rectory,—you want the afternoon?

Q. Between simply— A. Just Cape May, or before? 40

William Charles Heilman—Cross

Q. Cape May. A. I had been at the residence of I. F. Harris, a laundry man—that was in Claghorn Place—at whose place I was by reason of a call asking me to get change for him in smaller denominations, a large piece of County school scrip, which he couldn't get, and he appealed to me, thinking I
10 could get it.

Q. You don't need to tell me why you were at these different places. I just wanted to know generally the various places that you were in Cape May prior to starting your trip to Wildwood, so that we can rather fix the time. A. Yes. Leaving Wildwood, my first stop in Cape May was at the post office.

Q. The post office? A. The post office.

Q. Did you see anyone there— A. Certainly.

20 Q. —that you talked to? A. Yes.

Q. To whom did you talk there? A. I talked to everybody that was employed in the post office, plus the wife of the postmaster, to whom I was presented that day. In other words, I was taken back of the barrier and all the clerks and people working there were introduced to me by the postmaster.

Q. What time would you say you left Cape May? A. On the return trip?

30 Q. Yes. A. After four o'clock. That is, I left the last house at which I stopped after four o'clock.

Q. And how far away from the accident was that, would you say, approximately? A. I can't tell the distance.

Q. You don't know the distance from Cape May to the place where the accident occurred? A. I did not say that. I don't know the exact distance from the last house I visited to the place where the
40 accident occurred.

William Charles Heilman—Cross

Q. Well, I asked you approximately the distance. A. If you can tell the distance between Claghorn Place and Cold Spring Harbor, I can tell you. I am not sufficiently familiar to make a distance, because you can go several ways. The way I went, I went from Claghorn Place down towards the Decatur Avenue and the main street to make a call on someone who was sick, found out that I had trouble with my car, heard a noise, ran very slowly, decided to leave that call off until a later date, and then started on my way home. 10

Q. Did you go to any garage in Cape May to have your car looked at? A. I did not.

Q. Had you been to any garage in Wildwood during the day to have your car looked at? A. My car was kept in a garage at which my mechanic was. 20

Q. What is the name of your mechanic? A. Al Nye.

Q. Did he do any work on your car that day? A. Al Nye looked it over and told me everything was all right except that fly-wheel, of which he had known, because I had it fixed temporarily before. He told me if I went out I should take it very easy, with fast driving that fan might come off and go into the radiator and I would have a new radiator to buy in addition to a new fan. 30

Q. When you were coming away from Cape May towards the scene of the accident, did you pass very many cars? A. I do not recall.

Q. Do you recall if you passed any cars just immediately preceding the accident? A. When you say did I pass any car, coming in the opposite direction?

Q. Yes, I mean coming in the opposite direction. A. I do not recall. I know I didn't pass any cars 40

William Charles Heilman—Cross

going in the same direction, because I was worried about my car.

Q. You never saw the defendant's car in this case at all, did you? A. I did not.

10 Q. When you stopped your car had you put on your brakes? A. I don't know, but I have made it a point ever since driving a car, and I have driven a car for many years, before you start your car at any time, to see that your emergency is open.

Q. Do you know for a positive fact that your emergency was open at the time of this contact? A. I was in the act of opening it. Just what distance I came in that process I can't remember.

20 Q. In other words, your emergency brake might have still been on, so far as you can remember now? A. I don't think so.

Q. That is, it might have been? A. I don't think so. I am quite sure that it was not, because if that emergency is on, then it stands upright, and I wouldn't have bent over, and I remember distinctly bending over so that in going over my head was down over the wheel. If that had been on it would have been up straight and I didn't need to bend over.

30 Q. When you stopped your car, which side of the road were you on? A. The side on which any driver will stop. On the right side.

Q. How far over on the right side were you? A. Just off the concrete.

Q. Just off the concrete? A. Yes.

40 Q. Well, was there any part of the road to your right or were you over as far as you could get? A. No. There was a grass field there. It was the widest part of the road there. That is the reason I picked it so I would have plenty

William Charles Heilman—Cross

of space in case I had to work on that thing. I thought perhaps I had to work on that car. The noise was becoming so great I was becoming scared and I thought perhaps I could shove the fan in.

Q. You were over on the right-hand shoulder of the road next to the grass field? Is that it? A. That's it. 10

Q. And your car was pointed in a general northerly direction? Is that right? A. Yes, parallel to the road.

Q. How much distance was there between the concrete and your car, if any? I am talking about the right-hand side of the concrete. A. I really don't know. All I know is that when I stopped the car was off the concrete, because that is one of the first principles when you stop, get off the concrete. As to how far it was off I do not recall. The car was off, however. 20

Q. You have gone into great detail about your injuries. Have you consulted your doctors as to what can be done in the future to further cure you and make you better than you are today? A. Yes, I have.

Q. What do they say? A. They say that the thing has not been cured, tell me that it may never be cured, and that I shouldn't be surprised if I had to stop work in the ministry entirely, that the bone had been shattered to such an extent that no union has yet been made, even with all this. 30

Q. Did they say that it was possible to have an operation? A. Told me they were going to attempt one. They are going to attempt an operation.

Q. They are going to attempt one? What assurances do they give you that it might be successful? A. None at all. 40

William Charles Heilman—Cross

Q. They don't give you any assurance? A. In fact, they told me it was so dangerous that they kept from that operation up to this time, in hopes that it might otherwise cure itself.

10 Q. But if that operation was successful, it would give you almost full use of your leg, wouldn't it? A. I don't know.

Q. They haven't told you that? A. No.

Q. Have they told you they could do anything for that scar, that they could remove the tissue and make that better? A. The other injury was so much greater I must admit I haven't thought very much of that little hurt up there. I mean not little, but comparatively little. I am quite content to go with one eyebrow an inch higher than the other one if I get the use of my leg back.

20 Q. You have received your salary as Episcopal Rector all during the time of your injury? A. Partially.

Q. Partially? Well, what part did you receive? I mean why did they make partial payments? A. As anyone might know, when the head of an industry or the head of a large plant is gone, there isn't the same income as when the head is there. That is one reason why partial payment was made, because I had just before the accident, on account
30 of the depression, given back a large portion of my salary, and when I was sent to the hospital, when funds were available I gave such portion as I had been collecting. In other words, my salary is in arrears now.

Q. But while you have only received partial payment, the balance will be paid when the funds become available? A. I have asked them to give me a reduced amount, and that reduced amount
40 has been in force right along, and that reduced

William Charles Heilman—Cross

amount I did not get. I will get that reduced amount, of course, when funds are available.

Q. Did you actually pay the substitutes that you had, or did the church pay the substitutes? A. Sometimes they paid and sometimes I paid.

Q. Well, then, who paid? You gave a figure of \$62.00. Who paid that? Did you pay that? 10
A. No, the church paid that.

Q. Then when you testified that the substitute cost you \$62.00, it really cost the church \$62.00, and not you? A. I did not testify that it cost me \$62.00. I think the question was, what did the substitute cost? It was my impression that is what I was testifying to.

Q. Of course you realize that this is not the church suing, that you are suing here for the damages and expenses that you have had, and you are only to testify as to what expenses you have had, not the expenses the church has had. A. I answered the question as best I could. 20

Q. All right. Now, then, when you said that certain substitutes had sent in a bill for \$50.00 a day, who is to pay that bill, you or the church? A. The church.

Q. And of course it would have been possible, if you had wanted to, to make an agreement with the people that came as to how much they were going to charge, in order to stop any exorbitant charges, wouldn't it? A. It was done after those occasions, yes. 30

Q. But as far as practically all of these substitute charges, they have either been paid by the church or are going to be paid by the church? A. No, no, no. I paid quite a number of them myself.

Q. You do pay some of them? A. Yes. 40

Robert K. Arbuckle—Direct

ROBERT K. ARBUCKLE, SWORN:

Direct examination by Mr. Bonnell.

Q. Doctor, what school of medicine are you a graduate of? A. Temple University.

10 Q. Where are you today? What official position do you hold in the Episcopal Hospital? A. Resident physician in surgery at the Episcopal Hospital in Philadelphia.

Q. How long have you been at the Episcopal Hospital? A. Since the first of July, 1933.

Q. Do you know Dr. Heilman? A. I do.

Q. When did you first see Dr. Heilman in the Episcopal Hospital, if you remember? A. On the afternoon of his day of admission, November 25, 1933.

20 Q. From that time on have you more or less had charge of Dr. Heilman's case? A. To a great extent.

Q. What did you find when Dr. Heilman came to the hospital his condition to be? A. At the time of admission he was suffering from a moderate amount of shock, a laceration over the right eye measuring between two and three inches in length, laceration of the right lip, the lower lip, contusions of the chest, right side, anterior-
30 ally, with questionable fractures, a transverse fracture of the left ulna, and a comminuted fracture of the right femur, middle third, and there were some minor abrasions about the knees and lower legs.

Q. What was the most serious injury that you discovered there, Doctor? A. The fracture of the femur.

Q. Just explain to the jury what you mean by the femur. A. The femur is the long bone from
40 the hip to the knee.

Robert K. Arbuckle—Direct

Q. What was the condition of the fracture of that bone? What kind of a fracture was it? A. At the clinical examination it revealed what was apparent as a transverse fracture, which had resulted in considerable shortening, and at the same time it was evident that there was a comminution, characterized by numerous spicules and fragments that could be felt beneath the palpating hand, and marked swelling with hemorrhage of the adjacent tissues. 10

Q. What treatment, if any, did you have to give the doctor at the time he came there? Were there any operations or anything necessary? A. Not immediately, other than immobilization of the right leg. The other injuries had priorly treated. Those were re-dressed daily and the splint to the left arm was changed on examination. The right leg, at the time, due to the apparent shortening and the swelling, we felt had better be immobilized between sandbags and such measures as that, with pulleys and weights to produce a moderate amount of extension at the time. 20

Q. Did the doctor suffer pain at that time? A. Very much pain.

Q. How long did he suffer extreme pain? A. Probably ten days to two weeks immediately after the accident. 30

Q. And did he suffer pain after that? A. Yes, sir, at various times.

Q. What next did you do? A. Of course, immediately after the examination he was X-rayed to determine the nature of the fracture, and then we arranged a frame, a Russell frame, which consists of two uprights above the bed, and applied weights and pulleys with sandbags and things of that sort, without an anaesthetic and with three 40

Robert K. Arbuckle—Direct

or four manually dragging on the muscles of the leg, attempting to mould the fractured bones into a suitable position.

Q. Was that painful? A. That was very painful.

10 Q. How long was he in the hospital before he was able to come out for the first time, if you know? A. He was admitted the 25th of November and discharged the 9th of March.

Q. Of this year? A. Of this year.

Q. Did he then have to still have help or treatment? A. At that time he was wearing a body cast which extended from toes to armpits, encasing the right leg.

20 Q. Was it necessary then for him to have a helper or someone to assist him? A. At least two. He attempted to walk with crutches, but when we helped him out it took two of us to keep him on his feet.

Q. Did it require when he got home an assistant to help him? A. All the time.

Q. Does it require someone now? A. At the present time he is able to travel alone with the aid of the braces and crutches, except it is rather dangerous up and down stairs alone.

30 Q. He is in a position, though, so it isn't safe for him to go out alone, is it, at this time? A. No, sir.

Q. What do you say you put on this cast—did that cause considerable suffering while it was on there? A. Intense suffering.

40 Q. What did you have to do sometimes to relieve that pain? A. He was getting opiates and other sedatives at two to three hour intervals, and various times the swelling would increase and we would have to cut away part of the cast to make room for the swelling.

Robert K. Arbuckle—Direct

Q. In other words, when you put the cast on, that caused a swelling of the whole body? A. That is true. The cast was put on under deep surgical anaesthesia, with contraction, on a specially constructed Holly table.

Q. Today what is the result of the treatment he has had, so far as to his injuries? A. The lacera- 10
tions have well healed. There are some visible scars. The fracture of his arm has satisfactorily healed without apparent deformity or impairment of function. There is no healing between the complete fracture of the femur.

Q. His present condition—will that heal as it is, do you think? A. No, sir.

Q. What will have to be done, if anything, there to effect a cure, if possible? A. In an attempt to 20
effect a cure, an open surgical procedure will have to be attempted.

Q. What do you mean by an open surgical procedure? A. Incising the leg and attempting, either by bone graft or plate, under anaesthesia, to attempt to approximate the fragments of bone and then hold them in place by these metal plates and screws.

Q. Is that a dangerous operation? A. That is a very dangerous operation. 30

Q. In your judgment, knowing the case as you do, will that operation be a successful operation? A. I don't understand you.

Q. Knowing the history of the case and having examined it as you have, do you think that operation will be a successful operation? A. Not completely successful, no, sir.

Q. In your judgment what effect will that operation have, if it goes through, as to what he would be in shape again? How much will he have 40

Robert K. Arbuckle—Direct

lost of actual— A. We can't hope to have less than one to one and a half inches of shortening, at the very least.

10 Q. What will be the effect on the hip? Will that be abnormal after that? A. Only as the result of the shortening and the consequent limp and tilting of the pelvis and throwing strain on unused muscles.

Q. What is the chance of that operation being successful? A. It is very hard to state in answer to that question, because of the complications which must necessarily be gotten by before we can hope that the operation itself will be successful.

20 Q. About what is the percentage of operations of that kind being successful, in the condition that he is in? A. Probably not more than 30%.

Q. In other words, 70% of those operations would not be a benefit or successful? A. Yes.

Q. If the operation was not successful, would that then cause probably the loss of the leg? A. It is probable.

30 Q. If the operation wasn't successful, what would be the effect on the bone, the shattered bone? Will it ossify? A. No. If the attempt is made to repair that by plates, once the operation is attempted, if that isn't successful then you have completely destroyed whatever hope we may have of a successful operation of that kind.

Q. Then what would that mean, that the limb would have to be removed? A. In all probability.

Q. And you say that is only 30% successful, 70% not successful? A. That is right.

40 Q. And if successful there would still be some impairment there, would there not? A. That is true.

Robert K. Arbuckle—Direct

Q. What complications—you say complications you would have to get by. What are those complications? A. The first complication is the result of the deep surgical anaesthesia which must be to the very deepest degree to afford relaxation of the muscles of the leg in order that those bones can be brought into position. The other complication occurring as a result of the operation is the fact that the ends of those bones which have now softened, portions of them, the ends of each bone have to be sawn through, and any operation involving the cutting or sawing of bone is a shocking operation. The surgical shock is a great complication in those cases. 10

Q. Is that a danger to this operation, then, from surgical shock? A. That is true. 20

Q. So in making this operation the doctor takes great risk, then, of death from shock? A. That is true.

By the Court.

Q. What is the prognosis, Doctor, in the absence of such a suggested operation? A. Very poor. There can't ever be any permanent union, that is, of weight bearing.

Q. To what do you attribute the failure of the bone to unite? A. To the fact that the distal fragment of the bone was so badly comminuted that we were unable to maintain direct apposition between the bone. We placed them end to end satisfactorily repeatedly with various manipulations which we attempted, but, due to the shattering of the distal fragment, those would slide by and shove off to the side, so that the shortening would result. Healing won't take place unless you can maintain the bone end to end or at least 30 40

Robert K. Arbuckle—Direct

side to side in close enough proximity that callus will form.

10 Q. And that can't be done in this case? A. It could have been done at the time had we been able to maintain it in apposition. At this time a certain change has taken place by resulting fibrosis of the ends of those broken bones and callus formation won't follow where fibrosis has once taken place. That is the way it works, and to do that it necessitates an open operation.

20 Q. What about the patella? There is some suggestion there was an injury to the kneecap. A. At the time, as I recall, he complained of considerable distress and there was some swelling, but there was no evidence of a fracture, and so far as I recall, there is no evidence of any permanent injury there.

By Mr. Bonnell.

Q. What was the condition of the kneecap, Doctor? A. At the time of the examination, other than being painful and accompanied by considerable swelling, there was no clinical evidence of fracture.

30 Q. Being in the cast as it has all this time, with no weight on it, is there any possibility of that being involved so it won't be able to work properly when he gets on it? A. There is a great stiffness accompanied by the wearing of a cast which has to be relieved by manipulation and massage and things of that nature later.

Q. Do you think in the condition that the doctor is in, that fact can probably be brought about if the other operation is successful? A. To a great extent.

Robert K. Arbuckle—Cross

Q. Will it be entirely normal, all knit? A. I think it will probably take a year before it returns to normal, but I think it can be returned to the full function.

Q. But that would have to first depend on whether your first operation was successful? A. That is true. 10

Cross examination by Mr. Bell.

Q. When did you graduate from Temple University? A. In June of 1933.

Q. How long have you been practicing medicine? Since that time? A. As a hospital physician, yes.

Q. Then when this came in to you, you had been in the hospital approximately six months, or not quite that long? About five or six months? 20
A. Yes.

Q. You have stated that there might be an inch to an inch and a half shortening? A. That is true.

Q. Isn't that considered to be rather a minor thing? I mean a person with an inch shortening doesn't have great difficulty walking, does he?
A. No. With an inch or less we can make some adjustments on the shoe so that no deformity results.

Q. So that if there wouldn't be over an inch in shortening the Reverend would have very little difficulty in walking? A. Quite true, if there weren't over an inch, but if— 30

Q. And it might be possible if this operation took place that there would only be half an inch of shortening? A. No, that is not possible.

Q. That is not possible? A. That is not possible.

Q. The chance of success of this operation you place at 30%? From your experiences in this type 40

Robert K. Arbuckle—Cross

of operation, how can you judge the 30%? A. From my experience it would be less than that. From teaching, medical school teaching and surgical chiefs' teaching I place it at 30%.

10 Q. When you make the estimate of 30%, it is from books and teachers and not from your own experience? A. From past hospital experience, but not my own.

Q. Were any operations performed on the Reverend while he was at the hospital? A. Yes, sir.

Q. Who performed those operations? A. Dr. Muschler, with his assistants.

Q. Who were his assistants? A. I am one of them, and Dr. Brown.

Q. But Dr. Muschler actually made the operation? A. That's true.

20 Q. As I get your conclusions at the present time, you don't think the Reverend will have very much use of that leg unless he does have an operation; is that correct? A. That is true.

Q. In your opinion, when should that operation take place? A. It is very difficult to say just when the conditions upon which it depends, the amount of calcification which takes place in the adjacent comminuted fragments. At the time of examination it must be sufficient to show that when drilled, screws can be placed there which will hold, and that can only be determined by the amount of callus as shown by the X-ray.

30 Q. Haven't you made examination of the Reverend to such an extent that you are now in a position to say when would be the best time to have that operation? A. The best time is not yet. He isn't ready for it now. I can't say how soon it will be.

Robert K. Arbuckle—Cross

Q. You don't think he is ready for it now? A. No, sir.

Q. And you don't think it would have been better to have had this operation perhaps two or three months ago? A. He couldn't have had it.

Q. Could not? A. That is true.

Q. When was the last time you made an examination of the Reverend Heilman? A. In July. 10

Q. Then do you know what the condition is today, if you haven't made an examination since July? A. I think so.

Q. You think so, but do you actually know? A. Only as a result of previous examinations.

Q. Then how can you tell this jury that he isn't ready for an operation today, if you haven't examined him since last July? A. The examination—the determination of the time for operation depends upon the X-ray evidence of callus, and we have compared X-rays from three to four week intervals, and clinical examination at three and four week intervals. 20

Q. When were the last X-rays you say? A. In July.

Q. Then you don't know whether there has been a change in condition since July or not, do you? A. There probably has been, but callus doesn't form that quickly. 30

Q. And you think positively that no operation should be performed at the present time? A. I do.

Q. And you base that upon your last examination in July? A. No. I base it upon the previous examinations, as well as that one, and the healing as it progressed from March until July.

Q. You stated that you are the resident physician at the Episcopal. Is that correct? A. That is true. 40

Robert K. Arbuckle—Cross
William Taylor—Direct

Q. When did you become the resident? A. In July of 1933.

Q. In July of 1933? A. That is true.

Q. You graduated in June of 1933 from Temple and you became the resident physician at Episcopal Hospital in July 1933? A. That is true.

Q. Or 1934? A. 1933.

Q. Where did you serve your internship? A. I spent thirteen months at Taylor Hospital in Ridley Park during the time of my senior year, so-called, in medical school.

Q. In other words, you served your internship during your senior year in medical school? A. Concurrently, yes.

20 *By the Court.*

Q. What is the cost, Doctor, of the operation that you have been mentioning? A. What is the cost of the operation?

Q. Yes. Are you able to approximate it? A. No, I am not.

By Mr. Bell.

Q. At the Episcopal Hospital is there any concession in the charges made to the members of the ministry of the Episcopal Church? A. I don't know that.

WILLIAM TAYLOR, SWORN:

Direct examination by Mr. Bonnell.

Q. Where do you live, Mr. Taylor? A. 112 East Andrews Avenue, Wildwood, New Jersey.

Q. Where did you live in November, 1933? A. 4603 Pacific Avenue.

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Dr. George F. Dandois—Direct

Q. Still in Wildwood? A. Yes, sir.

Q. What was your business in November 1933?

A. My business then was I was connected with the Wildwood Police Department.

Q. What are you connected with today? A. City fireman of the City of Wildwood.

Q. Were you on Route number 4—

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(The witness was temporarily withdrawn.)

DR. GEORGE F. DANDOIS, SWORN:

Direct examination by Mr. Bonnell.

Q. Doctor, where do you reside? A. Wildwood, New Jersey.

Q. Are you a practicing physician in Wildwood? A. I am.

20

Q. How long have you been a practicing physician? A. How long altogether?

Q. Yes. A. Thirty-eight years.

Q. Of what school are you a graduate? A. Jefferson Medical College.

Q. Do you know Reverend Heilman? A. I do.

Q. Were you called on or at a place where Reverend Heilman was brought in the hospital on the 24th of November, 1933? A. I was.

Q. Where was that hospital? A. The Mace Hospital in Wildwood.

30

Q. Were you one of the doctors that examined him at that time? A. I was.

Q. Will you state to the jury and the Court just what you found at that time with Reverend Heilman? A. He had a laceration above the right eye one and a half to two inches long, an irregular laceration; a laceration of the lower lip; he had an injury to the left forearm. We weren't sure at

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Dr. George F. Dandois—Direct

the time whether it was a fracture or not, and we didn't manipulate it enough to find out, but that was put on a splint and taken care of. Then he had a fracture of the right femur. He also had a laceration of the right arm. He had some lacerations of the right knee, two on the outward side of the right knee, and a Y-shaped laceration of the thigh, just over the site of the fracture.

10

Q. Did you make a thorough examination at that time? A. As thorough as it was safe to make in a first aid treatment.

20

Q. How long was the doctor at the Mace Hospital? A. This was on the evening of the 24th. I think it was the next morning that he was sent up to the Episcopal Hospital. I would add that Reverend Heilman was in quite a state of shock at the time.

Q. After he was sent to the Episcopal Hospital did you then after that consult or follow the case of Dr. Heilman? A. Only as he returned. When he got back to the city or back to Wildwood I saw him occasionally.

30

Q. What was his condition when he got back, if you know? A. The first time he returned, his leg and body and thigh were in a cast and he was practically helpless with it, managed to get—with some help to get up on his foot occasionally.

Q. Did you see that he had to have an attendant continuously when he first came back? A. He couldn't get along without one.

Q. Have you followed his condition since that time, Doctor? At times, yes.

Q. Have you made an examination of his injuries to see what the condition of those injuries is today? A. The last examination was made last Sunday afternoon. The fracture has not

40

Dr. George F. Dandois—Direct

healed and there is a shortening of the leg roughly, I would say, of two and a half inches. There is an overlapping of the two fragments of the thigh bone. I may add that I saw an X-ray taken of that a couple of months ago, which showed that was very little promise of healing of that fracture.

Q. What today in your judgment is the condition of that hip? Will it heal as it is? A. I don't think it will. 10

Q. What will be necessary, if anything, to cure that? A. That will require quite a serious operation.

Q. Is that a dangerous operation? A. Yes.

Q. Why is it dangerous? A. Because of the extent of work that must be done.

Q. Is it a generally successful operation or not successful? A. Quite frequently it is successful. Not always. 20

Q. In the condition that you say you find the doctor's fracture is at this time, is there a probability that this will be a successful operation? A. I wouldn't use the word probability. I would use the word possibility.

Q. All right. Possibility. A. There is a possibility that it will be successful.

Q. Is the percentage against it being successful or for its being successful? A. I think it is for it. I think the percentage is in favor. 30

Q. How long will it be before that operation will be able to be made? A. I think it should be made at the most convenient time in the near future.

Q. Well, but how long will that be? Is there any way it has to get before that can be done? A. My own opinion is it is ready for it now.

Q. Have you followed up the fracture by X-rays and examinations to be thoroughly familiar 40

Dr. George F. Dandois—Direct

with it? A. I saw the—I think they were the last X-rays that were taken, a couple of months ago.

The Court: What part of the femur was fractured, the upper third?

10 A. Just below the middle third. In the middle third.

Q. The operation, the time for the operation depends upon the callus that may be—the condition of the callus and what may be formed there, doesn't it, to make it successful, Doctor? A. No. I think the operation is indicated because there is very little callus there. The X-ray shows very little callus.

20 Q. How about the comminutions of the bones there that were fractured at that time? Have they united sufficiently— A. The bones don't show any union at all.

Q. Do the bones show fractures or splits through them? A. They do.

Q. Have those united sufficiently so that a screw could be put through there at this time and hold? A. Personally I don't think a screw operation is indicated.

30 Q. What operation would you say would be necessary? A. I think bone splint will be necessary. Understand, I am not an authority. I am not doing only surgical work, but that is my opinion.

Q. Isn't the same true of a bone splint that there would be of a screw, that there has to be a certain amount of formation there in the healing of those splits before it would grow together and hold? A. I am not so sure of that.

40 Q. In making a bone splint you make a tunnel or groove, don't you, to put the splint in and form it that way, and in making a screw you put the

Dr. George F. Dandois—Direct

bones together in the same way and put a screw through? Isn't that the only difference? A. Put the screws through the bone, and there is another difference. Very frequently your screws have to come out later, with another operation, and your bone splint becomes a part of the leg, a part of the leg bone.

10

Q. Isn't it necessary just the same for a bone splint to have those fractures heal before that starts, to a certain amount? A. If they don't heal and refuse to heal, then we are up against it pretty badly.

Q. That is the danger of the operation not being successful, isn't it? A. That is the danger.

Q. That the bones won't heal after you have it done? A. That is the one danger.

20

Q. What did you find the condition of this fracture, then, as to the possibility of this bone healing if that was done? A. The bone hasn't healed. There is very little callus there. What little there has been was broken through when the cast was taken off, or, rather, I should say when traction was released, and there has been no callus since, and it doesn't look as though there was going to be very much until something further is done.

Q. Different methods of operation, then, whether it is a screw or whether it is a pin or bone graft is simply a difference in medical authorities on that, as to whether which is the best? A. Yes; surgical authorities.

30

Q. That joint would be made by a piece of living bone and that would also depend as to whether the blood would properly circulate through there as to whether that was successful or not? A. Absolutely.

40

Dr. George F. Dandois—Cross

Q. Do you think there is any permanent injury to the doctor, also, even if he was successful in that operation? A. I think there will be.

Q. What will that permanent injury be? A. Nobody can estimate that at this time.

10 Q. Also if you put that bone in there, there is a danger of osteomyelitis or infection of the bone, isn't there, in an operation of the kind you speak of? A. That could happen.

Q. Which probably wouldn't happen in the screw operation? A. I think it is more likely to happen with the screw operation than it is with the other.

Q. But that is the dangerous part of either operation, isn't it? A. That is a danger.

20 Q. And if that does happen, then what happens? A. Probably lose the leg.

Q. You heard Dr. Arbuckle say, who has followed this case, that he thought about 30% of those operations as a rule were successful and seventy not successful. Do you agree with that? A. I am not able to give the percentage. I haven't followed that up closely enough.

30 Q. You don't know the percentage of those operations, then, that are successful and not successful? A. I do not. I don't know.

Cross examination by Mr. Bell.

Q. Dr. Dandois, you have stated, I believe, in your direct testimony that one of the great dangers of operation is infection setting in. Do you know the percentage of operation cases where infection does set in? A. I do not.

40 Q. Is it a great or small number of cases? A. I think with modern methods of surgery there aren't very many, but yet there are some.

Dr. George F. Dandois—Redirect

Dr. George F. Dandois—Recross

Redirect examination by Mr. Bonnell.

Q. Did you see the defendant, Meadows, in the hospital at the same time? A. He was there while—

Q. Did you examine him while there? A. I was close to him and looked him over, but not closely. 10

Q. Did you notice anything at that time out of the ordinary with Mr. Meadows? A. I thought he had been drinking.

Recross examination by Mr. Bell.

Q. Doctor, when did you see Mr. Meadows? A. I saw him just after we had finished giving first-aid to Reverend Heilman.

Q. Was that in Macé's Hospital at Wildwood? A. That was, yes. 20

Q. How close were you to Mr. Meadows? A. Oh, I was right up close to him. Within two feet.

Q. And you say that you thought he had been drinking? A. I thought so.

Q. What made you think so? A. I detected the smell of liquor, stale liquor on his breath.

Q. You did detect that? A. Yes.

Q. You made no examination of him? A. Not further than that. Talked to him a little bit. His attitude was very much to me as that of a man who had been drinking, too. 30

Q. Did you examine his head? A. I don't remember that I did.

Q. Did you know that he had a head injury? A. I don't know that.

Q. Didn't you make an examination of him? A. I don't remember examining Mr. Meadows because he had been given first-aid at Cape May and we did not give Mr. Meadows first-aid. 40

William Taylor—Direct

10 Q. You say he acted somewhat as if he had been drinking. If he had had a head injury that might have caused a slight concussion, wouldn't that cause a person to act, perhaps, the same way as someone who might have been drinking? A. Well, that wouldn't give his breath an odor of alcohol.

Q. But you did distinctly smell alcohol? A. I am certain of it.

Q. You are positive of that? A. Yes.

Q. How long was that after the accident? A. I don't exactly remember, but it was early in the evening.

Q. Early in the evening? A. Early in the evening.

20 Q. It was after supper, was it? A. I don't remember that.

Q. Was it dark or was it still daylight? A. It was dark. You see, it gets dark early on the 24th of November.

WILLIAM TAYLOR recalled.

Direct examination by Mr. Bonnell.

30 Q. Mr. Taylor, I think before you went off I had asked you where you lived and what your business was, and you were a policeman of the City of Wildwood at that time? A. Yes, sir.

Q. Were you on the Cape May road between Cape May and Wildwood in November, 1933? A. I was, sir.

Q. Do you remember about when that was? A. It was on the Friday before Thanksgiving, somewhere between the hour of four and five in the afternoon, the 24th of November.

40

William Taylor—Direct

Q. Did you see anything or hear anything that day? A. Yes, sir. As I was—right before you come to that accident there is an S-turn there in the road, and you can see right across the field there, and as I was on this here turn in back of a—if I am not mistaken, it was a Bell Telephone truck with a trailer on it with two poles on it, and I was following it, and I happened to see a cloud of dust. I didn't know what it was from or anything. Taking caution coming down, as I came down there I run upon an accident which laid over on the far side of the road, on the railroad side. I was on the main Shore Road coming in this way. 10

The Court: You were going north?

A. Yes, sir. 20

Q. You were going north? A. Yes, sir, coming back to the City of Wildwood.

Q. Did you hear any noise or anything right previous to that? A. No, I didn't hear no noise, on account of following the truck.

Q. When you arrived at this accident, what did you see? A. I seen two machines that was involved in an accident. Owing to the fact that I didn't wait to stop on the right-hand side of the road, I crossed the road and pulled up alongside of the accident. As I alighted from the car, the first thing I inquired for was what became of the man that was in the automobile that was hurt. There was a lady standing there and she told me her son had just took the Reverend Heilman at that time to the hospital, and she pointed to me and showed me the car going down the road. 30

Q. Did you see anybody else there? Did you see Mr. Meadows that day? A. Yes, sir. 40

William Taylor—Direct

Q. Where did you see Mr. Meadows? A. Mr. Meadows was sitting in his car behind the wheel. The seat of his car, the seat he was sitting on, was moved away from the car out into a position so it raised his foot up like that there, and he was sitting there like that there (indicating). I spoke to this here man and asked him if he wanted to go to the hospital, and he said no. There was a gash on his head here like a scratch. It didn't look very bad, although it was bleeding, so I asked the gentleman if he wanted to go to the hospital and he says, no. I says, "Well, come on, get out of your car until I look at you." He said he didn't have to get out of his car, it was his car.

Q. What else? What was the condition of him at that time? A. The man was under the influence of intoxicating liquor.

Mr. Bell: I move to strike that answer because we do not have any evidence that this man is qualified to give such an opinion.

Mr. Bonnell: I asked him what he saw.

Q. What did he do? Did you smell anything or what happened?

The Court: You may strike it out for the present. What did you see that caused you to reach that conclusion?

A. Well, I went over and spoke to the man and I got very close to the man and fumes of the alcohol was on his breath.

Q. What else happened? Just state what happened there. A. After that there I walked around—I wanted to find out if anybody had notified the State Police, owing to the fact that it was on the highway, and I thought the State Police, it was

William Taylor—Direct

their job; owing to the fact that I was a police officer I took charge of it until the State Troopers arrived.

Q. State what you did there. A. I walked around the car and asked a boy to go notify the State Troopers. While I was in back of this here car I heard three gentlemen at the car saying, "Come on, let's get him out and away from here," so I walked back to those three fellows and told them not to move him, and they asked me what authority I had that they couldn't take him away and I said, the first man that moved him I would lock them up with him, and I just chased them away. 10

Q. Why did you do that? A. I offered to give the man first-aid and take care of him and he tells me he don't want any, it is his automobile, he don't have to get out. No one else is going to move him until the State Trooper comes there and takes charge of it and does what he sees fit to do with the man. 20

Q. Why did you want to hold the man? A. Hold him there for the State Troopers, to let the State Trooper take charge of him.

Q. What was your reason for that? A. Leave him see the condition of the man. 30

Q. What was the condition of the man? What did he do, outside of refusing to get out? Did he talk or anything to you? A. Yes, he talked.

Q. How was his talk? A. Well, his talk was what I just told you. He talked to me and he told me he wouldn't get out of the car, it was his car and there was no use of him getting out of it, he didn't have to get out of it.

Q. Anything else he said? A. No, I didn't speak to him any longer. I walked away. 40

William Taylor—Direct

Q. But you did smell fumes, you say, of liquor?

A. Yes, sir.

10 Q. When the State Trooper came, what happened then? A. When the State Trooper came up I spoke to the State Trooper and just told him what I had found when I got there, told him there was a man sitting up in the car, the car that was upon the railroad side. He went over there and he spoke to Mr. Meadows. What he said I don't know, because he got in the car and spoke to him. Of course, I am saying "Mr. Meadows". I don't know the gentleman at all.

20 Q. Go ahead. A. He got in the car and he spoke to the man and he asked the man to get out, and what he ever said I don't know. The trooper takes the man out of the car and stands him up alongside of the car, on the right side. He brought him out on the right side. He stands the man up, and as he did he stepped back and told the man to walk to him. This man walked to the State Trooper in a staggering condition.

Q. Then what happened? A. After that I left.

30 Q. What was the position of the cars that you saw when you got there? Where did they lie? A. Both cars were facing south. Reverend Heilman's car was on this side, about four foot off the main road, in the dirt.

The Court: On the westerly side, you are speaking about now?

40 The Witness: That is on this railroad side, yes, sir. The other car of the other gentleman was stopped up on the embankment almost on the railroad track. I would say within four feet of the railroad ties. I don't know whether it was the northbound train or southbound train runs on that.

William Taylor—Direct

Q. Were both cars pointed nose towards the south? A. Yes, sir.

Q. Which way was the Reverend Heilman going? Coming out from Cape May, would he be going north or south? A. If he was coming from Cape May, he would be coming north.

Q. And the other party was going south? A. 10
They were both headed that way when I found them.

Q. I mean that is the way they were both coming?

Mr. Bell: That is objected to.

The Court: I don't suppose he knows.

Q. If you know, which way were they going? A. I have no idea which way they were going.

Q. Then which car laid south, the Reverend's 20
car or the other car? A. Reverend Heilman's car laid south in that direction, and the other car, I would say, laid in a southeastern condition.

Q. Which car was south of the other car as they lay alongside of each other? Which one was toward Cape May? A. They were both towards Cape May.

Q. They both lay here. Here is Cape May. Was Heilman's car nearer Cape May or his car? Which was the car that was nearest Cape May 30
City? A. The Reverend Heilman's car was the nearest.

Q. In other words, Heilman's car laid south of the other car? A. Reverend Heilman's car laid on an angle like that there, facing south. The other gentleman's car was on an angle back here up on the railroad track.

The Court: In back?

William Taylor—Direct

The Witness: Off to the side, where it had run up on this here embankment. There is an embankment there that goes up to the railroad.

10 Q. Was that car north of Heilman's car or south of Heilman's car then? A. Well, you can say it was west, as far as that is concerned, because it was up on a hill this here way, and it would be right in back of it.

Q. It was nearer Wildwood, the car of Meadows, than Heilman's, wasn't it?

The Court: Can you draw a diagram of it?

The Witness: I am not much of a drawer, but I will do my best.

20 The Court: Put the highway down first, the concrete highway.

The Witness: This is the center of the road in through here. I will mark that with an X. They are the railroad tracks up here. This is the main Shore Road over here, and this is the gravel dirt. I will put a nought in here for the gravel dirt. This X indicates the line dividing the main Shore Road north and southbound. Over here is the gravel and up here is the railroad tracks. This is the
30 Reverend Heilman's car and this is the other man's.

Q. Is this Cape May down here? A. This is Cape May.

Q. And this is toward Wildwood? A. That's it.

Q. Which was the front of the cars? Is this the front part here? A. This is the front here.

Q. Put a cross there for the front. That's it. You say, then, you left after the State Trooper came? A. Yes, sir.
40

William Taylor—Cross

Q. How long were you there before the State Trooper came? A. Why, I would say roughly not less than ten minutes. It seemed more to me, because I was waiting for someone else to come along and take charge of it, to tell you the truth.

Q. Were any other people there besides you when you first got there? A. When I arrived there, I think there was one woman there, if I am not mistaken, and after that quite a number collected there. I had a little difficulty keeping the road open on account of north and southbound traffic. They had all parked on the left, off the road, and on the right, off the road. 10

Q. They had been across there, then, cars, before the State Troopers or anybody else got there? A. Yes, sir. I cut across there myself, because I pulled from the right of the road to the left of the road at the scene of the accident and parked on the wrong side of the road. 20

Q. So there were other tracks going over the road before the trooper got there? A. Yes, sure there was.

Cross examination by Mr. Bell.

Q. Mr. Taylor, did you make an investigation of the surroundings where this accident took place, as to where the cars had made marks and things of that kind? A. I looked around, but couldn't find any there. 30

Q. You looked around and couldn't find any? A. Nothing on the concrete.

Q. You couldn't find anything on the concrete? A. Not at that time, no, sir.

Q. You couldn't find anything on the highway toward Cape May or toward Wildwood? A. No, sir. 40

William Taylor—Cross

Q. Did you see any marks on the shoulders? A. On the shoulders of the road?

Q. Yes. A. I did not, no.

Q. You didn't see any marks? A. I didn't look on the shoulders.

10 Q. You didn't look on the shoulders? A. No, sir.

Q. Weren't you making a complete investigation? A. No, sir.

Q. Why would you look on the concrete and not look on the shoulders? A. I wasn't that much interested at that present time.

20 Q. You were not interested? A. I was just getting the little data I could give to the State Trooper, trying to co-operate with them, as being a Peace Officer, and giving them my co-operation on the highway.

Q. Tell me why did you look for marks on the concrete and didn't look for them on the shoulder, when the cars were up on the shoulder, had gone over the shoulder and up near the railroad? A. You are talking about in the dirt?

30 Q. Yes. A. Sure there was marks in there. You are talking about the shoulder of the road, and off of the road is two different things. The shoulder of the road is where the concrete ends. After you get off that you get on the gravel side of the road. Therefore, the shoulder of the road would be at the shoulder of the concrete.

Q. And there weren't any marks on the gravel right off the concrete? A. Indicating a skidding automobile. That's all I could say.

40 Q. Could you tell from those marks as to whether the car that made them was proceeding on the right-hand side toward Cape May or not? A. I could not, sir.

William Taylor—Cross

Q. You couldn't? A. Because other ones had drove over there.

Q. Other cars had driven? A. Yes. Came right close and stopped there and looked at the scene of the accident and moved.

Q. How many people were there when you got there? A. When I got there, to the best of my knowledge, all I can recall is that one lady. 10

Q. There was only one there when you got there? A. I don't say for sure. That's all I seen, because I had made inquiry where the driver of the car went that was laying there unoccupied when I got there.

Q. What kind of marks were there on the bank as to how these cars had gone off the road? A. I didn't look at the bank, sir.

Q. You didn't look at the bank? A. No, sir. 20

Q. Did you notice any broken glass? A. Did I notice any broken glass? I seen plenty of broken glass.

Q. Show on that description where you saw the broken glass? A. Where I seen the broken glass?

Q. Yes. A. Inside of the cars.

Q. Didn't you see any outside of the cars at all? A. No, sir.

Q. There wasn't any glass outside at all? A. I couldn't say that. 30

Q. But you didn't see any outside? A. No, I did not.

Q. Now, did you look at the Reverend Heilman's car? A. Yes, sir.

Q. Did you notice how the car had been damaged? A. I did, sir.

Q. Where was the hood of his car? A. The hood of his car?

Q. Yes. A. Almost up in the front seat with him. 40

William Taylor—Cross

Q. It was up— A. Almost in the seat with him. Up to the dash. Pushed back to the dash. The whole side was pushed back. If you want to know, I will give you the whole diagram of the car as I came there. When I came upon the scene of the accident, Reverend Heilman's car, the door on the left-hand side was open. Where the man had sat behind the wheel, one of his shoes had set right there, where he had placed his feet on the ground like this and one shoe had set there, knocked completely off the foot, with the shoe lace still tied, and that set right at the driver's seat, and that shoe laid there without the shoe strings being disturbed. On the seat in back, on the back seat on the left-hand side of the car, his black felt hat set back there on the seat, as if one had maybe took it off and set it there. The front steering wheel, as I say, was all bent up, just crumbled. The whole glass was mashed in, the whole side was pushed all the way back. The wheel, one wheel on the left-hand side was pushed all the way back on an angle like this here, but this car demolished all the way clean back from the front to the rear, that is, to the dashboard.

Q. You took a pretty good look at his car, then? A. I surely did.

Q. And you saw about everything that happened to it? From your inspection of the car, where would you say the car was hit, what part— A. Well—

Q. —where the contact was? I don't want any ifs, ands or buts. I just want your opinion on the observation you made, where the car was hit. A. I would say the car was hit on the left front side.

William Taylor—Cross

Q. You would say it was hit on the left front side? A. Yes, sir.

Q. Then if we would take it that Mr. Meadows, as the testimony has been, that Mr. Meadows was coming down here on the right and Reverend Heilman was coming up here—

Mr. Bonnell: There is no testimony as to Reverend Heilman coming down here. The testimony in the case is that Reverend Heilman was not moving. I object to misquoting the testimony.

Mr. Bell: I am very sorry. I apologize.

Q. The testimony is that Reverend Heilman's car was over here on the right-hand side, and therefore your observation would be that as his car was standing here facing toward Wildwood, the first contact came on the left front side of his car, in other words that the Meadows' car must have come across here and hit him on the left? Is that your idea? A. Either came across or run into him head-on. I couldn't tell you that.

Q. But he hit him on the left front? A. Yes, hit him on the left front. Yes, sir.

Q. Where is the concrete down here? A. This is the road here. This is the concrete road. This is the dividing line. This is the gravel part here, and up here is a little grade that goes up to the railroad tracks, and this is the railroad tracks.

Q. Then if Reverend Heilman's car was over here, where he testified to, after the collision, both cars went clear across the concrete, over to the other side? Is that right? A. That's the way I found them.

Q. You found them over here? A. Yes, sir.

Q. Mr. Taylor, you have said that when you looked at Mr. Meadows, you asked him if he

William Taylor—Cross

wanted to go to the hospital. Will you simply describe Mr. Meadows' condition, that is, as to what made you feel he should go to the hospital?

10 A. Well, after coming upon the scene of an accident of that kind and seeing the demolishments of the cars, one can never tell what may happen to the other fellow. Owing to the fact that I only
seen one man moving, seen him sitting there and went over to speak to him and seen this here gash in his head—it was very little; I couldn't say how long it was or how bad it was—I asked him if he was hurt and if he wanted to go to the hospital, and he told me no.

Q. Did you see whether he had any other injuries? A. I did not, sir. I asked the gentleman to get out and walk around so I could see, but he
20 said it was his car and he didn't have to get out.

Q. Will you state just exactly where you saw this gash on Mr. Meadows' head? Was it on the forehead, on the right-hand side or the left-hand side? Just state exactly. A. I couldn't be exact with that. It was on his upper forehead, I will grant you that, because after I had been there and went back to him the second time, the Bell Telephone crew had come along or Keystone Telephone crew—which I don't know, but it was the
30 second; there was one in front of me coming in, but this here second one stopped, and after they had come over and seen the man with the gash in his head, they went over and brought their first-aid kit and asked me if they could give the man first-aid, and I said, "Yes, sir," and they wanted to know if it was all right to put iodine on his head, and I said, "Go ahead, anything to fix the man up."

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William Taylor—Redirect—Recross

Q. Was that before or after the trooper got there? A. That was before the trooper arrived there.

Q. Before the trooper arrived? A. Yes, sir.

Redirect examination by Mr. Bonnell.

Q. I think I can ask this question now: You were asked your supposition by the defense as to where the cars stood. Then this would account, would it not, if the Reverend Heilman stood here and the car was hit here on the left-hand side, that would cause it to turn around in that way, wouldn't it? A. Sure. 10

Recross examination by Mr. Bell.

Q. Turn around in what way? 20

The Court: You must remember this witness did not see the accident at all.

Mr. Bonnell: I didn't ask him to bring out the admission.

Q. If the car was struck on the left front side, as you have testified to, wouldn't it have turned Heilman's car to his right-hand side of the road— A. No, sir.

Q. —rather than throwing it clear across the road? A. May I ask you a question? 30

The Court: No.

A. I can ask you something if you want to go in them details. If you hit a car on the left-hand side, you will turn it around every time. I am telling you from experience, one who has been stopped and been hit.

Q. It wouldn't throw it up on the railroad track, would it, clear across the road? A. Just a minute. If he had hit him in that side, he would have been 40

M. A. Piatt—Direct

coming the other way and threw him across the road probably against the post or in the field on the opposite side of the road, on the easterly side of the road.

10 M. A. PIATT sworn.

Direct examination by Mr. Bonnell.

Q. Where do you live, Mr. Piatt? A. Pacific and Pine Avenues, Wildwood.

Q. What is your business? A. Automobile business.

Q. How long have you been in the automobile business? A. Since 1905.

20 Q. Do you buy and sell cars? A. Sell new cars.

Q. Buy and sell second-hand cars? A. No, sir.

Q. Trade them in? A. Yes, sir.

Q. Do you know the market value of second-hand cars? A. Yes, sir.

Q. Do you know the car that was owned by the Reverend Heilman? A. Yes, sir.

Q. Did you know it before the accident? A. I sold it to him.

30 Q. Did you know it immediately before the accident? A. Yes, sir.

Q. Where did he keep that car? A. In my garage.

Q. Did you know the condition of that car up to the date of the accident? A. Very good, except the fan. We had had trouble with those fans in 1932.

Q. Were the brakes in good condition at that time? A. Yes.

40 Q. Gears, tires and everything? A. Yes, sir.

M. A. Piatt—Direct

Q. The only trouble—the fan wouldn't have anything to do with the operation of the car as to safety, would it? A. No, sir.

Q. What was the trouble with that fan? A. It came loose on the shaft.

Q. Would that require that he would have to run that car at a slow rate of speed? A. The faster you would run, it would bring it off towards the radiator. 10

Q. I mean it would compel him, then, to run at a lower rate of speed than if it had been in good shape? A. Yes.

Q. Did you see the car after the accident? A. Yes, sir.

Q. What was the condition of the car after the accident as to its market value? A. It wasn't worth anything. 20

Q. What was the car worth in the market, its market value, on November 24, 1933, before the accident? A. That car would sell for \$450.00.

Q. Did you or anyone make an allowance for this car to Mr. Heilman? A. To trade it in?

Q. Yes. Was it purchased by you or someone else afterwards? A. No. It was purchased by a salvage company.

Q. Do you know what they gave him for it? A. \$50.00 was paid to the finance company. 30

Q. Was that the full market value for it in that condition? A. Well, it had to be sold for junk, different parts on it.

Q. I say was that full market value for it? A. I don't know about the market value. I know the offer that was given, and the finance company accepted it.

Q. What I am getting at, supposing you had sold that car in the condition it was, what could 40

M. A. Piatt—Cross
Albert C. Nye—Direct

you have gotten for it in the open market? A. Couldn't sell it.

Q. Then the \$50.00 was the full market value for that car? A. Yes, sir.

10 *Cross examination by Mr. Bell.*

Q. Did you know that this car had a bad fan?
A. We had had trouble with the 1932 Terraplanes, yes, sir, with the fans backing off.

Q. What happened when the fan went bad? Did it make a lot of noise? A. It would scrape against the radiator.

Q. Make a lot of noise? A. Yes, sir.

20 ALBERT C. NYE SWORN.

Direct examination by Mr. Bonnell.

Q. Mr. Nye, where do you live? A. Higbee Beach Road, Cold Spring.

Q. Where did you live in 1933? A. The same place.

Q. Where do you work? A. I did work for Mr. Piatt—Piatt Motor Company.

30 Q. Where is that? A. Wildwood, Pine and Pacific Avenue.

Q. Did you work there in November, 1933? A. I did.

Q. Were you the mechanic that did the work on the cars? A. I was.

Q. Do you know the car of Mr. Heilman? A. I do.

Q. What was the condition of that car on November 24, 1933, before the accident? A. The

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Albert C. Nye—Cross

car was in perfect mechanical condition, except the fan.

Q. You don't buy and sell cars? A. No, sir.

Q. What was the condition of the car after the accident, as to its value, if you know? A. Well, I wouldn't be able to say.

Q. Was it wrecked badly? A. It was.

10

Cross examination by Mr. Bell.

Q. Mr. Nye, you were down at the scene of this accident shortly afterwards? A. Yes, sir.

Q. Did you notice any tracks on the road down there? A. There were a lot of tracks there. There was no one there in either car when I got there. I was ordered there by Mr. Piatt.

Q. Did you see any tracks on the road, on the right-hand side of the road going toward Cape May, that would indicate anything? A. I don't recall.

20

Q. Did you see any tire burn marks on the concrete? A. There were tire marks there, but I couldn't say from which car.

Q. What was the direction of these tire marks? That is, I mean can you show on that little sketch we have there as to which way these tire burn marks ran? A. They weren't very plain. The tire marks seemed to skid off the road this way. They were only—from the center of the road here there was a small burn like of rubber.

30

Q. What type burn was it? Like a car would make if the brakes were on? A. No. It looked as though the car had been slid sideways.

Q. Just where did the marks start and where did they end? A. I don't just recall now where the marks did start, but I did notice that the marks were there and I didn't know whether it was from

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Albert C. Nye—Cross

that accident or whether it was somebody that had stopped to look at the accident.

Q. Didn't they look fresh? A. Yes, they looked fresh.

10 Q. Did the marks lead over to where these cars were standing? A. I didn't take that much notice to it.

Q. You didn't follow them that far? A. No, I didn't.

Q. Would they have been marks that would have been made by a car going toward Wildwood or a car going toward Cape May? A. I couldn't say that, because I wasn't interested in the cars that way, only just to get the Reverend Heilman's car away from the scene of the accident.

20 Q. And you did take his car away? A. No. Mr. Kehr took the car away to Cape May and I later got it from him.

Q. Were the cars standing at the scene of the accident when you arrived? A. Yes.

Q. And is the position which has been given by Mr. Taylor about the approximate position that you found them in? A. Yes, the approximate position of the cars.

30 Q. Did you see any glass on the roadway? A. No, I didn't.

Q. Or on the shoulder of the road? A. I didn't notice. It was getting dusk when I was at the scene of the accident.

Q. Then you didn't see any glass on either side of the road at all? A. No, I didn't.

By Mr. Bonnell.

Q. You saw neither party when you got there? A. No, neither party was there.

*Albert C. Nye—Cross**By Mr. Bell.*

Q. These skid marks, where did they start? About the middle of the road? A. I couldn't say. I don't recall clearly just where they did start, because I wasn't even interested in them at the time.

10

Q. You have known Mr. Heilman for some time, haven't you? A. About two years.

Q. And you have been out riding with him? A. Yes.

Q. Didn't you tell Mr. Meadows that you had been on a very fast trip with Mr. Heilman—

Mr. Bonnell: This is improper cross examination. I object to it.

Q. —from Wildwood to Philadelphia in an hour and ten minutes? A. No. 20

Mr. Bonnell: I object to any of that. It is not fair, it is not a proper question, and it is immaterial in this case and only done for prejudicial purposes.

Mr. Bell: We have to do it on cross examination.

The Court: How is it material? It is not on the occasion with which we are concerned in this trial. It was some other day, wasn't it? 30

Mr. Bell: That is true, your Honor, but we think we can establish that this man not only was a fast driver, but he boasted about his speed and the records that he made on the highway, and we have evidence that will tie that right up to this day, where he made boasts on this particular day of this accident.

Mr. Bonnell: I object to that because it is

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John Johnson—Direct

not cross examination and he cannot cross examine the witness where he is not the plaintiff in the case, only on the direct examination, unless he makes him his witness.

The Court: It seems to me it is immaterial. The objection will be sustained.

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JOHN JOHNSON, SWORN:

Direct examination by Mr. Bonnell.

Q. Mr. Johnson, where do you live? A. Irma.

Q. How far do you live from the point of this accident? A. I don't know. About three or four hundred yards.

20 Q. Do you remember in November an accident happening near your place, within three or four hundred yards? A. Yes.

Q. Whereabouts was that? What part of the road? Near Bennett? A. I am near Bennett, yes.

Q. Where did the accident happen? Right near Bennett Station? A. Yes.

Q. How did you come to first know about that? What called your attention to it? A. I heard the crash.

Q. What did you do then? A. I went over there.

30 Q. Were you there right shortly after the accident? A. Well, I suppose I was, yes.

Q. You had only about three or four hundred yards to go? A. How many?

Q. Three or four hundred yards? A. Yes, I think it is about that. Across both railroads and the end of my place.

Q. When you got there did you find anyone else there? A. Yes.

40 Q. Whom did you see there at that time? A. Oh, I don't know. There was quite a few there.

John Johnson—Direct

Q. See Mr. Taylor at that time? A. Who is Mr. Taylor?

Q. The gentleman who was on the stand here just a minute ago. A. Yes, I saw him.

Q. That was the officer—in a statement to me you say you saw an officer in citizen's clothing. That was Mr. Taylor, was it not, at that time? A. Well, he said he was. I don't know. 10

Q. What did you do when you got there? A. I didn't do anything. Just looked on, the way a lot of the rest of them was.

Q. Did you see Mr. Meadows and different ones that day? A. Yes.

Q. Did you have any conversation with Mr. Meadows? A. No.

Q. Did you hear anybody else have any conversation with him? A. Only the policeman. He didn't say anything to him. Mr. Meadows said something to him. 20

Q. Were you close to Mr. Meadows that day? A. Yes.

Q. Did you smell anything out of order on Mr. Meadows that day? A. No.

Q. What was his condition that day? A. I would say he had been drinking.

Q. What was he doing that would make you say he had been drinking? A. The whole appearance of him, was all. 30

Q. What was he doing out of the ordinary that called your attention to that? A. Laying back in his car and apparently asleep.

Q. Did he use any violent language at that time? A. No, not that I heard.

Q. Did he stagger in any way when he got out? A. Yes, when he got out of the car he did. 40

John Johnson—Direct
Jeanette Lewis—Direct

Cross examination by Mr. Bell.

Q. Mr. Johnson, if you had been in an automobile accident and had been hit on the head—
 A. How is that?

10 Q. I say if you had been in an automobile accident, the same as Mr. Meadows was, and had been hit on the head, isn't it possible that you might have staggered?

Mr. Bonnell: That is objected to as calling for a conclusion and medical testimony.

The Court: The objection will be sustained.

Q. Did you see any tire marks on the concrete?
 A. No, sir. I didn't look for any.

20 Q. Did you see any broken glass around? A. Only inside of the car, and the windshield.

Q. Didn't see any out on the road or on the shoulders of the road? A. No, didn't take notice of it.

Q. Did you see any marks on the east side of the road at all? A. That would be on Bradley's side, wouldn't it?

Q. That would be on the right-hand side as you were coming from Cape May. A. I didn't go over there.
 30

JEANETTE LEWIS, SWORN:

Direct examination by Mr. Bonnell.

Q. Where do you live, Mrs. Lewis? A. Wildwood.

Q. Where were you on the 24th of November, 1933? A. Cape May.

40 Q. During that time were you on highway Route #4? A. I couldn't tell you what the route was,

Jeanette Lewis—Direct

because I am not familiar with them, but I was on my way from Cape May to Wildwood.

Q. Did you at that time come to an accident? A. I did.

Q. What did you see there? A. Oh, I couldn't tell you. I only saw two smashed-up cars.

Q. See Mr. Heilman? A. I did not. 10

Q. See Mr. Meadows? A. I did.

Q. What was he doing when you got there? A. Sitting in his car.

Q. Where was the car at that time? On what side of the road? A. Facing Cape May.

Q. Both cars were on the same side of the road? A. Yes, sir.

Q. Both cars facing the same way? A. Yes, sir.

Q. How did Mr. Meadows act at that time? A. He acted to me like a man under the influence of drink. 20

Q. What did he do that made you think he was that way? A. Well, his actions was enough. The way he talked, waving his hands around, pushing his hair back, I suppose like anyone would try to do.

Q. Was he using any vulgar words at that time? A. He passed some remark.

Q. When the State Trooper got up, what did he do then? A. I didn't see the State Trooper do anything to him. 30

Q. What remarks was he making at that time? A. He was asked was he hurt, get out of the car and see, and he said it was his car, why in the H should he get out to see if he was hurt.

Q. Why should he get out to see if anybody was hurt? A. No. It was his car, why should he get out of the car. 40

Jeanette Lewis—Cross

Q. Did he use any explosive language along with that? A. Why in the H should he get out. I don't use that language.

Q. Were you close to him? A. I was to the car. I was in the car with Mr. Taylor.

10 Q. Did you smell him that day? A. I smelled his breath.

Q. What did it smell like? A. Like drinking.

Cross examination by Mr. Bell.

Q. Did you look around? A. No, sir, I did not. I just walked to the car with Mr. Taylor and heard what he had to say and walked back, and I was talking to two ladies.

Q. Were you with Mr. Taylor? A. I was.

20 Q. You were riding with him that day? A. I was.

Q. So you helped him make the investigation? A. I did not.

Q. Why did you get out of your car to go over to Mr. Meadows' car? A. Naturally anybody that would see an accident would get out to see what was wrong and what was doing and looking around.

30 Q. But you didn't see anything there except you did see Mr. Meadows and you smelled his breath? A. I did. I was close to him. I was standing on his side of the car, the driver's side.

Q. You didn't see any marks on the road? A. I didn't.

Q. You didn't see any broken glass? A. I didn't. I didn't look.

40 Q. Which side of the road were the cars on when you got there? Were they on the west side or were they on the east side? A. They would be on my left-hand side coming from Cape May.

Jeanette Lewis—Cross

Q. They would be on your left-hand side coming from Cape May? A. Going to Wildwood, yes.

Q. Did you see any wheel marks or any tire marks? A. Didn't look, no, sir. I just got out of the car and walked to Mr. Meadows' car and walked away again.

Q. Which way were you traveling when you were coming with Mr. Taylor? A. To Wildwood. 10

Q. You were going to Wildwood from Cape May? A. From West Cape May.

Q. And you didn't see any marks on your side of the road at all? A. No.

Q. There weren't any tire marks or wheel marks on the shoulder of the road to your right? A. No, sir, I didn't look for anything. I just merely walked over with him and walked away again and was talking to two ladies. 20

Q. When you were smelling Mr. Meadows' breath was his car door open or closed? A. The car door was shut and the window was down.

Q. The door was shut and the window down? Did you notice the gash in his forehead? A. Yes, I saw he was bleeding, but I couldn't tell you how much it was. I am not one to stand and look. When I see blood I have to run. I didn't see much. 30

Q. Well, you didn't notice then, how bad a gash it was? A. No.

Q. It might have been very bad, for all you know? A. I didn't say anything about that.

Q. Did you leave immediately as soon as you got there? A. Not immediately, no. I guess we stayed—well, we stayed there until the State Trooper came.

Q. I meant when you were over at Mr. Meadows' car. A. No, I didn't stay. When he passed 40

Frank Bradley—Direct

that remark I left. I was standing near the car and I walked away after I saw it.

Q. You just stayed long enough to smell his breath and then you left? A. You didn't have to stay long to smell it. You could smell it when you walked near the car.

10

A recess was taken until 1.30 P. M.

Afternoon session, 1.30 P. M.

FRANK BRADLEY SWORN:

20 *Direct examination by Mr. Bonnell.*

Q. Where do you live, Frank? A. Irma.

Q. How near do you live to the place of the accident? A. Within say a hundred feet.

Q. You have a house right there where the accident happened? A. Yes, sir.

Q. Where were you the day of the accident? A. I was in the house.

Q. Were you out just before that? A. Yes, sir.

30 Q. Where were you then? A. I went across the track to the garage, Wilson's garage.

Q. What was the first thing you knew at the time this accident happened? What did you see first? A. After the accident?

Q. No. Just before the accident. A. I noticed an automobile standing on the road right out by the house.

Q. What side of the road was it standing on, do you know? A. On the same side of the house. Right-hand side coming from Cape May.

40

Frank Bradley—Direct

Q. Do you know whose car that was? A. I think I recognized it as Mr. Heilman's after the accident.

Q. Did you see another car that day? A. I did.

Q. Did you see that before the accident? A. Yes, sir.

Q. What was that other car doing just before the accident? A. It was traveling at a high rate of speed towards Cape May. 10

Q. Was it on the road or going back and forth on the road? A. I didn't notice.

Q. Was it traveling at a high rate of speed? What do you mean by that? Very fast? A. It was.

Q. Did you then see this accident? A. I didn't. I didn't see it.

Q. Was that just before the accident you saw this car? A. It was. 20

Q. Who was driving that car? A. I didn't notice.

Q. Was that the car that afterwards was in the accident? A. It was a red car that I saw.

Q. How soon after you saw that car coming down at this high rate of speed did you hear the crash of the accident? A. Almost instantly.

Q. Did you go immediately out then? A. I did. 30

Q. Were you one of the first people there? A. I was the first.

Q. You were the first there? When you first got there, what did you see? A. Well, I noticed that both cars were on the right-hand side of the road going in to Cape May, on a hill, pointing south.

Q. Did you go then to see as to the occupants of the cars? A. I did.

Frank Bradley—Direct

Q. What did you find as to the occupants of the cars? A. I first went to Mr. Heilman and he looked to me as though he was in very bad shape. He was trying to open the door of the car.

Q. Did you open it for him? A. I didn't, not at that time.

10 Q. Did you open it later for him? A. No.

Q. Then did you go to the other car? A. I did.

Q. What did you see there? A. I saw Mr. Meadows, and he looked apparently as though he was intoxicated, as though he was going to sleep it off.

Q. He was then, right after the accident, in the car as if he was sleeping it off? A. Yes.

Q. Did you talk with him after that? A. I didn't.

20 Q. You are sure this car you saw, you afterwards know was Heilman's car, was standing still on the right-hand side of the road, just exactly a few minutes before the accident? A. Yes, sir.

Q. How soon after you saw the car did the accident happen or the crash you heard? A. I couldn't say. It was—

Q. Right soon? Right quick? A. It was, yes.

30 Q. Did you at that time go near Mr. Meadows? A. I walked to the car.

Q. Did you smell anything on his breath at that time? A. Well, I couldn't say I did, but there was the odor of the alcohol from the radiators that was very heavy.

Q. There was alcohol in the radiator of the car, as well? A. Yes.

Q. Do you know what the man was doing who had the car stopped? Did you notice that? Was

Frank Bradley—Cross

he out of the car or in the car? A. He was out of the car when I first saw him.

Q. Out of the car when you saw him? A. Yes.

Cross examination by Mr. Bell.

Q. Where is your house as compared to where the cars were after this accident? Where does your house stand? A. On this side of the accident. 10

Q. This is towards Wildwood and this is toward Cape May. Which side of the road? A. This side of the road.

Q. On the east side of the road? A. Yes.

Q. Then your house is about in there? A. Yes.

Q. How far was Mr. Heilman's car down the road from your house? A. Almost directly across from where the accident occurred.

Q. How far is that from your house? A. Within a hundred feet. 20

Q. Where were you standing at your house? A. I was in the house, inside.

Q. What did you do, look out the window? A. No, I didn't. I was standing looking straight out of the front door.

Q. You were standing looking out the front door? A. Yes.

Q. From where you were standing you could see Heilman's car? A. No. I left the house and I saw it. 30

Q. Where were you at the time you saw Heilman's car? A. I was outside the house.

Q. You were outside the house? Where? In the yard? A. Across the tracks and I noticed the car when I crossed the tracks, and then I got tobacco and came back and I noticed the car again still there.

Frank Bradley—Cross

Q. Then where were you when you saw the other car coming down the road? A. I was in the house.

Q. You were in the house at that time? A. Yes.

Q. Were you looking out the door or looking out the window? A. I was looking out the door when
10 I saw the car go by.

Q. And you don't know whether the car that you saw go by was Mr. Meadows' car or not, do you? A. I am not sure.

Q. It may have been some other car? A. Well, it was moving at a high rate of speed, and I noticed it was a red car that went by.

Q. But you don't know whether it was Mr. Meadows' car or not? A. No.

Q. This car that you saw go by, it went by your house, did it, Mr. Bradley? A. It did.
20

Q. On the highway? A. It did.

Q. What did you do after the car went by? A. I was just standing there.

Q. You were just standing there? A. Yes.

Q. Then did you follow this car that went by at the high speed? A. I didn't.

Q. You didn't follow it? A. No.

Q. And you didn't see that car again? Is that true? A. I don't know as I did.
30

Q. After the accident did you see any glass on the roadway or on the shoulder of the road? A. I did.

Q. Where did you see this glass? A. There was glass on both sides of the road.

Q. Glass on both sides? A. There was.

Q. Where was the glass on the right-hand side of the road as you come from Cape May? A. Almost directly across from where the accident occurred.
40

Frank Bradley—Redirect—Recross
Alice Bradley—Direct

Q. Almost directly across from where the accident occurred? A. From where the cars were parked afterwards.

Q. Where the cars were parked? That is all.

Redirect examination by Mr. Bonnell.

10

Q. The other car that ran into Mr. Heilman's car, was that a red car? A. Yes, it was.

Q. Did you see any other car go down outside of that car that way that day, before the accident? A. No, sir.

Q. And it was immediately after you saw that car that you heard the crash of the accident? A. It was.

Recross examination by Mr. Bell.

20

Q. Where was the glass on the right-hand side of the road going toward Cape May? A. Where the cars were.

Q. It was where the cars were? A. Yes, sir.

ALICE BRADLEY, SWORN:

Direct examination by Mr. Bonnell.

Q. Where do you live, Mrs. Bradley? A. Irma. 30

Q. You are the mother of the previous boy who was on the stand, Frank Bradley? A. I am.

Q. Do you remember the date of this accident? A. Friday before Thanksgiving.

Q. What first called your attention to this accident? A. The crash and the little girl coming up and said there had been a wreck.

Q. Did you go down to the accident? A. I didn't go all the way. I started out, but I didn't go all

40

Alice Bradley—Direct

the way down. I ran out, and then my boy came and said, "Go on back in," that he thought it would make me sick, you know.

Q. Did your boy just previous to this accident call your attention to anything on the road? A. He was standing at the window—

10

Mr. Bell: I object to that. She can tell what she saw.

The Court: Yes. As a result of that she may testify what she did and saw.

Q. Did your boy call your attention to anything on the road? A. Why, he said—

The Court: Not what he said.

Q. Just yes or no. A. Yes.

20

Q. And from the fact of his calling your attention to that, what did you do then? A. Didn't do anything.

Q. Did you come out to look? Did it cause you to look when he called your attention? A. No. I just looked up, was all. I just looked up. I went on with my work. I was working.

Q. What did you look up and see by virtue of his calling your attention? A. He said there was a car. He just remarked that.

30

Mr. Bell: I ask it be stricken.

The Court: Strike it out.

Q. You didn't go then, go all the way down to the car? You don't know anything else about it? A. I went almost to Mr. Heilman's car, and I seen his head, seen the condition he was in, and I did see the car, but I didn't stay. I went there and I just heard him say, "Help me out of here, Son," and by that time the boy was out, and that's all I heard. I went back to the house.

40

Alice Bradley—Cross

Q. Was there anyone else beside you and your boy at that time? A. Not anyone. There was no cars either way in sight.

Q. Did you see Mr. Meadows at that time? A. I seen him in the car.

Q. Did you go near him at that time? A. No, I didn't go near him. 10

Q. You don't know, then, what he was doing? A. His head lay back in the car. He looked like he was hurt, lying back in the car. That's all I seen.

Q. You didn't speak to him? A. No, I didn't.

Q. Did you see Heilman's car that day down there, parked? A. No, I didn't.

Cross examination by Mr. Bell.

Q. Mrs. Bradley, how far below your house were the cars when you saw them standing after the accident? A. I don't know. A little distance down the road. I don't know just how far. I wouldn't say how many yards or feet. I couldn't measure. 20

Q. Was it opposite your driveway leading into your farm? A. No, it wasn't.

Q. Was it down that far or down farther? A. You see, our drive is right this way of the house, and the accident was the other way. There is another drive goes in down there that isn't ours. There is another drive. There is a drive the other side of our farm now. Pretty near down to that. 30

Q. Was it that far down? A. Yes, pretty near.

Q. It was down almost to the other drive? A. Yes.

Q. Whose drive is that? A. It is ours, my father's. It is his farm where we live. 40

Levi Dickinson—Direct

LEVI DICKINSON, sworn:

Direct examination by Mr. Bonnell.

Q. Mr. Dickinson, where were you on November 24th, the Friday before Thanksgiving, in November, 1933? A. I was home.

10 Q. In the afternoon, was it? A. Yes, sir.

Q. What time? A. I couldn't tell you what time in the afternoon.

Q. Was it late in the afternoon or early in the afternoon? A. Well, you would call it about four o'clock, somewhere along there. Early or late. I don't know what you call that.

Q. Did you hear right shortly after that of an accident down the road? A. Yes, sir.

20 Q. About how long after? A. I should think possibly about a half hour.

Q. Were you talking to Mr. Meadows about a half hour before the accident? A. He was talking to me.

Q. At your house? A. Yes, sir.

Q. And it was about a half hour after that that you heard of this accident? A. Somewheres about that.

30 Q. What was the condition of Mr. Meadows about half an hour before the accident when he was talking to you?

Mr. Bell: I object to that. I don't think it is material.

The Court: The defendant's condition?

Mr. Bell: Yes, at that time, and another thing is that it calls for a conclusion on the part of this witness.

40 Mr. Bonnell: He can tell what he did at that time. The accident happened half an hour after that.

Levi Dickinson—Direct

The Court: You may testify to what he said and did.

Q. Did Mr. Meadows come to your place, you say, about half an hour before you heard of this accident? A. Yes, sir.

Q. When he came there what did he do and how did he act? A. Well, he stopped his car opposite to my place and came into the driveway, and he was sort of zig-zagging coming in. Now, I didn't know Mr. Meadows personally, but I know him when I see him, and he approached me and said, "Do I owe you anything?" Shall I use the words he said? 10

Q. Yes. A. I said, "No, sir, you don't owe me anything." He said, "You're a hell of a fellow," and he started out. That's all I know. 20

Q. What was his condition then as to sobriety? A. Well, I thought he was—

Mr. Bell: That is objected to.

Q. Did you smell any odors on him at that time? A. No, sir, he wasn't close enough for that.

Q. Did he walk straight? A. No, sir.

Q. How did he walk? A. He walked with a zig-zag condition.

Q. Did he get in the car in that condition and drive away? A. I suppose he did. He went immediately to his car, and when he started off with his car he started with his car almost across the road, and there was some fellow came by and had to sheer out from him. 30

Q. Did you go down to the accident right after that? A. No, sir.

Levi Dickinson—Cross
Noble Bright—Direct

Cross examination by Mr. Bell.

Q. Have you ever had any business dealings with Mr. Meadows? A. No, sir.

10 Q. Have you had any dealings of any kind with Mr. Meadows? A. No, sir.

Q. How long have you known him? A. Well, I have known him for several years, but simply by sight. I am not personally acquainted with him at all.

NOBLE BRIGHT, SWORN:

Direct examination by Mr. Bonnell.

20 Q. Where do you live, Mr. Bright? A. Wildwood.

Q. Where were you on the afternoon of November 24, 1933? A. On my way to West Cape May from Wildwood.

Q. About what time in the afternoon was that? A. I would say around four or four-thirty. I passed the school bus coming from Cape May.

Q. Did you hear right shortly after that of an accident happening? A. Yes, sir.

30 Q. About how long after that time? A. Probably an hour.

Q. Did you see Mr. Meadows at that time? A. On my way to West Cape May, yes.

Q. What did you observe or see at the time on the road, with Mr. Meadows?

Mr. Bell: I object unless he tells where he saw him and just exactly what time.

A. Four-thirty.

40 The Court: You saw him at four-thirty?

Noble Bright—Direct

A. Yes, sir.

Q. What did you observe and see at that time, and where? A. Why, I was on the back road in to West Cape May, had crossed over at Bennett off of the concrete highway, and there is a bungalow about quarter of a mile in a northerly direction from Charles Bowen's farm, and when I pulled up towards this bungalow there was a little driveway on the side and there was a car parked there, and I got within about one hundred or one hundred and fifty feet of that and this car backed out and I put on my brakes to stop, and all of a sudden the car came to a stop and I shifted gears and was going to start again when the car started up again with a jerk and the wheels spun around and the car went all the way across the road backing up, made a complete turn while it was backing up, and backed in right in front of my car up onto a little like a knoll there probably a foot or so, and I thought maybe he would stop then. The front of his car was then facing in an easterly direction, and I again shifted gears and started to turn out this way to go around him, and I observed the gentleman driving the car with his hands on the wheel and he was hanging down like this, and I says—when he first started out there I said, "That fellow's foot must have slipped off the clutch," and when I observed the condition he was in I said, "He is drunk." I had a wife and baby—

Mr. Bell: I don't think this is at all material. It is not responsive to the question that has been asked.

Mr. Bonnell: I asked him what he saw Mr. Meadows do at that time.

Noble Bright—Direct

Mr. Bell: He has not testified that he saw Meadows do anything yet.

The Court: Who was the man you observed?

10 A. It was a maroon car and my wife knows the man personally and said it was Mr. Meadows.

Mr. Bell: I move to strike it all out.

Q. Was it this gentleman here? A. Yes.

The Court: These statements you made, do you mean you made those statements to your wife?

A. Yes, sir. She was sitting alongside of me in the car holding the baby.

20 The Court: The statements may be stricken out.

Q. What did you see? A. Well, I went to go around this car and—

Mr. Bell: I still object to all of this testimony unless it is connected up as concerning the defendant in this case.

Mr. Bonnell: He has identified him.

30 Mr. Bell: The only thing is that prior to this accident—

The Court: Half an hour, he said.

Mr. Bell: He has not stated definitely the time.

A. I said four-thirty.

Mr. Bell: He said that he left Cape May at a certain time.

The Court: He was asked where and when and gave the place and said the time was four-

Noble Bright—Direct

thirty. The testimony is that this accident occurred at about that time, as I recall the plaintiff's testimony.

Mr. Bell: If your Honor is going to allow this to go in, may I have an exception?

The Court: It does not seem to me to be sufficiently remote to prevent its admission. 10

(An exception was noted for the defendant.)

Q. What else did you see him do that day? A. When I started to go around him, the car started up again and shot across the road in an easterly direction and then made a complete turn and headed towards Cape May or West Cape May and went far to the right side of the road again, and I said, "Well, I will stay back of this fellow"— 20

Q. Not what you said. What you did. A. I stayed back of this car and followed it, and while I was following it the car zig-zagged on the road up to a gas station which is beyond—I would say south of Bowen's farm toward West Cape May, where the car came to a complete stop again with one wheel on the gravel and one rear wheel on the concrete, and where he stopped made quite a track in the gravel where the brake took hold, and it shot right across the road again, so I stopped my car again and when he pulled off to the side I went around him and went into West Cape May and looked for an officer. 30

Mr. Bell: I would like to move to strike all of that testimony as absolutely immaterial and not responsive to the question, and I don't think it has been properly connected up with the time, the place or the defendant.

The Court: The motion to strike will be denied. 40

Noble Bright—Cross

(An exception was noted for the defendant.)

Cross examination by Mr. Bell.

Q. Did you see the cars after the accident? A. I did not, no, sir.

10 Q. Did you see the accident? A. I did not.

Q. Did you see the place where the accident occurred shortly after the accident had happened? A. Well, I came home that evening, but I didn't identify the exact location of the accident, but I passed on that road.

Q. What time did you come home? A. Well, we had dinner in Cape May Point. I would say around eight or half-past.

20 Q. You have referred to Bowen's station? A. Bowen's farm.

Q. What? A. Charlie Bowen's farm.

Q. How far is that from Cape May? A. Why, it is on the West Cape May Road. I would say approximately maybe two miles from West Cape May, mile and a half.

Q. Is the West Cape May road route #4, or is that a different road? A. That I can't say. I don't know. It is the old main road, and they have cut a new road which circles around.

30 Q. Is the West Cape May road concrete? A. Asphalt.

Q. Is that the road on which you saw the car that you have been talking about? A. It is.

Q. And that was about four-thirty? A. Well, I place it at that, although I passed a school bus at the same time, so whatever time the children would be coming.

40 Q. Which way was that car going? A. Which car?

Noble Bright—Cross
Marion Bright—Direct

Q. The car you had trouble passing. A. Why, it was headed toward West Cape May.

Q. And they were going toward Wildwood? A. Who?

Q. The car that you testified you had trouble getting around. A. No, that car was headed towards West Cape May, the same way I was headed. 10

Q. It was headed the same way? A. Yes, sir.

Q. That was heading south? A. Yes, approximately south.

Q. And about two miles outside of Cape May? A. West Cape May.

Q. That was actually south of the place where this accident occurred, wasn't it? A. Where I was told that it later occurred, yes, sir. 20

MARION BRIGHT, SWORN:

Direct examination by Mr. Bonnell.

Q. Where do you live, Mrs. Bright? A. Wildwood.

Q. Are you the wife of Noble Bright? A. Yes.

Q. Were you in the car with your husband on November 24, 1933? A. I was. 30

Q. Do you know Mr. Meadows? A. Yes.

Q. Did you see Mr. Meadows that day? A. Yes, I did.

Q. Where did you see him and under what circumstances and what did he do? Fix the hour. About what time was it? A. Well, the only way I can fix the hour is I know it must have been around four o'clock, because the school bus brings the children home from school at that time, and 40

Marion Bright—Direct

at the end of our narrow escape, I recall it, we passed the school bus.

10 Q. How long after you saw Mr. Meadows did you hear of this accident? A. We went into West Cape May to look for a policeman, and we talked to Father Heilman, and we stopped there to make a call to the State Police, but we had talked to Father Heilman for quite a few minutes then, and by that time we figured the fellow would be off the road and it would be a sort of a false alarm to call the State Police from there, and then we went into Cape May and picked up some groceries and went to Cape May Point, and as we got in the door the telephone rang and it was my Mother telling me that there had been a very serious accident and explaining the case to me.

20 Q. What did you see at that time when you saw Mr. Meadows? What was he doing? Just what you saw.

Mr. Bell: I object to that.

The Court: Where?

30 Q. And where? A. It was on the road—on what we call the main road. There are three roads, the back road, the main road and the new road, and this was on the main road, approximately around Charlie Bowen's farm. I was so scared at the minute that I couldn't think much of anything when the car backed out—

Mr. Bell: That is objected to.

Q. What did you see him do? A. He backed out and backed completely around the road.

The Court: Strike out the comment the witness made as to her own feelings.

Marion Bright—Direct

Q. Tell what you saw him do, not how you felt about it, just the moves he made.

Mr. Bell: I object to that question as incompetent and immaterial, because it has no connection at all with this accident.

By the Court.

10

Q. I understand these observations you made of the defendant about four o'clock in the afternoon? A. Yes.

Q. On November 24, 1933? A. Yes, Judge.

The Court: The objection will be overruled. Of course, what the defendant did in the operation of his car at the place where it was observed by this witness is not evidential that he did not exercise reasonable care in the operation of his car at the time of the occurrence of this collision. However, the contention in this case is that the defendant was intoxicated in the afternoon of this accident and I shall permit this testimony as being relevant to his condition as to sobriety on that afternoon.

20

(An exception was noted for the defendant.)

30

Q. Just state what he did. Not what you thought, but what he did, what you saw him do. A. He backed out of this driveway very fast and backed out to the opposite side of the road and completely backed around and into the field or some such thing that was there at the time. Then he started up down the road from one side to the other and put on his brake so fast that he completely—he just turned perpendicular with the road and he made several starts like that and

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Marion Bright—Cross

stops, and finally he stopped in front of this gas station almost perpendicular to the road and we got by him, and just then I looked up and saw the school bus coming towards Mr. Meadows, and I turned around to see if he would start up and go into the school bus, but as we passed him and when I recognized who it was, he was hanging over the wheel like this, with both arms off the wheel and his car travelling perpendicular to the road with the back wheels off on the gravel.

Q. That was all you saw of Mr. Meadows that day? A. That was all I saw of Mr. Meadows.

Cross examination by Mr. Bell.

Q. How long have you known Reverend Heilman? A. Well, I would say four years.

20 Q. You have known him ever since he has been in Wildwood? A. Yes.

Q. Are you a member of his church? A. No, I am not a member of his church. I am a member of a church in Cape May.

Q. Do you attend his church? A. Possibly once a year.

Q. Do you visit the family? A. No, I wouldn't say that I did. I know—

30 Q. Well, do you or don't you? A. No, I never remember making a visit to the family.

Q. You never remember? A. No.

Q. You are pretty weak now. Are you sure you can't remember once or twice you were there? A. No, I am sorry, but I can't.

Q. How long have you known Mr. Meadows? A. Well, he has been a character around town ever since I can remember. I am from Cape May.

Mr. Bell: I move to strike it out.

Marion Bright—Cross

A. I didn't mean it the way it sounded.

The Court: Strike it out. The question is how long have you known him?

A. I am sorry. I didn't mean it. Ever since I can remember.

Q. Where were you sitting in the car that you were riding in? A. On the front seat, right-hand side. 10

Q. Where was your husband? A. He was driving.

Q. He was driving? A. Yes.

Q. What side of the road did you drive on when you went by Mr. Meadows' car? A. Well, when we passed the car—

Q. Don't say what you did next. Say what you did this day. A. We were in the middle of the road. That was as far as we had to go to pass him, I would say. 20

Q. Was Mr. Meadows' car to the right of you or to the left of you? A. To the right of us, facing the left. His car was facing—

Q. Where you saw Mr. Meadows' car was on the back road, the West Cape May Road, was it? A. On the main road, as far as I know.

Q. That is a macadam road, is it? A. Yes.

Q. Which way was he travelling? A. Both ways. 30

Q. He was travelling both ways? A. Yes.

Q. At the same time? A. Well, both ways within five minutes. Not at the same time both ways.

Q. And he was out in the field, too, was he? A. He was backed up into—I don't just remember whether it was a field or farm or something that went up about—

Q. What kind of a car was he driving? A. A maroon car. 40

Marion Bright—Cross

Q. What? A. A maroon sedan.

Q. What make car was it? A. I am not up enough on the makes to tell. I should imagine it was a Pontiac or something.

Q. I am sorry you don't know. Where did you and your husband go after you left Cape May?
10 A. Into West Cape May.

Q. Then did you go back to Wildwood? A. We were having dinner in Cape May and didn't go back to Wildwood until later.

Q. With whom did you have dinner in Cape May? A. My sister.

Q. What is her name? A. Mrs. Haldeman.

Q. Where did you have dinner? A. At her home in Cape May Point.

Q. Anyone else present? A. I can't remember
20 whether my father was present at the time or not. Her husband was present.

Q. When you people came into Cape May did you say that you had a conversation with Father Heilman? A. Yes, sir.

Q. And where did that conversation take place?
A. Where we went to try to use the phone at Claghorn Place in Cape May.

Q. You had a conversation with him at that time? A. Yes.

30 Q. What time was that? A. We went from the school bus right into Claghorn Place, and that is about, I should say, six or seven blocks from when we passed Mr. Meadows.

Q. You don't know what time it was? A. No. The only thing I have to go by is seeing the school bus with the grammar school students in it.

Q. How long did you talk to Father Heilman?
A. I don't know. We had quite a conversation
40 about the baby.

Marion Bright—Cross

Q. About whose baby? A. Mine. We had him with us on the front seat in the car. We had quite a conversation and that's all. I couldn't say just the time.

Q. At the time you left Father Heilman did he leave you or did you leave him? A. He got in his car, and it is a dead-end at Claghorn Place, it has a circle at the end, and he got in his car and went around the circle and started out towards Wildwood, and we pulled off in back of him and went towards Cape May Point. 10

Q. Would you say you had talked to him for ten or fifteen minutes? A. Yes, I would say that.

Q. Do you know where Bennett Station is? A. Yes, I do.

Q. How far is it from Bennett Station to where you left Father Heilman in Cape May? A. I don't know how far Bennett Station is from Cape May. 20

Q. Is it several miles? A. Yes. I imagine it is just about half-way in between Wildwood and Cape May.

Q. You say that Mr. Meadows pulled into a gas station. Whose gas station was it? A. He didn't pull in the gas station. It just happened to be a—I would say about twenty-five yards this side of the gas station, and I believe a man by the name of Bradley or some such name as that. I know the man when I see him, but I don't know his name. 30

Q. The gas station that you refer to was on your left as you went to Cape May, wasn't it? A. Yes.

Plaintiff rests.

(The following motion was made in chambers.)

Motion for Non-Suit

MOTION FOR NON-SUIT.

10 Mr. Bell: If your Honor please, we make a motion for a non-suit on the ground that the plaintiff has failed in any way to connect the defendant, Meadows, with this accident. Our contention is that there is no evidence of any kind whatsoever hooking any negligence onto Meadows' operation of his car.

20 The Court: In disposing of a motion of this nature I cannot weigh the evidence or determine and pass upon its credibility. I must not only view the testimony introduced in behalf of the plaintiff in its most favorable light to the alleged cause of action of the plaintiff, but I must likewise duly regard all inferences that may logically and legitimately be drawn from the circumstances disclosed by the testimony.

30 It is sufficient to say that there is testimony from which the jury might infer that the plaintiff, who had been proceeding northerly along this State highway, had guided his car to the shoulder on the easterly side of the highway, where it was standing at the time of the occurrence of this collision. There is testimony from which it may be inferred that the defendant was operating his car in a southerly direction. Additional testimony is to the effect that immediately or at least a short time preceding the occurrence of the accident a car such as that operated at the time by the defendant was observed proceeding in a southerly direction on this highway at a rapid rate of speed.

40 The occurrence of the collision between the automobiles of the plaintiff and defendant ap-

Harry Ludlam—Direct

pears to be admitted by the pleadings. Moreover, there is testimony from which the jury might infer that the defendant on the occasion of this accident was in a state of intoxication.

In all such circumstances I cannot exclude the possible inference of a lack of reasonable care on the part of the defendant in the operation of his automobile and its causal relation to the occurrence of the collision. 10

In the present state of the testimony, the motion for a non-suit must be denied.

(An exception was noted for the defendant.)

DEFENDANT'S TESTIMONY.

20

HARRY LUDLAM, SWORN:

Direct examination by Mr. Bell.

Q. Where is your home, Mr. Ludlam? A. Cape May City.

Q. Where do you live in Cape May? A. 1240 Washington Street.

Q. How long have you lived there? A. About nine years.

Q. Were you on Route 4 on the day of this alleged accident? A. Yes, sir. 30

Q. Where were you on the road? A. Coming from Cape May to Cape May Court House.

Q. About what time was that? A. Well, somewhere between half-past four and five o'clock. I wouldn't want to set the exact minute, but it was somewhere around five o'clock, I should think.

Q. Did you see Mr. Heilman that day? A. I saw his car. I didn't know it was Mr. Heilman

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Harry Ludlam—Direct

when it passed, but I saw the car after the accident.

Q. Where did you see his car? A. Along where the—when he passed me or where I saw it?

10 Q. When he passed you. A. Where the spring house is on the road coming up. That is about, I should judge, two thousand feet or a little better than that from where the accident was.

Q. How was your attention called to his car at the time it passed you? A. Well, a car passed me and it was going just about as fast as a car could go. I don't know—of course, speed is a hard thing to determine, but I should judge he was going fifty-five or sixty, and maybe better.

20 Q. Fifty-five or sixty miles per hour? A. Yes, something like that.

Q. Did he go out of sight after he passed you? A. I could see him all the way up the road, because when he passed me he swerved in—there is a bank on that side of the road.

30 Q. Which side? A. On the right-hand side coming up, and when he passed me he cut in ahead and I thought that he was going to take the bank, because the back of his car—I was looking right at it, and the back of his car kind of shimmied like a car will that is going with speed, but he righted it up and I glanced down, and when I did I heard the crash.

Q. What did you glance down at? A. Just down at the road, like you will when you are driving, just take your eyes off the middle of the road and look down.

Q. And you saw—you heard the crash the minute after you looked down? A. It wasn't very long, no.

Harry Ludlam—Direct

Q. Could you see the actual crash of the cars?

A. I could if I had been looking up the road at that time. It is a straight, open way road, and it wasn't far.

Mr. Bonnell: Well, he didn't see it.

A. I just saw it in a second. That is all there was to it, when he passed me and when he hit. 10

Q. Did you go right on to the scene of the accident? A. I did.

Q. Did you stop there? A. I did.

Q. What did you see? A. The driver was sitting in his car and Mr. Meadows was in his car on the left-hand—on the right-hand side of the road coming down.

Q. To your left? A. To my left. I stopped about two hundred feet down the road, because I had to be at the Court House at a certain time and I didn't want to get blocked up in traffic. 20

Q. Was anybody else there at the time you arrived? A. I think there were four or five. Maybe a few more than that, but not many, because I didn't hurry up at all.

Q. Where were the cars when you got there? Were they up near the railroad bank? A. Mr. Meadows' car, I should judge, was about eighteen inches on the gravel, heading out towards the railroad, and Mr.—his car was further down towards Cape May, heading a little more directly into the bank. 30

Q. That was Heilman's car? A. Yes, sir, Mr. Heilman's car. He was sitting in his car at that time.

Q. Which car was nearer to the concrete? A. I think Mr. Heilman's car's rear was on the concrete or very near to it. 40

Harry Ludlam—Direct

Q. His car was either on or near the concrete?
A. Very near, yes. I didn't measure it. I didn't look for what I might see, because I didn't expect to get in it.

10 Q. Mr. Meadows' car was to the right of Heilman's car, was it? A. He was on this side. He was toward Bennett Station more.

Q. He was on the Wildwood side? A. He was up towards Wildwood more. Mr. Heilman's car was towards Cape May more, but they were very close together. A few feet apart.

Q. In other words, Heilman's car was nearer to Cape May and Meadows' car was nearer to Wildwood? A. Yes, nearer on the Wildwood side or Bennett Station side.

20 Q. And they were both off the right-hand side of the road looking towards Cape May? A. Both of them were heading toward Cape May.

Q. Which car was nearer to the railroad tracks?
A. I think if anything Mr. Meadows' car was. He was further up on the bank.

Q. Did you see any tracks of either car? A. Only where Mr. Meadows' car was out on the gravel with his two side wheels.

Q. Where were these tracks that you saw? A. On the gravel.

30 Q. How far back were they? A. Oh, I don't know. I suppose maybe ten or fifteen or twenty feet. I didn't go back to measure. I just saw where he had come in on it, is all.

Q. You could follow the track right to his car, could you? A. You could follow the tracks just where they came off of there.

40 Q. Right to where the car was standing? A. Yes, but the car then had gone a little sideways off of the track. He was pushed in sideways and

Harry Ludlam—Direct

turned around more in the direction he was coming.

Q. Did you see any tracks at all from Mr. Heilman's car? A. To tell you the truth, I didn't look.

Q. Did you see any glass around? A. Around on this side of the road. 10

Q. On which side of the road? A. Right-hand side going down, the side the car was on.

Q. To Mr. Meadows' right-hand side you saw considerable glass? A. Yes, on that side of the car going down there was broken glass there and the cars were standing just kind of racked in.

Q. Did you see any glass on the other side of the road? A. I did not.

Q. Did you talk to Mr. Meadows at all? A. No, sir. I haven't talked to Mr. Meadows—at that time? 20

Q. Yes. A. Yes, I did.

Q. Did you smell any liquor on his breath? A. No, sir. I put my arm around him and said, "Come on, Meadows, get out of here." He was cut over the top of his eye or his forehead, and the blood was trickling down, and I went and I said, "What's the matter, Meadows, are you hurt?" and he said something about let him alone or something, and I put my arm around him and said, "Come on, get out and take a walk or lay down," and he wouldn't get out of his car, but I was as close to him as I could be and I never smelled any liquor to Meadows' breath. 30

Q. How long did you stay at the scene of the accident? A. I came away just as the State police came. I suppose he was half an hour, maybe, or twenty minutes getting there. I couldn't tell you how long, because I didn't— 40

Harry Ludlam—Cross

Q. Had Mr. Heilman been taken away before?

A. Yes, sir, he had.

Q. Was Mr. Meadows still there when you left?

A. Yes, sir, he was in his car when I left.

Cross examination by Mr. Bonnell.

10 Q. Do you know whether or not it was Heilman's car that passed you? A. That's the only car that passed me going that way.

Q. What kind of a car was it that passed you?

A. A sedan.

Q. I mean what make of car? A. I couldn't tell you. I never looked, because I was looking right up the road at him.

Q. Was it a coach? A. It was a sedan; four-seated car.

20 Q. Double door or coach door? A. I didn't look at the doors.

Q. What kind of a car was Heilman's? A. Was Heilman's?

Q. Yes. A. His was a sedan, too.

Q. What was the make of it? A. I couldn't tell you.

Q. Did you see him when he was stopped there in front of Bradley's house? A. No, sir, I did not.

30 Q. Do you know where Bradley's house is? A. Yes, sir.

Q. How near is that to the accident? A. Right across the street, I suppose maybe fifty feet towards Cape May.

Q. You heard what Mrs. Bradley and her son said about being stopped there, didn't you? A. I heard what the son said, yes.

Q. Would that change your mind if you are not sure this car that passed you was that car or not? A. No, sir, it wouldn't. At the rate of speed he

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Harry Ludlam—Cross

was going he couldn't have stopped there more than to shift his gears, if he did that.

Q. Are you sure, in view of that testimony, that was the same car you saw go past you? A. Yes, sir.

Q. You say you never saw the accident, but you didn't look up the road so you didn't see it until after it happened; is that right? A. He passed me and I seen him go into the bank and shoot out. I thought he was going to take the bank. 10

Q. Just answer the questions. I say I understood you to say in your direct examination that when he went by you didn't look up or you could have seen the accident? A. I glanced my eyes down and then looked up and heard the crash.

Q. In other words, you didn't see him until after you heard the crash? A. No, not exactly see him until after he hit. 20

Q. So you were not taking a very good look to see whether there were any other cars up there at the accident, were you? A. Certainly I was. I had a straight view up there. There was no car up there.

Q. Did you pass any car coming down the road toward Cape May? A. I did.

Q. What kind of a car was it? A. I don't know whose it was. 30

Q. What color car? A. Dark car. Passed it coming into Cape May, below the spring house.

Q. Did any maroon car pass you going into Cape May? A. No.

Q. There was no car of that kind coming down? A. No, it was a black car or dark car.

Q. You heard the testimony of Mr. Bradley, stating that a red car or maroon car had come down at a high rate of speed. Did you see that car? A. No. 40

Harry Ludlam—Cross

Q. What color was the car of Meadows? A. I couldn't tell you. I think it was a dark red or something like that. It was a dark car of some color.

10 Q. Could you see what speed Meadows was making? A. No. I saw Meadows coming down the road.

Q. Where did you first see Meadows coming down the road? A. Down below Bailey's, where it strikes out from that curve.

Q. How far is that above the Bradley house? A. Seventy-five or a hundred feet.

Q. Was he coming fast? A. Didn't seem to be.

20 Q. But there was no other maroon car passed you at all? A. No, sir, there was one car passed me, just as I told you, below the spring house, and he passed me above it.

Q. But that wasn't a maroon car? A. It wasn't. It was a black car.

Q. Were you there when the trooper got there? A. I left just as the trooper drove up.

Q. You were not there when the trooper took Mr. Meadows out of the car? A. No, sir.

Q. You didn't see the trooper walk him out to see how he walked? A. I didn't. Mr. Meadows seemed to be hurt.

30 Q. You didn't see the trooper when he got there taking him out of the car and getting him to walk? A. I didn't. I was due at the Court House at a certain time.

Q. How long have you known Mr. Meadows? A. I don't know. Quite a while.

40 Q. Were you one of the witnesses who testified here, Mr. Taylor, that came there and wanted to take Mr. Meadows away before the trooper got there? A. Did I do what?

Harry Ludlam—Redirect—Recross

Q. Wanted to take Mr. Meadows away before the trooper got there so he couldn't see him? A. Was it me?

Q. Yes? Were you one of that part? A. I was not.

Redirect examination by Mr. Bell.

10

Q. When you testified you saw Mr. Meadows' car coming, could you see whether his car was on the right-hand side of the road or the left-hand side? A. It was on the right-hand side of the road heading towards Cape May.

Recross examination by Mr. Bonnell.

Q. Could you see that around the bend? A. It wasn't around the bend. It was on the straight-away.

20

Q. How is it that Mr. Heilman's car was on the bend if there was no bend there? A. He wasn't on the bend. I didn't say he was on the bend. I said he was on the straight-away.

Q. You said when he went around the bend—
A. When he went around me I said he went almost up into the bank.

By Mr. Bell.

Q. Then Mr. Meadows was travelling on his right? A. He was, and heading toward Cape May.

30

By Mr. Bonnell.

Q. How do you know he was on his right if you didn't see the accident until after you heard the crash after the accident happened? A. I was looking right up the road.

Q. You just now said if you had looked you would have seen the accident but you didn't look

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William J. Meadows—Direct

and you didn't know of the accident until the crash. A. I just dropped my eyes and the crash occurred.

Q. Then how do you know if Meadows was on the right-hand or left-hand side when the crash happened? A. Because I was looking at him a
10 second before.

Q. If you didn't see the accident, how do you know that? A. Well, I know he was there because I saw him.

WILLIAM J. MEADOWS, SWORN:

Direct examination by Mr. Bell.

Q. Mr. Meadows, where do you live? A. Cold
20 Spring.

Q. Is that in Lower Township? A. Lower Township. The beginning of Lower Township.

Q. How long have you lived there? A. Since 1923.

Q. Will you tell how this accident occurred on the day that you were driving down route 4 toward Cape May? A. Want me to explain it as I seen it?

Q. Yes, just as it occurred. A. I was on my
30 way to Cape May and travelling about thirty-five miles an hour. I saw a car down below that looked as though it was out of control, so I took my foot off the accelerator—

Q. Which way was the car coming? A. Coming up toward me. It looked as though the car was under control—not under control, and his sway-
ing was not this way, but excessive, in big sweeps, so I took my foot off the accelerator and was prepared, not knowing what to do, and this car was

William J. Meadows—Direct

upon me before I knew it, and shot directly across into me. I done the only thing I could do, tried to get up on the bank and grabbed my emergency.

Q. Did you turn your car—how did you turn your car? A. I tried to shoot to the bank, up on the road. I hugged the side of the road, because, knowing the way this car was acting, I didn't know what to expect. 10

Q. Which way did you turn off the road, to your right or your left? A. The only way that was natural to turn off.

Q. To your right? A. Otherwise I was running into trouble.

Q. You turned to your right? A. I was on the right side. This car shot over this way and I tried to get out of its road, up on the bank.

Q. Well, which way was that? To your right? A. To my right. To my right, the only way I could turn. Otherwise I— 20

Q. Did you notice the speed of this car that was approaching? A. It was excessive. So much so that I didn't know what to do.

Q. Did this car that was coming toward you stop at any time between the first time you saw it and the time it hit you? A. No.

Q. Did you receive any injuries as the result of this collison A. Well, the steering wheel was broken. I was hurt here, pains in here, and pains— 30

Q. State just where you were hurt. A. I am trying to make it as clear as I can.

Q. Don't point. You were hurt in your chest? A. The steering wheel was broken here. I was cut over here, struck in the head.

Q. You see, the stenographer is taking everything down and he can't take down "Here". A. I understand you. I was struck in the breast— 40

William J. Meadows—Direct

Q. The steering wheel hit you in the breast or chest? A. The steering wheel was broke and that hit my chest and I was cut in the forehead. My nose—my glasses—I only had a portion of my glasses, and some wounds were in there, and also in my—inwardly.

10 Q. Stomach? A. In my stomach.

Q. Where were you taken after the accident? A. Well, they took me to Dr. Hughes, and from Dr. Hughes they took me to Mace's Hospital.

Q. Dr. Hughes took you to Mace's Hospital? A. I was sent there.

Q. Who took you to Dr. Hughes? A. I really don't know.

Q. Who was with you at the time you were at Dr. Hughes? A. I understand Mr. James Hand.

20 Q. Was a trooper there? A. I understand he was. I was sort of semi. I was shocked, and the effect of it I naturally felt.

Q. Well, now, Mr. Meadows, where had you been prior to this accident? Had you been visiting anyone? A. I stopped at Mr. Robert Phillips for a short space. I can't say just exactly how long.

Q. Where does Mr. Phillips live? A. He lives just above the Sunny Hall Cafe on the main road.

30 Q. Is that route 4? A. That is the seashore road. Not on the road the accident happened on. On the other road, on the other side.

Q. It isn't the concrete road? A. Well, yes, it is concrete, macadam.

Q. Had you been drinking on this day? A. No, sir.

Q. Had you had anything to drink— A. No, sir.

Q. —with alcoholic contents? A. No alcoholic contents.

Q. Did you have any alcohol in your radiator?

40 A. In the radiator.

William J. Meadows—Direct

Q. Because it was cold weather? Is that right?

A. Yes.

Q. Was your car damaged? A. It was.

Q. What kind of a car was it? A. It was a Chevrolet four-door sedan.

Q. What model? A. 1933.

Q. When had you purchased this car? A. About 10
two months prior to that.

Q. About two months prior to the accident? A.
Yes.

Q. How much did you pay for it? A. Six hundred and some dollars, I think that car cost. I can't say exactly.

Q. What was it worth after the accident? A. Based on the book value it was worth about \$545.00.

Q. That was before the accident? A. Well, 20
that type car, as a second-hand car that is what it was supposed to be worth.

Q. That was before the accident? A. Yes.

Q. What was it worth after the accident? A. Well, that would depend upon what it could be used for. I don't know. I personally can't figure what that would be worth.

Q. Did you get any money for it? A. Sir?

Q. Did you get any money for it? A. I traded 30
it in for a second-hand car for a consideration of money.

Q. How much did you get for it on the trade? A. They allowed about \$250.00.

Q. You were allowed about \$250.00? A. Yes.

Q. How long did you have pains from your injuries? A. I had pains for quite some time. I can't just tell you how long, but it was quite some period. I also had a desire to sleep all the time, a sort of heaviness, that stayed with me for quite 40

William J. Meadows—Direct

sometime. If I went to lift anything I would feel terrific pains in my chest. I have to do that to make it appear as it felt to me.

Q. Did you have any bill at Dr. Mace's Hospital? A. I paid Dr. Mace \$3.00.

10 Q. Did you have any bill at Dr. Hughes? A. I paid Dr. Hughes—I don't know whether it was \$3.00 or \$2.00.

Q. How long were you at Mace's Hospital? A. I was overnight. A night and half a day.

Q. Do you know Mr. Dickinson, who testified here in court today? A. I don't know him. I have seen him, but I don't know the man. Never spoke to him in my life.

20 Q. Did you see him on the afternoon of the accident? A. I did not.

Q. And you never talked to him at that time? A. No, sir.

Q. You didn't ask him did you owe him any money? A. No, sir. I had no occasion to. I had no dealings with him. Never had.

30 Q. How long had you been up at Mr. Phillips' place before you started your trip back to Cape May? A. Well, I can't say. Possibly ten minutes, perhaps a little longer. Somewheres in that neighborhood.

Q. Where had you been prior to that? A. Came from home.

Q. You had come over from your home? A. Yes.

Q. Where is your home with relation to Route 4? A. At the beginning, just above Simpson Lane. In other words, just outside of West Cape May.

40 Q. On the West Cape May road? A. Yes, sir. The West Cape May road—the shore road is a

William J. Meadows—Direct

continuation of the road at West Cape May. In other words, Simpson Lane is the beginning of Lower Township. On the other side of that is West Cape May, known as Broadway.

Q. Do you recall that the school bus passed you?

A. I was on my place, and on Friday afternoon the school buses let out early. Clint Wilson passed my place somewhere around, I think it was possibly twenty-five minutes of three. 10

Q. Is he the driver of the school bus? A. He is the driver of the only school bus I know of.

Q. Do you recall passing Mr. and Mrs. Bright in a car? A. No, sir.

Q. You heard them both testify as to the maneuvers your car did? A. I did.

Q. Is that true? A. It is not. 20

By the Court.

Q. What part of the cars first came in collision?

A. Sir?

Q. What part of the automobiles first came in collision? What part of your car collided, your car and Mr. Heilman's? A. I don't get your question.

Q. What part of the cars, your car and Mr. Heilman's car, first came into contact at the time of the collision? A. He come over like this and swished around and struck me more like a glancing blow. 30

Q. What part of his car hit yours? A. It was the front part.

Q. What part of your car did the front part of his hit? A. His car hit me—he came into me. I can't just tell you just the—the pictures will show you the point where it was hit, but that thing came so it would be impossible for me to 40

William J. Meadows—Cross

figure just the part of it, if that is what you are asking me. I can't, because this thing came, and in a condition like that, the way he was coming, I done the best at the moment, but as far as me to give you any more than what the photograph will show you I couldn't pin myself down to a question like that. I couldn't answer it.

10 Q. Was it a head-on collision? A. Well, he shot over so quickly—

Q. To his left? A. He shot over to his left from his side over into my side, and it happened just like that.

Q. He shot over to his left before the cars came into collision? A. Oh, yes. He shot over from there and then hit me. It seems as though he tried to right his car like. That is the only thing I can figure that happened, having it under control and he shot over there, and the way the cars hit, it looks as if—

20 Mr. Bonnell: I object to the conclusions.

A. I am only trying to make it clear, to answer the question.

Q. You don't know, then, what part of his car, speaking of Dr. Heilman's car, came into collision with yours, whether it was the left front or right front? A. I think his right side struck me glancingly, just like that.

30 *Cross examination by Mr. Bonnell.*

Q. Mr. Meadows, what time did you leave your home that day? A. I should imagine a little after four o'clock.

Q. From your home what route did you take? A. My natural road.

William J. Meadows—Cross

Q. What road? The back road or the main line? A. The main highway.

Q. Was that going down toward West Cape May? A. No.

Q. Where does the main highway lead to? A. Well, that would continue into West Cape May.

Q. That was what they call the middle road, wasn't it? A. The what? 10

Q. What they call the middle road? A. The main seashore.

Q. The main seashore road? A. Yes.

Q. How far is it down to this spring mill you said about, or spring house? A. Well, now, to be exact, I can't tell you.

Q. Well, approximately. A. Oh, possibly two miles.

Q. Then you went on that back road and did drive—you left there about four or four-thirty from your home and drove on that road about two miles, did you not, down to the spring mill towards Cape May? A. I beg your pardon. 20

Q. You did leave your home and drove down that road about two miles towards West Cape May on that particular road? A. Excuse me. You mentioned the time.

Q. About four, between four and four-thirty, you say you left? A. A little after four it was. 30

Q. A little after four? You did go out of your home a little after four and drive down on that main seashore or back road to what they call the spring house, about two miles, going towards West Cape May? A. No. I drove up to Mr. Robert Phillips.

Q. Where did you get over on route 4? A. After I left Mr. Phillips I drove up and crossed over to Bennett.

William J. Meadows—Cross

Q. What road did you cross over? A. At Bennett Station.

Q. Were you down any time in a garage down there, down towards the spring house? A. No.

10 Q. You said in your direct examination you drove down to the spring house. If you went up to Robert Phillips, the other way, what were you doing down at the spring house?

Mr. Bell: That is not in the testimony.

Mr. Bonnell: He said that he drove down to the spring house.

Mr. Bell: Mr. Ludlam said that.

A. I haven't mentioned anything about a spring house to you.

20 Q. You went on that road, anyhow, that sea-shore road, about four or four-thirty? A. Yes.

Q. Where is your place there? A. My place is the corner of Simpson Lane and the main sea-shore road.

Q. How did you come out from your place? Did you back out from your home to get on the main road there? A. Yes, I had to back out.

30 Q. So you did as Bright said, come out of that road about four or four-thirty and back out on that main highway, didn't you? A. About four or four-thirty?

Q. Yes. You said after four, between four and four-thirty. A. You are stating a certain time and I didn't mention it. I said a little after four I left my home.

Q. And you did back out when you left your home on that road? A. That's the way I get out of my place.

Q. And you did after you backed out turn towards West Cape May? A. No.

William J. Meadows—Cross

Q. Where did you turn? A. I went north on that road and stopped at Mr. Robert Phillips.

Q. How far is that from your place? A. Oh, I imagine about three or four minutes run.

Q. Well, how far? How many miles? A. Well, say possibly three-quarters of a mile.

Q. You stayed there about ten minutes, you say? 10
A. Well, roughly. Somewhere around there.

Q. Then where did you drive to? A. From there I started back to Cape May.

Q. On what road? A. On number 4. On the same road.

Q. On the same seashore road? A. Yes.

Q. Then how far—then you did go from your place down on the seashore road. How far did you go down that seashore road when you went there? A. Went up as far as Bennett and crossed 20
over.

Q. How far is Bennett south of your place? A. Well, I should imagine about somewheres close to two miles.

Q. Where did you stop next? A. I was on my way down to the landing.

Q. What landing? A. At Cape May.

Q. Did you go through to the landing? A. No, didn't get a chance to get there.

Q. Is there a garage down at Bennett Crossing 30
where you crossed over there on the main seashore road? A. No. There is one above.

Q. How far above where you crossed over there? A. Couldn't just say exactly.

Q. Right near it, isn't it, that corner? A. Oh, quarter of a mile.

Q. Who runs that garage? A. I don't know.

Q. Do you know Paul Lennox,— A. No.

Q. —who drives the school bus down in Lower Township? A. No. 40

William J. Meadows—Cross

Q. You didn't see him that day, did you? A. No.

Q. Where does Mr. Levi Dickinson live from your place? What direction? A. Well, I know he lives somewhere on the road, but I don't know exactly.

10 Q. On the road going down the way you drove? A. Yes.

Q. So you went past his place that day, didn't you? A. Yes. In that section I passed it, but I don't know the exact house.

Q. If you passed it as he says you did, you were not in any condition to know what you did that day, were you, whether you stopped or not? A. I don't know Mr. Dickinson and I don't know which is his house.

20 Q. He has lived there for a number of years, hasn't he? A. That may be. I don't know.

Q. How long have you lived there? A. I have lived there since 1923.

Q. How long have you known of Mr. Dickinson? A. I don't know him.

Q. How long have you known of him? A. Well, I have seen him occasionally. I never knew his name. Never knew him.

30 Q. How long? How long have you known him, not what you have seen him occasionally. A. I don't know of him. I don't know him.

Q. Never saw him before, have you? A. I have seen the gentleman once or twice, but never knew who he was.

Q. And you were not there that day? A. No.

Q. Did you drive down past the house of Alice Bradley that day? A. Alice Bradley?

Q. Yes. Pass her house that day on route 4?

A. That's where the accident happened.

William J. Meadows—Cross

Q. Well, did you drive on past her house before the accident happened? A. No.

Q. You hadn't got to the Bradley house yet?
A. I passed there. Yes, I passed there.

Q. That is what I am asking you. A. I didn't get your question.

Q. Had you passed that Bradley house going towards Cape May before this accident? A. Before the accident? 10

Q. Yes. A. I had been past the house, yes.

Q. What kind of a car were you driving, what color? A. Maroon sedan.

Q. You saw no other cars on the road at the time you were there, did you, either way? A. No, sir.

Q. Saw no other cars ahead of you, did you, before the accident? A. There was no car ahead of me outside of the car that was straight coming to me and— 20

Q. And your car was a maroon car? A. Yes.

Q. And you went past this house? A. I did what?

Q. You went past the Bradley house before the accident? Did you see Ludlam's car that day, the man who was on the stand? A. See his car?

Q. Yes. A. There was a car in the distance, but this man here was— 30

Q. I asked you if you saw Ludlam's car, not a car in the distance? A. A car in the distance, yes, away off.

Q. Did you know it was Ludlam's car at that time? A. I didn't know it was his car, no, sir.

Q. He was so far away you couldn't tell whose car it was? A. No, sir, you can see everything down that road.

William J. Meadows—Cross

Q. You could see a car, but he was so far away you couldn't tell whose car it was? A. I couldn't tell who was in the car.

Q. Could you tell whose car it was? A. If I didn't see the party in the car, I couldn't tell you whose car it was.

10 Q. How far away was that? A. About fourteen hundred feet. Yes, fourteen hundred feet, about.

Q. Did you measure it to see whether it was fourteen hundred feet away? A. Taking the number of poles there I imagine that is about what it would be.

Q. It was so far away you couldn't tell who it was and you couldn't tell what kind of a car it was, could you, that you saw? A. No, couldn't tell what kind of a car it was.

20 Q. When I asked you before there were no other cars on the road and you said you saw none, why did you say that if you saw the Ludlam car? A. Will you repeat that?

Q. I asked you a while ago if you saw any other cars on the road at the time of the accident, and you said no, and now you say you saw the Ludlam car. A. If you will allow me to make it clear, any other car coming towards me I thought was what your question was, that is, passing me at the time.

30 Q. The Ludlam car was coming toward you? A. That was in the rear of the Reverend's car.

Q. That was so far away you could barely see it, wasn't it? A. That car was in back of this car, but this car was coming at such a terrific speed and his actions was such that my attention was brought to bear on him.

Q. How long have you driven cars? A. Sir?

Samuel R. Smith—Direct

Q. How long have you driven automobiles? A. Well, I can't just exactly tell you that.

Q. How many years? A. Well, at least—off and on, possibly four or six years, something like that.

Q. What do you mean, off and on? Didn't you drive continuously? 10

Mr. Bell: I object to that. I think it is absolutely immaterial. I think I know what the plaintiff is driving at, and it is absolutely immaterial.

Q. I mean continuously how many years have you driven an automobile?

The Court: He has stated the experience he has had driving. 20

Q. Did you for any reason quit driving during those four to six years during that time, for any reason?

Mr. Bell: I object to that.

The Court: I sustain the objection.

Q. Was there any time during the time that you stated there that you were not permitted to drive a car during that time? 30

Mr. Bell: I object to that.

The Court: I sustain the objection.

SAMUEL R. SMITH SWORN:

Direct examination by Mr. Bell.

Q. Mr. Smith, what is your business? A. Photographer.

Q. Where are you in business? A. Cape May. 40

Samuel R. Smith—Direct

Q. Did you take some pictures of Mr. Meadows' car and Mr. Heilman's car and some pictures of the roadway? A. Yes, sir.

Q. When did you take these pictures? A. Five on December 19th and three on December 20th.

10 Mr. Bonnell: We object to the pictures of the cars taken in December, when the accident was in November.

Mr. Bell: We can tie it up very thoroughly as to where the cars were all during that period of time, if you want us to do that.

Mr. Bonnell: We object to them.

Q. I show you this photograph here and ask you if you took this picture? A. Yes, sir.

20 Q. When did you take that? A. That was taken in the morning around between eleven and twelve on December 19th, back of Harry Kehr's.

Q. That was taken back of Harry Kehr's? A. Off to the right of Harry Kehr's, in the rear.

(The photograph was marked D-1 for Identification.)

Q. Did you take this photograph of route 4? A. That was taken December 20th, between ten and twelve.

30 Q. Which way is this looking? A. That is facing north, toward Bennett Station.

(The photograph was marked D-2 for Identification.)

Q. Did you take this picture? A. Yes, sir.

Q. Where was that taken? A. That was taken at the same time the first one was.

Q. In back of Kehr's garage? A. The same car, same place, same time.

40

Samuel R. Smith—Direct

(The photograph was marked D-3 for Identification.)

Q. Did you take this picture? A. Yes, sir.

Q. When was that taken? A. That is also the same car, same place and same time.

Q. As numbers 1 and 3? A. Numbers 1 and 3. 10

(The photograph was marked D-4 for Identification.)

Q. Did you take this picture? A. Yes, sir.

Q. When did you take that? A. That was taken in the afternoon of December 19th in Piatt's Garage, Pacific and Pine, Wildwood.

(The photograph was marked D-5 for Identification.)

Q. Did you take this? A. Yes, sir, that was taken at the same time as the other one, in Piatt's Garage. 20

Q. That is in Piatt's Garage in Wildwood? A. Yes.

(The photograph was marked D-6 for Identification.)

Q. Did you take this picture? A. Yes, sir, that was taken on the 20th, at the same time as the other one, facing south. 30

Q. This is facing south? A. Yes.

(The photograph was marked D-7 for Identification.)

Q. Did you take this one of the roadway? A. That is the same as number 2, facing north.

Q. This is the same as number 2? A. Yes.

(The photograph was marked D-8 for Identification.) 40

(No cross examination.)

Alfred Nye—Direct

ALFRED NYE, recalled:

Direct examination by Mr. Bell.

Q. Mr. Nye, you worked for Mr. Piatt's garage in Wildwood? A. Yes, sir.

10 Q. And you knew Mr. Heilman's car? A. Yes, sir.

Q. And after this accident was his car taken to your garage? A. First to Mr. Kehr's and then to Mr. Piatt's.

Q. When did it come to Mr. Piatt's garage? A. Well, first they took it to Wright's Garage, the Pacific Garage, and then they brought it over the next day around noon.

20 Q. How long was that after the accident? A. I should judge around twelve to fourteen hours.

Q. Around twelve to fourteen hours after the accident? A. More than that, because it was around noon when they brought it over.

Q. I show you this picture and ask you if that is a picture of Mr. Heilman's car, marked D-5? A. Yes, sir.

Q. I show you a picture marked D-6 and ask you if that is another photograph of his car? A. Yes, sir.

30 Mr. Bell: I offer these photographs in evidence.

Mr. Bonnell: I object on the ground that the cars were moved first to Kehr's Garage and then they were moved to another garage and then they were moved to this garage. Unless they can show there was no change from the time of the accident, I object to the pictures going in, taken on December 19th, which is a month after the accident, because

40

Alfred Nye—Direct

the car had been moved to several garages. It may be a picture as to when it came to that garage, but it had gone to several garages before that.

By the Court.

Q. You were at the scene of the accident, Mr. Nye, weren't you, on the afternoon of the accident? A. Yes, sir. 10

Q. Did you see the plaintiff's car there? A. Yes, sir.

Q. Mr. Heilman's car? A. Yes, sir.

Q. At the place of the accident? A. Yes, sir.

Q. Do the photographs, D-5 and D-6, correctly and accurately represent the condition of the plaintiff's car as you saw it on the afternoon of the accident? A. I couldn't say, because it was getting dusk. 20

Q. You didn't examine it? A. I didn't examine it thoroughly.

By Mr. Bell.

Q. From what you did see of the plaintiff's car, do these pictures look to you to show exactly the plaintiff's car? A. Well, it shows it is a Terra-plane, but I couldn't say the condition, because there would be maybe some difference in the lifting and moving around with the tow-car. 30

Q. But approximately— A. Approximately, yes.

Mr. Bonnell: I don't see any harm in them.

(The photographs previously marked D-5 for Identification and D-6 for Identification were marked Exhibits D-5 and D-6.)

Douglass Wilson—Direct

DOUGLASS WILSON, SWORN:

Direct examination by Mr. Bell.

Q. Mr. Wilson, where do you live? A. Cold Spring.

10 Q. Where do you work? A. Kehr's Service Station, at the forks of Route 4 and Mill Lane.

Q. How long have you worked there? A. About three years.

Q. Did you receive a call as a result of this accident between Mr. Heilman and Mr. Meadows' cars? A. No, sir, I received no call. Trooper Souder came down there and asked me if I would call Mr. Kehr and get his tow-car to get two cars off the road, there had been a wreck.

20 Q. Did you go to the scene of the accident with Mr. Kehr? A. Yes, sir.

Q. What time was that? A. Why, I should say—well, it was just about dusk when Mr. Souder came down there and when Mr. Kehr and I got up there with the tow-car darkness had come on. I should say it was somewhere around five-thirty or probably quarter of six.

Q. Did you remove the cars? A. Yes, sir.

30 Q. Where did you take them? A. We took Mr. Heilman's car first and we put it in the back of the garage where I work, or on the end of it, and we went back and got Mr. Meadows' Chevrolet and took it to Mr. Kehr's Garage on West Perry Street, and then we came back and got Mr. Heilman's car from in back of the garage and took that to Perry Street.

40 Q. Did you take particular notice of Mr. Meadows' car? A. No, I didn't take particular notice of either one of these cars, any more than I seen them.

Douglass Wilson—Direct

Q. Would you recognize a picture of Mr. Meadows' car, as to the damage done to that, and so forth? A. I think so.

Q. Would you say this is a picture of his car as it appeared after the accident? A. Yes, sir.

Q. At the time you removed it? A. Yes.

10

Mr. Bell: That is D-4.

Q. I show you D-3 and ask you if this is another view of Mr. Meadows' car— A. Yes, sir.

Q. —after the accident? I show you D-1 and ask you if that is another view? A. Yes, sir.

Mr. Bell: I offer these photographs in evidence.

By Mr. Bonnell.

20

Q. You know that this is Mr. Meadows' car, do you not? A. Yes, sir. That is the car that we towed in from the wreck, anyway.

Q. Do you know since that of your own knowledge that that is Mr. Meadows' car, or from having him say so? A. If it isn't, someone has broke one up practically the same as his was.

Q. What color was Mr. Meadows' car? A. Maroon.

Mr. Bonnell: No objection to the pictures. 30

(The photographs previously marked D-1, 3 and 4 for Identification were marked Exhibits D-1, 3 and 4.)

By Mr. Bell.

Q. You are quite familiar with the scene of this accident, aren't you? You know where the accident took place? A. Yes.

40

Douglass Wilson—Direct

Q. You saw these cars before you took them away, as to what their location was and so on? A. Yes.

Q. I show you D-2 and ask you if this is a view of the highway Route 4 at the scene of the accident? A. Yes, sir, it is.

10

Mr. Bonnell: As of what date?

The Court: As it appeared November 24, 1933?

Q. As it appeared November 24, 1933? A. I think so, any more than when the accident happened the freight train wasn't there, this car here.

Q. Everything else is the same? A. Positively, yes, sir.

20

Mr. Bonnell: I don't think they are any use, and I object to them because I think they are misleading as they are taken.

The Court: Has there been any change in the condition of the highway? Do they show simply the highway?

Mr. Bonnell: They don't show anything, one way or the other, and I don't think they should go in the record, because they were taken at another time.

30

Mr. Bell: They were taken within about three weeks of the time of the accident.

Mr. Bonnell: The witness himself says they do not show the conditions as of that day.

Mr. Bell: It gives the jury a picture of where this accident took place.

Q. Mr. Wilson, there hasn't been any change in the highway since that time, has there? A. No, sir, not in the highway, any more than one

40

Douglass Wilson—Direct

railroad track that went by there at that time I think has been took up, but the highway itself is just the same, any more than probably there may be a little hole or something that the State men filled up along there.

By the Court.

10

Q. The general physical conditions as disclosed by these three photographs, to your knowledge, were substantially the same on November 24, 1933? A. They are.

Q. As shown in the photographs? A. They are, yes, sir.

The Court: Is there any objection? If so, the objection is overruled and the photographs will be admitted.

20

(The photographs heretofore marked D-2, 7 and 8 for Identification were marked Exhibits D-2, 7 and 8.)

By Mr. Bell.

Q. Mr. Wilson, when you were taking Mr. Heilman's car away from the scene of the accident did you have any trouble? A. We had a little trouble loading it at first, but after we got the front of it swung up in back of the tow car, the boss, Mr. Kehr, started away with the wrecker and I was standing outside seeing if everything went along all right, and the back wheels of Mr. Heilman's car were sliding, so I hollered to Mr. Kehr and told him to wait a minute, she must be in gear or something, so I walked around and the motor was pushed back inside of the car so bad that you couldn't tell whether the emergency brake was on or off or whether she was in gear or not, but

40

Douglass Wilson—Direct

I tried to get it out of gear and tried also to get the brake off if it was on—I wouldn't say whether it was on or off, because it was all bent up in there.

10 Mr. Bonnell: I object to that. If he doesn't know whether it was in or out, that doesn't have anything to do with the accident.

Mr. Bell: The only thing I think is material is the fact that the back wheels were locked, and the rest of it may be stricken, as far as we are concerned.

Mr. Bonnell: I don't see that would show the condition, because the engine was knocked back and that would stop it.

The Court: It is purely a circumstance.

20 Q. What did you do to unlock these wheels? A. I got underneath the car and I felt of the cables of the brake and they was tight, so I took a pair of pliers and cut the two cables, one on each wheel, the brake cables, and he towed the car away.

30 Q. Did you notice where Mr. Heilman's hood was, the hood to his car? A. I picked Mr. Heilman's hood about thirty foot south of the two cars. I picked it up laying on the right-hand side of the road going towards Cape May.

Q. In other words, will you point out to the jury just where you picked up this hood? Here are the two cars.

Mr. Bonnell: I object to that, because he got there two hours after the accident, and we don't know whether that hood had been moved from the cars or what happened.

40 Mr. Bell: It was part of the car and he got there before six o'clock.

Douglass Wilson—Direct

The Court: I think I will permit it. Some time had elapsed, of course.

Q. Thirty feet south towards Cape May? A. South towards Cape May.

Q. Was it on the shoulder of the road? A. I should say that it was at least four foot off the concrete. 10

Q. To the right going towards Cape May? A. To the right going toward Cape May. It laid between the concrete road and the railroad track.

Q. Did you make any inspection of Mr. Heilman's car, of the tires? A. No, sir, I did not.

Q. When you were removing Mr. Meadows' car did you see anything running out of the radiator? A. Yes, sir.

Q. Did you smell anything at that time? A. Yes, sir. 20

Q. What was it? A. It was denatured alcohol, I guess, that was running out of the radiator.

Q. You could smell it, could you? A. Yes, sir.

Q. Was the odor very strong? A. Yes, sir.

Q. You have had experience in handling alcohol in radiators, have you? A. Yes, sir.

Q. From your experience this odor would tell you that it was alcohol that was in the radiator? A. Yes, sir. 30

Q. How did you come to smell this alcohol coming out of the radiator? A. Well, you couldn't help from smelling it. I was fastening the chain around the front bumper and springs to raise the car up, and there was rusty water like with the contents of alcohol, I suppose, in it. That's what I took it for, the way it smelled.

Q. Did you see any glass around the scene of the accident? A. I did.

Q. Where was this glass? 40

Douglass Wilson—Direct

Mr. Bonnell: This was an hour later.

Mr. Bell: Here is a man who came there to remove the cars. They had not been touched, apparently, waiting for these people to come who were sent there by the trooper.

10 Mr. Bonnell: There has been no proof they had not. There were probably a hundred people there during that time.

Q. What was the position of the cars at the time you got there? A. The position of the cars was Mr. Meadows' car was on the north side, that is, the side toward Wildwood, headed into the railroad, I should say on a forty-five degree from the road. Mr. Heilman's car was on the south side, practically about the same. Probably his wasn't
20 quite on an angle as much as Mr. Meadows'. Mr. Heilman's car probably might have been headed into the railroad just a little more straighter than what Mr. Meadows' car was. Mr. Meadows' was by the road, about a forty-five degree, headed into the railroad and Cape May.

Q. Which car was nearer to the railroad? A. Mr. Meadows'.

Q. What was the general condition of the cars at the time you arrived there? A. Well, both cars
30 was busted up pretty well in the front.

Q. Did you notice any tracks on the highway? A. No, sir, I did not, not on the highway, but around underneath the cars where they were standing there was places there where cars had been pushed sideways and one thing and another. I don't know which car it was.

Q. Did you trace any tracks at all? A. No, sir, I did not.

Q. Where did you see this glass that you speak
40 of? A. All the glass I saw was on the right-hand

Douglass Wilson—Cross

side of the cement road, laying on the gravel on the right-hand side going towards Cape May, on the side the cars was on.

Q. How far away from the cars was it? A. Well, it was just sort of scattered around like, around the cars.

Q. Around the cars? A. Yes, sir. 10

Q. Did you see any marks or glass on the opposite side of the road? A. No, sir, I did not.

Cross examination by Mr. Bonnell.

Q. What time did you say it was when you got there? It was dusk? A. It was dark when I got there.

Q. You couldn't see if there was any glass, then, on the other side of the road or not, could you, if it was dark? A. No, sir, I don't know as I could. 20

Q. So when you say there was none over there, you don't know whether there was or not? You didn't look, did you? You didn't look on the other side of the road, did you, to see if there was any glass there? A. No, sir.

Q. The only glass you saw was the glass right at the cars? A. Yes, sir, and plenty of it.

Q. If a man stops a car, he naturally puts on his brakes on his hind wheels, doesn't he, his emergency brake? That is the usual thing to do, isn't it? A. It is the usual thing, yes, sir. 30

Q. The brakes being on the Reverend's hind wheel may have come from two things; it may have been if he was stopped when he was struck and the brakes had not yet been taken off, that might be the cause of that brake being on, mightn't it? A. Well, possibly.

Q. And it may have been caused by the fact that the engine was driven back in and drove the gears 40

Douglass Wilson—Redirect
James C. Hand—Direct

and the wires and put the brakes on and knocked it in gear? A. Well, it could be, I guess.

10 Q. So it could be caused from a number of things, couldn't it? If there wasn't any reason for it, the cause might possibly be as he said, when he was stopped with his brake on and he hadn't taken his brake all the way off yet when he was struck, mightn't it? A. Well, it could be, yes, sir.

Redirect examination by Mr. Bell.

20 Q. The fact that the brakes were locked like they were at this time could also come from the fact that the brakes were applied at the time the car was going at high speed, couldn't it? A. It could, yes, sir.

By Mr. Bonnell.

Q. In other words, it could have been from a number of things, couldn't it? A. Well, I guess it could.

JAMES C. HAND, SWORN :

30 *Direct examination by Mr. Bell.*

Q. Where do you live, Mr. Hand? A. Cape May.

Q. Where were you on the day of this accident? A. I was coming home from Wildwood.

Q. Did you stop at the accident? A. I did.

Q. Did you see Mr. Meadows there? A. Why, I stopped at the two cars and he was in one of them. There was no one in the other car.

40 Q. Did you take Mr. Meadows anywhere? A. Yes, sir.

James C. Hand--Direct

Q. Where did you take him? A. Dr. Hughes.

Q. At Cape May? A. Yes.

Q. Where did he ride in your car? A. No, I didn't take him in my car. We waited for the ambulance.

Q. You went with him in the ambulance? A. Yes. There was no one volunteered, so I went because I was an American Legion man and an American Legion ambulance. 10

Q. Did you sit close to Mr. Meadows? A. I did. Helped hold him on there.

Q. Did you smell any liquor on his breath? A. Positively not.

Q. Was he bleeding at the time? A. He was. The man had a cut here that I could see and the blood running down his face.

Q. He had a cut where? On his forehead? A. Somewhere in that vicinity, his forehead or over the eye, I forget just exactly where, but it was in the front part of his face up high. 20

Q. Did he act dazed? A. He did. He didn't know what he was doing. The man was, I thought, knocked out; that is, what I mean by that, practically unconscious. He would come to and mumble and then fall back in a dazed condition.

Q. You were with him at Dr. Hughes' office at Cape May? A. I stayed there until they took him away, yes, sir. 30

Q. Did you take him from Dr. Hughes' to Dr. Mace's Hospital? A. No.

Q. Who took Mr. Meadows from Dr. Hughes' to Dr. Mace's? A. The same ambulance, but I don't know who rode in it. There was someone else volunteered, so I went home.

*James C. Hand—Cross**Cross examination by Mr. Bonnell.*

Q. You say he would go off and then come to again? Is that right? A. Yes, in a dazed condition from—

10 Q. Then when he would come to he would babble and talk? A. Oh, no.

Q. What would he do when he would come to? A. Moan.

Q. Didn't come to enough to talk? A. No.

Q. Then he didn't babble, as you say? He didn't talk at all, then? A. I said he was in a dazed condition.

Q. You said he came to and then went back again? A. That is true.

20 Q. So he didn't talk at any time? He just moaned? A. He moaned. Apparently hurt.

Q. How long would he, when he would come to, would he stay that way before he would go back again? A. He was lying in the ambulance and I was holding him on there, because the man was speeding, naturally, to get him down to the doctor, and he would sort of raise up and moan and I said, "The man is hurt," to myself.

30 Q. Then would he go back? A. He would go back, because I would push him back. I didn't want him to fall off. I never had any experience with injured persons.

Q. He wanted to get up and you kept pushing him back? A. Naturally anyone wants to get up when they come to.

Q. You kept pushing him back? A. I held him on there as I would have held you if you had been on there.

A recess was taken until Monday, October 15, 1934, at ten A. M.

Dr. Edward T. Crossam—Direct

Cape May Court House, N. J. October 15, 1934.

Trial of the cause resumed at 10 A. M.

DR. EDWARD T. CROSSAN, SWORN:

Direct examination by Mr. Bell.

Q. Dr. Crossan, where do you live? A. Philadelphia. 10

Q. How long have you been practicing medicine? A. Twenty years.

Q. With what hospital are you connected? A. Episcopal and Orthopedic.

Mr. Bonnell: We will concede Dr. Crossan's qualifications.

Q. How long have you been connected with the Episcopal Hospital? A. Twenty-one years. Twenty years. 20

Q. Doctor, did you make an examination of Reverend Heilman? A. Yes, sir.

Q. What did you find as the result of your examination? A. He had a non-union of a fracture of the femur. He had a painful scar on his forehead, scars on his right—on his left knee, scar on the right forearm, and an old fracture of the left ulna.

Q. Did you make a complete examination of the leg which was broken, that is, I mean the femur bone? A. Yes, sir. 30

Q. What is your opinion as to what you found in connection with that? A. He has a non-union of that fracture.

Q. How could that be corrected? A. By an operation.

Q. When, in your opinion, should that operation take place? A. In my opinion, it could take place at any time. 40

Dr. Edward T. Crossam—Direct

Q. Does it make any difference whether it is immediately or later on? A. In my opinion, I think it would be better immediately than later on.

Q. What do you think would be the result of that operation? A. I can't prophesy.

10 Q. Well, from your experience with operations of that type, is it likely to be successful? A. Yes. There is more than an even chance that it would be successful.

Q. If the operation is successful, would it give Reverend Heilman—how much use of his leg? A. Well, he probably would always have some limitation of motion in his knee, even after a successful operation. Other than that he should have a successful leg, with one exception; some shorten-

20 ing, too.

Q. If the operation was successful, how much shortening do you think there would be? A. That would depend upon how much of the ends of the bone were taken off to make them fresh. It might be half or three-quarters of an inch. Might be an inch.

Q. Up to an inch is not considered serious, is it? A. Well, I wouldn't put it that way. Up to an inch can be compensated through tilting of

30 the pelvis.

Q. What I meant by an inch shortening not being serious was the fact that it could be corrected so that it would hardly be noticeable? A. Yes, he could wear a lift in his shoe and compensate for some of it, and the tilt in his pelvis.

Q. What do you think should be done with the scar on the face? A. I believe that should be excised.

Q. That could be entirely eliminated? A. No,

40 the scar wouldn't be eliminated, but the pain would be eliminated.

Dr. Edward T. Crossam—Cross

Q. From your examination of Reverend Heilman, how do you find his general health to be?

A. Why, I haven't gone over his general health.

Q. You didn't go over anything— A. No, nothing other than those things connected with the injuries.

Q. From your examination, is his general appearance healthy? A. No, he looks a little pale to me. He looks like he had been confined a little bit. Other than that he seems fairly healthy. 10

Cross examination by Mr. Bonnell.

Q. This operation, you say if it is successful that would be what would happen, but suppose it isn't successful, then what would happen? A. I can't prophesy again.

Q. Would there be any danger of death from an operation of that kind? A. Danger from every operation. 20

Q. So that all of the—whether he could be compensated, the "if" would be there, whether this operation would be successful? A. That is correct.

Q. And of course there is just as much possibility of it not being successful as there is that it would be successful? A. Well, I shouldn't put it that way. I think with bone-grafting operations for non-union there is about 80% chance of success. 30

Q. But the "if" is there just the same? A. Oh, my, yes.

Q. And of course if it isn't successful it might create death, too? A. Not any more than if it were successful. He runs the same risk whether it is going to be successful or unsuccessful.

Q. Then, in other words, there is the danger even if it is going to be successful of the shock of death? A. That is right. 40

Dr. Edward T. Crossam—Cross

Q. What type operation is this, a major or minor? A. Major operation.

Q. Have you seen Dr. Heilman at the hospital off and on during the time he was there? A. Yes, I saw him on a couple of occasions at the hospital.

10 Q. You have worked in conjunction with Dr. Muschler on this case? A. No, sir.

Q. Who is in charge up there? A. Dr. Muschler.

Q. Then when Dr. Muschler says it isn't time for the operation he is wrong? Is that right? A. I said in my opinion.

Q. What is the type of this operation that they have there? A. Bone grafting operation or bone plating or bone pegging.

20 Q. What do you have to do to do that? A. You have to make an incision, expose the bone, take out a graft, depending upon where you think is the most logical place to take it. You can take it from one of the fragments itself and slide it down or it could be taken from the leg off the thigh, whichever was thought to be the logical place to take it, or you can take a plate along the two fragments after taking off the ends of the bone that are closed off, or you could take a peg and put it in the canal and hook the two bones together,
30 or you could take a piece of fascia out of his thigh, drill the two fragments and take the fascia and hook it across.

Q. Then if you took another piece of bone from somewhere else in his leg, that would make some difference there, too, wouldn't it? A. Make another scar, is all.

40 Q. Wouldn't it make a difference if you took a bone out of there? A. You wouldn't take a bone. Just take a portion of the bone.

Dr. Edward T. Crossam—Cross

Q. Wouldn't that make some difference? A. No, sir, none at all. That all fills in again.

Q. Of course it would depend upon how far the fissures of the fracture of those bones, where the crack was, as to how much bone you would have to take out, wouldn't it? A. I don't quite understand you.

10

Q. I say it would depend on the bone as far as—the fissures in the break of the bone as to how much bone you would have to take out, wouldn't it? A. No. It would depend on how much the end of the bone is closed off. You see, when a fracture doesn't unite, the ends of your fragments get closed off, what we call technically eburnated, so there is no raw surface to oppose to raw surface. To get raw surface to oppose to raw surface it would be necessary to take off a piece of each fragment. Otherwise, that bone would not unite again.

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Q. If there were a number of fractures in the bone, small fractures in the bone, you would have to take more off than if there wasn't? A. No, sir. The only thing that has anything to do with it is the nature of the bone you are going to graft.

Q. What is the nature of the end of the bone with Mr. Heilman? A. That couldn't be told entirely until the time of operation. I said it might be a half inch, it might be three-quarters of an inch, it might be an inch.

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Q. It might be two inches? A. No, I wouldn't hardly think that, because you only have two inches shortening now, or slightly more than two inches.

Q. But it might require two inches to get it to unite if you had to take it off? A. No, I hardly think so.

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N. Harvey Collisson—Direct

Q. It couldn't? A. No, I don't think that is even possible.

Q. You say there would be a loss of motion in the knee. What do you mean? A. I mean his knee would be stiff. He would have some stiffness in his knee.

10 Q. Could he kneel properly with that? A. I doubt it very much.

Q. In other words, in his work it would be a handicap to him? A. Exactly.

Q. That is all.

N. HARVEY COLLISSON, SWORN:

Direct examination by Mr. Bell.

20 Q. Mr. Collisson, where do you live? A. Ocean City, New Jersey.

Q. What is your business? A. Civil engineer.

Q. Did you make a map of Route 4 near Bennett Station, at my request? A. I did.

Mr. Bell: Any objection?

Mr. Bonnell: Except I would like to know when it was made and whether the road is in the same condition it was in 1933.

30 Mr. Bell: There is already testimony this road is in the same condition.

Mr. Bonnell: I don't think so.

Q. Do you know whether there has been any change in the condition of this roadway and shoulder since November of 1933? A. No.

Q. It is practically the same condition, with the exception of the railroad track? A. I would say it was, yes, from casual observation. I didn't make any observation in December, 1933, other

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N. Harvey Collisson—Direct

than ride over the road from time to time. There is no evidence of any reconstruction there.

Q. You are thoroughly familiar with this road?

A. Yes.

The Court: If there is no objection, the map will be admitted. 10

(The map was marked Exhibit D-9.)

Q. Now, Mr. Collisson, will you explain to the jury what the map shows? A. On October 12, 1934 I made a survey of a portion of Route 4 in the vicinity of Bennett Station, Lower Township, Cape May County, and the results of that survey I have shown on this plan. In the upper right-hand corner, for the purpose of location and orientation I have shown at a scale one inch equals 20 two hundred and fifty feet the location of the road and any cross roads, the location of the railroad, location of any signs, dwellings, premises situate adjacent to the road, for the purpose of locating this stretch of road. In the right-hand side of this small key plan I have shown a road leading off to the west marked, "To West Cape May and Cape May Point". I have then shown the distance from that intersection down to the intersection of route 4 with a small woods 30 road or farm road leading to the east. That distance is thirteen hundred and forty-five feet. I have then shown further down to the south or toward Cape May the location of the first rise in grade, which is twenty-eight hundred feet to the crest of the first hill beyond or southwardly from the intersection with this small woods road. The limit of visibility here would be fixed clearly on the north by the curve and on the south by this hill to which I have referred. The railroad 40

N. Harvey Collisson—Direct

tracks run approximately parallel to the road on the westerly side of the right-of-way and the road runs, generally speaking, northeast by southwest, extending in this direction or to the right towards Cape May Court House and points north, and extending in this direction or to the left, towards Cape May and points south. I have then reproduced this same section on a very much larger scale, shown in the lower right-hand side of the map. This map contains many of the features shown on the small key plan, but to a larger scale. I have shown a section line crossing this road and have marked that section line A-A. The purpose in locating this section line here was that at this point it is about the only point which it is possible to locate on this road.

20 This road looks about the same and is in about the same condition all along here, so I picked out the intersection of route 4, the main highway, with this small road leading to the left, and I have marked that A-A, and, secondly, the conditions found three hundred to four hundred feet on either side of station A-A are about the same as at A-A. In other words, the section at A-A would be typical of the road in that general vicinity. I have located on the side of the road a dwelling,

30 two-story frame dwelling, tenanted at the time of my examination by Frank Bradley, a small produce stand and a barn, all belonging or all being occupied by the same party. On the right I have shown a small six-foot wide road. This road in its condition when I made the survey was little more than two ruts. There was no evidence of any gravel, but there was evidence on the road itself at its intersection with the concrete, there were two small concrete intersection

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N. Harvey Collisson—Direct

slabs indicating that perhaps at one time this road did run across here and perhaps across the railroad, although there is no evidence today that it did run across the railroad. I have located the shoulders. The road itself is an eighteen foot wide concrete road. It is an old type concrete construction and doesn't have any center longitudinal expansion joint, but at the time of the survey did have about a four-inch white strip locating the center, nine foot from each side. On each side of the roadway there is a six-foot wide Ugite shoulder. That is a black bituminous treated shoulder. They take a tar material and put it on top of gravel and it gives a black appearance and forms a shoulder. On the right-hand side, or on the northwesterly side, there is further a grass shoulder of about six foot in width. On the southeasterly side there is no grass shoulder. There is a cut with a slope sloping up. When this road was constructed it was evidently found necessary to cut through the farm land here, which leaves the adjacent farm land on either side higher than the road bed itself, and of course that means that the shoulder—not the shoulder, but the adjacent ground, slopes to the road shoulder itself. I have located the telegraph poles which appear on the northwestwardly side of the railroad right of way. I have located the electric poles which appear on the side of the shoulder, northwestwardly side of the shoulder of the road, and have further located any other structures existing. You will note very close to station A-A and on the northwestwardly side of the road I have marked a railroad sign. This is a small sign about eighteen inches in diameter extending—sticking up from the ground about three

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N. Harvey Collisson—Direct

feet, a black sign with a white W on it. On the left-hand side of the road I have shown and marked a small sign of about the same general dimensions, excepting it is rectangular, marked "Produce". The road itself has a very slight longitudinal slope, but to all intents and purposes in this vicinity is level. Level readings on this road show a slope up towards Court House of six inches in one hundred feet. That is one-half of 1% grade, and to all practical purposes it is practically level. For the purpose of showing you the relative elevations of the adjacent ground on either side, the railroad track, the road and the shoulders themselves, I have taken a cross section through station A. I might explain that a cross section is the picture that you would get if you took and made a vertical cutting in the road and then held up that cutting so you could look into it. That would be represented to scale on a cross section. In the upper left-hand corner I have shown such a cross section taken through station A-A or at station A-A, and in this cross section we are looking to the northeast or towards Cape May Court House. In green on the right-hand side I show the adjacent farm land, which is shown in green also on the plan. In yellow I have shown the slope, which is also shown in yellow on the plan view. In black I have shown the bituminous or Ugite shoulders, which is also shown in black on the plan. I have then shown you the concrete roadway with its crown. I might mention that the crown is not excessive there. The crown is about .25. That is three inches. In other words, the center of the concrete roadway is about three inches higher than the side of the concrete roadway. I have shown you the Ugite

N. Harvey Collisson—Direct

shoulder on the northwestwardly side of the road colored the same as on the plan, and then in green I have shown the grass shoulder. I might say that at the time of my examination of the road the grass in this particular section of the shoulder was short grass, not exceeding over eight inches, I would say, in height, as the maximum. I have then shown you the slope up to the center portion of the land dividing the railroad right of way from the road right of way. You will note that the slope is sharp and that the ground as it originally existed there was much higher. I have then shown the width of this grass strip and then the drop into the railroad right of way and then the actual railroad tracks themselves and the fill on the other side of the railroad tracks, and then I have shown also the telegraph poles and the electric light poles. I might say that the cross section, of course, as is usual and customary with cross sections, the vertical scale is not in proportion or not the same as the horizontal scale. That is because your differences in elevation, of course, are very much less than your differences or the magnitude of your horizontal measurement. Therefore, elevations which appear on the cross section as being very excessive are not necessarily that steep on the ground, but I have, however, shown on the cross section the actual elevations of these various points so that by subtracting one elevation from the other you can easily get the difference in elevation of any two points on the ground.

Q. Mr. Collisson, how far is it from the edge of the concrete to the railroad, we will say at station A-A? A. It is 34.8 feet from the northwestwardly side of the concrete road to the center line of the railroad track.

*N. Harvey Collisson—Cross**Cross examination by Mr. Bonnell.*

Q. Is there any railroad track there at the present time? A. Yes, indeed.

10 Q. Any tracks been taken up there? A. I couldn't tell you whether there are any tracks that have been taken up. There is just at present one railroad track there.

Q. Which is that, the Reading or the Pennsylvania? A. I believe it is operated by the combined or Seashore road.

Q. Which track is down, the Pennsylvania track or the Reading track? A. I couldn't tell you.

20 Q. You say there is only one track. Where was the other track, over the other side or this side, that was taken up? A. I couldn't tell you.

Q. You know there were two tracks originally there? A. I believe there were, as a matter of general knowledge. I couldn't tell you that there positively was.

Q. There were two tracks there in October and November, 1933, weren't there? A. I couldn't tell you.

30 Q. You say you know the condition of the road there at that time? A. Yes, the road, but not the condition of the railroad tracks.

Q. They were right alongside of the road? A. About thirty-five feet away and separated from the main road by a bank. As a matter of fact, in this particular vicinity they are not visible from the road.

Q. You went over there to see the tracks when you made this survey? A. That's right.

40 Q. You didn't look to see which one of the tracks was taken up? A. There was no evidence of any one track being taken up. There was still

N. Harvey Collisson—Cross

a road bed or ballast existing to the left or to the northeast, and I presume if there were other tracks there, they came from there. It was, however, I didn't think pertinent to the survey and made no examination of that other than to locate the one track and to definitely determine that it was operated by the Seashore road. 10

Q. Which is nearest the road, where the tracks had been, if there had been tracks, or this track that is there now? A. I have already testified that I have no knowledge of the other location of the tracks, if any other tracks existed there.

Q. You say there were two tracks that originally went through there. Where did the other track go through, nearer the road or this way? A. I don't know.

Q. It was perfectly to be seen there if you had looked, wasn't it? A. I am afraid I can't answer a question as to where the track was unless I actually made an examination there. From the physical examination— 20

Q. When you went there you went there to make an examination of the surroundings just as they were, didn't you? A. That's right.

Q. Then why didn't you show the track that had been taken up, as well as the other track? A. There was no track there at the time I made the examination. 30

Q. It showed the evidence of a track there, didn't it? A. There were cinders there. There were no ties.

Q. Where were those cinders? Nearer the road than this track? A. No, the cinders were to the northwest of this present track. No ties, no rails.

N. Harvey Collisson—Redirect
Dr. Frank R. Hughes—Direct

Redirect examination by Mr. Bell.

10 Q. Have you marked how far apart the telegraph poles are? A. No. I might say the map is to scale. I will tell you that now in testimony if you want it.

Q. All right. Will you tell us how far they are? A. The electric poles, they are the poles closest to the road, are about one hundred and eighty-three feet apart. The telegraph poles, which are on the northwestwardly side of the railroad track, are one hundred and twenty feet apart.

20 Q. And the scale is one inch to two hundred and fifty feet? A. The scale of the large plan is one inch equals thirty feet; the scale of the key plan is one inch equals two hundred and fifty feet; and the scale of the cross section, the horizontal, is one inch equals fifteen feet; and vertical one inch equals three. They are all marked on the plan.

Q. How far back from the road is the Bradley house, taking it from the concrete? A. From the edge of the concrete?

30 Q. Yes, from the edge of the concrete. A. The front porch, the edge of the front porch on the Bradley building or the building occupied by Bradley is fifty-three feet from the southeastwardly edge of the concrete.

DR. FRANK R. HUGHES, SWORN:

Direct examination by Mr. Bell.

Q. Dr. Hughes, where do you reside? A. Cape May, New Jersey.

Q. Do you practice medicine there? A. I do.

40 Q. How long have you been practicing? A. Twenty-seven years in Cape May.

Dr. Frank R. Hughes—Direct

Q. Did you on November 24, 1933, make an examination of Mr. Meadows? A. Your Honor, may I refer to my notes?

The Court: Surely.

A. I did, on November 24, 1933.

Q. What did you find his condition at that time? 10

A. I found his condition to be dazed, probably because of the laceration one inch long on his forehead, contusion of his right upper ribs. I examined him closely in the usual way for intoxication and found no evidence of intoxication present.

Q. At what time was this examination? A. Five-thirty P. M., about.

Q. That was— A. On November 24, 1933.

Q. How long was Mr. Meadows in your office at that time, approximately? A. I would say approximately fifteen to twenty minutes. 20

Q. Who was with him at that time? A. As I remember, Mr. James C. Hand and another person whom I do not at this minute recall.

Q. Was a State policeman there? A. I am unable to answer exactly.

Q. Where did you send Mr. Meadows after he left your office? Did you send him any place, to a hospital or— 30

Mr. Bonnell: Don't lead him. Please let the witness answer.

A. I am unable to recall exactly. My notes do not show.

Q. Did you treat Mr. Meadows after that time at all? A. I believe that he was in my office on the 6th of December and asked for his bill and paid it. 40

Dr. Frank R. Hughes—Cross

Q. That is the only other time you saw him except the time he came to your office on the 24th?

A. I believe that to be the only time.

Q. And when he was in your office you treated the cut on his head, did you? A. I did.

10 Q. Of what did that treatment consist? A. The usual routine treatment, which would be cleansing, approximation of the edges of the wound and anti-septic dressing.

Q. What did you find relative to the chest injuries that you have— A. Contusion of the right upper chest, right upper ribs.

Q. Did Mr. Meadows complain of pain at this time? A. He did complain of pain in his chest.

20 Q. Did he complain of any pain in his head? A. He did. May I add there was sufficient injury to justify pain in his head.

Q. And there was sufficient evidence of injury to his chest to justify pain? A. There certainly was.

Q. What, if anything, did you do for the injury to his chest? A. I do not remember and failed to record it. Therefore, I can't answer exactly.

Q. How much was your bill to Mr. Meadows for the treatment? A. \$2.00.

30 Q. And he paid you? A. He did.

Cross examination by Mr. Bonnell.

Q. Doctor, you say he came there that day and was there about ten or fifteen minutes? A. Probably more than that. Probably twenty.

40 Q. Why did you examine him for intoxication? What was your reason for that? A. The State police must have been with him and requested it. I have forgotten why I did it. I was requested to do it, very likely. Otherwise I should not have done it.

Dr. Frank R. Hughes—Cross

Q. You sent him from there to Mace's Hospital, did you not? At least, that was his testimony. A. I believe that to be correct. I have no record of it. I believe that is correct, yes, sir.

Q. And he went directly after he had been there fifteen minutes to Mace's Hospital, did he not? A. I am unable to answer that. 10

Q. I mean you sent him directly, as I understand, in the ambulance from your place? A. Yes, I believe that is correct.

Q. So that Mace's Hospital, then, had an extensive examination of him later on, had him overnight, didn't they? A. I am unable to answer that. I have no first-hand knowledge as to whether they did or not.

Q. If you were to hear the testimony of various witnesses that about four o'clock that day this man had been staggering over the road and when he came in Mace's Hospital a thorough examination showed that he had been drinking, would that change your mind as to his intoxication? A. Not at all. 20

Q. The hospital, of course, had more opportunity to examine him than you had after they had him there, didn't they? A. No, they did not.

Q. You only took a superficial examination? A. No, I didn't. I made a thorough examination. 30

Q. And you only made a charge of \$2.00? A. That's all.

Q. To make a thorough examination isn't there a statutory fee of \$10.00 that you would be entitled to if you had made a proper examination at the request of the State police?

Mr. Bell: I object to that. I don't see how it is material. 40

Dr. Frank R. Hughes—Cross

Mr. Bonnell: It simply goes to show that he did not make a thorough examination.

Mr. Bell: He testified he made a thorough examination. What he charged I think is immaterial.

The Court: I will permit it.

10 (The question was repeated.)

A. I am not aware of such a statute. The matter was between the man and myself. No one else was concerned. He asked for his bill and was given it and paid it.

Q. What time did you say this was? About five-thirty? A. About five-thirty, according to my records.

20 Q. Supposing this man had been intoxicated an hour before that, what effect would a blow on his head have had as to that intoxication?

Mr. Bell: I object to that. It is not cross examination.

The Court: What is the purpose? Is it to show its relation with the dazed condition?

Mr. Bonnell: Yes.

The Court: I will permit it.

(An exception was noted for the defendant.)

30 (The question was repeated.)

A. Your Honor, am I on the stand—

The Court: You mean it just the other way around.

A. Your Honor, am I on the stand as a general witness or as a technical witness?

40 The Court: Simply a general witness, as far as I am aware. The question having been repeated, the objection to that question will

Jere E. Chambers—Direct

be sustained. The question in a different form might be proper.

Mr. Bonnell: That is all.

JERE E. CHAMBERS, SWORN:

Direct examination by Mr. Bell.

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Q. Mr. Chambers, where do you live? A. Cape May City.

Q. What is your official position in Cape May City? A. I am postmaster of Cape May City.

Q. On November 24, 1933, did you have a conversation with Reverend Heilman? A. Yes. He was in the office, I would say, fifteen minutes.

Q. About what time was that? A. Well, I imagine it was around three-thirty or four o'clock. I can't say sure about that, but I know it was in the afternoon. 20

Q. Did you hear of an accident that Reverend Heilman was in sometime later? A. Later in the day.

Q. How long would you say—

Mr. Bonnell: He has not fixed the time yet.

The Court: That is what he is endeavoring to do. 30

Q. How long was it after your conversation with Reverend Heilman that you heard about this accident that he was in? A. Well, I imagine it was—I am not positive, but I imagine about an hour and a half. An hour, maybe. I couldn't say sure, because I went home after he left. I went up to my home, and then when I came back to the post office I heard it.

Q. Where did this conversation with Reverend Heilman take place? A. Well, when he first came 40

Jere E. Chambers—Direct

in, back in my office. He was in—may I say what he came in for?

Q. No, I don't think that is necessary.

Mr. Bonnell: We have no objection.

10 A. Then he came out front and he was standing there talking with—I think my wife was in there and Miss Dilks and two or three, and I was over by the window, and then I came back, a gentleman came in that had lost some money in the office on the floor and I was talking with him, but I imagine he was in there ten or fifteen minutes in the front office.

Q. Was Mr. Wilson there at the time this conversation took place? A. Yes, he was on the money orders, I think. I am not sure of that, but
20 I am most positive he was on the money orders.

Q. What is Mr. Wilson's position? A. He is a clerk in the post office at Cape May.

Q. A clerk in the post office? A. Yes.

Q. Did Reverend Heilman tell you where he was going? A. No, sir, he did not. Didn't tell me. He might have said it, but I don't recall him ever telling me. He was over there to put some signs up to have a church entertainment or something in Wildwood.

30 Q. Did you hear him make any remark about his Essex car? A. No, I did not.

Q. Did you hear him make any remark about the driving of his car?

Mr. Bonnell: I object to that.

A. No, I did not.

Q. Did you know the kind of car Reverend Heilman had? A. No, I did not. In fact, I didn't see his car.

40 No cross examination.

J. LeRoy Wilson—Direct

J. LEROY WILSON, sworn:

Direct examination by Mr. Bell.

Q. Mr. Wilson, where do you live? A. Cape May.

Q. Do you work in the post office? A. Yes, sir.

Q. Did you on November 24, 1933, see Reverend Heilman? A. I did. 10

Q. Where did you see him? A. In the post office, Cape May.

Q. Did you hear him say anything about his Essex car?

Mr. Bonnell: I object.

The Court: You may answer yes or no.

A. I can't say that I did, about any car.

Q. Did he say anything about his driving his Essex car? 20

Mr. Bonnell: I object to that. That is not material in this case.

The Court: Let us see whether he says yes or no to it.

(The question was repeated.)

The Court: Not what he said. Did he say anything?

A. It was general conversation about— 30

The Court: No. Did he make any remark on that subject or not?

A. Not about the Essex car, no.

Q. Well, did he say anything about his driving?

Mr. Bonnell: I object to that as not material in this case.

The Court: Did he say anything about his driving? Yes or no? 40

A. Yes.

J. LeRoy Wilson—Direct

Q. Now, Mr. Wilson, what time was it, approximately, that this conversation was taking place between you and Reverend Heilman? A. Somewhere in the neighborhood of three-thirty, quarter to four.

10 Q. How long after that was it that you heard that he had been in an accident? A. Possibly two hours.

Q. What did he say about his driving?

Mr. Bonnell: That is objected to. That has not anything to do with this accident, what he said about his driving in the past.

20 Mr. Bell: I think it is part of the res gestae of this case. We have had Mr. Ludlam on the stand, who testified that he saw Reverend Heilman going up the road at a very high rate of speed, and here is a man who saw Reverend Heilman just a short time before the accident.

(Counsel conferred with the Court at side bar.)

30 The Court: Let it appear upon the record that counsel have acquainted the Court with the conversation sought to be elicited from this witness, and the objection will be sustained.

(An exception was noted for the defendant.)

Mr. Bell: Will your Honor give permission to have it placed on the record later in Chambers?

The Court: Yes.

No cross examination.

Dr. Millard Cryder—Direct

DR. MILLARD CRYDER SWORN:

Direct examination by Mr. Bell.

Q. Dr. Cryder, where do you reside? A. Cape May Court House.

Q. Do you practice medicine? A. Yes, sir.

Mr. Bonnell: We will admit Dr. Cryder's qualifications.

10

Q. Dr. Cryder, did you make an examination of Reverend Heilman, the plaintiff in this case? A. Yes, sir.

Q. When did you make that examination? A. Yesterday a week.

Q. What did you find as the result of your examination as to his condition? A. Injuries at the present time?

20

Q. Yes. A. On the forehead a transverse scar, four centimeters in length, tender to the touch. The left forearm, a thickening of the lower fourth of the left side of the forearm, meaning the ulna. Right forearm, in similar position, a longitudinal scar about two centimeters in length. Right lower extremity, a swelling and thickening around the knee and ankle. The middle third of the right thigh, another scar which measured three centimeters in length. Over the right knee-cap two scars measuring about three centimeters. The measurement of the right lower extremity was seventy-three and one-half centimeters, the left lower extremity seventy-nine centimeters.

30

Q. What did you find as to the right femur? A. The right femur? There was little, if any, union. Easily moved.

Q. What was your opinion of his general health at the time of this examination? A. The patient's general health was good.

40

Dr. Millard Cryder—Cross

Q. What in your opinion could be done to correct the non-union of the right femur ? A. My opinion would be that the leg would have to be opened and the fracture reduced.

Q. In other words, it would be necessary to have an operation? A. Yes, sir.

10 Q. When do you think would be the best time to have that operation? A. It would depend upon the judgment of the surgeon who did it.

Q. Well, in your opinion would it be immediately or would it be probably sometime in the future? A. Again my opinion would be that it would be better left to the judgment of the surgeon who did it.

Q. From your experience in operations of this kind, are these operations usually successful? A.

20 In a large majority of cases they are.

Q. And if the operation was successful, what degree of use would Reverend Heilman have of his leg? A. I couldn't say.

Q. But it would be very much improved over the present condition?

Mr. Bonnell: I object to leading questions.

The Court: Do you wish to change it?

Mr. Bell: I will change the question.

30 Q. What would the result of an operation be if it was successful? A. The limb would certainly be in much better condition than it is at the present time.

Q. Can you or can't you say how much use he would have of it? A. I couldn't say.

Cross examination by Mr. Bonnell.

Q. How much shortening is there in inches at the present time, Doctor? A. Somewhere between

40 two and three.

Dr. Millard Cryder—Cross

Q. Then if there was an operation, would that shortening still be there? A. The shortening in all probability would not be there.

Q. How much shortening probably would be there? A. I couldn't say.

Q. There would be some shortening, wouldn't there? A. If the bones were in end to end apposition, there should not be any. 10

Q. Suppose, as you have heard the testimony of the other physicians here, they had to cut off a piece of bone, how much shortening would that make? A. That would depend upon the surgeon.

Q. You say if the operation was successful. Of course, the operation may not be successful, may it? A. That is possible.

Q. And it would be a very painful operation, too, would it not? A. Yes. 20

Q. And a major operation? A. Yes, sir.

Q. Would be considerable shock and some chance of death, would there not? A. I couldn't say that.

Q. Well, there would be considerable shock from an operation of that kind, wouldn't there? A. It would be a major operation.

Q. If that operation was had, would he have the use of his knee? A. Afterwards? 30

Q. Yes. A. Yes, sir.

Q. Have you seen the X-ray of the knee? A. I have not.

Q. Are you familiar with and know what the injury to the knee is? A. From examination.

Q. But you have examined no X-ray? A. No, sir.

Q. You heard the testimony of Dr. Crossan, who has examined the X-rays, who said that knee would always be stiff. Would that change your mind, after hearing his testimony? 40

Jesse Souder—Direct

Mr. Bell: I object to that, because I do not believe Dr. Crossan's testimony was to the effect that the knee would always be stiff.

The Court: Some limitation.

10 Q. None of your examination, Doctor, was made from an X-ray examination, was it? A. No, sir.

Q. Of course, as to whether or not the proper time for operating now is here or not would depend on the surgeon, and on the X-rays, who had the operation, would it not? A. Yes.

JESSE SOUDER SWORN:

Direct examination by Mr. Bell.

20 Q. Mr. Souder, what station are you with in the New Jersey State Police? A. Cape May Court House.

Q. How long have you been stationed there? A. Two years.

Q. Were you called to the scene of an accident on November 24, 1933? A. Yes, sir.

Q. Where was this accident? A. On Route 4 at Irma or below Bennett Station.

30 Q. What time did you arrive at the scene of the accident? A. I should say between five and five-fifteen.

Q. Between five and five-fifteen? A. Yes, sir.

Q. What did you find when you arrived at the scene of the accident? A. I found two automobiles that had been involved in this accident, which had left the road and were standing between the railroad tracks and Route 4.

40 Q. Do you recognize this map as a drawing of Route 4 at about the scene of this accident? A. Yes.

Jesse Souder—Direct

Q. Can you show the jury just where you found the cars at the time you arrived at the scene of the accident, this being the concrete roadway and this being the shoulder of Ugite or asphalt and this being the grass and this being the bottom of a cut and then this being the top or crest of the bank, and then here is the railroad track and bank. Will you show the jury approximately where you found these cars? 10

Mr. Bonnell: I think the first question should be whether he knows whether that shows the scene of the accident or not, because that is a long road there. I think that should be established first.

Mr. Bell: I did ask him that question and he said he thought this clearly depicted the scene of the accident. 20

Q. Do you know Mr. Bradley's home along the road there? A. Yes, sir.

Q. Does this look to you like the scene of the accident this day, I mean a clear picture of the road and all the surroundings at the time of the accident?

Mr. Bonnell: I object to that form of question, that it looks like it, if it is not the place. 30

Mr. Bell: The map is in evidence as the scene of the accident.

Mr. Bonnell: No, it is not.

By the Court.

Q. Do you understand the map, Trooper? A. Yes, sir.

Q. It has been sufficiently explained to you, has it, so you know where the Bradley house is and the railroad? A. I don't believe it has as to the Bradley house. 40

Jesse Souder—Direct

By Mr. Bell.

10 Q. This is the Bradley house to the right of the road looking north, this is the barn, this is the produce stand, here is a little block of concrete here and a block of concrete over here in the shoulder, and here is a wagon road off the highway. Now, this is going towards Cape May Court House and this is going towards Cape May, and this, of course, is the railroad track up here, and here is the railroad sign marked "W".

By the Court.

Q. Now are you able to locate on the map where the vehicles were when you arrived? A. How far is it here to the turn at Bennett Station?

20 *By Mr. Bell.*

Q. This is thirteen hundred and forty-five feet. Thirteen hundred and forty-five feet from this mark, A-A, up to the turn. A. As I recall it, the accident happened between one-eighth and one-quarter of a mile below the turn at Bennett Station.

Mr. Bonnell: We still object if he cannot fix it on the map.

30 Mr. Bell: We are not trying to locate definitely the actual scene of the accident. I am simply trying to show the location of the cars in relation to the concrete highway.

The Court: He can describe that.

Mr. Bonnell: There is no objection to his describing it.

40 Q. You do know where the cars were in relation to the concrete roadway, don't you? A. Approximately, yes.

Jesse Souder—Direct

Q. Supposing that station A was the place where you found the cars, will you show and tell the jury how the cars were in relation to the concrete roadway?

Mr. Bonnell: I object to that. He can explain how they were on the road, but if he does not know—the part I object to is fixing any spot on the map. 10

The Court: The objection is well taken. You are having him locate at a given place on the road where he saw the cars, so to speak, when he is unable to say with relation to the map just where they were.

Mr. Bell: I said supposing it was at station A, and the engineer has already testified that the same conditions prevail for three or four hundred feet on either side of that point. 20

The Court: Mr. Bonnell objects to your supposition.

Mr. Bonnell: I have no objection to his fixing how the cars stood on the road, but not from any point on that map.

Q. You have stated that the cars were from an eighth to a quarter of a mile below the turn at Bennett Station? A. Yes, sir.

Q. Now, will you show how the cars were when you found them at a point which you would fix where the accident occurred? A. I distinctly remember that there was a telephone pole at the scene of the accident, which was narrowly missed by Mr. Heilman's automobile. Mr. Heilman's automobile was nearly next to the telephone pole on the north side of it, and Mr. Meadows' car was above that and further off the road towards the railroad track. 30

40

Jesse Souder—Direct

Q. How far was Mr. Meadows' car from the railroad track, would you say? A. I should think between five and ten feet from the railroad track.

Q. Which way was Mr. Meadows' car pointing? A. Towards the railroad track.

10 Q. Was it pointing towards the railroad tracks? Which way was Mr. Heilman's car pointing? A. More towards the railroad tracks. Mr. Meadows' car wasn't directly towards the railroad tracks. It pointed a little more towards Cape May than it did to the railroad tracks.

Q. How about Heilman's car? A. It was pointing directly at the railroad tracks.

Q. Did you make an examination of the scene of the accident? A. Yes, sir.

20 Q. Did you find any glass, broken glass? A. There was broken glass laying around the cars, yes.

Q. Where was this glass laying? A. Between the concrete portion of the road and the grass.

Q. Did you find any glass on the other side of the road? A. I don't believe I looked for any.

Q. But you did see plenty of glass between the concrete road and the place where the cars were standing? A. Yes, there was glass there.

30 Q. Was that the west side of the concrete? Between the west edge of the concrete and the railroad track? A. That's right.

Q. Did you see any marks that the cars made in going off the highway? A. Yes, sir.

Q. What did you see with reference to Mr. Meadows' car? A. I saw tire marks where Mr. Meadows had applied his brakes before the accident happened; also tire marks after the accident happened.

40 Mr. Bonnell: I object to that, as to stating before the accident happened, because he does

Jesse Souder—Direct

not know whether it was or not. He can tell the condition there, but I think this supposition as to whether it was Meadows' car or whose car it was—I move to strike out that evidence.

The Court: Strike it out. Have him answer as to the position of the marks and where they led. 10

Q. Was it daylight at the time you got there?

A. Yes.

Q. How long after that was it, approximately, before it got dark? A. Very shortly.

Q. Just what did you find with relation to the tracks of Mr. Meadows' car? A. I saw tracks made by the tires on Mr. Meadows' car on the right-hand side of his road going north and south and then going off of the road across the shoulder of the road and into the field or into the embankment between the railroad track and the concrete. 20

Q. Will you just show the jury how the tracks were, I mean how they ran on that road? A. Well, the tracks ran—the skid mark showed down the right-hand side of the concrete road, and then there was a burn mark made with tires and a skidding mark across the shoulder of the road and through the embankment, which is grass, up to where Mr. Meadows' car stopped. 30

Q. And you could follow those marks clear through? A. Yes, sir.

Q. Did you see any marks concerning Mr. Heilman's car? A. Yes, sir, there was marks made by the tires on Mr. Heilman's car.

Q. Will you tell the Court and jury just what those marks showed? A. Those marks were also on the right-hand side of the road going towards 40

Jesse Souder—Direct

Cape May and crossed the road, a burn mark made by tires being pushed sideways.

Q. Did they follow clear up to where the car was standing? A. They followed up to the shoulder and across the shoulder to Mr. Heilman's car.

10 Q. How far back did you follow these marks of Mr. Meadows' car? A. I should say they showed for fifteen feet before leaving the concrete of the road.

Q. And how far on the shoulder? A. Across the shoulder.

Q. This is up toward the right? A. Yes.

Q. Did these marks show how the car was travelling? A. No, the tire marks didn't show how it was travelling. The car could have been going up the left-hand side or going down the
20 right-hand side, but it was going either one of those two ways. The tire marks didn't show.

Q. If the car had been going up the left-hand side—

Mr. Bonnell: I object to the "If". That is putting a conclusion in the witness's mouth.

Q. You followed the tracks from Mr. Meadows' car right straight back onto the concrete and north on the concrete? A. That's right.

30 Q. And they were all on his side of the road? A. Yes, sir.

Q. Who was at the scene of the accident at the time you got there? A. Quite a few people there. I recognized Mr. Hand from Cape May and I recognized Mr. Taylor from Wildwood. There was the driver, Mr. Meadows, in his car when I arrived there.

Q. Was Heilman there? A. No, sir.

40 Q. Did you send Mr. Meadows to Dr. Hughes in Cape May? A. Yes, sir.

Jesse Souder—Cross

Q. Were you present at Dr. Hughes' office at the time of the examination? A. No, sir, I arrived there after the examination had been made.

Q. You arrived after the examination had been made? A. Yes, sir.

Q. Was Meadows still there at that time? A. Yes, sir. 10

Cross examination by Mr. Bonnell.

Q. Trooper, when you got to the scene you say Mr. Taylor was in charge, from Wildwood? A. Mr. Taylor was there, yes, sir.

Q. And the accident had happened sometime then, a little time before you had gotten there? A. Yes, sir.

Q. Been a considerable number of cars over the road, so there were various tracks there then, weren't there? A. There were several cars there when I arrived, yes. 20

Q. The car, you say, the Heilman car, the tires looked as though they had been pushed sideways? A. Yes.

Q. That was the only tracks you saw of Dr. Heilman's car where it had been pushed sideways? A. Yes, sir.

Q. Now, at that time where did you find Mr. Meadows? A. In the driver's seat of his car. 30

Q. And what did you do when you got there as to Mr. Meadows? A. Walked over to him and asked him if he was hurt and there was no response.

Q. Then what did you do? A. I asked for his driver's license and there was no response, and then I asked him to get out of the car and there was still no response, so I took him out of the car, and I found the man was very unsteady on his feet and failed to respond to the questions that 40

Jesse Souder—Cross

were asked, so I had him taken to Dr. Hughes in the Cape May ambulance by Mr. Hoffman, and asked Mr. Hand to go with him.

Q. Did you at that time make a report to your superiors in Trenton of this accident? A. Yes, sir.

10 Q. What did you say in that report as to intoxication at that time of Mr. Meadows?

Mr. Bell: That is objected to.

The Court: I sustain the objection.

Q. At that time when you saw Mr. Meadows did you consider he was intoxicated or under the influence of liquor?

Mr. Bell: I object to that as calling for a conclusion.

20 Mr. Bonnell: Dr. Hughes testified the trooper had him to examine him. I want to know why he had him to examine him.

The Court: In some stages of intoxication, of course, even a lay witness can testify.

Mr. Bell: He has to be qualified. If he wants to ask him what he saw there I have no objection to that, but to say that he was intoxicated when we already have testimony that he was not—

30 Mr. Bonnell: We already have testimony that he was.

The Court: Why not develop first the basis of it?

Q. What did you do at that time? Did you request his examination for intoxication? A. Yes, I asked the driver of the ambulance to have Dr. Hughes examine the man to see if he was under the influence of liquor.

40

Frank Bradley—Direct

Q. What called your attention that he might possibly be under the influence of liquor?

Mr. Bell: That is objected to.

The Court: I will overrule the objection.

(An exception was noted for the defendant.)

10

A. His inability to answer questions and his unsteadiness.

By Mr. Bell.

Q. Did you smell any liquor on Mr. Meadows' breath? A. No.

FRANK BRADLEY, SWORN:

20

Direct examination by Mr. Bell.

Q. Mr. Bradley, where do you reside? A. Irma.

Q. Did you see two cars on Route 4 near your home on November 24, 1933? A. Yes.

Q. Did you hear the crash? A. Yes.

Q. Did you see the crash? A. No.

Q. Now, you see this map that is here on the board. This is supposed to be your home, isn't it? (Pointing to the Bradley house as marked on the map.) A. Yes.

30

Q. Is this your barn here? A. Yes.

Q. How far is the barn away from the house, approximately? A. About sixty feet.

Q. Can you tell the Court and jury where you saw the cars after the accident on this road? The white part here is the concrete, this is the black shoulder on either side, this is toward Cape May Court House, this is towards Cape May, over here

40

Frank Bradley—Direct

are the railroad tracks. A. Well, they were right opposite the little drive you see there.

Q. They were right opposite this drive here?

A. Yes, on the opposite side of the road.

10 Q. Then they should be put over here. Can you mark it? You tell me where to mark it. A. Is this—

Q. This is the railroad up here. A. Is this the road across? The opposite side of that intersection. Is that it?

Q. Yes. A. Is this a telephone pole marked here?

Q. Yes. A. Then they were over about ten feet.

Q. About here? A. About there, yes.

20 Q. How near the railroad were they? A. On the side of the bank of the railroad; the bank between the shoulders and the railroad. They were on the bank, one of them.

Q. They were about in there, were they, where I have marked that X? A. Yes. Mr. Heilman's car was headed a little more towards Cape May than Meadows'.

Q. Whose car was toward Cape May? A. Mr. Heilman's.

30 Q. How close were these cars together? A. Well, you couldn't get the back door all the way open—you couldn't get the door on Mr. Meadows' car all the way open. It struck the rear of Mr. Heilman's car.

Q. Was it daylight at the time this accident took place? A. Yes.

Q. Did you see either one of these cars previous to the accident? A. No.

40 Q. Did you see any glass at the scene of the accident? A. Glass around the cars.

Frank Bradley—Cross

Q. Glass around the cars? A. Around the cars and in the grass.

Q. Did you see any marks in the roadway that either car had made? A. No, I didn't look for any.

Q. What called your attention to this accident? A. The crash. 10

Q. Where were you at that time? A. Just in back of the barn.

Q. What did you do? A. I came up right away. Went right to the house and then out to the road.

Q. Was anyone else there at that time? A. My boy.

Q. And you were the second one on the scene? A. Yes, sir.

Q. What is your boy's name? A. Frank, Jr. 20

Q. What is your wife's name? A. Alice.

Q. How old is your boy? A. Why, he is around sixteen.

Q. That is, at the present time? A. Yes.

Cross examination by Mr. Bonnell.

Q. You didn't see anything, then, until after the crash, did you? A. Not a thing.

Q. Did you go out there with your wife and boy? A. My wife didn't go all the way out there. I went out there with my boy. 30

Q. You went out with the boy? A. Yes.

Q. Did you examine the cars with the boy? A. No.

Q. You didn't go up and examine Mr. Heilman and the rest of the cars? A. I went up to Mr. Heilman and opened the door of his car and I seen he couldn't get out without somebody helping him, and we couldn't do it.

Q. What was the reason he couldn't get out? 40

Frank Bradley—Redirect

Mr. Bell: That is objected to.

The Court: I suppose it is obvious.

Q. Why couldn't he get out? A. Well, he seemed to be hurt; jammed in.

10 Q. Did you stay there all the time the boy did with him? A. Yes, practically.

Q. You heard the testimony of the boy the other day as to smelling liquor on his breath. Did you smell any? On Mr. Meadows' breath, I am talking about now. A. No, I didn't smell any liquor on Mr. Meadows' breath. I went around the car.

Q. Did you go in Mr. Meadows' car to see? A. No.

Q. You didn't go and see whether— A. No.

20 Q. Didn't go to see Mr. Meadows? A. I went to Mr. Meadows when I first went there after I went to Mr. Heilman.

Q. You went to Mr. Heilman first? A. Yes.

Q. Were you there when your boy was in the car talking to Mr. Meadows? A. No.

Redirect examination by Mr. Bell.

Q. Mr. Bradley, were you present at the time the engineer made that map on last Friday? A. Why, yes, when he was at the house.

30 Q. Are there any changes in the general condition of the roadway and shoulders at the time this map was made over the time when the accident occurred? A. I don't think so. I haven't seen any.

Q. Well, you have lived there all that time, haven't you? A. Yes.

Q. And you haven't seen any changes? A. No.

Robert S. Phillips—Direct

ROBERT S. PHILLIPS, sworn:

Direct examination by Mr. Bell.

Q. Mr. Phillips, where do you live? A. Cold Spring.

Q. How long have you lived there? A. Twelve years. 10

Q. Do you know Mr. Meadows, the defendant in this case? A. I do.

Q. Did you see him on November 24, 1933? A. I did.

Q. Where did you see him? A. In my yard.

Q. What time did you see him? A. Around four o'clock.

Q. Do you know which direction he drove when he left your place? A. He drove north.

Q. Is Cold Spring on the back road from West Cape May to Route 4? A. It is. 20

Q. When did you hear that Mr. Meadows was in an accident? A. That evening.

Q. Did you go to see him after the accident? A. No, sir.

Q. Did you go to the scene of the accident? A. I did the next day.

Q. The next day? Did you go there with anyone the next day? A. Why, yes.

Q. With whom did you go? A. Mr. Meadows. 30

Q. How did you come to go to the scene of the accident? A. Why, Mr. Meadows called me from Mace's Hospital and asked me if I would come over and get him.

Q. And did you go to Mace's Hospital? A. I did.

Q. And you got Mr. Meadows there? A. Yes, sir.

Q. Was this in the morning of the next day? A. In the afternoon of the next day. 40

Robert S. Phillips—Direct

Q. About what time? A. I would say between two and three.

Q. Where did you take Mr. Meadows? A. I took him back to Cape May and we stopped at the scene of the accident on the way in.

10 Q. What did you see at the scene of the accident? A. I could still see the rubber burns on the cement of the road. I could see where the cars had gone up into the embankment.

Mr. Bonnell: How does he know? The cars were moved. He can only tell what he had seen. He can tell where tracks were. He doesn't know whether they were cars or what they were.

20 Q. Where were these rubber burns? A. On the right-hand side of the road going towards Cape May.

Q. Did you follow the rubber burns, that is, I mean could you follow these tracks— A. Yes.

Q. —into the tracks along the railroad track?

Mr. Bonnell: I object unless it is connected with our car. I move to strike out the evidence. There has been no evidence that it was in connection with our car, only rubber burns.

30 The Court: He may describe them.

Q. Will you describe where these burns were in relation to the highway? A. They were on the right-hand side of the road going towards Cape May and you couldn't see them into the shoulder but you could see them when they got up into the soft dirt on the embankment.

Q. Did the tracks run continuously from the concrete into the shoulder of the bank? A. They did.

40

Robert S. Phillips—Cross

Mr. Bonnell: If he says he can't see them after they get on the shoulder, how does he know they run continuously in there? I object to it. That is putting the words in the witness's mouth that he saw it.

A. I can explain that.

10

Q. Explain what you did see there. A. Why, the tracks were black on the white cement, the rubber burns, and when they struck the oiled shoulder they didn't show, and you could pick it up from there, the tracks, into the gravel that went up onto the embankment.

Q. Where was that in relation to Bradley's house? A. I would say to the southwest three hundred feet.

Q. Approximately three hundred feet? Did you know where that lane was at the end of Bradley's property? A. Yes, sir.

20

Q. How near to that lane? A. Within ten feet, twenty feet.

Q. When you saw Mr. Meadows about four o'clock on November 24th did you observe anything unusual about his condition or his actions? A. No, sir.

Q. He seemed perfectly normal to you? A. Yes, sir.

30

Cross examination by Mr. Bonnell.

Q. Now, Mr. Phillips, you heard what Mr. Meadows said, that he drove from his place to your house. That is north, isn't it, from his place? A. Yes, sir.

Q. And he drove from your place down towards Cape May. You say he drove north from your house. Which is right? A. Towards Cape May is south.

40

Robert S. Phillips—Cross

Q. He said he came up to your house and then went down towards West Cape May. You say he went north, in the opposite direction. Which is right, you or Mr. Meadows?

10 Mr. Bell: I object to that. I don't see that this witness should be called upon to answer that question. He has testified which way Mr. Meadows went when he left his house. After he left his house I don't see how this witness could know anything about where Mr. Meadows went, and we say it is not proper cross examination, because we did not try to bring out anything by this witness other than the general direction in which Mr. Meadows left.

20 The Court: He testified to that on direct examination, as I recall it, that upon leaving his, Mr. Phillips' house, the defendant turned north.

Mr. Bell: Yes.

The Court: Except for asking him to compare his testimony with someone else's, it is perfectly proper to cross examine him on the subject.

30 Q. Is Cape May north from your place or south?
A. South.

Q. What time in the afternoon did he go north?
A. I couldn't say exactly the time.

Q. Did you see him when he came back after he had gone north, going towards Cape May after that that afternoon? A. No, sir.

Q. So that you don't know what his condition during the afternoon was, do you, after he left your place? A. No, sir, I didn't see him.

40 Q. You are very friendly with Mr. Meadows, are you not? A. Not necessarily so.

Robert S. Phillips—Redirect

Q. You went around with him, didn't you, to try to gather up witnesses on his behalf in this case? A. No, sir.

Q. You remember Marion Bright? A. Yes, sir.

Q. You were over to Marion Bright's with Mr. Meadows, were you not? A. I was.

Q. Didn't you ask Marion Bright if she wouldn't soften down for Mr. Meadows? What did you mean by that? A. If you want me to explain, I can explain. 10

Q. What did you mean, asking her to soften down against Mr. Meadows? A. I didn't use those terms.

Q. You don't need to explain. You did that, didn't you? A. I didn't use those words.

Q. But you did ask her to soften down, not to make it so hard against Mr. Meadows, didn't you? A. No, sir. 20

Q. What did you state to her? A. I asked her to tell the truth.

Q. In other words, she told you, did she not, what she had to say and you said, "Don't tell that; soften down on Mr. Meadows"? A. No, sir, I said nothing like that.

Q. And she told you she couldn't be a witness if she didn't tell the truth, didn't she? A. Well, I asked her to tell it. 30

Redirect examination by Mr. Bell.

Q. What was your conversation with Mrs. Bright? A. In regard to the accident?

Q. Yes, in regard to the accident. Just tell the Court and jury what your conversation was. A. Why, I had been in Mrs. Bright's presence before and I had heard her say that the Reverend Heilman just missed them, and I was asking for them 40

James H. Matthews—Direct

to testify to that, what they had said, that the Reverend Heilman had just missed them on the road, and when I had Mr. Meadows in their presence they said it was Mr. Meadows that had just missed them.

10 Q. And that was when you made the statement to her to tell the truth? A. Yes, sir.

By Mr. Bonnell.

Q. You also asked her if she wouldn't testify that Mr. Heilman was a drinking man to help you out, too, didn't you, and she told you she refused to do it, did she not? A. No, sir.

Q. All right. That is all.

20 JAMES H. MATTHEWS, SWORN:

Direct examination by Mr. Bell.

Q. Where do you live, Mr. Matthews? A. I live at Irma, New Jersey.

Q. How long have you lived there? A. Practically all my life.

Q. Were you at the scene of this accident on November 24, 1933? A. After it happened, yes.

30 Q. How long after it happened, do you know?
A. Probably five minutes, ten minutes. We will say ten minutes.

Q. Did you see the position of the cars? A. Yes, sir.

Q. Where would you say the cars were when you arrive there? A. On the right-hand side of Route Number 4, Meadows' car and Reverend Heilman's car.

40 Q. Is that going towards Cape May? A. On the right-hand side going down. Mr. Meadows' car was north of Mr. Heilman's car.

James H. Matthews—Direct

Q. South? A. Mr. Meadows' car was north of Mr. Heilman's car. Mr. Heilman's car was south.

Q. Which way was Mr. Meadows' car pointing? A. About that angle. This is south, we will say, and about that angle. It would be north and south.

Q. Sort of toward the railroad? A. Yes, 10
towards the railroad.

Q. And a little south? A. Yes.

Q. Which way was Mr. Heilman's car pointing? A. It seemed to be pointing more in that way, if anything just a trifle north more than south.

Q. Just a trifle north toward the railroad? A. More than south.

Q. Did you make any examination of the roadway at the scene of the accident? A. No, not the tracks or nothing like that.

Q. You didn't observe any tracks? A. None 20
at all.

Q. Did you see any glass around? A. Lots of glass on the ground.

Q. Where was the glass? A. Around where you would walk around the accident.

Q. Around the cars? A. Around the cars.

Q. Was it to the right or to the left of the concrete looking toward Cape May? A. The right.

Q. Where was this accident with relation to Bradley's house? How far down the road from Mr. Bradley's house? A. If this print is right, 30
which it is, this little place here is a roadway that goes through Dr. Ashbourne's property, and the accident happened about ten feet north of this little concrete place here, ten or so, maybe fifteen.

Q. How near the railroad were the cars? A. I imagine by the looks of the sight, from the railroad to the cars was around twenty feet, anyhow.

Q. About twenty feet? A. I should imagine it 40
would be a twenty foot measurement.

James H. Matthews—Direct

Q. Which car was nearest to the railroad? A. Mr. Meadows'.

Q. Mr. Meadows' car was nearer the railroad? A. Yes.

10 Q. How much nearer would you say? A. Probably by the front of the car would be three foot, anyhow.

Q. Were the fronts of these two cars close together as they stood there? A. Well, I walked between them.

Q. You walked between them? A. Yes. I walked around the front and walked between the two cars.

Q. Could you walk between the rears of the two cars? A. Oh, yes, the rears were like that, kind of on that angle.

20 Q. Were the fronts of the two cars nearer together than the rears? A. Yes.

Q. Was there very much more space in between the cars than for you to pass through? A. I imagine there was a space so wide, like this.

Q. What would you say, about two feet? A. Somewhere around there. Approximately two feet.

30 Q. Did you see any tracks of either car? A. Not that I noticed, except just where they came in. They were practically standing in those tracks. We will say that much of a track.

Q. Which car was that? A. That was Mr. Meadows'. Where the car came in.

Q. Where it came off the concrete into the shoulder? A. No. It was on the edge of the gravel, you see. I didn't observe none of the tracks at all.

40 Q. How far did that extend back from the car?

James H. Matthews—Direct

Mr. Bonnell: He has already said that he did not observe and did not examine, so how can he tell how far it is?

A. Couldn't tell you.

Mr. Bonnell: I object to the leading questions, putting the words in the witness's mouth. He has already stated twice he did not observe or examine. 10

Q. Do you know Mr. Dickinson, who was a witness in this case? A. Levi Dickinson?

Q. Yes. A. Yes, I know him.

Q. Did you work with him? A. I have worked around him lots of times. Not with him personally.

Q. How long have you known Mr. Dickinson? 20
A. All my life.

Q. Were you working around him or did you ever see him about the time of this accident? A. I didn't see him at the time of the accident or nothing like that. Different times I came in contact with him, but personally never saw him at the time of the accident.

Q. Were you working with him prior to the accident? A. Not right with him, no.

Q. What did you say? A. No. We do the same 30
kind of work, but I never worked with him.

Q. How long before the accident was the last time you had seen him? A. I would probably see him half a dozen times a week.

Q. You saw him every week? A. I saw him passing his house, often when I am passing his house.

Q. Do you know anything about his physical condition at that time? A. Nothing only pertaining to an operation, probably, for his eye. 40

James H. Matthews—Cross

Q. What do you know about that? A. Well—

Mr. Bonnell: I think what he knows about it, his condition, is a medical word for a doctor and not for a layman, and I object to it.

Mr. Bell: We are only asking what he knows.

10

The Court: Yes, if he knows.

A. He had trouble with his eyes. He is a painter, the same as I am, and naturally I received a lot of work that Mr. Dickinson couldn't do on account of his eyes. He had cataracts on his eyes last fall.

20

Mr. Bonnell: What has that to do, if he had cataracts over his eyes last Fall, with this accident? I object to that testimony from a lay witness and think it should be stricken out.

Q. He had this trouble with his eyes prior to the time of this accident, did he? A. Well, after the accident—

Q. After the accident— A. —he went to the hospital to have them removed.

30

Q. How long after the accident did he go to the hospital, do you know? A. I couldn't just tell you.

Q. Well, how long had you known that Mr. Dickinson had this trouble? A. Well, I suppose I had known it for eight months before he went to the hospital.

Cross examination by Mr. Bonnell.

Q. He has had a steamboat captain's license, been running a boat all summer, hasn't he? A. That is this summer.

40

James H. Matthews—Cross

Q. And all the time during this time? A. That is this summer.

Q. And last year, too? A. Last Fall, late in the Fall.

Q. He was never so that he couldn't tell who you were when you were around, was he? A. I think so. 10

Q. He could always tell who you were, couldn't he? A. Not always, no.

Q. You went to Bradley's the day of the accident, didn't you, Bradley's house? A. No, sir.

Q. Didn't you stop at Bradley's house about a half hour of the accident and come up there and ask them what was going on there? A. No, sir.

Q. And ask them to give you some particulars of the accident? A. No, sir, I did not. 20

Q. You were not at the accident until half an hour or more after, yourself? A. I was at the accident about ten minutes after it happened.

Q. Who was there when you got there? A. I could name lots of people that was there.

Q. Was Mr. Tayylor there? A. I don't know Mr. Taylor.

Q. Who was there in charge? A. I don't know who was in charge.

Q. Well, did you see anybody there in charge? A. No. 30

Q. A policeman in citizen's clothes? A. No, no policeman.

Q. Was the State police there when you got there? A. No.

Q. Who was in charge there? A. Nobody that I know of was in charge. I know there was a young man—when I stopped there I said, "How about this man, Mr. Meadows, ain't you going to give him first-aid?" He said, "No, leave him 40

James H. Matthews—Cross
Wallace F. Hebenthal—Direct

there, he is drunk; leave him there," and I went over to Mr. Meadows and was talking to him. I said, "Bill, are you hurt?" He said, "Well, I feel bad." I said, "You better get out of the car." He said, "No, they want me to stay here." I said, "All right".

Q. You were not there when this officer from Wildwood tried to get him out of the car and he wouldn't get out? A. No.

Q. All you wanted to do when you got there after the State trooper had ordered him to stay there, you wanted to take him out and take him away so he couldn't see him? You were one of those three, weren't you? A. No, not at all.

20 *By Mr. Bell.*

Q. Did you smell any liquor on Mr. Meadows' breath at the time you were there? A. No, sir.

By Mr. Bonnell.

Q. How long have you known Mr. Meadows? A. I have known Mr. Meadows, where he lived, for a long time, but I never knew Mr. Meadows personally.

30 Q. Do you take liquor sometimes? A. No, sir, positively not.

WALLACE F. HEBENTHAL, SWORN:

Direct examination by Mr. Bell.

Q. Mr. Hebenthal, where do you live? A. Cape May.

Q. Were you on Route 4 on November 24, 1933? A. I was.

Wallace F. Hebenthal—Direct

Q. Did you see an accident there? A. I did. I didn't see it happen.

Q. But you saw the scene of the accident? A. I saw the cars after the accident.

Q. How long after the accident were you there? A. Well, I can't tell exactly, but it was an extremely short time. 10

Q. Were there very many people there when you arrived? A. When I pulled up to the cars and passed them I recall seeing no one there.

Q. Then you were one of the first that arrived? A. I was.

Q. Who was with you? A. My mother and another lady.

Q. Who was the other lady? A. Mrs. Bowner.

Q. What did you see when you arrived there? A. Well, the two cars were there off the road, completely off the road. 20

Q. On which side of the road? A. On the right-hand side going toward Cape May.

Q. Which way were you coming that day? A. I was going towards Cape May.

Q. Now, go ahead with what you saw. A. Well, I came around the turn and I saw the two cars parked off the road and at first I didn't know it was an accident, because the damage wasn't so clearly visible from my side until I got close to them, and as I passed by the cars I saw the track of Mr. Meadows' car in the dirt on the right-hand side of the road for approximately thirty or forty feet, and then they turned abruptly to the right and went off the road completely and up towards the embankment, and I could see the marks of Mr. Heilman's car from where they left the concrete until they went side by side with Mr. Meadows' car up towards the embankment also, but not quite as far, and then I drove just beyond the cars 30 40

Wallace F. Hebenthal—Direct

—by the way, when I was passing Mrs. Bradley's house, Mrs. Bradley was running out in the front yard, but she hadn't yet crossed the road when I drove by. I drove down beyond the cars and parked and got out of my car and walked back, and as yet I hadn't seen anyone in either car, and as I walked back I saw Mr. Heilman sitting in his car. He was sort of slumped down in the seat and you couldn't see him very well unless you were close. I immediately ran up to the side of the car and asked him if he was hurt and he said yes, he thought his leg was broken. So I got the car door open and I went around and backed my car up side by side with his car and I opened my car door, and about that time an ice cream truck drove up and the driver got out, and in the meantime Mr. Bradley and his son were there and they came over, and with their assistance and that of another man whom I don't know, who came across the field, I imagine, because there was no car there for him, we got Mr. Heilman out and got him in the car, and then I asked him if there was anyone else with him and he said no, and I went around to the other car and asked Mr. Meadows if he wanted to go to the hospital, too, if he was hurt, and he said no, he wasn't, but he seemed to be injured. He had a blow upon the forehead and there was blood upon his forehead and he kind of seemed as if he was dazed, he didn't know what he was doing, so I opened the car door and put my arm under his shoulders and undertook to lift him out, and he said he didn't want to go and he struggled with me, sort of. He waved his arms around. He could move both arms and both legs and he didn't appear to be seriously injured, so I closed the door and left him there, and I went back and got in my car and drove to Wildwood.

Wallace F. Hebenthal—Cross

Q. It was perfectly daylight at the time you came there? A. It was.

Q. Then you took Reverend Heilman to the hospital at Wildwood, did you? A. Yes, sir.

Q. When you were over beside Mr. Meadows, trying to get him out of his car, did you smell any liquor on his breath? A. Not at all. 10

Q. Did you have any conversation with Reverend Heilman? A. You mean at the scene of the accident?

Q. At the scene of the accident or on the way to the hospital? A. Well, at the scene of the accident I don't remember saying anything to him except asking him if he was hurt, and on the way to the hospital I had considerable conversation with him.

Q. What did he tell you about the accident? A. 20
Well, he didn't seem to know anything about it. He was in a very dazed condition and he didn't even know he had had an accident. He couldn't realize how his leg was broken or why, and when I told him he had had an accident and where it had happened, he didn't even recognize the name of the place where it had happened. He was what you might term semi-conscious, and yet he didn't know anything. All he knew was what his name was and where he lived. He was in a very serious condition. 30

Cross examination by Mr. Bonnell.

Q. He was in a very serious condition, then, at that time? A. He was, very.

Q. Injured badly? A. He seemed that way to me.

Q. You remember stating—did you make the statement you thought Mr. Meadows that day was intoxicated to anyone? A. No, sir. 40

Lillian Hebenthal—Direct

Q. You remember being out with Mrs. Frank Hebenthal, don't you? A. That's my mother, yes.

10 Q. Where she stated her son and she had thought that he was intoxicated? Did you have any talk with her about that, that day? A. Why, I left her at the scene of the accident.

Q. Did you have any talk that day that you and she thought Mr. Meadows was intoxicated? A. Why, he acted as if he was sort of dazed, which could possibly have been intoxication.

20 Q. When you got there you say he struck at and struggled with you and wouldn't get out of the car? A. He didn't exactly struggle. He pulled his arm away and tried to pull away from me. You wouldn't call it struggle. He was too weak to struggle.

Q. Did he make any remarks? A. He said he wanted to stay there, he didn't want to go, he wanted to stay until the officers came.

LILLIAN HEBENTHAL SWORN:

Direct examination by Mr. Bell.

30 Q. Mrs. Hebenthal, where do you live? A. Cape May.

Q. Were you riding with your son on November 24, 1933, on Route 4? A. I was.

Q. Do you recall coming to the scene of the accident below Bennett Station? A. I do.

40 Q. What did you see when you got to the scene of this accident? A. Well, I saw two cars standing at the side of the road, and at first I thought they were just parked, as my son did, but after I looked the second time I saw these men in the

Lillian Hebenthal—Cross

cars, and I says: "There has been an accident," and I was all excited and upset over it.

Q. Did you see any tracks in the roadway of either of the cars? A. I did back of Mr. Meadows' car for—well, I should say the length or two lengths of his car back of him, and then afterwards—I didn't look at that until afterwards. 10

Q. What side of the road were those tracks on? A. On the right-hand side going towards Cape May.

Q. How far did you follow those tracks? A. Well, when I looked there was cars parked over it, and as far as I could see, they went—the tracks ended under the other cars that were parked back of him.

Q. Did you talk to Mr. Meadows? A. At that time? 20

Q. At that time. A. I don't just recall what I said to him, but I went up to him and said something to him. I just forget what, and he kind of scrooched away from me like that. I had my head right up to the side of the car right in the window.

Q. Did you notice any odor of liquor on his breath? A. I did not.

Cross examination by Mr. Bonnell.

Q. Did he talk to you that day, Mrs. Hebenthal? A. Who? 30

Q. Mr. Meadows. A. No, I don't know as he said a word to me. I don't recall it.

Q. You remember making a statement when you were asked what condition Mr. Meadows was in that day, you said, "I thought he was full, intoxicated, he had that reputation". What made you say that? A. I had heard of those things, but I had never seen him intoxicated, and I thought I 40

Harry L. Kehr—Direct

would get close to him and see if I could smell anything on his breath, and I didn't smell a thing.

Q. You didn't talk to him, you say, on that day?

A. Not any more than I said something, I don't know just what it was, and he scrooched away from me like.

10 Q. You did make that statement, did you not, you thought he was full, intoxicated? A. That was my thought, and I went, perhaps, to see if I could smell anything on him.

Q. But you did think he was intoxicated from his actions that day? A. I don't think anything like that until I am sure.

Q. But you made that statement? A. Well, I said that was my impression and I was trying to find out.

20

HARRY L. KEHR, SWORN:

Direct examination by Mr. Bell.

Q. Mr. Kehr, where do you live? A. Cape May City.

Q. What is your business? A. Automobile dealer.

Q. How long have you been in that business? A. Since 1910.

30 Q. Do you have an impairment in your eyesight at the present time? A. Yes, I do.

Q. How long have you had that impairment? A. I was taken the 19th of February. I lost my sight in five days.

Q. That was February of this year? A. The 19th of February of this year.

Q. Prior to the time your eyesight was all right? A. Well, it wasn't 100%, but I could read or drive or anything of that kind.

40

Harry L. Kehr—Direct

Q. Were you called to the scene of an accident on Route 4 on November 24, 1933— A. Yes.

Q. —at about Bennett Station? A. Yes, sir.

Q. What time did you get to the scene of the accident? A. Shortly after five.

Q. Was it daylight when you arrived there? A. No, sir. 10

Q. It was about dusk? A. About dusk.

Q. What did you find when you got to the scene of the accident? A. When I arrived at the scene of the accident I found—I saw two cars on the right-hand side of the road, that is, on the right-hand side of the road coming towards Cape May, and they were headed towards the railroad track. They appeared as though you would pull off the road towards the railroad and standing diagonal. The two cars were nearly parallel, possibly a little closer at the front than they were at the rear, but there was just room between the two cars to walk through, because I walked through between the two cars. 20

Q. Did you do anything with the cars? A. Well, we were ordered by the State police to take the cars in and hold them until they notified us to release them.

Q. Did you take the cars away? A. Yes, sir. 30

Q. Personally? A. Well, on the way out I stopped at my other station and got Mr. Wilson to go along with me to help me, because I didn't know how big a job it was, and Douglass Wilson and I together took the cars away.

Q. Did you later make an inspection of Mr. Meadows' car? A. Yes, sir, I examined both cars.

Q. How long were these cars at your place? A. Well, immediately after the accident we took Mr. Heilman's car from the scene of the accident to 40

Harry L. Kehr—Cross

my station on Mill Lane and Route 4, and I left that there and went back and got Mr. Meadows' car and took that in to Cape May where we do our repairing, and then went back and brought Mr. Heilman's car into Cape May.

Q. How long did they stay in your place there?

10 A. Mr. Heilman's car was called for that night by a garageman from Wildwood, stating it was Mr. Heilman's wish that the car be taken to his place, so that car left the same night. Mr. Meadows' car stayed—Mr. Meadows' car I stored from the time of the accident until—I don't know the exact date that they took it away, but it was after I lost my eyesight.

Q. Did you make an examination of Mr. Meadows' car with an idea of seeing what it would take
20 to repair it? A. Why, if I can recall it correctly, I made an estimate at the time of the cost of repairs of the damage done to both cars.

Q. Do you recall what your estimate was concerning Mr. Meadows' car? A. I am not certain, but I think it was in the neighborhood of \$225.00.

Q. Did you see any tracks around the scene of the accident at the time you were there? A. Well,
30 when we were putting the chains around the front axles and bumpers to raise the cars up, there was some glass there and the road was dug up where one of the cars swung—I don't know which one, but you could see around there some marks in the dirt.

Cross examination by Mr. Bonnell.

Q. Mr. Kehr, did you notice in the general direction of the cars which way they faced, whether they were pointing towards Cape May or straight
40 in? A. The cars appeared to me to be off the

Ada C. Lafferty—Direct

road on the right-hand side coming to Cape May, pointing towards the railroad track a sort of a diagonal position.

Q. Was the diagonal position pointing toward Cape May or north? A. Pointing towards Cape May.

10

A recess was taken until 1.30 P. M.

AFTERNOON SESSION, 1.30 P. M.

Mr. Bell: If your Honor please, the defense rests.

Defense rests.

PLAINTIFF'S TESTIMONY IN REBUTTAL.

20

ADA C. LAFFERTY, SWORN:

Direct examination by Mr. Bonnell.

Q. Where do you reside, Mrs. Lafferty? A. West Cape May.

Q. Do you know where Levi Dickinson lives in Irma? A. Yes, sir.

Q. Were you at Levi Dickinson's on November 24, 1933? A. I was passing there in a car.

Q. What time in the afternoon, Mrs. Lafferty? A. Between four and four-thirty. 30

Q. Whom did you see there at that time? A. I saw a car at the side of the road, and Mr. Meadows at the side of the car.

Q. What was Mr. Meadows doing at that time? A. He was standing about two feet from the—or three feet, probably, and he was in a staggering condition.

Q. In what condition? A. He was staggering, or very unsteady on his feet. 40

Ada C. Lafferty—Direct

Q. Just state what he did to the jury. State what actions he was going through. A. Shall I stand and just show you?

Q. Yes. A. He seemed to be just this way (indicating).

Q. That was about four-thirty in the afternoon?

10 A. Between four and four-thirty. I didn't notice just exactly the time, but I know about that time.

Q. Was that just prior to this accident?

Mr. Bell: I object to that unless she can tell.

Mr. Bonnell: I mean if she knows about the accident.

Mr. Bell: She has not been able to tell definitely what time this was, and unless she can I move to strike it out.

20

A. I was on my way home to start my supper, and I know it was after four o'clock.

Mr. Bell: I move to strike this testimony because it was sometime prior to this accident and the witness does not know exactly when it was, and it is irrelevant and immaterial and too remote.

30

The Court: I do not think I can say it is too remote, having in mind all of the testimony relating to the time this accident occurred. The testimony differs to some extent. It covers a larger period of time. The plaintiff testified that to his recollection the collision occurred sometime between four and five, a difference of almost an hour.

Mr. Bonnell: The purpose is rebuttal. The defendant testified that he was not at Dickinson's place that afternoon, and this witness places him there.

40

Alice Bradley—Direct

The Court: Yes, but you are asking her now as to his condition. The motion to strike will be denied.

(An exception was noted for the defendant.)

No cross examination.

10

ALICE BRADLEY, recalled:

Direct examination by Mr. Bonnell.

Q. Mrs. Bradley, you know Mr. Matthews, who was on the stand this morning? A. Yes.

Q. You heard his testimony that he wasn't at your place the day of the accident? A. Yes.

Q. Was he at your place at or after the accident? A. Yes, sir.

20

Q. About how long after the accident? A. Just exactly thirty minutes.

Q. When he came there what did he state to you about the accident? A. He asked me if anyone had been killed or hurt.

Mr. Bell: I object to this. I cannot see that that would be binding on us. Mr. Matthews has made statements here as to what he saw at the accident, and I cannot see that anything he said about it would be material to this case.

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The Court: That is not the purpose. The purpose is, I presume, to contradict Matthews.

Mr. Bonnell: Yes. I asked him the question this morning if he had talked to this lady and he said no.

The Court: On strict rebuttal, however, you should direct to this witness the very question you addressed to Matthews.

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William Charles Heilman—Direct

Q. At that time I addressed to Mr. Matthews whether it was after the accident when he came there and he stated not. Is that true? A. Thirty minutes after, exact.

Q. I also asked him if he didn't at that time ask you what the accident was about. A. He did, and
10 his wife, too.

Q. I also asked him if that wasn't the first time he had come up to the accident. A. It was.

No cross examination.

WILLIAM CHARLES HEILMAN, recalled:

Direct examination by Mr. Bonnell.

Q. Reverend, you heard the testimony here of
20 a Mr. Ludlam, stating that he saw a car like your car come past him at considerable speed and go into the corner of the rut in the roadway. Did you come up the road at any time with any speed that day? A. I did not.

Q. Did you at any time strike any corners of the road at that time? A. Not that I know of. My mind was on my fan. I was worried about that, and I was driving slowly so as to listen to that fan, whether it was striking against the
30 radiator.

Q. In other words, you didn't come up at any great speed of fifty miles or sixty miles an hour at that time? A. I did not.

No cross examination.

TESTIMONY CLOSED.

The Court's Charge to the Jury

(The following motion was made in Chambers:)

MOTION TO DIRECT VERDICT FOR DEFENDANT.

Mr. Bell: If your Honor please, I should like to make a motion for a directed verdict in favor of the defendant at this time, due to the fact that the plaintiff has failed in any way directly to connect the defendant with this accident. There is absolutely no evidence that the defendant operated his car in a negligent manner. 10

The Court: The testimony in this case discloses different sets of circumstances said to have existed at the time of the occurrence of this accident, and such circumstances are productive of different inferences. In the existing state of the evidence in this case jury questions are presented, and accordingly the motion will be denied. 20

(An exception was noted for the defendant.)

The Court's Charge to the Jury.

JAYNE, J. Members of the jury: In the trial of these cases I so often think that if we had personally been standing by and witnessed the occurrence of the automobile accident itself, we would probably in most instances experience very little difficulty in determining who was at fault; but as jurors you are obliged to ascertain the existing circumstances from the testimony of witnesses, and it frequently occurs, perhaps all too frequently, that the testimony relating to the circumstances surrounding the occurrence of one of these automobile collisions is conflicting and contradictory. You therefore encounter the task of deciding in these cases what testimony relating 30

The Court's Charge to the Jury

10 to the circumstances you will accept as true and what testimony you regard as untrue and unworthy of belief. You are therefore required, where a dispute such as that existing in this case is presented, to pass upon the credibility of the testimony of the witnesses, and ultimately, by passing upon the credibility of such testimony, determine in your own minds what were the true and the actual circumstances amid which the automobile accident occurred.

20 Materially different pictures of this collision have been sketched for you, so to speak. There is testimony in this case that the plaintiff had stopped his car facing north on the easterly shoulder of the highway, and, having attempted to make some repair or adjustment of the fan on the car, had resumed his seat behind the wheel and was engaged in the act of releasing his emergency brake when the automobile of the defendant crashed into his, the plaintiff's car. If that is the true picture of this mishap, it discloses that the plaintiff's car was well over to its right-hand side of the road and was not in fact in motion at the time of the collision. But you have other testimony in the case to the effect that the plaintiff was operating his car at a rapid rate of speed, said 30 to have been from fifty-five to sixty miles an hour, in a northerly direction over this highway, and as the vehicles moving in opposite directions approached each other, the plaintiff's car was swerving and ultimately swung to its left in the path of the defendant's oncoming car.

40 I say two pictures have been sketched for you by some of the testimony. Obviously, these two explanations cannot in some particulars be reconciled. You will doubtless conclude that one or the

The Court's Charge to the Jury

other of these explanations of the occurrence of this accident is false, untrue. One or the other of the explanations, particularly with respect to whether or not the plaintiff's automobile was standing still at the easterly edge of the highway or was in fact being operated on the highway at a speed of from fifty-five to sixty miles an hour, one, I say, must be untrue. 10

Further, to aid you in your consideration of this testimony you have here a diagram; you have in evidence in the case photographs tending to indicate the positions of the respective cars after the collision had occurred, as well as the conditions of the respective cars after the occurrence of the collision. You also have some testimony in this case relating to the existence of tire marks said to have been apparent on the surface of the highway and on the shoulder. Additionally, there is some testimony from which you might infer that the defendant was under the influence of intoxicating liquor, although the defendant himself has denied it, and while other witnesses have testified that they detected the odor of alcohol upon his breath and have described to you the manner in which he acted a short time before the occurrence of the accident and immediately after the accident, on the other hand, you have some testimony of witnesses who say they observed him after the occurrence of the accident and found no evidence whatever of his use of alcohol. It is suggested in this case that those who detected an odor of alcohol may have been mistaken in concluding that it came from the breath of this defendant, and it is suggested that the odor, if present at all, may have come from the solution that was seeping or dripping from the radiator of the defendant's car. 20 30 40

The Court's Charge to the Jury

All of this conflict in the testimony creates what we speak of as questions of fact, and it is your exclusive duty, members of the jury, to solve these questions of fact.

10 Was the plaintiff's car standing on the easterly side of the highway, or was it being operated on the highway at the time of the collision? Did the plaintiff's car, that is, Dr. Heilman's car, swing to its left in front of the defendant's car? Or did the defendant's car cross to the easterly side of the highway and collide with the standing car of the plaintiff? These are certainly some of the questions of fact which you yourselves must determine.

20 It is, of course, as you appreciate, essential that you analyze the testimony relating to the circumstances, thoughtfully consider it, in order that you may visualize, so to speak, just how and in what manner and under what circumstances this collision in fact occurred. Having settled the facts, you can then undertake to apply to those facts as you find them to have existed the rules of law to which I shall refer.

30 You will understand that it is not the mere circumstance that a collision occurred between these two vehicles that justifies you in rendering a verdict for or against either one of these parties. The liability of a party for the injurious consequences of a collision such as this arises only upon proof that such person to be held liable was negligent and thereby proximately, that is, efficiently, caused the collision, as well as the injurious consequences. And so, to meet this requirement of the law, the plaintiff in this case alleges that he sustained his injuries and his losses as a proximate result of the carelessness and negligence of this defendant.

40 On the other hand, the defendant denies that he

The Court's Charge to the Jury

was in anywise negligent, and by way of counter-claim against the plaintiff, he, the defendant, alleges that this collision was solely caused by the negligence of the plaintiff, Heilman.

The party alleging negligence, whether he be the plaintiff in the main case, so to speak, or the defendant, under the counter-claim, has the burden of proving negligence as alleged, by the greater weight of the legal and credible evidence in the case. The rule to which I have just alluded applies to the affirmative causes of action of the plaintiff against the defendant and of the defendant under his counter-claim against the plaintiff. 10

Negligence, about which we hear so much in the trial of these cases, is a word that I think we all use in general conversation. Negligence, as it is to be understood in law, is the failure to exercise reasonable care. Reasonable care is not that high or extreme degree of care that makes one an insurer of the safety of others, but reasonable care is said to be that degree of care that an ordinarily prudent person would exercise and employ in the same or like circumstances. 20

So, having determined the circumstances amid which this collision occurred, you are then obliged to decide in this case whether the plaintiff, in the existing circumstances, was negligent or whether the defendant, in the existing circumstances, was negligent. Of course, in normal circumstances both of these drivers had an equal right to the use of the highway, but each in the use of the highway was under the duty to exercise reasonable care and caution for the safety of others lawfully using the highway. 30

Again, there is no rule of the road better known, I think, than that which requires us to keep to 40

The Court's Charge to the Jury

the right, except under certain circumstances. Keep to the right is an old rule of the road that has prevailed since long before the advent of automobiles. The rule keep to the right, incidentally, has been perpetuated by our statute in this State which we commonly speak of as the Traffic Act, governing the operation of vehicles on our public highways, and we find in this statute the following provision: "Upon all highways of sufficient width, except upon one-way streets, the driver of a vehicle shall drive the same upon the right half of the highway and shall drive a slow moving vehicle as closely as possible to the right-hand edge of said highway, unless it is impracticable to travel on such side of the highway, and except when overtaking and passing another vehicle," subject to the limitations otherwise set forth in the Act. A further provision is: "Drivers of vehicles proceeding in opposite directions shall pass each other to the right, each giving to the other at least one-half of the available traveled portion of the highway, as nearly as possible."

So that if these vehicles were proceeding over this highway in opposite directions, the rule of the road, so to speak, required these drivers to keep to the right of the center of the highway in the direction in which they were respectively proceeding. But what were the true circumstances under which this collision occurred? If you conclude that the defendant, Meadows, was intoxicated, that he failed to have his vehicle under proper control as he was proceeding down this highway, and that he crashed into the plaintiff's standing automobile, and that it, the plaintiff's car, was on the easterly side of the highway, then I surmise that you will determine under such

The Court's Charge to the Jury

circumstances, if you conclude they were the circumstances, that the defendant was negligent and careless.

I pause here to say to you that intoxication is no excuse in a case of this nature. One cannot voluntarily become intoxicated and attempt to operate an automobile over the public highways of our State and then escape responsibility for the injurious consequences of his carelessness and his neglect. There is, perhaps, no more serious menace to the lives and safety of travelers on the highway than the drunken driver of an automobile. But mind you, I do not say here that this defendant was intoxicated on the occasion of this collision, nor do I say that if he was intoxicated, he was negligent in the manner in which he operated his automobile on this occasion; because these are questions for you to determine and not for me. It is my duty to rule upon the legal questions presented throughout the progress of this trial and to instruct you with regard to those rules of law which may be applicable to the facts as you may find them. It is your duty, and indeed exclusively yours, to pass upon all questions of fact which arise out of a conflict of testimony. And let me add that this is not a case in which the defendant is being prosecuted for driving an automobile while under the influence of liquor. You are not concerned with that phase of it at all. The question in this case is, in its relation to the condition of this defendant, whether or not he was negligent in the operation of his automobile. And so if you conclude that the defendant was under the influence of liquor on the afternoon of the occurrence of this collision, should you also conclude, if you should, that the plaintiff here has failed

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The Court's Charge to the Jury

10 to prove that the defendant was negligent in the operation of his automobile, then, even though the defendant was intoxicated, if the plaintiff has failed to prove that he was negligent in the operation of his automobile, the plaintiff cannot recover; because to recover against the defendant in this case the plaintiff must prove, regardless of the cause being a state of intoxication or not, that the defendant was negligent. If, however, the plaintiff has satisfied you by a fair preponderance of the evidence that this defendant, perhaps due to his state of intoxication or over-indulgence, negligently operated his automobile, and thereby solely and proximately caused this collision, then the defendant should be held fully
20 accountable in damages for the injuries and losses sustained by this plaintiff as a proximate result of his negligence.

It is not necessary that the plaintiff should satisfy you that the defendant was intoxicated. It is only incumbent upon the plaintiff to prove by a fair preponderance of the evidence that the defendant was negligent in the manner in which he operated his car on this occasion and thereby proximately caused this collision.

30 You are obliged in this case, by reason of the defenses interposed both to the complaint of the plaintiff and the defenses interposed to the counter-claim, to consider the contributory negligence, if any, of each of these drivers. Contributory negligence is said to be present in a given case when the injured person was negligent himself and by his own negligence has contributed in such a manner to the occurrence of the collision that, in the absence of his own negligence, he would have

The Court's Charge to the Jury

suffered no injury from the negligence of the other driver. So if either of these parties was guilty of contributory negligence, as I have defined it, then such party cannot recover against the other. If you should conclude that both were guilty of contributory negligence, as I have defined it, then neither of them can recover against the other. Contributory negligence, however, is a matter of defense and the burden of proving it falls upon the party who asserts it as a defense in the action. 10

There is yet another branch of the case to which I am obliged to refer. I have said to you, as have counsel in their summations, that the defendant has filed here what we speak of as a counter-claim, in which he, the defendant, asserts that this collision was solely and proximately caused by the negligence of Mr. Heilman. A counterclaim is in effect a counter action being prosecuted by the defendant against the plaintiff. In the prosecution of a counter-claim a defendant as a litigant occupies the same position, insofar as proof of the counter-claim is concerned, as a plaintiff. And so all that I have said to you concerning the burden of proof, proximate cause and contributory negligence in its application to the plaintiff's case against the defendant applies with precisely the same effect to the alleged cause of action of the defendant under his counter-claim against the plaintiff. 20 30

Therefore, you have three possible decisions at which you might arrive in this case, depending upon your view of the evidence. If the plaintiff was not guilty of contributory negligence, as I have defined it, and if the plaintiff has satisfied you by a fair preponderance of the evidence 40

The Court's Charge to the Jury

that the defendant by his negligence proximately caused this collision, then you will render a verdict in favor of the plaintiff. If you conclude that the defendant here was not guilty of any contributory negligence, as I have defined it, and that the defendant has satisfied you by a fair preponderance of the evidence that this collision was proximately caused by the negligence of Mr. Heilman, then you will find a verdict in favor of the defendant on his counter-claim against the plaintiff. If you should conclude that both of them are guilty of what I have spoken of as contributory negligence, then neither can recover against the other and you will render a verdict of no cause for action as against the alleged causes of action of each of them against the other.

In the plaintiff's case, as well as under the counter-claim, you are asked to award damages for bodily injuries and for injury to an automobile. In awarding damages for bodily injuries, the law permits you to consider the bodily injuries that such party has sustained, the nature, the extent and the degree of severity of any such injury. You will consider the pain and suffering the injured person has undergone, and will in reasonable probability undergo in the future, if any. You will consider the effect of any such injury upon the physical capacity of the party, having in mind again whether the effects of any particular injury which he sustained are temporary or whether, in reasonable probability, they are permanent in character. Having considered these elements, you will then award to such injured party in whose favor you have determined to render a verdict such sum in damages as in your sound judgment will fairly and justly compensate

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The Court's Charge to the Jury

such injured party for the bodily injuries and for the elements of damage to which I have referred.

Speaking now generally with regard to the claims for damages for injury to the automobiles, the rule of law governing the allowance of damages for an injury to an automobile is that the owner shall be entitled to recover, if the verdict is to go in his favor, a sum equivalent to the difference between the value of the automobile immediately before the accident and its value immediately after the accident. There is testimony in this case indicating that the defendant, Meadows, sustained in this collision a laceration on his forehead, bruised chest, some injury to his nose and to his abdomen, as I recall the testimony, from some or all of which injuries he says he suffered some pain. 10 20

Turning then to the plaintiff in this case, the testimony indicates that he suffered rather severe shock, a laceration over his right eye from two to three inches in length, which in healing has resulted in an elevation of the right eyebrow; he suffered a laceration of his right lip; his chest was bruised; he sustained a transverse fracture of the ulnar bone of the left arm, some injury to the kneecap on his right limb, as I recall, and a transverse comminuted fracture of the femur bone of the right leg. It is said that this fracture of the femur bone was of such a character and nature and so comminuted that no union of the severed bones has yet resulted. The testimony has disclosed for your information the period of the plaintiff's confinement in the hospital for treatment, the pain and suffering he has undergone, still using a brace, still using crutches. There is testimony expressive of the opinion that the frag- 30 40

The Court's Charge to the Jury

ments of this bone, referring to the femur bone, will probably never unite in the absence of some operation to remedy the existing condition. Then you have some testimony descriptive of the nature and type of the operation suggested and referring to the probable result of such an operation.

10 In addition to damages for his bodily injuries, the plaintiff, if he is entitled to recover in this case, will be entitled to have included in the award the expenses which were made necessary in consequence of his injuries. I recall testimony of the following items of expense: Hospital bill of \$854.00; cost of the services of an attendant at home amounting to \$100.00; cost of the brace, \$48.00; which, according to my calculations, total the sum of \$1,002.00.

20 In the event that you determine to award damages to the defendant against the plaintiff on his counter-claim, there is testimony in the case that the defendant was obliged to make two disbursements, I think, amounting in the aggregate to some \$5.00 for the services of a physician to attend him. The testimony, as I recall it, relating to the depreciation in the values of the respective cars is as follows: Plaintiff's automobile was reasonably worth from \$400.00 to \$450.00 immediately before the accident, and worth \$50.00 after the accident. Defendant's automobile is said to have been worth from \$500.00 to about \$545 immediately before the accident, and there is testimony from which you might conclude that the vehicle was worth \$250.00 after the accident.

30 I have mentioned these injuries which these parties are said under the testimony to have sustained and items of expense and the figures concerning the depreciation in the value of the cars
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The Court's Charge to the Jury

simply in a general way to refresh your recollection of the testimony. I have been able to do so because I have kept some notes and memoranda of the injuries, the expenses and the figures to which I have referred. But let me say here that my references to this testimony, as well as to all other testimony in the case, are made with the distinct understanding that it is your recollection of the testimony by which you are to be entirely guided and influenced, in not only the determination of all questions of fact but in the determination of the damages to be awarded. 10

Now, members of the jury, give this case your thoughtful and impartial consideration, and, in order that there may be no unintentional error or irregularity in rendering your verdict, let me in conclusion refer in an alternative way to the possible verdicts that you might render in this case, depending, of course, on how you shall decide it. Do not overlook disposing of the counter-claim, because it is part of this case. So, for example, if you should conclude that the plaintiff should recover, having in mind, of course, all the rules of law that I have expressed, you will then return a verdict in favor of the plaintiff, stating the amount of damages that you have determined to award the plaintiff, and you will return a verdict against the defendant, if you so decide, of no cause of action on his counter-claim against the plaintiff. If, on the other hand, you conclude that the defendant here ought to recover on his counter-claim against the plaintiff, and that the plaintiff ought not to recover, then you will return a verdict in favor of the defendant against the plaintiff and state the amount of damages to be awarded to the defendant, and a verdict of no cause of action on the plaintiff's case against the defendant. 20 30 40

Defendant's Exceptions

I think of nothing further that it is necessary for me to add.

DEFENDANT'S EXCEPTIONS.

10 Mr. Hartpence: If your Honor please, the parts of your Honor's charge to which the defendant desires to note exceptions are these:

First, in submitting to the jury the determination of the factual case, not because it is not their function to determine the facts, but because we feel your Honor should have directed a verdict in favor of the defendant.

20 To those parts of your Honor's charge where you refer to what the jury might infer from the evidence with regard to the defendant's car crossing over to the plaintiff's side of the road and crashing into the plaintiff's car, because we think there is no evidence in the case to sustain even a comment on that fact.

Where you also refer on several occasions to the function of the jury to determine whether or not the defendant was intoxicated and what the effect of that intoxication would be, because we feel that the facts in the case were positively the other way and did not warrant such a comment
30 upon the evidence.

Where your Honor specifically charged them: "If you conclude that the defendant was intoxicated and did not have the car under control and crashed into plaintiff's car, I surmise you will find in favor of the plaintiff." In the first place, we do not think that the intoxication is the test, and, secondly, there is no evidence to show that the defendant's car crashed into the car of the plaintiff.

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Defendant's Exceptions

Where you charged to the jury that intoxication was no excuse and there was no more serious menace on the road, and a driver cannot drive on our highways while intoxicated, because we think that was not warranted by the proofs in the case.

"If you find that the defendant, due to intoxication, was negligent in the operation of the car, then the defendant should be held fully accountable." We think that the proofs did not warrant that. 10

Finally, where on the question of damages you charged the jury that they should find such sum, if they find in favor of the plaintiff, as, "In your sound judgment will fairly compensate the injured party entitled to recover for the injuries he has sustained." We think that leaves it too much to the conjecture of the jury as to what they might think governed the amount to be found, rather than what the law specifically empowers them with the duty of finding. 20

(Which exception is hereby noted.)

(Following is a repetition of the statement made by Mr. Bell to the Court concerning the proposed proof to be given by the witness LeRoy Wilson:)

Mr. Bell: The statement we made to the Court was that we proposed to prove by the witness, Kidder Wilson, that the plaintiff had made a statement to him that he had made a trip from Wildwood to Philadelphia with the Essex in an hour and ten minutes, and that he had boasted about other trips. That was all I told the Court, just that. I think I have repeated what I told the Court. 30

Notice.

(Filed April 18, 1935.)

NEW JERSEY SUPREME COURT,
CAPE MAY COUNTY.

10

WILLIAM CHARLES HEILMAN,
*Plaintiff,**vs.*WILLIAM J. MEADOWS,
*Defendant.*Action at Law.
On Rule to
Show Cause.

To:

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KATZENBACH, GILDEA & RUDNER, Esquires,
Attorneys for Plaintiff,*Sirs:*

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PLEASE TAKE NOTICE, That, on Saturday, November 10th, 1934, at 9:30 o'clock in the forenoon, and from time to time thereafter until the same are completed, we will take the depositions of witnesses in support of the rule to show cause why the verdict rendered in above stated cause should not be set aside and a new trial granted, heretofore allowed and entered herein, pursuant to the terms of said rule, before C. W. Myrose, Esquire, a Supreme Court Examiner, at the Court House of Cape May County, in Cape May Court House, New Jersey, at which said time and place you may

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Notice

attend and cross examine said witnesses, and take the testimony of other witnesses, if you so desire.

Dated, November 5, 1934.

Yours, etc.,

WALL, HAIGHT, CAREY & HARTPENCE, 10
Attorneys for Defendant.

(Indorsed.)

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

JOHN A. HARTPENCE, of full age, being duly sworn, according to law, on his oath says that on November 5th, 1934, at the hour of 11:00 o'clock in the forenoon, he served a true copy of the within Notice on Katzenbach, Gildea & Rudner, the attorneys for the plaintiff, by leaving same at their designated office, 1112 Trenton Trust Building, Trenton, N. J., with William V. Lee, Esquire, their associate who has been conducting the case. 20

JOHN A. HARTPENCE.

Sworn to and subscribed }
before me this 5th day } 30
of November, A.D. 1934. }

JAMES R. LAIRD, JR.,
Master in Chancery of New Jersey.

Depositions.

(On Rule to Show Cause.)

NEW JERSEY SUPREME COURT,
CAPE MAY COUNTY.

10

WILLIAM CHARLES HEILMAN,
*Plaintiff,**vs.*WILLIAM J. MEADOWS,
*Defendant.*Action at Law.
On Rule to
Show Cause.

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Depositions taken before Claude W. Myrose, a
Supreme Court Examiner, on November 10, 1934,
at the Court House, Cape May Court House, New
Jersey, pursuant to order, a copy of which is
hereto attached.

Appearances:

For plaintiff: Messrs. Katzenbach, Gildea &
Rudner (Mr. Lee appearing), and Charles
A. Bonnell, Esq., of counsel.

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For defendant: Messrs. Wall, Haight, Carey
& Hartpence (Mr. Hartpence appearing),
and Robert K. Bell, Esq., of counsel.

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IT IS HEREBY STIPULATED and agreed that the
depositions may be taken stenographically, after-
wards reduced to typewriting, and the signatures
of the witnesses waived, and that the transcript
of the depositions may be used on the argument
of the rule or wherever required without the pro-
duction of the stenographer who reported the
same.

Irene Freideman—Direct

IRENE FREIDEMAN SWORN:

Direct examination by Mr. Hartpence.

Q. Where do you live, Mrs. Freideman? A. Mayville.

Q. You were one of the jurors, were you not, upon the trial of this case between William Charles Heilman, plaintiff, and William J. Meadows, defendant, on October 10th, 11th and 15th, 1934? A. I was. 10

Q. At any time while that case was being tried, from the time it started until your verdict was rendered, did you have an occasion to or did you talk about the case with anybody except the members of the jury that was trying the case? A. No, I didn't.

Q. Did anybody except the other eleven people that were on that jury with you talk to you or say anything to you about the case during the progress of the trial? 20

Mr. Lee: I want to enter an objection on the ground that this is apparently an attempt to impeach the verdict of the jury. So that we can save time, I want to object to all questions along this line, particularly from this witness, without objecting specifically to each question. 30

Mr. Hartpence: If you have a specific objection other than that one, you will have it noted specially?

Mr. Lee: Yes.

(The question was repeated.)

A. Only just one day in the ladies' room they asked me what I thought of the trial and I said I didn't know what to think of it. That was all I 40

Irene Freideman—Direct

said and that was all that was ever said to me about it.

10 Q. When was that? Which day of the trial? Do you recall? A. Well, it must have been Monday, because there was no other ladies on the jury or anybody else here on Thursday of the trial, and nobody was here with me except my daughter, and I don't remember being in the ladies' room with anybody else.

Q. Where did you say that happened? A. In the ladies' room.

Q. Here in the court house? A. Yes.

Q. That is the ladies' retiring room? A. Ladies' lavatory.

20 Q. Who were those people who spoke to you in that way? A. Well, I couldn't begin to tell you to save my life who they were. I went in there, I think, by myself and there were several ladies in there and just one among them, I don't know who it was said, "What do you think of this case?" and I said, "I don't know what to think of it; one time you think one thing and the next time another so," I said, "I couldn't say".

Q. Were any of those ladies also members of the general panel of jurors?

30 Mr. Lee: I object to that. The witness has already said she did not know who they were.

Mr. Hartpence: I am asking her specifically now to try to find out, if we can.

A. They could have been. I wouldn't say positive that they were.

Mr. Lee: I will move to strike that because she has not identified them in any way.

Irene Freideman—Direct

Q. Do you know Irene Austin? A. Yes.

Q. Was one of the ladies there in the retiring room at that time Irene Austin?

Mr. Lee: I object to that because it has been previously asked and answered twice.

A. I tell you I couldn't say. I couldn't say. No, I couldn't, because I made my errand as briefly as possible and came out about my business. 10

Q. Was one of the ladies there in the retiring room Lena V. Robbins?

Mr. Lee: I object to that for the reason the witness stated she is unable to identify any of them.

A. I couldn't say that, either.

Q. You know Lena V. Robbins, do you? A. Yes, I know Mrs. Robbins. 20

Q. You were the only woman who sat on the jury in the trial of this case, weren't you? A. Yes.

Q. Don't you recall that at that time that you have referred to in the ladies' lavatory, when you say you heard these people say these things, that one of those ladies stated to you that there was an insurance policy covering the defendant? A. No.

Q. And that that insurance policy was for \$5,000.00? A. No, I didn't. 30

Q. And that therefore it would be a good point to render a verdict for more than \$5,000.00?

Mr. Lee: I object to that because the witness has said she does not remember any conversation of that character.

A. No, I didn't.

Q. And that is all you can remember about the conversation that took place on that occasion? A. That is all. That is all I can remember. 40

Irene Freideman—Direct

Q. You didn't talk with anybody else about this case outside the jury that was trying it— A. No.

Q. —during the whole time that the case was on trial? A. No.

10 Q. Did you know as a matter of fact that there was an insurance policy covering Mr. Meadows, the defendant?

Mr. Lee: I object to that as being highly improper, immaterial, and a further attempt to impeach the verdict of the jury.

A. No, I didn't.

20 Q. During the course of the trial, Mrs. Freideman, prior to the rendering of the verdict, up to the time of rendering the verdict, did you know of your own knowledge that the automobile driver's license of Mr. Meadows, the defendant, had been revoked about a year previously to the trial because of alleged drunkenness?

Mr. Lee: I object to that as immaterial and as a further attempt to impeach the verdict of the jury. Further, on the ground that there is no testimony in the trial in any part of it relating to the revocation or alleged revocation of the driver's license of Mr. Meadows.

30 A. Well, I had heard it talked about at the time of the accident, was all. That is all I did know of it.

Q. So that you did know that prior to the time your verdict was rendered? A. I just heard it the day or maybe the day after the accident. They said—I didn't even know the gentleman. I never saw him until he came in Court. I just heard them talking about it the day of or after the accident.

Irene Freideman—Direct

Mr. Lee: I move that testimony be stricken for the reasons stated above.

Q. As a matter of fact, Mrs. Freideman, wasn't that circumstance of the revocation of his driver's license discussed in the jury room by the jury at the time that you were considering your verdict? 10

Mr. Lee: I object to that as being highly improper and as being a further attempt to impeach the verdict of the jury.

(The question was repeated.)

A. Am I supposed to answer what took place in the jury room? Am I supposed to answer that?

Mr. Lee: Well, over objection.

Mr. Hartpence: Of course, these are depositions, and if there is any real question about the right of this juror to testify about that, I suppose it would have to be decided by the Court before the answer was taken. I do not want to press the taking of the depositions beyond the point of propriety, but in view of the theory upon which we are prosecuting this rule to show cause, namely, that the verdict was based upon other considerations than the testimony, it seems to us that this is a proper question. 20 30

Mr. Lee: I want to note the objection that I can see no other purpose in the question than an attempt to impeach the jury's verdict by evidence not in the case at any time during the trial or not now in the case.

Mr. Bonnell: We object further on the ground it is not a proper question.

The Examiner: Do you care to answer the question, Mrs. Freideman? 40

Robert S. Phillips—Direct

The Witness: I would rather not answer it.

Mr. Hartpence: We will reserve the right to press for an answer to the question upon the ruling of the Court and to produce the witness later for that purpose.

10

No cross examination.

ROBERT S. PHILLIPS, SWORN:

Direct examination by Mr. Hartpence.

Q. Mr. Phillips, were you present here in Court during the trial of this case between Mr. Heilman and Mr. Meadows, October 10th, 11th and 15th, 1934? A. I was.

20

Q. Were you in attendance on all three of those days? A. Yes, sir.

Q. At any time between the time when the trial was opened and moved on the 10th up to the close of it by the rendering of the jury's verdict on the 15th, did any members of the jury that were trying that case speak to you?

30

Mr. Lee: I object to this line of testimony on the ground that it is improper, being an attempt to impeach the verdict of the jury, and as being immaterial, and that this man was a witness at the time of the trial. I think we ought to have a ruling on this. I do not think we ought to go into it.

Mr. Hartpence: Do you think it is proper for members of the jury to talk to outside persons during the course of a trial?

Mr. Lee: It is not a question of what I think, whether it is proper or not proper. It

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Robert S. Phillips—Direct

is a question of whether you have a right to go into it in this manner.

Mr. Hartpence: Don't we have the right, if the jury indulged in some improper practice, to show that for the purpose of overthrowing the verdict of the jury?

Mr. Lee: As I understand it, these depositions are being taken on the theory of newly discovered evidence. Isn't that so? 10

Mr. Hartpence: And on the further ground that the verdict was the result of biased, prejudiced and improper influence.

Mr. Lee: This man by his testimony now admits that he was in Court all during the progress of this trial. The trial lasted two and a half days, two full days and a part of Wednesday afternoon, and extended over a week-end, so that there was ample opportunity for this witness to communicate to the jury or counsel or the Judge anything which he thought was improper which occurred during any of that time. He was a witness in the case and was on the stand at least once, and nothing was asked of that nature, so that even if this is being introduced on the theory of newly discovered evidence I fail to see how it meets the test on that score. 20 30

Mr. Hartpence: But our second reason is that the verdict is the result of bias, prejudice, passion and improper and illegal influence upon the jury, and it comes, it seems to me, strictly within that reason.

Mr. Lee: Then I will object as to that feature on the ground that the defendant knew or should have known or could have found out this line of testimony, and specu- 40

Robert S. Phillips—Direct

10 lated on the verdict of the jury, this witness having been in Court during the entire progress of the case and being in possession of this evidence, or the evidence being available to the defendant, he apparently refused or refrained from introducing it and speculated on the result. He was used as a defendant's witness in the case. It is a further attempt, apparently, to impeach the testimony of their own witness.

Mr. Hartpence: No, it is not that. It is an attempt to impeach this jury.

Mr. Lee: Then I object again that you admit you are trying to impeach the verdict of the jury.

20 Mr. Hartpence: No, we are not. We are trying to impeach the jury.

(The question was repeated.)

Mr. Lee: I feel we ought to have a ruling of the Court on this whole line of testimony. I don't want to make any unnecessary trips or trouble or anything else, but it certainly is a most unusual proceeding.

Mr. Hartpence: I will admit it is somewhat unusual.

30 Mr. Lee: It is an unusual type of deposition to attempt to take on a rule to show cause.

Mr. Hartpence: I will admit that, also.

Mr. Lee: I think we ought to have a ruling of the Court.

Mr. Bell: The only thing is how can you be harmed when you are entering your objection?

40 Mr. Hartpence: We think we are entitled to an answer to the question as it stands.

Robert S. Phillips—Cross

Lena V. Robbins—Direct

Mr. Lee: We think we are entitled to have the question ruled upon before the answer comes from the witness, ruled on by the Court.

Mr. Hartpence: And we will reserve the right to have the answer received if the Court shall so rule, and the witness produced for that purpose. 10

Q. Assuming, Mr. Phillips, that someone or more members of the jury did talk to you about the case during the progress of the trial, when and where did such conversation take place, who was it that spoke to you and what was said?

Mr. Lee: I make the same objection.

Mr. Hartpence: And I make the same reservation. 20

Cross examination by Mr. Lee.

Q. Mr. Phillips, how many days were you here during the trial of this case? A. One day preceding the trial and all during the trial.

Q. And you testified on behalf of the defendant during the trial? A. Yes, sir.

Q. And you remained until the testimony was all completed? A. Yes, sir. 30

LENA V. ROBBINS, SWORN:

Direct examination by Mr. Hartpence.

Q. Where do you live, Mrs. Robbins? A. Rio Grande.

Q. That is in Cape May County? A. Yes.

Q. Were you one of the jurors that sat in the trial of this case between William Charles Heil- 40

Lena V. Robbins—Direct

man, plaintiff, and William J. Meadows, defendant, last October? A. No.

Q. Were you a member of the general panel of jurors at that time? A. Yes, I was.

10 Q. Were you present here in Court at any time while this case between Mr. Heilman and Mr. Meadows was being tried? A. I was in here a little while Monday, I believe.

Q. That was the last day of the trial? A. Yes. I think Wednesday—I was on the Pool case, and I think I was out on that. I tried to remember, and I think that that was the day that we were in the jury room, the day the Heilman trial was started.

Q. That was on Wednesday. Now, on Thursday you were not here in the room when the case was being tried? A. No, we were excused then.

20 Q. But you were here part of the day on Monday? A. Yes, I was here a little while Monday.

Q. And you heard part of the case, the testimony, did you not? A. Well, very little of it. I was crocheting. I wasn't interested and I didn't listen to much of it.

Q. You know Mrs. Freideman, who was one of the jurors in the case, don't you? A. Yes, I met her since we came here.

30 Q. And you heard her testify here in this room this morning, did you not, just a few minutes ago? A. Well, some of it. She didn't talk very loud.

Q. You were here while she was testifying, weren't you? A. Yes.

Q. Did you talk with Mrs. Freideman during the course of the Heilman-Meadows trial?

Mr. Lee: I object to this line of testimony on the same general ground, an attempt to impeach the verdict of the jury, and beyond a

Lena V. Robbins—Direct

yes or no answer. I think we ought to have a ruling of the Court on this testimony.

A. Well, as far as I remember, no. I know I didn't ever speak to her about the trial.

Q. Weren't you in the ladies' lavatory during the course of the trial with some other ladies when Mrs. Freideman was there and you were talking about the case? 10

Mr. Lee: I object to that as being immaterial, where she was.

A. No, I don't remember being in there with Mrs. Freideman and anything ever being said about this trial.

Q. You do not? A. No, I do not.

Q. Nor you didn't hear anybody say anything about it in the presence of Mrs. Freideman? A. No. 20

Q. Just to refresh your recollection, didn't you say or hear someone else say in the presence of Mrs. Freideman something pertaining to the trial of this case, and particularly with regard to the insurance policy of \$5,000 which was carried by Mr. Meadows? A. No, I didn't.

Mr. Lee: I object to that, anyway, regardless of her answer, because it is immaterial, there is no evidence of any insurance in the case, the witness has previously said she did not hear any conversation about the case and was only in court a very short time during the trial. It is irrelevant, immaterial and incompetent. 30

Q. Do you recall seeing Mrs. Freideman in the ladies' lavatory during the course of the trial?

Lena V. Robbins—Direct

Mr. Lee: I object to that as being irrelevant, incompetent and immaterial, whether she saw her or did not see her.

10 A. I was in the lavatory two or three times during the time I was coming up here, and different ladies were in there. Mrs. Freideman might have been in there. She has been in there when I was in, but I could never tell you whether it was that Heilman trial or not. I didn't pay enough attention to it. I wasn't interested.

Q. And you didn't discuss with her at all the Heilman trial during the trial?

Mr. Lee: I object as being previously asked and answered four or five times.

20 Mr. Bonnell: We object because it is brow-beating the witness, trying to put something in her mouth and making her answer which she has already denied.

Mr. Hartpence: The witness is a hostile witness and counsel has a right to go to great lengths.

The Witness: No, I am not hostile. I don't know either one.

30 Mr. Bonnell: I object because she has stated three or four times she does not know, and counsel is now trying to brow-beat her by putting the words in her mouth and forcing her to answer, and it is improper and not a proper way to examine and should not be answered.

Mr. Hartpence: I do not think there has been any evidence of brow-beating here. I think I have conducted myself very quietly and decorously in an endeavor to bring out the truth with respect to this matter.

40

Lena V. Robbins—Direct

Q. You know Irene Austin? A. Yes.

Q. She was also a member of the general panel for this term, was she not? A. Yes.

Q. Do you remember being in the lavatory during the course of the Heilman trial when Mrs. Austin was there? A. No.

10

Q. You do not? A. I couldn't tell you what trials were on when I have been in the lavatory. I have been in there many times.

Q. Do you remember being in—

Mr. Lee: In view of that answer, I object to the asking of any other questions of this witness as to her presence in the lavatory during the trial of this case or as to the presence of any other juror or non-juror in there at that time, because she has distinctly said she does not remember who was in there when she was in there or whom she saw in there at any time during the trial of the case. I think that precludes any further questions to her along that line, certainly any further answers from her on that line.

20

Mr. Hartpence: Notwithstanding counsel for the plaintiff's very obvious and apparent desire to keep me from asking questions, I am going to ask one more.

30

Mr. Lee: I object to that remark, too.

Mr. Hartpence: You see, I don't even get a chance to ask questions.

Mr. Lee: I object to that remark.

Mr. Hartpence: I have been endeavoring for sometime to complete a question without being interrupted, and I am not having very good success at it, but despite all that I will again ask or endeavor to ask the question I

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Lena V. Robbins—Direct

started just a moment ago when I was interrupted by counsel for the plaintiff, and ask you, Mrs. Robbins, if you recall being in the ladies' lavatory at any time during the present term, the ladies' lavatory here in the court house, when Irene Austin was there?

10

Mr. Lee: I object to that as being immaterial. The question is at any time during the term. It cannot possibly have any effect on this case unless it is pinned down to a closer time to the trial than that.

A. Was I at any time during the term of Court in the lavatory when Mrs. Irene Austin was there?

Q. Yes.

Mr. Lee: If you know.

20

Mr. Hartpence: I am objecting again to counsel for the plaintiff interjecting remarks which tend to indicate to this witness what answer should be made.

(The question was repeated.)

A. Oh, yes, I was in there with Irene Austin, because she brought me up and took me back.

Q. As a matter of fact, Mrs. Robbins, during the course of the Heilman-Meadows trial didn't you and Irene Austin and Mrs. Irene Freideman go out to lunch together? A. I don't think so. We lunched together two or three times during the term, and I tell you I don't know whether it was that trial or not, because we positively never talked about it.

30

Mr. Lee: I ask that testimony be stricken as immaterial.

A. I don't like you to call me hostile, because if I knew anything I would certainly tell it.

40

Irene Austin—Direct

Q. What say? A. You called me a hostile witness. I don't like that.

Q. That is a legal term. A. I would certainly tell you the truth.

Q. Yes, I know you would, Mrs. Robbins. A. I live just as near right before God as I can, and I don't like that. 10

Q. You will have to bear in mind lawyers have technical names for their proceedings which don't always mean all that the layman thinks they mean. That was between Mr. Lee and myself. We are hostile friends.

No cross examination.

IRENE AUSTIN SWORN:

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Direct examination by Mr. Hartpence.

Q. Where do you live, Mrs. Austin? A. I live in Rio Grande at the present time, but I am on the jury list as living in Wildwood Crest. I have moved since it was made up.

Q. Is Wildwood Crest anywhere near Wildwood? A. I am not living in Wildwood now. I lived in Wildwood Crest and I moved on the 1st of October to Rio Grande. 30

Q. Is Wildwood Crest anywhere near Wildwood? A. Oh, yes. It is part of the five-mile beach.

Q. You know Mrs. Robbins, do you, who just testified? A. Oh, yes, well.

Q. How long have you known her? A. Twenty-five years, twenty years. Twenty years.

Q. Do you know Mrs. Freideman, who testified a few minutes ago? A. I met Mrs. Freideman only in court here. 40

Irene Austin—Direct

Q. When did you meet her here in court? A. I sat with her on one or two occasions and I took lunch with her once, I think.

Q. You mean you sat with her on juries on one or two occasions? A. Not on the jury, but right in the panel.

10 Q. You sat with her right in the panel? A. Yes, the three of us sat one day together, I think, Mrs. Robbins, Mrs. Freideman and myself. I don't think there was any other time. I wouldn't say positively, but it is such a trivial matter.

Q. Could you fix the time, about when that was, that you did sit together? A. No, I couldn't.

Q. During the term that you have been here? A. I think it was after the trial.

20 Q. Could you fix the time when you had lunch together? A. I am pretty sure—Mr. Bonnell could fix that. It was the day you tried the man on that liquor case and you and Mrs. Bonnell and your daughter were down at the Rose Highway Diner.

Mr. Bonnell: That was in November sometime.

30 A. It was after this trial, I know. It was the last day I was on the jury. It was after the Heilman trial.

Q. You didn't eat lunch with Mrs. Freideman any time during the course of the Heilman-Meadows trial? A. Well, I might have. I might on one other occasion. I am not sure.

40 Q. Do you remember talking to Mrs. Freideman about the Heilman-Meadows case while it was in course of trial? A. I don't remember discussing it at all with Mrs. Freideman. I don't know. If it was, it would be a casual remark. It wouldn't be a discussion of the case at all.

Irene Austin—Direct

Q. Do you remember whether you made any such casual remark? A. No, I don't think I did.

Q. Don't you remember on an occasion there in the ladies' lavatory during the course of the Heilman trial you made a remark to Mrs. Freideman about the case?

Mr. Lee: I object as having been asked and answered by this witness, as being immaterial and improper, and a further attempt to impeach the verdict of the jury. I object to the form of the question, also, as being leading.

10

Mr. Hartpence: In an effort to refresh this witness's recollection, if I can, of what may or may not have taken place, I find it necessary to make the suggestion, at least, as to what might have taken place, and I have asked her, therefore, in that form.

20

(The question was repeated.)

A. I don't remember unless probably if the remark was quoted to me I will acknowledge whether I made the remark. I don't remember making a remark to Mrs. Freideman about the case. I did make one remark about the case, and it was the last day of the trial. I said, "I am surprised that your witnesses all seem to be for Mr. Heilman," the defendant's witnesses. That was the only remark that I remember making, and I made it to Mrs. Robbins.

30

Q. And where were you at that time?

Mr. Lee: I object to this.

A. I think I was going home. I am not sure. I don't know whether it was in the automobile or as we passed out. I don't know just what.

40

Frank R. Shaw—Direct

Q. Wasn't Mrs. Freideman present at the time you made that remark? A. No, she wasn't present. I have never ridden with Mrs. Freideman. I walked down the street on a couple of occasions with Mrs. Freideman, but I don't remember discussing cases with her. We were discussing our daughters and different things, and not cases at all, as I remember.

Mr. Lee: I move to strike the testimony as being immaterial.

Q. On the last day of the Heilman trial, on Monday, didn't you remark to Mrs. Freideman in the ladies' lavatory here in the court house something about the insurance that was carried by Mr. Meadows in this case? A. No.

Mr. Lee: I object to that.

A. No, because I didn't know anything about the insurance.

Q. Did you hear anybody else make that remark? A. No, I did not.

No cross examination.

FRANK R. SHAW, SWORN:

Direct examination by Mr. Hartpence.

Q. Where do you live, Mr. Shaw? A. Wildwood.

Q. You were one of the jurors, weren't you, on the case of Mr. Heilman and Mr. Meadows? A. I was.

Q. During the course of that trial did you speak to anyone outside of the members of the jury or the Court about the case? A. No, sir.

Frank R. Shaw—Direct

Q. Anybody speak to you other than the members of your jury or the Court? A. No one, no, sir.

Q. During the whole course of the trial? A. The whole course of the trial, yes, sir.

Q. Don't you remember, Mr. Shaw, speaking to Mr. Robert Phillips, the gentleman who was on the stand here just a few minutes ago, about this Heilman-Meadows case during the course of the trial? 10

Mr. Lee: I object, the witness having previously testified he spoke to no one and no one spoke to him during the trial except members of the jury.

A. I don't recall it, no, sir.

Q. At any time prior to the rendering of your verdict in this case did you have personal knowledge of the fact that Mr. Meadows' driver's license had been revoked previously because of alleged drunkenness? 20

Mr. Lee: I object to that as being immaterial, and an improper question to put to this witness.

Mr. Hartpence: Do you want a ruling on that, also? 30

Mr. Lee: We might as well have a ruling.

Mr. Hartpence: We will reserve the right to ask for an answer and for the further production of the witness after the Court rules.

Q. As a matter of fact, Mr. Shaw, was not the fact that Mr. Meadows had had his driver's license revoked about a year previous to the trial or sometime previous to the trial, because of alleged drunkenness, discussed by your jury, and wasn't 40

Frank R. Shaw—Direct

that the real basis why they found their verdict in favor of the plaintiff and against the defendant?

Mr. Lee: I object to that on the general grounds as stated before.

10 Mr. Hartpence: You want a ruling on that?

Mr. Lee: Yes.

Mr. Hartpence: We will reserve the right to ask for an answer and to produce the witness for that purpose after the Court's ruling.

20 Q. Isn't it a fact, Mr. Shaw, that the jury in this case of Heilman vs. Meadows entirely disregarded the evidence in the case in their consideration of it in the jury room and found a verdict against Meadows and in favor of Mr. Heilman because of their prejudice or bias against Meadows and because of their feeling that he had a reputation for alleged drunkenness and because of the fact that his driver's license had been revoked for that cause sometime previously to the trial of this case?

30 Mr. Lee: I object to that on the same general grounds as above, as being highly improper, and a further attempt to impeach the verdict of the jury by directing questions to a member of the jury.

Mr. Hartpence: Do you want a ruling on that, also?

Mr. Lee: Yes.

Mr. Hartpence: We reserve the right to ask for an answer to the question and for the further production of the witness.

No cross examination.

Dr. Margaret Mace—Direct

DR. MARGARET MACE, SWORN :

Direct examination by Mr. Bell.

Q. Dr. Mace, you are in charge of Mace's Hospital at Wildwood, aren't you? A. Yes.

Q. Do you remember the occasion when Reverend Heilman and Mr. Meadows were brought to your hospital after their accident? A. Yes. 10

Q. Do you remember the doctor that had charge of Mr. Meadows' case? A. At Cape May?

Q. Yes. A. Dr. Hughes.

Q. Do you know whether Dr. Dandois, of Wildwood, ever made any examination of Mr. Meadows while he was in your hospital? A. I don't know.

Q. You don't know whether he did or not? A. I don't know. I didn't see him make an examination. 20

Q. You didn't see him make an examination? A. No.

Q. But Mr. Meadows was in charge of Dr. Hughes at Cape May? A. He had first-aid there.

Q. Well, was he Dr. Hughes' patient or was he a general patient at the hospital? A. He was Dr. Hughes' patient.

Q. Dr. Mace, did you make an examination of Mr. Meadows when he came to the hospital? A. No. 30

Q. Were you close to him? A. Yes. I helped put him in bed.

Q. Was Dr. Dandois at the hospital at the time he came in? A. I think not.

Mr. Lee: I would like to interpose an objection to this line of testimony as not meeting the test of newly discovered evidence.

Q. Dr. Mace, when Mr. Meadows came into the hospital did you detect any smell of liquor on his breath? A. No. 40

Dr. Margaret Mace—Direct

Q. And you were one of the ones who helped put him to bed? A. Yes.

Q. Did he show any indications of being intoxicated? A. He was very ill from this bump on his head, and I didn't notice anything different from other accidents of the same kind.

10 Q. Did you communicate with Dr. Hughes or Dr. Dandois after you put him to bed? A. With Dr. Hughes—no, I think not. After I put him to bed, you said?

Q. Yes, or before. A. Dr. Hughes called me up before he came in and told me that he was on his way in the ambulance.

Q. Did he give you any instructions? A. Yes, he said, "Put him to bed; it is a head case, and see if anything develops in the night".

20 Q. Do you know when Dr. Dandois came into the hospital after Mr. Meadows arrived? A. No. I know Dr. Dandois was in the hospital, but he came for Reverend Heilman. He was the family doctor, and I ask that they get somebody in consultation, and usually they get the family doctor, which they did.

Mr. Lee: I move that most of that testimony be stricken. Most of it is drawing the conclusions of the witness and coupled up with what other people said, and it is pretty hard to separate the wheat from the chaff.

30

Mr. Hartpence: I think in that case, the chaff has to stay in with the wheat, if you can't separate it.

Q. Dr. Mace, Dr. Dandois came to the hospital to take care of Reverend Heilman, didn't he? A. He did.

40

Dr. Margaret Mace—Direct

Q. And so far as Mr. Meadows is concerned, he had nothing to do with him? A. No.

Q. Did Dr. Dandois say anything to you about Mr. Meadows? A. At that time?

Q. Yes.

Mr. Lee: I object to that.

10

A. No.

Q. Did he say anything to you about Mr. Heilman?

Mr. Bonnell: I object to any of this hearsay as to what he said. Dr. Dandois can be subpoenaed.

Mr. Lee: It is also incompetent, what one witness said to another.

(The question was repeated.)

20

A. We examined Reverend Heilman together.

Q. When was this? A. The evening of the accident.

Q. What did Dr. Dandois say to you concerning Mr. Heilman? A. He said he had a complicated fracture.

Q. Did he say anything else about the car? A. Dr. Dandois?

Q. Yes. A. No.

30

Mr. Lee: I object to this as being immaterial. I move to strike it.

Q. Did Dr. Dandois say anything to you about what Mr. Heilman might have said to him about his car?

Mr. Lee: That is objected to as being hearsay.

Q. Your answer is no to that question, is it?
A. Yes.

40

Dr. Margaret Mace—Cross

Q. Did Reverend Heilman say anything to you about his car the day of the accident?

Mr. Bonnell: I object to that as hearsay testimony. You cannot ask him that without asking the plaintiff first.

10 (The question was repeated.)

A. Yes, he did.

Q. What was it that he said? A. He said it was not in good condition when he left.

Q. When he left where? A. Wildwood.

Q. Did he say what the trouble was? A. He said he had had it to some garage for repair.

Q. Did he say whether they had fixed it properly or not? A. No, he said it wasn't—they told him to be careful.

20 *Cross examination by Mr. Lee.*

Q. Doctor, were you in the County on October 10th, 11th and 15th, 1934? A. Well, I was in the County some of those days, and I could know by looking on a calendar, but I don't remember exactly when I was away. I was out of the County, but just the exact time, calling on me here, I am not able to answer, but I would know if I had my book from home.

30 Q. On those days on which you may have been out of the County were you out of the State, out of New Jersey? A. I am not sure, but I think I was in Philadelphia. That is the only place I would be over the river, but I am not positive of that.

Q. And if you were in Philadelphia during any of those days, how long were you there? I mean by that were you there overnight or just during the day? A. I haven't been out of the County
40 overnight for a long time. I might have been in at two o'clock or one o'clock or something.

Clinton Wilson—Direct

CLINTON WILSON, sworn:

Direct examination by Mr. Hartpence.

Q. Where do you live, Mr. Wilson? A. Lower Township.

Q. Cape May? A. Yes, sir.

Q. How long have you lived there? A. All my life. 10

Q. What is your business? A. Well, farmer and school bus driver.

Q. How long have you been school bus driver? A. Five years.

Q. Where do you drive from and to? A. Why, the Consolidated School. I start in from Cape May Point up to the main road, main seashore.

Q. Does that cover Lower Township? A. Yes, sir, part of it. 20

Q. Bennett Station? A. No.

Q. Not as far as Bennett Station? A. No, I go from the Consolidated School to Stimson Lane and then from Stimson Lane out to the bayside and then over to Cape May Point.

Q. What time in the afternoon do you run your bus? A. Well, we are supposed to be at school at three o'clock. I should judge we leave the grammar school at quarter after three, about. 30

Q. What time do you reach Lower Township? A. Well, that is Lower Township.

Q. The upper end of Lower Township. A. Well, what road do you mean by what time? I can pretty near tell you if you will tell me the road.

Q. Do you know Mr. William J. Meadows, the defendant in this suit? A. Yes, sir.

Q. Do you know where he lives? A. Yes, sir. 40

Clinton Wilson—Direct

Q. What road do you call that? A. That is called the—used to call it the old main road.

Q. Is there a crossroad there? A. No.

Q. No crossroad? A. No. That is a pretty big road.

10 Q. Do you know about the accident to Mr. Heilman and Mr. Meadows in November last? A. Why, I don't know anything about it. All I know, after I got done delivering the kids sometime that night, late that night, I heard he had an accident, yes.

Q. That is what I mean, you did learn about it? A. Yes.

20 Q. Do you know about what time it was when your bus got there right near Mr. Meadows' house that afternoon? A. Yes, it was around about half-past three when I passed Mr. Meadows in his yard and I let the kids out to the Cape May Water Works road. That is the corner of Stimson Lane and the Cape May Water Works road.

Q. How far is that from Mr. Meadows' house? A. I should judge about three hundred feet.

Q. And that, you say, was about half-past three? A. Yes, between that. Between half-past three and something like that.

30 Q. Between half-past three and something like what? A. It could be a little later, probably, but not much. It don't vary much.

Q. Just a few minutes? A. Yes. I have my schedule pretty well figured out.

Q. Where was your next stopping place? A. Billy Newell's, on Stimson Lane.

Q. About what time would your schedule carry you there? A. Very close. About three minutes.

40 Q. Then where did you go after that? A. Then I went on out and the next stop was on the Shunpike Road.

Clinton Wilson—Cross

Q. Where did you finally wind up? A. Cape May Point is the last stop.

Q. You didn't get back to Mr. Meadows' house again that afternoon? A. No.

Q. That was the last time you were? A. Yes, sir, that is my route.

Q. You saw Mr. Meadows in his yard? A. He was in the yard and waved at me. 10

Q. He didn't almost run into your bus with his automobile? A. No, indeed.

Cross examination by Mr. Bonnell.

Q. You are the only one that drives a bus? A. No, sir, there are eight of us.

Q. Do you know Paul Lennox? A. It is Paul Emmons.

Q. Did he drive a bus that day? A. I don't think he did. 20

Q. He drives a bus there, doesn't he? A. He drives once in a while for Norman Taylor. He works for him, did at that time.

Q. That is the Norman Taylor bus and that goes over a portion of the same roads you do, doesn't it? A. He is High School and I am Grammar School. Altogether different.

Q. You didn't see him that day, did you? A. Not driving no bus. 30

Q. Did you see the Norman Taylor bus that day? A. I don't think so. So many of us I might have saw it, but I don't remember it.

Q. So you don't know whether that was on the road that day about that time or not, do you? A. No.

Q. And that would go past Meadows' the same as you would? A. No, indeed. Our school lets out at three o'clock and the High School lets out twenty minutes after four. 40

Clinton Wilson—Cross

Q. Then of course the High School bus would be later on than you? It would be between four and five o'clock that would be down at that crossing at Stimson's Lane, wouldn't it? A. I don't know whether that was his route at that time. They have changed routes.

10 Q. The High School bus would be down, whatever bus it was, in that vicinity between four and five o'clock, wouldn't it? A. It would, yes, sir, down in front of the High School.

Q. Were you in the County on October 10th, 11th and 15th, in the County of Cape May? A. Well, as far as I know. I very seldom ever go out of the County.

Q. You were driving bus during that time? A. I am driving bus all the time unless I am sick.

20 Q. Do you know Mr. Meadows? A. Yes, sir.

Q. How long have you known him? A. Well, I guess I knowed Mr. Meadows ever since he has been here. Maybe five or six years, maybe ten years. I really couldn't say.

Q. Quite an intimate neighbor of his, aren't you? A. No, not more than anybody else.

30 Mr. Lee: I want to object to this testimony and move to strike it on the ground that it does not meet the legal test of newly discovered evidence. The witness was available, by his own testimony, during the entire trial, known to the defendant, the defendant saw him at a time shortly before the accident, and his testimony, if not known to the defendant, could have been ascertained with the exercise of ordinary diligence.

Paul Emmons—Direct

PAUL EMMONS, sworn:

Direct examination by Mr. Hartpence.

Q. Where do you live, Mr. Emmons? A. Cold Spring.

Q. Cape May? A. Cape May County.

Q. Is that sometimes called Lower Township? 10

A. Yes, that is in Lower Township.

Q. Do you know Mr. Meadows, William J. Meadows, the defendant in this suit? A. Only to speak to him is all.

Q. You know him when you see him? A. When I see him.

Q. How long have you known him? A. I guess a couple of years.

Q. What is your business? A. I drive bus, 20
farm.

Q. Drive school bus? A. Yes.

Q. Which school bus do you drive? A. High School bus.

Q. Where do you drive to and from? A. From Cape May up through Lower Township to the northern end of Lower Township.

Q. Go up as far as Mr. Meadows' house? A. By Mr. Meadows' house.

Q. What time in the afternoon of November 24, 1933—that was just a few days before Thanks- 30
giving last year—were you working on the bus at that time? A. According to the time book I wasn't working that day.

Q. But you were working generally driving bus? A. Off and on. Mr. Taylor and I used to alternate in driving.

Q. How long have you been doing that? A. About three years. Over three years.

Q. Still doing it? A. No.

Norman Taylor—Direct

Q. When did you stop? A. Last year. This spring.

Q. In the spring of this year? A. At the end of the school term.

Q. You were not driving the bus at all on November 24th? A. Not according to his time book
10 I wasn't.

Q. No part of the day, morning or afternoon?
A. No. I worked three hours in the morning.

Q. Three hours in the morning? A. Yes, but I didn't drive bus.

Q. Were you on a bus, whether you were driving it or not, a school bus, that day? A. No.

Q. You were not on it at all? A. I never rode unless I was driving.

Q. You never rode it unless you were driving
20 it? A. No.

No cross examination.

NORMAN TAYLOR, SWORN:

Direct examination by Mr. Hartpence.

Q. What is your business, Mr. Taylor? A. Farmer.

Q. Bus driver? A. Yes, I operate a bus. I
30 own the bus.

Q. School bus? A. Yes.

Q. Where do you drive to and from with the school bus? A. Cape May City to Wildwood Villa.

Q. Which school do you take care of? A. High School pupils from Lower Township to Cape May City.

Q. Take them to school and then take them back home? A. Yes.

Norman Taylor—Direct

Q. Take them to school in the morning and take them back home in the afternoon? A. Yes, sir.

Q. Do you know Mr. William J. Meadows? A. Yes, sir.

Q. Do you know where he lives? A. Yes, sir.

Q. Does your route home in the afternoon from the High School up through Lower Township take you past Mr. Meadows' house? A. Yes, sir, it did last year, but not this year. 10

Q. Well, take November 24, 1933, a few days before Thanksgiving— A. Yes.

Q. —last year, it did then? A. Yes, sir.

Q. What time in the day does your return trip in the afternoon take you by Mr. Meadows' house?

A. Anywheres from twenty minutes after four until quarter of five.

Q. On that day, November 24, 1933, did you come in contact with Mr. Meadows out on the road with his car in any way? A. No, sir. 20

Q. Did you see Mr. Meadows at all that day? A. No, sir.

Q. Did you have any trouble with an automobile on the road there near Mr. Meadows' house?

A. No, sir, I never had since I have been operating the bus.

Q. Nor anywhere else along the road that day? A. No, sir. 30

Q. Have hard work to get out of the road of a car that was being driven by somebody that kept you on the jump or something like that? A. No.

Q. Didn't come very near being run into by a sedan that somebody was driving all over the road? A. No, sir.

Q. At no time? A. No.

Norman Taylor—Cross
Norman Taylor—Redirect—Recross

Cross examination by Mr. Bonnell.

Q. Where do you live? In Cape May County?
 A. Live at Cold Spring.

10 Q. Were you in Cold Spring during October
 10th, 11th and 15th of this year? A. Yes, sir.

Q. Are there any other buses outside of your
 bus in Lower Township? A. Seven of them.

Q. Seven other buses? A. Yes.

Redirect examination by Mr. Hartpence.

Q. Do they operate over this same route you
 do? A. No, sir.

20 Q. Yours is the only one that operates for the
 High School pupils? A. No, there is another bus,
 but it don't operate over the same route I do.

Recross examination by Mr. Bonnell.

Q. Where does the other bus operate? Down
 at Stimson's Lane? A. It had the exact route
 that I have this year.

Q. What other bus operates in that vicinity?
 Where does that go to? Does any bus operate
 near your place? A. From Rio Grande to Cape
 May.

30 Mr. Hartpence: That is as of November
 24, 1933?

Mr. Bonnell: Yes.

A. One travels what we call the front route and
 the other the back route. One travels the bay-
 shore road and the other the seashore road.

Q. And yours is the bayshore road? A. This
 year, yes. Last year it was the seashore road.

Norman Taylor—Recross

Q. Where is the crossing coming out of Cape May from the seashore to the bayshore road? Where do the buses cross from one road to the other? A. Stimson's Lane.

Q. So that there were more buses than your bus operating from Stimson's Lane on November 24, 1933? A. Only Clint Wilson's bus and mine are the only two that travel that lane. 10

Q. And you were not out of the County during the month of October? A. No, sir.

By Mr. Hartpence.

Q. Then did Paul Emmons sometimes drive your bus? A. Last year.

Mr. Lee: I object to the admission of this testimony of this witness on the ground that it does not meet the test of newly discovered evidence, the witness having been in the County during the trial and knowing the defendant and being available to testify. 20

An adjournment was taken to a date to be decided upon after the ruling of the Court on the unanswered questions in the foregoing depositions. 30.

Depositions.

(On Rule to Show Cause.)

NEW JERSEY SUPREME COURT,

CAPE MAY COUNTY.

10

WILLIAM CHARLES HEILMAN,
Plaintiff,

vs.

WILLIAM J. MEADOWS,
Defendant.

Action at Law.
 On Rule to
 Show Cause.

20

Further depositions taken before Claude W. Myrose, Supreme Court Examiner, on January 4, 1935, at the Guarantee Trust Building, Atlantic City, New Jersey, in the presence of Charles A. Bonnell, Esq. and William V. Lee, Esq., attorneys for plaintiff, and Robert K. Bell, Esq. and John A. Hartpence, Esq., attorneys for defendant.

ROBERT S. PHILLIPS, recalled:

Direct examination by Mr. Hartpence.

30

Q. At the time of the former taking of depositions on November 10, 1934, at the courthouse at Cape May Court House, you were on the witness stand, weren't you? A. Yes, sir.

Q. And at that time I asked you this question (which appears on page 8 of the official transcript of the depositions): "At any time between the time when the trial was opened and moved on the 10th, up to the close of it by the rendering of the jury's verdict on the 15th, did any member

40

Robert S. Phillips—Direct

of the jury that were trying that case speak to you?" That refers to this Heilman and Meadows case. The Court has ruled that it is proper for you to answer that question, which was objected to on the former hearing. A. Yes, sir.

Q. Who was it? A. Mr. Shaw.

Q. Do you recall when it was? A. It was the last morning of the trial, if I recall right. 10

Q. Will you state where it was and just what took place between Mr. Shaw and yourself? A. Well, it was in front of the courthouse building, just as we were getting out of the cars, and Mr. Shaw—I got out and Mr. Shaw got out and he says, "What are you doing up here, Phillips?" and I says, "I am on this Meadows case". I says, "What do you think of it?" He says, "Well, I think they are all lying myself." I says, "Well, I am going to testify on it today myself, and if you think they are lying, my testimony will contradict everybody's." That was about all of our conversation. 20

Q. Who was it that said, "I think they are all lying"? A. Mr. Shaw.

Q. He was the one that said that? A. Yes.

Q. Did you afterwards speak to anyone about what passed between you and Shaw? A. When the jury had gone into—well, when they had left the courtroom. I don't know where they go. Into the jury chambers. 30

Q. After the trial was over and the jury went out? A. After the trial was over and the jury went out I told Mr. Meadows what—

Q. Had taken place? A. Had taken place between Shaw and I.

Q. That was the first that you had spoken to anybody about it? A. The first I had spoken to anyone. 40

Robert S. Phillips—Cross

Q. You have related, have you, the whole conversation that took place between you and Mr. Shaw? Does anything else occur to you? A. I don't remember anything else.

10 Q. You don't remember anything else? Any of the other members of the jury besides Shaw speak to you during the course of the trial? A. No, sir.

Q. After you spoke to Mr. Meadows about it and told him what had taken place, did you tell anybody else about it or was anybody else present when you told Mr. Meadows? A. Mr.—what is his name?

Q. Mr. Bierach? A. Mr. Bierach was standing by me.

Q. This gentleman standing here? A. Yes.

20 Q. He was there at the same time, was he? A. Well, he was standing by and he happened to hear what was said.

Q. Where were you at the time you said that? A. On the courthouse steps, out front.

Q. Outside on the courthouse steps? A. Outside there.

Cross examination by Mr. Lee.

30 Q. Where did you say this conversation took place, Mr. Phillips? A. The first conversation?

Q. With Mr. Shaw. A. With Mr. Shaw? Just as we were getting out of the cars in front of the courthouse.

Q. Do you know Mr. Shaw? Did you know him before this? A. I knew him just to speak to.

Q. At the time that you repeated this conversation to Mr. Meadows the jury was still in the courthouse? A. The jury was still in the courthouse.

Robert S. Phillips—Redirect

Q. It had just retired to deliberate? A. It had retired.

Q. Did you assist the defendant to prepare the case for trial? A. No, sir.

Did you call on any prospective witnesses for the defendant? A. Your other question there—I went around with Mr. Meadows. 10

Q. Yes, that is what I meant. I wasn't trying to mislead you. You went around? A. I went to one place with Mr. Meadows.

Q. Where was that, do you recall? A. Over to Mr. Bright's.

Redirect examination by Mr. Hartpence.

Q. When was it that you went to Mr. Bright's with Mr. Meadows, Mr. Phillips? A. It was before the trial. I don't know just when. 20

Q. Before the trial? A. I don't know just what date. I imagine it was in October sometime.

Q. And when you speak of going to Mr. Bright's, which Mr. Bright do you mean? A. Mr. Noble Bright.

Q. Did you see Mr. Bright or Mrs. Bright on that occasion? A. I saw them both. Mr. Bright wasn't in when I first went in the office, and then Mr. Bright came in.

Q. And where was that? A. In his office in Wildwood. 30

Q. Did Mr. Meadows go with you in the office? A. Yes, sir.

Q. Did you have a conversation with Mr. and Mrs. Bright or with either of them? A. Well, we had a talk. It wasn't just a conversation. Just talking on the coming trial.

Q. Was Mr. Meadows there at the time? A. He was. 40

Robert S. Phillips—Redirect

Q. Was he where he could hear what took place?

A. He was.

Q. Did he have any talk or conversation with Mr. or Mrs. Bright? A. No.

Q. Anybody else there except Mr. and Mrs. Bright and you and Mr. Meadows? A. No.

10 Q. What was the conversation that took place between you and Mr. and Mrs. Bright? A. I asked them if they would testify for Mr. Meadows, and they said no, that they were already going to testify for Mr.—for the Reverend Heilman, and then I asked them if they did testify if they would tell the truth, and what I meant by that—

Mr. Lee: I object to that.

Q. What did they say to that? A. They would.

20 Q. Did you mention to them in that talk or conversation what you understood the truth to be? A. I don't imagine—I undertook to, but I don't imagine I made myself plain to them.

Q. What did you say about it? A. I just can't recall.

Q. That is all that took place then between you at that time? A. It strikes me now I did say to them that I understood that they said that Mr. Heilman, or the Reverend Heilman almost run
30 into them, and they said it was vice versa, where Mr. Meadows had almost run into them. That was my intention of going to them, that I had understood them to say that Mr. Heilman had almost run into them, and instead they said it was Mr. Meadows that almost run into them. That was my idea of going to see them to testify for Mr. Meadows.

Q. When you got there, you found that their version of it was different? A. That Mr. Meadows almost caused them to have an accident.
40

Robert S. Phillips—Redirect

Q. And where had you gotten that understanding from previously, that it was Mr. Heilman who almost caused them an accident? A. Well, at a social gathering.

Q. Were you present at a social gathering? A. I was.

Q. Who else were there besides you? A. Oh, there was a whole—at least a dozen. 10

Q. Including whom? A. Well, there was Mr. and Mrs. Bright and Mr. and Mrs. Haldeman and Mr. and Mrs. Frank Hughes, Mr. and Mrs. Bert Dare, Mr. and Mrs. Jerry Gerew, and my wife and myself, if I recall.

Q. Where was that gathering? A. At the home of Mr. and Mrs. Haldeman.

Q. And when was it with relation to the accident involved in this case? A. It was the day after the accident. The day of the accident. The evening of the accident or the evening after, I can't just recall. 20

Q. One or the other? A. Yes.

Q. Well, had you heard Mr. and Mrs. Bright or Mr. or Mrs. Bright say anything at that gathering about what you have now referred to? You say you got your understanding from what was said there at that gathering. A. Well, the accident case was brought up and I understood them to say that Mr. Heilman had almost run into them, and there was talk pro and con in there on the accident. 30

Q. And it was because of that that you had gone with Mr. Meadows to see Mr. and Mrs. Bright later to see if they would testify to that same effect on the trial? A. Yes, sir.

Q. And then it was that they said it was the other way around? A. Yes. 40

Roberts S. Phillips—Recross
William H. Bierach—Direct

Recross examination by Mr. Lee.

Q. Of course, you might have been mistaken as to what you thought you heard at that gathering?

A. We all can be mistaken.

10 Q. At the time that you repeated to Mr. Meadows the alleged conversation with Mr. Shaw had the verdict of the jury been announced? A. No.

Q. The verdict had not been returned by the jury at that time? A. No.

WILLIAM H. BIERACH, SWORN:

Direct examination by Mr. Hartpence.

20 Q. Where do you live, Mr. Bierach? A. 374 State Street, Brooklyn.

Q. Were you present at the trial of this case of William Charles Heilman against William J. Meadows at Cape May Court House in October last? A. Yes.

Q. Do you know Mr. Meadows personally? A. I do.

Q. Do you know Mr. Phillips personally, the man who just testified? A. I do.

30 Q. Did you or did you not at any time there at Cape May Court House hear Mr. Phillips state to Mr. Meadows anything about a conversation that he had had with a juror? A. I did.

Mr. Lee: I object to that as being hearsay, irrelevant, incompetent and immaterial.

Mr. Hartpence: It is for the purpose of corroborating Mr. Phillips.

Mr. Bonnell: I object to it on the further ground that you cannot corroborate a wit-

William H. Bierach—Direct

ness by repeating the hearsay testimony of another witness.

Q. When was it that you heard the conversation and where? A. On the way—after leaving the courtroom on the way to the restaurant.

Q. On which day of the trial? A. The last day of the trial, which I believe was the 15th. 10

Mr. Bonnell: We object to this whole line of testimony.

Q. Where was it? A. On the sidewalk directly in front of the courthouse.

Q. Had the trial been concluded at that time? A. It had.

Q. Had the jury retired? A. It had.

Q. You have been present here this morning and were present during the whole time that Mr. Phillips testified? A. Yes, sir. 20

Q. You heard what he testified, did you not? A. Yes, sir.

Q. Is that the conversation between him and Mr. Meadows that you heard? A. It is, sir.

Mr. Lee: Which conversation do you refer to?

Mr. Hartpence: I have in mind the conversation which Mr. Phillips testified to having with Mr. Meadows on the courthouse steps after the trial, in reference to his having had a conversation with Mr. Shaw, one of the jurors. 30

Q. You overheard that conversation? A. I overheard that conversation.

Mr. Lee: Our objection continues to that. We object for the same reasons as heretofore. 40

William H. Bierach—Direct

Q. Had you had any knowledge of such a conversation previous to that time? A. No, sir.

Q. What I mean there is had you had any knowledge of any conversation or contact by Phillips with a juror prior to the time you heard him tell Mr. Meadows about it? A. No, sir.

10 Q. Did you afterwards speak to Mr. Frank R. Shaw, that member of the jury? A. I did.

Q. About that conversation that you had with Mr. Phillips? A. Yes, sir.

Q. When and where was that? A. That was either the following Thursday or Friday of the same week, about the 18th or the 19th.

Q. Following the rendering of the verdict? A. Following the rendering of the verdict.

20 Q. Where did you see him? A. I saw him at Cape May Landing, I believe it was—well, there is a tool chest there where they were ripping down some old buildings that I believe belonged to the Government, and I found him there, and he came out and spoke to me outside of the building.

Q. What did you say to him about it? A. When I first approached him I asked him if he knew who I was, and he says, “Yes”, and then I asked him what happened, and he turned around and made the statement that he had spoken to Mr.
30 Phillips and perhaps he had made a mistake.

Mr. Lee: I object to any statement made by Shaw to Phillips as coming from this witness.

Q. What did he say? A. He said that he had spoken to Mr. Phillips and he was afraid he made a mistake and maybe said too much.

Q. Did he say when he had done that? A. He did not.
40

William H. Bierach—Direct

Q. Did he say whether or not it was during the course of the trial? A. I didn't ask him at that time.

Q. Did he tell you what he had said to Phillips? A. He said to me that he had said to Phillips that he believed both sides were lying, and that Phillips in answer back said, "Wait until I testify, perhaps the opinion may be different," or something in that line. 10

Q. Did he say that he made any reply to what Phillips said in that respect? A. No, he did not.

Q. Did he say anything else to you about what had taken place during the course of the trial? A. He then started to talk in reference to what happened in the jurors' room.

Q. Did he tell you what had happened in the jury room? 20

Mr. Lee: I object to that. That has been ruled out by the Court. That is clearly an attempt to impeach the verdict of the jury, and we have had rulings by Judge Jayne on that line of testimony before and it has been ruled out.

Mr. Hartpence: It will only call for a yes or no answer.

(The question was repeated.) 30

A. He did.

Q. What did he say took place in there by the jury in the consideration of this case?

Mr. Bonnell: That is objected to. That has been ruled on. It is not a proper question.

Mr. Lee: It is an attempt to impeach the jury, any statements coming directly or indirectly from a member of the panel. 40

William H. Bierach—Direct

Q. Did you have occasion to talk to Mr. Shaw, this same juror, at any other time than the one you have mentioned? A. Two other occasions.

Q. Were they subsequent to the one you have just told about, or prior? A. Subsequent.

10 Q. Was anyone else with you at either of those times? A. I had a man with me by the name of Mr. Brown on the second one.

Q. What is his full name? A. I believe it is Robert.

Q. Did Mr. Shaw on that occasion when you and Mr. Brown were together say anything further about his contact with Mr. Phillips during the course of the trial?

Mr. Lee: I object to that.

20 A. No further, no.

Q. Did Mr. Shaw at that time say anything further to you about what had taken place in the jury room and what the consideration by the jury was of the testimony in the case?

Mr. Bonnell: That is objected to. It has already been ruled that it is an improper question.

30 Q. That only calls for a yes or no answer. A. Yes.

Q. And was that in the immediate presence of yourself and Mr. Brown? A. Yes, sir.

Q. So that Mr. Brown was in a position where he could hear what was said? A. Yes, sir.

Mr. Hartpence: It is the purpose of the defendant in offering this testimony of Mr. Bierach and later Mr. Brown to show that the jury in the consideration of this case

William H. Bierach—Cross

disregarded the testimony almost entirely and simply based their verdict upon their bias and prejudice against the defendant and their favor toward the plaintiff and that the amount of their verdict was fixed because of the remark of counsel for the plaintiff in his summing up, asking that the amount of \$15,000 be given as the verdict. I take it you will ask for another ruling by the Court? 10

Mr. Lee: Yes.

Mr. Bonnell: I think we have already had a ruling on those questions.

Mr. Hartpence: We reserve the right to produce Mr. Brown and to ask of him the same questions that have been submitted to Mr. Bierach insofar as he has knowledge of what took place on the occasion when he was present with Mr. Shaw and the conversation took place. 20

Cross examination by Mr. Lee.

Q. You knew, Mr. Bierach, at the time that you say that Mr. Phillips repeated the conversation with Mr. Shaw in your presence the jury had retired to deliberate on its verdict? A. They had.

Q. It had not brought in its verdict yet? A. No, sir. 30

Q. They were still in the courthouse? A. They were.

Q. You were present, were you not, when depositions were taken in this case on the 10th of November, 1934? You were in the courtroom while the depositions were being taken? A. I believe I was, yes.

Q. Were you present when Mr. Shaw was on the stand? A. No, I was not. 40

William H. Bierach—Redirect

Edith Phillips—Direct

Q. But you were there before the depositions had been concluded for the day, were you not?

A. Yes.

Redirect examination by Mr. Hartpence.

10 Q. During the taking of the depositions on November 10th you had performed some other action with regard to the production of Dr. Mace, had you not? A. Yes, sir.

Q. What was it that you did? A. I left the courthouse and went over to Dr. Mace's office in Wildwood and waited for her and then brought her back to the courtroom.

20 EDITH PHILLIPS, SWORN:

Direct examination by Mr. Hartpence.

Q. Is Mr. Robert S. Phillips your husband? A. Yes.

Q. You heard him testify here this morning, did you not? A. I did.

Q. Were you present at that social gathering with him that he referred to in his testimony on either the evening of or the next evening after the accident in this case? A. Yes, I was.

30 Q. Who do you say were present on that occasion? A. Why, I think the ones that he named.

Q. The ones that he named? A. I think so. He named one couple that I don't think was there, Mr. and Mrs. Dare. I am not sure.

Q. You are not sure whether they were there or not? A. No, I am not.

Q. Were you present in the room when he had the conversation that he spoke about with Mr. and Mrs. Bright? A. No, I was not.

40

Edith Phillips—Cross

Q. You were not there at that time? A. No.

Q. Did you hear Mr. and Mrs. Bright or either of them say anything about the case? A. I did not. I didn't hear the conversation at all.

Q. Were you in the same room where the men were or were you in a different room? A. Not all the time, no. 10

Q. Was there a time when the men were in one room and the ladies in another room? A. Yes.

Q. And at whose house was that gathering? A. Why, he stated Mr. and Mrs. Haldeman, but it was Mr. and Mrs. Hughes.

Q. Whose house? A. Mr. and Mrs. Frank Hughes at Cape May Point.

Q. Their house? A. Yes.

Q. But the party was Mr. and Mrs. Haldeman's? A. No, it wasn't the Haldeman's. It was at Mr. and Mrs. Hughes at Cape May Point. 20

Cross examination by Mr. Lee.

Q. And Mr. Phillips was mistaken when he said that this party occurred at Mr. and Mrs. Haldeman's? A. It was at Mr. and Mrs. Hughes'.

Q. Your husband was mistaken when he testified it was at Haldeman's? A. He must have been, because it was at Mr. and Mrs. Hughes'. 30

By Mr. Bonnell.

Q. What night was that, Mrs. Phillips? A. I really couldn't say. He said the night—

Q. Wasn't it at New Years, some little time after that? A. No, it wasn't.

Q. Were Mr. and Mrs. Bright at the party he was telling about? A. Yes, they were.

Noble Bright—Direct

NOBLE BRIGHT, SWORN:

Direct examination by Mr. Bonnell.

Q. Mr. Bright, you heard Mr. and Mrs. Phillips' statement of the party that they attended and at which you and your wife were present at Mr. and Mrs. Hughes'? A. Yes, sir.

Q. You heard they stated it was right after the accident. Is that so? A. I heard them state that, yes.

Q. When was it? A. The only time I was at Frank and Leah Hughes was to a party New Year's Eve.

Q. That was some two or three months after the accident? A. That was between the time of the accident—after the accident, the only party we were to at Hughes' was New Year's Eve, 1933.

Q. You were not to any party, then, right shortly after the accident in their presence at all at Hughes'? A. Not in 1933, no.

Q. Did you have any conversation with Mr. or Mrs. Phillips, either one, after this accident that night? A. I don't recall the actual conversation, but I will say that I have talked about the case.

Q. Did you at any time state to them who was at fault in this case? A. I had no conclusions as to whose fault it was at the time of the accident. I did speak to them of the actions of Mr. Meadows.

Q. Did you ever make any statement of any kind there that night to the purport that Heilman had almost run you off the road? A. No, sir.

Mr. Hartpence: That is objected to as irrelevant and immaterial. This is apparently an occasion different from that testified to by Mr. Phillips.

Noble Bright—Direct

Mr. Bonnell: He stated that was the only party he was to.

Mr. Hartpence: He has not stated that was the only time they may have been together.

Mr. Bonnell: I asked him if he had ever been to Mr. Hughes' house at any other time and he said no. 10

Mr. Hartpence: Mr. Phillips said it was at Mr. Haldeman's house.

Q. Were you ever to any party at Mrs. Haldeman's house with Mr. Phillips? A. Not between the time of the accident and the New Year's party at Hughes', no.

Q. You were not? A. No, sir. That is, just from the time of the accident until New Year's Eve. 20

Q. You heard Mr. Phillips' testimony stating that night you made a statement that Heilman almost ran you off the road. That isn't so, then? A. That isn't so.

Mr. Hartpence: That is objected to for several reasons. He answered it before I could make my objection. Mr. Phillips did not say it was on that night that it was done, to start with. 30

Q. Then we will say on any night at any time? A. At no time, no.

Q. Did Phillips at any time come to your place to have a talk with you about this accident with Mr. Meadows or anyone? A. I came into my office one afternoon prior to the trial and Mr. Meadows and Mr. Phillips were there, and they did not question me directly on anything with reference to the accident, but while they stood there my wife 40

Noble Bright—Cross

told me in their presence the questions they had asked her.

Q. Did she state they had suggested to her that she make certain statements in the trial?

10 Mr. Hartpence: That is objected to as leading. Ask the gentleman what was said.

Q. What was said as to her testifying at the trial, and by whom? A. I came into the office and Mr. Phillips and Mr. Meadows were there, and I said, "Hello, Bob." The wife said, "Do you know this gentleman?" pointing to Mr. Meadows, and I looked at him and said, "I have seen him before; his face is very familiar". She said, "He is the one that had the accident with Father Heilman," and I said, "Yes, Mr. Meadows." She
20 said, "Yes." So then she said, "They have asked me to testify in the trial for Mr. Meadows as to whether or not Father Heilman was a drinking man," and I said, "Well, what did you say?" and she said, "I told him that as far as I knew he was not," so they didn't discuss the trial or anything in connection with the case with me, because they had been in there, I imagine, for a while and talked with her.

30 *Cross examination by Mr. Hartpence.*

Q. I understood you to say that you had not been present at any gathering or party where Mr. and Mrs. Phillips were present between the time of the accident and the following New Year's Eve. That is correct? A. That is New Year's Eve, 1933. Yes, that is correct.

Q. Well, now, subsequent to New Year's Eve, 1933, after that, were you present at any party or gathering— A. During 1934 I do not recall—
40

Noble Bright—Cross

Q. —from the time of that New Year's Eve, 1933, to the time of the trial? A. Between New Year's Eve, 1933, and the time of the trial in 1934 I do not recall being at any social gathering with the Phillips being present.

Q. Either at Hughes' house or Haldeman's house? A. Hughes' house or Haldeman's house or any other house. 10

Q. And on this occasion, New Year's Eve, 1933, at that party you made no statement to the effect that previously there had been an occurrence in which the Reverend Heilman figured and that your car was involved with his car? A. No, sir.

Q. Did you make any statement with regard to that and the contact of your car with Mr. Meadows' car previously? A. Not in reference to contact; close, yes. 20

Q. Did you say anything about it at all? A. I believe I talked on the matter, yes.

Q. Did you on that occasion say that you had had a narrow escape through the actions of Mr. Heilman's car? A. I did not, no, sir.

Q. Did you hear anyone else say that? A. I did not.

Q. How long have you known Mr. Heilman, Mr. Bright? A. Ever since he has been in charge of St. Timothy's Church in Wildwood. 30

Q. Can you state about how long that is? A. Unfortunately I cannot, no. Well, yes. Five years. That is, to the best of my knowledge and belief.

Q. Do you and Mrs. Bright attend that church? A. Yes, occasionally.

Q. Are you members of the church? A. I am.

Q. And have been during that whole five-year period? A. All my life, yes, the same church. 40

Mary Bright—Direct

Q. Am I to infer, then, that when you do attend church you attend there? A. Yes, sir. Christmas Eve and Easter morning.

Q. Doesn't Mrs. Bright go without you sometimes? A. I don't believe she has for three years.

Q. Previous to that time did she? A. Yes.

10 Q. To Mr. Heilman's church? A. The morning service, yes.

Q. Pretty regularly? A. No, very irregular.

Q. Would it be right to say regularly but not often? A. That is probably it. Not very often.

Q. You testified upon the trial of this case, too, did you not? A. Yes, sir.

MARY BRIGHT, SWORN:

20 *Direct examination by Mr. Lee.*

Q. Mrs. Bright, you testified at the trial of this case previously, didn't you? A. I did.

Q. You are the wife of Noble Bright, who was just on the stand? A. Yes.

Q. Do you recall being present at any social gathering, either at the Hughes home or the Haldeman home, following the accident which Mr. Heilman suffered? A. I can't recall it, no.

30 Q. Being at any gathering at either one of those homes? A. No, not at any party. Of course, I think it is a place that everyone stops in and goes out and you could be in there with five or six more people and it wouldn't be a party, and yet—

Q. It wouldn't be a social gathering? A. No; just a call.

Q. Do you recall while you were in either of those homes ever making a statement to the effect that you were almost run off the road just before

40

Mary Bright—Direct

the accident by Father Heilman's car? A. No, indeed.

Q. Did you ever make such a statement? A. No, because I didn't even see Father Heilman in his car.

Q. You didn't see him prior to the accident? A. I saw him. I was talking to him prior to the accident. 10

Q. I mean immediately before the accident. A. Possibly almost immediately before the accident. I wouldn't say immediately. It was—

Q. Was he driving his car while you were talking to him? A. No, he was just getting in to drive.

Q. So you didn't see him on the road? A. No, we didn't see him on the road at all.

Q. Do you recall Mr. Phillips, who was on the stand a few minutes ago, making a visit to your home? A. I do. 20

Q. And when was that, approximately? A. Well, it was the same day, only prior to Mr. Bonnell's coming to me for testimony. I don't remember what day. It was before the trial.

Q. How close to the trial was it? I mean by that I am just trying to fix the time. Was it shortly after the accident or closer to the trial? A. It was closer to the trial. 30

Q. Did you have a conversation with Mr. Phillips? A. I did.

Q. Was Mr. Meadows there, too, at that time? A. Yes.

Q. And can you tell us in substance the conversation which you had with Mr. Phillips in the presence of Mr. Meadows? A. It is a pretty long ways off. I believe Mr. Phillips came in with Mr. Meadows and asked me if I knew this man. Of 40

Mary Bright—Cross

course, I did. And he said he had come there in reference to the accident that Mr. Meadows and Reverend Heilman had had, and then he asked me about Reverend Heilman, and he asked me to say that—he said, “Reverend Heilman is quite a drinking man; is that right?” and I said, “No, indeed, it is not right.”

Q. During that visit who did most of the talking, Mr. Phillips or Mr. Meadows? A. Mr. Phillips and I did most of the talking.

Q. Did Mr. Phillips ask you whether or not you would testify at the trial that Father Heilman was a drinking man? A. I believe he did.

Cross examination by Mr. Hartpence.

Q. And then you said you wouldn't so testify?
20 A. Yes.

Q. Because that was not so? A. Yes.

Q. That is all that you recall about the conversation between yourself and Mr. Phillips at that time? A. No. We had quite a conversation.

Q. What else was said, as you recall it? A. I said—I was quite perturbed. I said I was afraid I couldn't testify for anything for Mr. Meadows, because he had just missed us by about six inches.

Q. You told that to Mr. Phillips? A. Mr. Meadows was present at the time.

Q. And you hadn't previously said on any occasion—whether it was a party, a social gathering, call, chance meeting or what not, you hadn't on any previous occasion said that the Reverend Mr. Heilman had just missed you with his car and had almost run you off the road? A. I don't believe I ever saw or encountered Reverend Heilman on the road at any time, so I know I had no cause to say anything at all like that.

40

Mary Bright—Cross

Q. You yet haven't answered my question. A. No.

(The question was repeated.)

Q. I am asking you not whether that is so or whether it could be so or might be so. I am asking you whether you hadn't said that on some other occasion? A. No. 10

Q. You had not? A. No.

Q. You are very positive of that? A. I am very positive of that.

Q. On the day of the accident involved in this suit I understood you to say a moment ago that you had spoken to the Reverend Heilman? A. Yes.

Q. Previously to the accident? A. Yes.

Q. Where was that? A. That was at Claghorn Place in Cape May. 20

Q. I understood you to say he was then just getting into his car or just starting out? A. He was just coming down from a house next to the one that we were calling at and the baby had been sick and he came up to ask me about the baby, and possibly talked quite a few minutes.

Q. Ten or fifteen minutes? A. Yes.

Q. Standing outside, out in the street? A. No, sort of sat in—Noble had gotten out and he sort of sat in his seat. 30

Q. I mean you hadn't gone into any house and weren't talking in a house? A. No.

Q. And then later on you did go into the house, did you? A. No, I didn't. Noble had found that the party we were looking for wasn't there, so we went on in Cape May.

Q. And the Reverend Heilman went towards Wildwood, did he? A. Yes. 40

Mary Bright—Cross

Q. Then it was a little later on that you heard he was involved in the accident? A. Well, we had gone into Cape May and picked up some groceries and gone to Cape May Point when we heard of the accident.

10 Q. How long would you say that was after you had talked with him? How long after you had parted there in Cape May City and you had gone toward Cape May and he had gone on toward Wildwood? A. Possibly a half hour. I don't know.

Q. Perhaps a little longer? A. I am not much of a judge on time.

Q. But you had gone to the store and bought some groceries? A. Yes, we had gone to the store and picked up some groceries. We didn't
20 have to buy them.

Q. You just picked them up? A. Yes.

Q. And then had driven on to Cape May Point? A. Yes.

Q. How far was that from where you picked up the groceries? A. I don't know.

Q. Just a few miles, isn't it, from Cape May City to Cape May Point? Two or three miles? Maybe your husband knows. Ask him. If he
30 knows, he can tell you.

Mr. Bright: Approximately three miles.

A. The one who drives would know that better than I would.

Q. Am I correct in my recollection or am I mistaken that on that same evening you did attend a social gathering in Cape May or Cape May Point? A. I can't recall it.

Q. Or the next evening? A. No, I can't recall
40 anything around there.

Mary Bright—Cross

Q. Who is Mrs. Haldeman? A. She is my sister.

Q. Don't you remember testifying on the trial of this case: "We were having dinner in Cape May and didn't go back to Wildwood until later.

Q. With whom did you have dinner in Cape May?

A. My sister. Q. What is her name? A. Mrs. Haldeman. Q. Where did you have dinner? A. At her home in Cape May Point." A. Yes.

10

Q. Don't you remember testifying to that on the trial of the case? A. I did have dinner with my sister in Cape May Point.

Q. That same evening of the accident? A. Yes. That is why we came over.

Q. And who were present at that time besides you and your husband and Mr. and Mrs. Haldeman? A. As I testified before, I don't remember whether my Dad was there or not. He could have been.

20

Q. Mr. and Mrs. Haldeman were there? A. Yes.

Q. And you and Mr. Bright were there? A. Yes.

Q. You can't recall whether the next evening you attended any other social gathering where—
A. I am quite sure we didn't because we went to Cape May about once a week, and we usually made that suffice.

30

Q. So you have no recollection of having attended any social gathering the next evening after the accident or shortly thereafter, at which Mr. and Mrs. Phillips were present? A. No, I am sorry I cannot.

Q. You can't? Do you remember on any occasion attending a social gathering of any kind there in Cape May following the accident and before

40

Mary Bright—Cross

the trial at which Mr. and Mrs. Phillips were present? A. I am sorry. I think that is hard to say, because—

Q. I am only asking you if you can recall any occasions? A. Well, I recall seeing them all the time. Naturally, people you know you see all the time, but I can't remember being on any party or any social gathering with them.

Q. Or any occasion when they happened to be present in some other person's house or where you were all making a call together or where you chanced to meet or anything of that sort? A. No, I can't remember any.

Q. But you did see them from time to time? A. Yes. I think in a small town you see everybody from time to time.

Q. Do you belong to any clubs that Mrs. Phillips belongs to? A. No.

Q. Did Mrs. Haldeman belong to any clubs, that you know of, that Mrs. Phillips belonged to at that time? A. I don't know. I think Mrs. Phillips could tell you that.

Q. Are you a member of Reverend Heilman's church in Wildwood? A. No.

Q. Have you ever been a member of his church? A. No.

Q. You have attended it though, haven't you? A. About five times or six in six years.

Q. About five times in six years? You visit the home of the Reverend Heilman, do you not? A. No.

Q. Never have? A. No.

Q. Never have visited there socially? A. No.

Q. You have known the Reverend Heilman, though, how long? A. Well, I have known him, who he was, naturally ever since he has been there.

Edith Phillips—Direct

Q. Do you know Mrs. Heilman? A. Yes, slightly.

Q. How long have you known her? A. Well, possibly the same time.

EDITH PHILLIPS, recalled:

10

Direct examination by Mr. Hartpence.

Q. Do you desire to make some further statement about this matter? A. This party that no one seems to remember.

Q. What about it? A. It was held the weekend of—Thanksgiving weekend of 1933. Mrs. Hughes held it for Mr. and Mrs. Romig of Washington. I think they will all recall that now.

Q. Who were present, as you recall it? A. Mr. and Mrs. Bright. 20

Q. Mr. and Mrs. Noble Bright? A. Yes, and Mr. and Mrs. Haldeman and—

Q. Were you and Mr. Phillips there? A. Yes, and someone else. I don't just remember. I think it was Mr. and Mrs. Frank Rutherford. I am not sure, but I think they will all recall that. No one can seem to remember it. Also at New Year's Eve they were at Mr. and Mrs. Hughes'.

Q. That is New Year's Eve? A. But this earlier one that no one could recall was the Thanksgiving weekend of 1933. 30

Q. Would that be Saturday evening, Friday evening? A. I think it was Saturday evening, because Mr. and Mrs. Romig were spending the weekend with Mr. and Mrs. Hughes.

Q. And that would be the Saturday after Thanksgiving? A. It was the Saturday after Thanksgiving, because they had—

Q. 1933? A. They had spent Thanksgiving Day in either Philadelphia or some place. Anyway, 40

Mary Bright—Direct

Noble Bright—Direct

they spent Thanksgiving weekend with Mr. and Mrs. Hughes.

Q. Of 1933? A. 1933.

Q. And that was just a few days after this accident? A. Well, I don't know when the accident
10 happened.

Q. You don't know about that? A. No.

No cross examination.

MARY BRIGHT, recalled:

Direct examination by Mr. Lee.

Q. Is your memory refreshed by the testimony of Mrs. Phillips? A. It certainly is.

Q. And is Mrs. Phillips' testimony as to the
20 social gathering at which Mr. and Mrs. Romig were present, is that substantially correct? A. When she mentioned Mr. and Mrs. Romig, I can recall the gathering, and I think it was about a week after the accident.

Q. I direct your attention to this social gathering which Mrs. Phillips has referred to and which you now recall that you attended. Did you at that time say that you were almost run off the
30 road by Father Heilman's car shortly prior to the accident which he had? A. No. I said that about Mr. Meadows, but not Reverend Heilman.

Q. You are sure you didn't say it about Father Heilman? A. Yes, I am sure.

No cross examination.

NOBLE BRIGHT, recalled:

Direct examination by Mr. Bonnell.

Q. You have heard this testimony. Do you recall this particular party they are referring to?
40

Noble Bright—Cross—Redirect

A. I remember being at a gathering where the Romigs were present, but as for placing the time I cannot.

Q. When you were at that gathering where the Romigs were present, did you make any statement at that time that Mr. Heilman had pretty near run you off the road or caused you to run off the road? A. I did not. 10

Q. Did you make any statement of that kind about Mr. Heilman? A. If that gathering was subsequent to the accident I probably talked of the accident.

Q. Well, did you at any time make the statement I stated about, about Mr. Heilman running you off the road? A. I did not, no, sir.

Cross examination by Mr. Hartpence. 20

Q. You recall the occasion, do you? A. I remember being a party there and being present.

Q. But you haven't a very clear recollection of what happened on that occasion? Is that right? A. Well, we played cards, I remember that.

Q. Anything else you remember? A. Some didn't play bridge. I happened to play in the bridge group. Some played pinochle.

Q. The pinochle people went out of the room, the men, by themselves? A. No, they were mixed. They drew for partners. Passed out cards and you drew for partners. 30

Q. Do you recall anything further about that occasion? A. No.

Q. Any refreshments? A. Yes.

Q. Do you recall the refreshments? A. Lots to eat.

Q. You don't recall anything else about refreshments? A. No. 40

Redirect examination by Mr. Lee.

Q. Did you encounter Father Heilman on the road prior to the accident?

Noble Bright—Recross

Mr. Hartpence: That is objected to as immaterial. It is not a question as to whether he encountered him. What was said about it is the only thing we are interested in.

10 Mr. Lee: I think it is material. The testimony of Mr. Phillips was that he said Mr. and Mrs. Bright, or one of them, said that they had almost been driven off the road by Father Heilman's car just before the accident.

Mr. Hartpence: They have denied that. The fact of whether they did or did not encounter his car it seems to me is immaterial. However, that is my objection.

Mr. Lee: I will press for an answer.

20 A. His car was standing still when I saw it on Claghorn Place in front of Irving Harris' place.

Recross examination by Mr. Hartpence.

Q. Just in the afternoon of the accident? A. That was prior to the accident, whenever the accident happened, probably a half hour or three-quarters.

30 Q. Do you mean to say, then, you never encountered Reverend Heilman's car on the road any time prior to the accident? A. I don't recall ever seeing him drive a car on the road, no, sir.

Mr. Lee: We conclude for the time being. I don't know whether we should reserve the right to take further depositions or not.

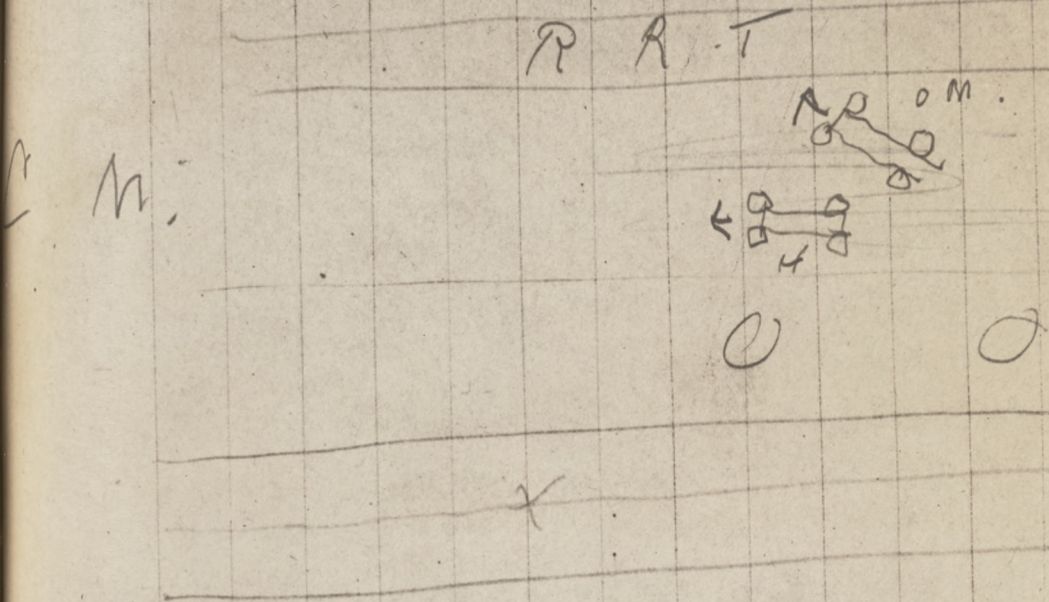
Mr. Hartpence: You can if you want to.

Mr. Lee: All right, we will reserve the right.

40 I hereby certify that the foregoing is a full and accurate transcript of the testimony taken before me in the before-entitled cause.

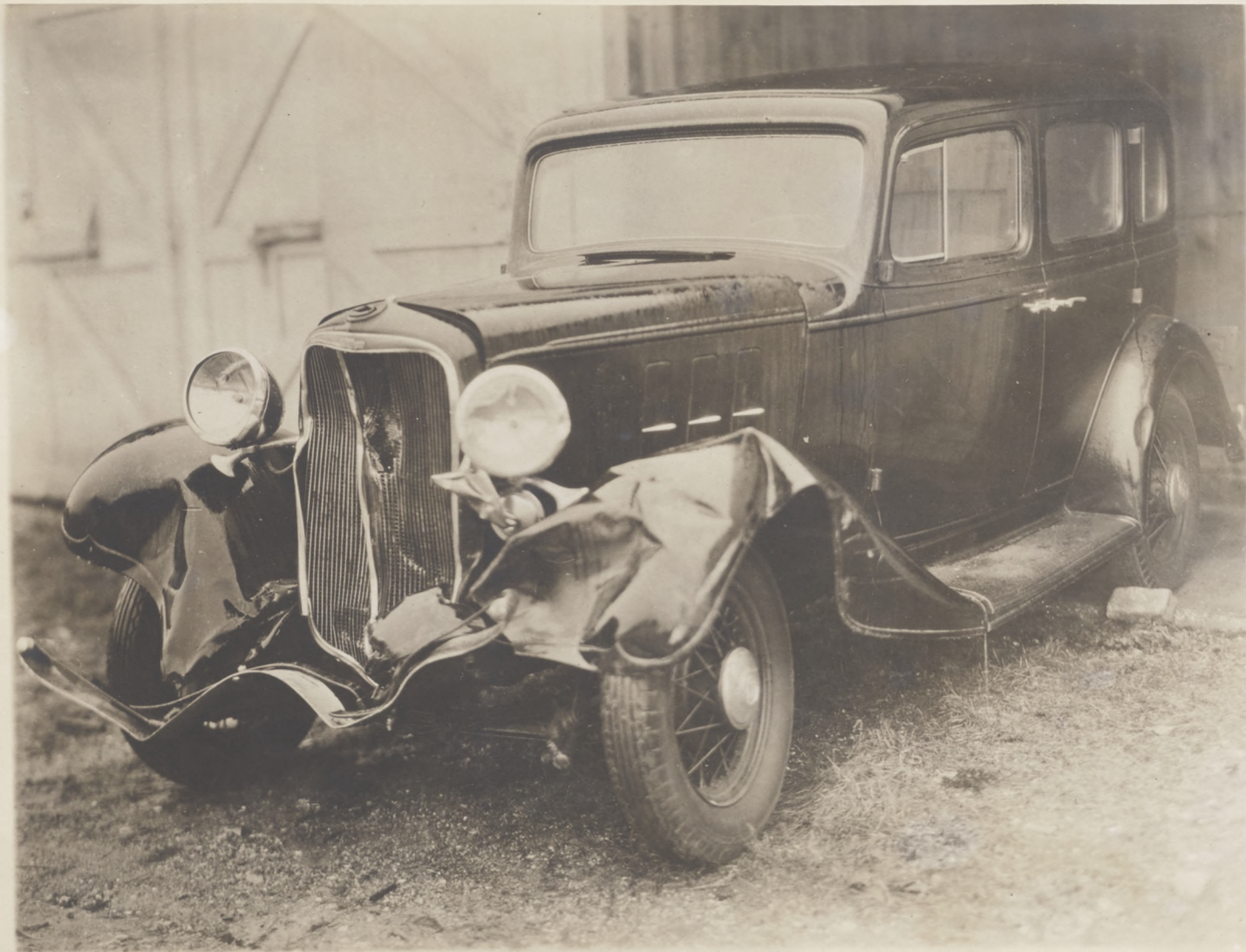
CLAUDE W. MYROSE,
Supreme Court Examiner.

(Not marked)



Sketch of Scene of Accident made by plaintiff's witness William Taylor on stand.

1851



Left side of Meadow's car.

Exhibit D-1.

320

166

Exhibit D-2.



Looking north from scene of accident.

Exhibit D-3.



Front end of Meadow's car..

628.

Exhibit D-4.

323

Right side of Meadow's car.

152

Exhibit D-5.



Front end of Heilman's car.

Exhibit D-6.



Motor view of Heilman's car - Driven under hood.

858

Exhibit D-7.

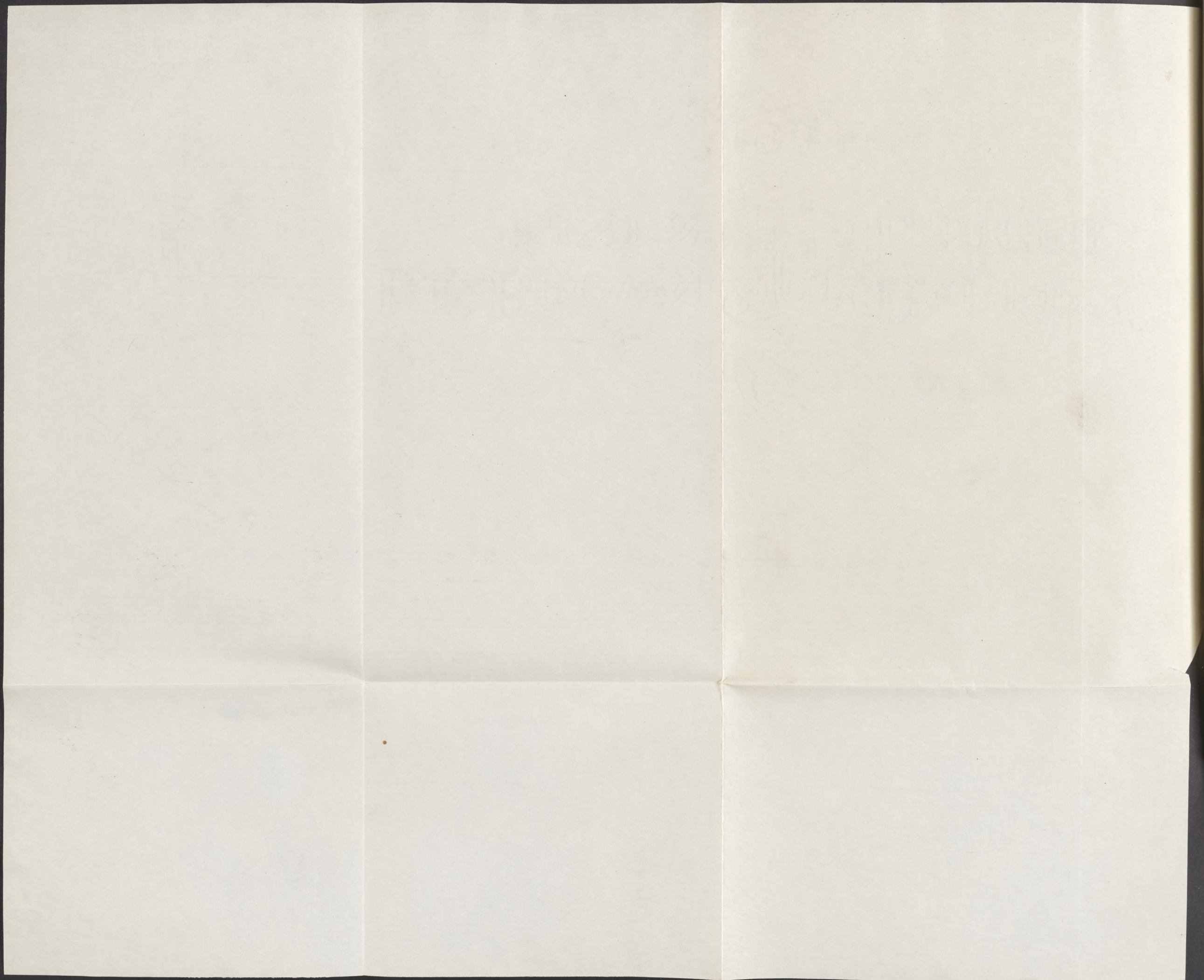


Looking south from scene of accident.

Exhibit D-8.



Looking north at direct place of accident showing
skid marks on bank - Heilman wheel marks.



New Jersey Court of Errors and Appeals

WILLIAM CHARLES HEILMAN,
Plaintiff-Respondent,

vs.

WILLIAM J. MEADOWS,
Defendant-Appellant.

Action at Law.
On Appeal from
Supreme Court.

BRIEF OF DEFENDANT-APPELLANT.

I.

Statement of the Case.

This is an appeal by the defendant-appellant, William J. Meadows (herein designated as the defendant) from a judgment final of the Supreme Court entered February 8, 1935, as of October 18th, 1934, upon a verdict of \$15,000.00 rendered by the jury at the Cape May Circuit in favor of the plaintiff-respondent, William Charles Heilman (herein designated as the plaintiff) against the defendant in an action at law for alleged personal injuries and property damage, and no cause of action upon defendant's counterclaim (State of Case, p. 19).

The verdict was rendered October 15th, 1934, and Postea was filed on October 18th, 1934 (Case, p. 18). A Rule to Show Cause why the verdict should not be set aside and a new trial granted

was allowed by the Trial Judge on October 19th, 1934, with *ad interim* stay of execution, reservation of all exceptions and leave to take depositions (Case, p. 20). The Reasons assigned under the Rule were limited to:

- (1) The verdict was excessive.
- (2) It was the result of bias, passion and prejudice of and improper and illegal influence upon the jury.
- (3) Newly discovered evidence (Case, pp. 22-23).

Ultimately the Rule to Show Cause was discharged and judgment final was entered as above indicated (Case, p. 36). The Trial Court's Memorandum upon the discharge of the Rule appears at pages 31-35 of the State of the Case.

Appeal to this Court was thereafter taken and perfected in regular course (Case, pp. 37-50).

II.

Grounds of Appeal.

The Grounds of Appeal are printed at pages 39-50 of the Case and are not restated in full here because of their apparent extensiveness (which is due chiefly to the provisions of the rules requiring the quotation *totidem verbis* of the portions of the Court's charge to which exception is taken). Briefly summarized, they are as stated in the questions involved in the appeal, which are as follows:

III.

Questions Involved.

1. Should not a non-suit have been granted?
2. Should not a verdict have been directed in favor of the defendant?
3. Should not the evidence of previous occurrences have been excluded?
4. Should not such evidence have been stricken out?
5. Should not the evidence of plaintiff's boast of speed have been admitted?
6. Did not the Court err in charging the jury as he did respecting intoxication and drunken drivers?
7. Did not the Court err in charging the jury with respect to the damages?
8. Did not the Court err in charging the jury with respect to the position of plaintiff's car and defendant's car colliding with it?
9. Did not the Court err in submitting to the jury for determination the issues of defendant's alleged negligence and plaintiff's alleged negligence and contributory negligence?
10. Did not the Court abuse its discretion in discharging the rule to show cause and refusing to grant a new trial?
11. Did not the Court err in sustaining plaintiff's objections to the testimony sought to be introduced by defendant under the rule to show cause to show contact by the jurors with outside

persons and improper action by the jury in reaching and rendering its verdict?

12. Should not the newly discovered evidence have been sufficient to warrant a new trial?

IV.

Facts.

On November 24th, 1933, the Friday before Thanksgiving (Case, pp. 2 and 52), the plaintiff-respondent, an Episcopalian Clergyman, drove his automobile northwardly along State Highway No. 4 from Cape May City towards Wildwood, New Jersey. He left Cape May after 4 P. M. and when somewhere in the vicinity of Bennett Station, about midway between Cape May and Wildwood, he says he stopped his car off the concrete on the shoulder to his extreme right side of the highway in order to investigate some trouble that he had been experiencing with the motor. He further says that he had gotten back into his car and had leaned forward to release the emergency brake when he seemed to go off into a dream from which he awoke in the hospital, severely injured. He at first testified (Case, p. 53, lines 16-20):

“I was ready to start back in the car, thinking I would continue my way to Wildwood and take it to a garage, *and I did get started* and something happened, and the next thing was like a dream. I found myself—”

Quickly thereafter, however, he changed his story and stated that he had not yet started the engine and that he was not yet moving his car when the “something happened” (Case, p. 53, line 26, and p. 54, line 11).

This constitutes plaintiff's entire testimony with regard to the actual occurrence of the accident. He did not know how it took place or what caused it, and no other witnesses were produced by him who had witnessed it or who testified how it occurred. There was no direct evidence whatever produced by plaintiff to show how the accident occurred.

He had previously had trouble with the mechanism of his car and had been warned to be careful about it before leaving Cape May that day (Case, pp. 53, 67).

Frank Bradley, Jr., one of plaintiff's witnesses, a young boy, testified that he lived near Bennett Station and that as he crossed the highway and adjoining railroad tracks to the west of the highway a short time before the accident to get some tobacco, he had observed an automobile standing on the right-hand side of the highway, about one-hundred feet south of his home and that the car was still there when he returned a few minutes later and entered the house, which set back about fifty or sixty feet from the highway on the easterly side thereof. He had gone into the house and was looking out the front door towards the highway when he saw a dark red car proceeding down the highway in a southerly direction towards Cape May at a rapid rate of speed and shortly thereafter heard a crash. Upon going out of the house and looking down the road, he saw two automobiles upon the railroad embankment on the *westerly* side of the highway, almost directly opposite the point where he had previously seen the standing car (Case, p. 119). The railroad embankment was on plaintiff's *left* side of the highway as he proceeded northwardly.

Both cars were then at rest and headed south. One was plaintiff's car and the other was defen-

dant's. Plaintiff's Essex was nearest the concrete roadway and defendant's Chevrolet was nearest the railroad tracks. This witness did not see the accident and, of course, was unable to state how or in what manner the cars had come into collision, or whether the standing car had meantime moved.

William Taylor, another witness for plaintiff, reached the scene of the accident after it happened and was also unable to state how it occurred. His remark that plaintiff's car was struck on its left side was, of necessity, therefore mere guesswork and incompetent. He described the position of the cars when he reached there (Case, p. 94, line 28) and he made a rough sketch while on the witness stand showing their position (Case, p. 319).

Several other witnesses testified for plaintiff regarding defendant's personal condition, indicating that he was under the influence of liquor, and, over the objection of the defendant, respecting certain alleged occurrences which had transpired some time prior to the accident on another highway and in which defendant was asserted to have participated in alleged mismanagement of his car on the road.

In this posture of the case plaintiff rested and defendant moved for the nonsuit. This motion was denied and an appropriate exception to the denial was taken.

Defendant testified that he was driving his car on Route No. 4 in a southerly direction towards Cape May, on his right-hand side of the road, at a speed of about thirty-five miles an hour, near Bennett Station, when he saw another car approaching him at high speed, apparently out of control, and swerving from one side of the road to the other. Defendant pulled over further to

his right-hand side of the road, so that his right-hand wheels were off the concrete on the shoulder, and gradually moved further to the right, which was the only thing he could do. When the approaching car had nearly reached him it suddenly shot over to its left and turned partly around directly in front of defendant's car, and the two cars then came into collision, going off to defendant's right, onto the shoulder and up on the railroad embankment on the westerly side of the highway, where they came to rest, both pointing in a southerly or southwesterly direction. Plaintiff's car was nearest the roadway and defendant's car nearest the railroad embankment.

Harry Ludlam, who was the only eye-witness of the occurrence other than the defendant, testified that as he was driving his automobile northward on Route No. 4 from Cape May toward Wildwood, plaintiff's car passed him at high-speed, fifty-five to sixty miles an hour (Case, p. 140) going in the same direction, at a location about two thousand feet south of the point of accident. As that car passed Ludlam, it swerved to such an extent that he thought that it would not be able to right itself on the road and he expected to see it "take the bank". He followed its course up the highway, at the same time watching the road, as he drove along, and he also saw a car on *its* right-hand side of the road and proceeding at a moderate speed, approaching from the north, towards plaintiff's car. A moment later he heard a crash and, although not seeing the actual impact, saw that the two cars referred to had come into collision. There were no other cars there on the road at the time he referred to. A few seconds later he reached them and saw them at rest on his left side of the road as he drove north, and

up on the railroad embankment, both cars pointing about south or southwest, with plaintiff's car nearest the highway and defendant's car nearest the railroad tracks. Broken glass was lying all around near the two cars.

Several witnesses testified in behalf of the defendant that they reached the scene of the accident very shortly thereafter and that they saw the wheel tracks of defendant's car on the shoulder on his right-hand side, and running back from his car in a direct line toward the north for a distance of from thirty to fifty feet. Some witnesses also testified that they saw skid or burn marks of tires on the concrete beginning at a point in about the center of the road and running directly over to where the plaintiff's car was located after the accident.

The photographs of the two cars, in evidence as exhibits (State of Case, pp. 320, 322, 323, 324 and 325), demonstrate that defendant's car was struck and damaged on the left side, while the plaintiff's car was struck and damaged on the right side. On the plaintiff's right-hand side as he went north there was an open field which at the point of the accident was higher than the roadway, forming a terrace. (Exhibit D-7, State of Case, pp. 326, etc.)

Defendant testified that he had not drank any intoxicant, and a number of his witnesses, including the physician to whom he was sent by the state trooper for the specific purpose of being examined in that respect, testified that defendant was not under the influence of liquor and that they did not notice any odor of liquor about him. Defendant also denied having been on the other highway referred to previous to the accident at the time or in the manner indicated by plaintiff's witnesses.

Defendant offered to prove that plaintiff had boasted of his speeding abilities, but the proof was rejected by the Court (Case, pp. 198 and 253).

At the close of the whole case a motion was made to direct a verdict in favor of the defendant which was denied. Appropriate exception to the denial was taken.

Exceptions were also taken to certain portions of the Court's charge, as indicated in the record (Case, pp. 252, 253) and which are discussed later.

The only grounds urged by defendant under the rule for the setting aside of the verdict were that:

1. It was excessive.
2. It was due to bias and improper influences.
3. Newly discovered evidence.

1. The Trial Court ruled that the verdict was not excessive.

2. Defendant attempted to show by depositions that there had been contact by some of the jurors with outside persons during the trial and that the jury had given no consideration to the evidence but had simply brushed it all aside and had given the verdict in favor of the clergyman plaintiff and against the defendant, whom they regarded as a drunken driver whose license had been previously revoked on that ground, of which fact they appeared to have knowledge, although the Court had ruled that evidence of that revocation was inadmissible (Case, p. 161, lines 20-30); and that the jury had fixed the amount of their verdict at \$15,000.00 because plaintiff's counsel in summing up had said that that was the amount which he thought should be given the plaintiff.

The Trial Court ruled, however, that testimony of what took place in the jury room was inadmis-

sible and sustained plaintiff's objection to it. The Court also ruled that alleged improper contact by the jurors with outside persons could not be shown by the testimony of the jurors themselves but only by the testimony of outside persons and also sustained plaintiff's objections to the defendant's effort to so secure proof from the jurors. There was some outside evidence produced showing that two of the jurors had contacted outside persons during the trial but the Court ruled that that evidence was insufficient to warrant disturbing the verdict (Case, pp. 33-34).

3. In an effort to meet the evidence admitted on the trial regarding alleged previous actions of defendant on the old Cape May road which had been objected to by defendant and which manifestly he could not have been expected to anticipate nor prepare to meet, several witnesses were produced by defendant in the taking of the depositions to substantiate defendant's denial of participation in the occurrences which the Court had permitted plaintiff's witnesses to delineate, and other evidence was produced tending to discredit those witnesses of plaintiff. But the Court held such newly discovered evidence insufficient.

The Rule to Show Cause was therefore discharged and judgment final entered, from which this appeal, as above indicated, was taken to remove the record to this Court for review (Practice Act 1912, p. 382, Sec. 26).

"An appeal is a step in the cause, and is deemed to remove to the appellate court the entire record of the cause and all orders, proceedings and documents made, taken or filed therein, whether or not they are actually included in the transcript of the record sent to that Court."

V. ARGUMENT.

(a) Nonsuit.

There was no evidence at the close of plaintiff's case to warrant an inference that plaintiff's injuries resulted from or were caused by the alleged negligence of defendant.

Ferdon v. McConnell, 99 N. J. Law 180;
Price v. N. Y. C. R. R. Co., 92 N. J. Law, 429;
Adriance v. Schenck, 95 N. J. Law 185, 187;
McCombe v. P. S. Ry. Co., 95 N. J. Law 187, 189;
Alvino v. P. S. Ry. Co., 97 N. J. Law 526, 527, 529;
Egan v. Krueger, 103 N. J. Law 474, 478;
Dobbyn v. Boat Co., 25 Fed (2nd) 283;
P. & R. Ry. Co. v. Thirouin, 9 Fed. (2nd) 856.

See also:

N. Y. C. R. R. Co. v. Ambrose, 280 U. S. 486, at 489; 74 L. Ed. 562 at 565;

where Mr. Justice SUTHERLAND, speaking for the United States Supreme Court said:

“But these are mere surmises, not legitimate inferences deducible from the proved facts. * * *

“In any view of the matter, the respondent (plaintiff), upon whom lay the burden, com-

pletely failed to prove that the accident was proximately due to the negligence of the company. It follows that the verdict rests only upon speculation and conjecture, and can not be allowed to stand. *Chicago, M & St. P. R. Co. v. Coogan*, 271 U. S. 472, 478, 70 L. ed. 1041, 1045, 46 Sup. Ct. Rep. 564, and cases cited.

“The utmost that can be said is that the accident may have resulted from any one of several causes, for some of which the company was responsible, and for some of which it was not. This is not enough. See *Patton v. Texas & P. R. Co.*, 179 U. S. 658, 45 L. ed. 361, 21 Sup. Ct. 275, where, at page 663, this court said:

“ ‘The fact of accident carries with it no presumption of negligence on the part of the employer, and it is an affirmative fact for the the injured employe to establish that the employer has been guilty of negligence. * * * It is not sufficient for the employe to show that the employer may have been guilty of negligence—the evidence must point to the fact that he was. And where the testimony leaves the matter uncertain and shows that any one of half a dozen things may have brought about the injury, for some of which the employer is responsible and for some of which he is not, it is not for the jury to guess between these half a dozen causes and find that the negligence of the employer was the real cause, when there is no satisfactory foundation in the testimony for that conclusion. If the employe is unable to adduce sufficient evidence to show negligence on the part of the employer, it is only one of the many cases in which the plaintiff fails in his testimony, and no mere sympathy for the unfortunate victim of an accident justifies any departure from settled rules of proof resting upon all plaintiffs.’ ”

(b) Motion to Direct.

(b) But assuming *arguendo* that there was sufficient evidence to warrant such an inference, as the Trial Court ruled on the motion, at the most it raised but a *prima facie* presumption to the effect that plaintiff's car having been placed by his direct evidence on his extreme right-hand side of the road, it remained there and must therefore have been struck while there. Even assuming this presumption to have been established there was still no evidence in the case at that juncture to show that defendant's automobile collided with the plaintiff's car because of any act of negligence alleged against him. There was no direct proof in the plaintiff's case to show how the accident occurred. The most that could be said in that respect is that there was a presumption of negligence, which we contend is not sustainable. There can be no presumption upon a presumption or an inference upon an inference. (See cases cited *supra*)

However, defendant in his case testified as above set forth in the Statement of Facts and showed affirmatively just how the accident occurred. In this respect, he was corroborated by the witness Ludlam, by the tracks in the shoulder made by his right-hand wheels, by the tire burns or skid marks made by plaintiff's car on the concrete, by the photographs of the cars showing the nature of the damage, and by the physical law that it was impossible for the accident to have occurred as plaintiff contends it did occur.

This positive, affirmative evidence by the defendant was in nowise rebutted by plaintiff nor was the aforesaid *prima facie* presumption regarding the position of plaintiff's car in any way restored.

Hence the defendant in that posture of the case was entitled to a direction in his favor.

The physical facts completely negative not only the probability of the accident having occurred in accordance with plaintiff's contention but the possibility of it. According to plaintiff's theory, while his car was still standing on his right-hand side of the highway completely off the concrete on the shoulder with a terrace of rising ground immediately to his right (Case, p. 185, lines 20-30; p. 186, line 20; Exhibit D-9, p. 328; Exhibit D-7, p. 326), the car of defendant shot across from defendant's right side of the road and struck the right side of plaintiff's car with the left side of defendant's car and then carried both cars across the highway to the opposite side of the road and up onto the railroad embankment where they came to rest at a point almost directly across from where plaintiff's car had been standing (Case, p. 119). In order to accomplish this manifestly impossible feat, defendant's car would have had to turn completely around by a wide detour either in front or in back of plaintiff's car, climb the terrace into the field, and then come back and hit plaintiff's car on its right-hand side and force it across the highway to the point where the cars came to rest. It was physically impossible for this to have occurred. On the other hand, the nature and location of the damage to the two cars squares exactly with defendant's testimony regarding the occurrence, which, as plaintiff's car suddenly swerved toward defendant's car and apparently turned to the left, would have presented the right side of plaintiff's car to the left side of defendant's car. The impact, impetus and momentum would then as a matter of physical law have carried the two cars naturally to the position in which

they were found after the accident on defendant's right-hand side of the road, across the shoulder and up on the railroad embankment. Again, assuming *arguendo* that defendant's car had suddenly shot to its left-hand side of the road and struck plaintiff's standing car, as contended by plaintiff, the natural result of the impact, impetus, momentum and speed would have been to knock plaintiff's car further over to the plaintiff's right, up the terrace and into the adjoining field. How could defendant's car, if it so swerved over and hit plaintiff's standing car, thus pick up plaintiff's car and carry it over to the defendant's right-hand side of the road, as contended by plaintiff? This, again, was not only physically improbable, but physically impossible.

(c) Intoxication (Grounds of Appeals Nos. 7, 11, 14).

Neither the pleadings nor the bill of particulars present an issue of intoxication. But to follow the course of the trial as shown by the record, one would gain the impression that defendant was on trial upon a drunken driver charge. But whatever else might be said in that respect, the overwhelming weight of the evidence was against such a charge of intoxication, and at the conclusion of the testimony it was clear that such assertion was unfounded. In charging the jury in that respect, however, the Trial Court stressed that feature to a degree which could not help but be prejudicial to the defendant on the issues of negligence alleged, and to such an extent that the jury unquestionably considered no other factor in the case, except perhaps that they should give a verdict in favor of the clergyman for the amount plaintiff's counsel had asked in his summing up.

This was patent (and was voluntarily divulged by a juror), to such an extent, that defendant on the Rule to Show Cause endeavored to establish that fact by showing unequivocally just how the jury so disregarded the evidence pertaining to liability and said in effect: "We will give a verdict for just what Mr. Bonnell asked in the summing up (\$15,000.00) in favor of the clergyman and against the 'town character'" (Case, p. 134, line 35-40; p. 135, line 9).

(d) References by Court to Manner of Accident.

These references appear in Grounds of Appeal Nos. 10 and 13 (Case, pp. 45, 47, 240, line 24; 244, line 32; 252, lines 17-23, lines 31-40).

It is respectfully submitted that the Court's statements with respect to the car of defendant colliding with or crashing into plaintiff's car assumes facts which are not substantiated by the evidence, and which must necessarily have misled the jury into regarding them as having been established. That this was prejudicial and harmful to defendant seems clear.

(e) Previous Occurrences.

The Trial Court also erred in admitting the testimony of Mr. and Mrs. Bright and the witnesses Dickson and Rafferty, respecting the alleged previous occurrences in which defendant was said to have participated on the old Cape May road, and in refusing to strike out such testimony as indicated in the Grounds of Appeal noted at page 18, *infra*.

Defendant cannot be convicted of the negligence alleged in this case by testimony of what he may

have done before or after the accident, even though it might be assumed to be negligence. It is the old, old story of negligence at large, condemned by Mr. Justice GARRISON, speaking for this Court, in *Bien v. Unger*, 64 N. J. Law, p. 596, at 599, and reiterated in *Wyckoff v. Birch*, 76 N. J. Law 646, 653.

See also:

Quellmalz v. Elec. Co., 94 N. J. Law 474, 477.

In *Bien v. Unger*, *supra*, this Court, speaking through Mr. Justice GARRISON, said:

“To charge the master with negligence in permitting the use of this machine because of its unaccountable tendency to behave in a dangerous fashion, something in the nature of *scienter* must be proved, or at least be fairly inferable from the testimony. Unless this be done there is no particular in which negligence has been shown by the greater weight even of probability. There is no such thing as negligence at large.”

In *Wyckoff v. Birch*, *supra*, the same Justice, speaking for this Court, said.

“Arguments based upon isolated circumstances or detached statements of witnesses or upon general allegations of negligence go for nothing when unsupported by testimony as to concrete facts. In its essence negligence is always concrete. ‘There is,’ as was said up another occasion, ‘no such thing as negligence at large.’ *Bien v. Unger*, 35 *Vroom* 596.”

And in *Quellmalz v. Electrical Co.*, *supra*, Mr. Justice PARKER, speaking for this Court, said:

* * * "it was irrelevant, under the well-recognized rule of evidence that other acts of negligence, like other crimes, are not evidential to show the commission of the particular act of negligence or particular crime. *Steph. Dig. Ev.*, art. 10; *17 Cyc.* 279; *State v. Raymond*, 53 N. J. L. 260, 264; *Fishman v. Consumers Brewing Co.*, 78 Id. 300; *Warner v. New York Central Railroad Co.*, 44 N. Y. 465, 471, 472; *Gahagan v. Railroad Co.*, 1 Allen 187; *Maguire v. Railroad Co.*, 115 Mass. 239. The proper inquiry was as to the alleged negligence in maintenance and operation of the particular car, not of other cars, or even cars generally. Evidence of general neglect, if this testimony tended to prove that, was beside the mark, and, as we have said, was harmful error. For this reason the judgment must be reversed and the case sent back for a new trial."

The Court erred in admitting the testimony and in refusing to strike it out and also in his references to it in his charge to the jury (Grounds of Appeal Nos. 5, 6, 8, 9, 7, 11, 14, State of Case, pp. 39, 40, 43, 46, lines 14-17; pp. 128, 129, 132, 133, 130, 236, 237, 252, 253).

(f) Damages.

And, again, we have the charge of the Court respecting damages, which we have urged so often is prejudicial to the defendant and which misleads the jury into the final belief that they can find any verdict they may choose and it will of necessity be "all right".

"Having considered these elements, you will then award to such injured party in whose favor you have determined to render a ver-

dict such sum in damages as in your sound judgment will fairly and justly compensate such injured party for the bodily injuries and for the elements of damage to which I have referred."

(g) Newly Discovered Evidence.

The newly discovered evidence, shown by the depositions taken under the Rule to Show Cause, was vitally material to defendant's rights, and the Court having permitted plaintiff to show the alleged occurrences on the old Cape May road, the defendant should be afforded an opportunity to refute them. Surely a party to a suit cannot be held to the duty of producing evidence to refute an issue which is erroneously permitted to come into the case on the trial, and then be held recalcitrant because he did not produce such refuting evidence. How was defendant to know that such erroneous evidence would be offered or be permitted to come in, so as to prepare to disprove it? The mere statement of this proposition should be sufficient to demonstrate its fallacy. And how can the Court then say that such newly discovered evidence, if produced, would not have influenced the jury or change its views?

(h) Improper Influences upon the Jury.

Defendant-Appellant contends that there was sufficient evidence of improper conduct of the jury produced and offered upon the rule to show cause to invalidate the verdict and cause it to be set aside.

Surely if it can be shown that the jury ignored and disregarded the evidence and the Court's charge and proceeded to arbitrarily find a verdict in

favor of the plaintiff, that should be sufficient to move the Court to set the verdict aside. And how would it be possible to ascertain that such had been the jury's action except by the testimony or admissions of the jurors themselves? Defendant therefore respectfully submits that the trial Court erred in ruling that the testimony of the jurors could not be taken, either to show improper conduct on their part within the jury room or outside.

However, that may be, it is respectfully submitted that sufficient outside contact by the jurors was shown to invalidate the verdict (Case, pp. 257, 258, 260, 291, 297, 298, 299, 300, 301).

Contact as a fact by two jurors was shown. That of itself should be sufficient. It is not so much what was said or done—it is the *fact of contact* that contaminates the verdict. A word or a look may be a signal. The inflection of the voice, or the elevation of the eye-brows, or the winking of an eye-lid, may convey the outsider's message to the recipient. Sign language is as old as the hills and is still widely in use. It is what one *has the right to infer* from contact, rather than what may actually have taken place, that should govern. On this same principle our courts have estopped those who remain silent when they should have spoken, and sanction the inferences which reasonably might be drawn from such silence. In like manner they permit inferences to be drawn against the interest of a party who refuses to produce a document called for by his opponent, or to answer a question propounded. And so, also, do they permit even the failure of a defendant in a criminal prosecution to take the stand in his defense, to be commented upon adversely and inferences to be drawn from such failure adverse to him.

(i) Alleged Abuse of Discretion.

It is submitted, therefore, with all respect, that the Trial Court did not sustainably exercise its discretion in refusing to set aside the verdict on the rule to show cause.

VI.

Conclusion.

Upon the grounds stated it is respectfully urged that the judgment under review should be reversed.

Respectfully submitted,

WALL, HAIGHT, CAREY & HARTPENCE,
*Attorneys for and of Counsel
with defendant.*

ROBERT K. BELL,
JOHN A. HARTPENCE,
of Counsel.



[7010]

LAWYERS PRESS, INC., 165 WILLIAM STREET, NEW YORK CITY, N. Y.

New Jersey Court of Errors and Appeals

WILLIAM CHARLES HEILMAN,
Plaintiff-Respondent,

vs.

WILLIAM J. MEADOWS,
Defendant-Appellant.

Action at Law.
On Appeal from
Supreme Court.

BRIEF OF PLAINTIFF-RESPONDENT.

I.

Statement of the Case.

This is an appeal by the defendant-appellant, William J. Meadows (herein designated as the defendant) from a judgment final of the Supreme Court upon a verdict of \$15,000 rendered by the jury at the Cape May Circuit in favor of the plaintiff-respondent, William Charles Heilman (herein designated as the plaintiff), against the defendant in an action at law for alleged personal injuries and property damage and from an order discharging the defendant's rule to show cause why the verdict should not be set aside and a new trial granted.

Facts.

Plaintiff, William Charles Heilman, at the time of the accident, November 24, 1933, was the Rector of the Episcopal Church at Wildwood, New Jersey (Case, pp. 7, 52). Between 4 and 5 P. M. on that date he had been driving his 1932 Essex

Terraplane automobile along State Highway Route No. 4 near Bennett Crossing, Cape May County (Case, pp. 2, 52, 61). At that point he heard a scraping sound under the hood of his car, caused by a loose fan and stopped on his right hand side of the road, off the road, to fix the fan (Case, p. 52). Plaintiff stopped his car entirely off the cement paving of the road (Case, p. 53). He got out of his car, tried to fix the fan and found that it had come entirely loose from the shaft. He tightened the fan belt as best he could, and then decided to take the car to a garage in Wildwood. He returned to the car, was sitting in the car, leaning over the wheel to see that the emergency brake was open. He had not as yet started the engine when his car was struck (Case, p. 57). By reason of the collision he was rendered unconscious (Case, p. 53). He did not regain consciousness until midnight of the day of the accident (Case, p. 54). He was then at Dr. Mace's Hospital. The following day he was removed to the Episcopal Hospital in Philadelphia where he remained until the second week in March (Case, p. 55). Plaintiff was then sent home in a body cast which encased him from his arm-pits down (Case, p. 55). Every three weeks thereafter he returned to the hospital for observation and treatment, on one occasion remaining for a week (Case, p. 55). At the time of plaintiff's admission to the Episcopal Hospital he was suffering from shock, a laceration over the right eye measuring from two to three inches in length, laceration of right lip, contusions of the chest, right side, anteriorly, with questionable fractures, a transverse fracture of the left ulna and a comminuted fracture of the right femur, middle third, besides some minor abrasions about the knees (Case, p. 72). The transverse fracture of the femur resulted in considerable shortening (Case, p. 73). Plaintiff

suffered extreme pain for approximately two weeks, and great pain at various times thereafter (Case, p. 73). Plaintiff was X-rayed and placed in a Russell frame, which was painful (Case, p. 74). The body cast, referred to above, was put on under deep surgical anaesthesia and plaintiff suffered intense pain while cast was on, at times opiates were administered to relieve this pain (Case, pp. 74, 75). At the time of the trial the lacerations had healed leaving visible scars but there was no healing between the complete fracture of femur (Case, p. 75). Plaintiff was then wearing a steel brace holding his knee cap rigid and prohibited him from putting any weight on his right leg (Case, p. 59). His present condition will not heal without a further open surgical operation consisting of incising the leg and attempting either by bone graft or plate, under anaesthesia, to approximate the fragments of bone and then hold them in place by metal plates or screws (Case, p. 75). This is a dangerous operation and unsuccessful in 70% of cases (Case, p. 76). If successful the operation would leave a shortening of the leg of 1 to 1½ inches. If the operation were not successful the plaintiff will lose his right leg (Case, p. 76). In addition to the foregoing plaintiff continues to suffer severe pains in the head and eyes.

At the trial the plaintiff proved the following items of expenses made necessary by this accident: Hospital bills—\$854; Male Attendant—\$100; Leg Brace—\$48; Depreciation of Automobile—\$400 (Case, pp. 60, 65, 105).

The plaintiff was unable to attend to his clerical duties from the date of the accident until September 1934. At the time of the trial he was still being assisted in certain church services (Case, pp. 60, 65).

The witness Frank Bradley saw the plaintiff's car standing on the right side of the road coming from Cape May just prior to the accident (Case, p. 116). Shortly thereafter he saw a red car traveling on this road at a high rate of speed towards Cape May (Case, p. 117). "Right quick" after that he heard a crash (Case, p. 118). He was the first person to arrive at the scene of the accident (Case, p. 117). He identified the plaintiff's car as the one which he saw stopped on its right side of the highway just before the crash (Case, p. 117). Just after the accident he saw a red car on the highway and he saw the defendant Meadows at that car (Case, p. 118). This witness saw no other car going toward Cape May before the accident that day (Case, pp. 120, 121). After the accident there was glass on both sides of the road (Case, p. 120).

After the accident the cars of the plaintiff and defendant were lying off the road, facing toward Cape May (Case, pp. 94, 95) and the plaintiff's car was nearer to Cape May than the defendant's (Case, p. 95), the defendant's car having completely left the road and climbed an embankment which lies between the road and some railroad tracks (Case, pp. 95, 96).

At the scene of the accident immediately thereafter various witnesses smelled alcohol on the breath of the defendant (Case, pp. 92, 94, 114). Dr. Dandois detected liquor on defendant's breath while defendant was in the hospital a short time after the accident (Case, pp. 89, 90). The defendant acted and talked as though he had been drinking (Case, pp. 92, 93, 111, 118). He refused to get out of his car and used vulgar language to those trying to assist him (Case, pp. 113, 114).

Shortly before the time of the accident the defendant walked up the drive of the witness Dickinson in a "zig-zag condition" and when the

defendant left Dickinson's house, he started with his car almost across the road so that a passing car had to sheer out from him (Case, p. 125). Mrs. Lafferty saw defendant stagger near his car between 4 and 4:30 P. M. on that day (Case, p. 235).

At about 4:30 of the afternoon of the accident defendant backed out into a road near the scene of the accident in front of the car driven by the witness, Noble Bright (Case, p. 127). Defendant was hanging down over the wheel (Case, p. 127). The witness followed the defendant as the car driven by him zig-zagged down the road (Case, p. 129). The defendant made an abrupt stop and shot across the road again in front of this witness. When the defendant had again pulled his car off to the side of the road, Bright went around him and went to West Cape May to look for an officer (Case, p. 129).

ARGUMENT.

PROPOSITION I. Assuming that the point is properly raised in this Court, there is no error in the Trial Court's refusal to nonsuit and to direct a verdict for defendant.

The defendant argues in his brief as grounds for reversal, the failure of the Trial Court to grant a nonsuit and to direct a verdict in favor of the defendant. There is serious doubt as to whether defendant has now the right to urge these grounds since, in his reasons assigned under the rule to show cause why the verdict should not be set aside, he assigned as his second reason that the verdict was the result of bias, passion and prejudice of and improper and illegal influence upon the jury (Case, p. 23). This reason assigned necessarily involved a review of the

evidence by the Trial Court to determine whether it was sufficient to support the verdict reached or whether it was against the weight of the evidence and, hence, indicative of bias. In fact, the Trial Court did so examine, did so review, and ruled as follows (Case, p. 33):

“Assuredly, the verdict was not so manifestly against the weight of the evidence touching the alleged negligence of the defendant and its causal relation to the collision as to be patently indicative of bias, passion and prejudice.”

This ruling upon the application to set aside the verdict was predicated, and necessarily so, upon a finding by the Court that there was evidence to support the verdict reached. Defendant should not be allowed, because of the phraseology used in stating the reasons for his rule, again to advance the same reason as a ground for reversal. The familiar rule applies. Grounds assigned for setting aside verdict on rule to show cause will not be reviewed by the Appellate Court under exceptions reserved.

Morris Plan Corp. v. Leschinsky (Err. & App.), 113 N. J. L. 44, 174 A. 729, affirming 12 N. J. Misc. 1, 169 A. 357;
Robins v. Mack International Motor Truck Corp. (Err. & App.), 113 N. J. L. 377, 174 A. 551;
Jones v. City Limit Cab (Err. & App.), 112 N. J. L. 482, 171 A. 791;
Schreiber v. Public Service Co-ordinated Transport (Err. & App.), 112 N. J. L. 199, 169 A. 629;
Holden v. Rolff (Err. & App.), 110 N. J. L. 499, 166 A. 201;
Dietz v. Glasgow (Err. & App.), 110 N. J. L. 490, 166 A. 175;

Richards v. Watson Flagg Engineering Co. (Err. & App.), 109 N. J. L. 128, 156 A. 500, affirming 9 N. J. Misc. 955, 156 A. 113;

Steinert v. Pennsylvania R. Co. (Err. & App.), 107 N. J. L. 505, 153 A. 533.

In *Robins v. Mack International Motor Truck Corp.*, *supra*, defendant had obtained a rule to show cause, assigning as a reason that the verdict was the result of prejudice. In its grounds of appeal defendant assigned the refusal to nonsuit and to direct a verdict. Mr. Justice PERSKIE stated for this court as follows (113 N. J. L. 377, at ³⁸⁵ 174 A. 551, at 556):

“But our affirmance is also rested on the ground that appellant obtained, as already stated, a rule to show cause assigning, among other reasons, that the ‘verdict was the result of prejudice, passion and bias on the part of the jury.’ It is well-settled law that such an assignment is the equivalent to an assignment that the verdict is against the weight of the evidence. The discharge of the rule to show cause, under such circumstances, precludes further consideration of any question which was assigned as a ground for setting the verdict aside on the rule, such question being *res adjudicata*, whether argued or not, and although not decided in terms on the rule to show cause. It precludes an appeal on the grounds of error in refusing to nonsuit and to direct a verdict for the lack of evidence.”

It is submitted that the *Robins* case is controlling but assuming, *arguendo*, that defendant now has the right to attack the refusal to nonsuit and to direct a verdict, it is clear his contentions cannot prevail. If evidence came in after the refusal to nonsuit sufficient to take the case to the jury, any error in such refusal was cured. So we may con-

centrate on the question whether on the whole state of the evidence, a verdict should have been directed for the defendant.

“Both contentions may, under familiar rules, be resolved into the question of whether or not the direction of a verdict was properly refused, because, if evidence competent to take the case to the jury came in after the refusal to nonsuit, any error in such refusal grounded in the lack of that evidence was cured.” Mr. Justice CASE in *Schreiber v. Public Service Co-ordinated Transport*, 112 N. J. L. 199, at 201, 169 A. 629, at 629.

See also:

McGee v. Kraft, 110 N. J. L. 532, 166 A. 80;

Mandsley v. Richardson & Boynton Co., 101 N. J. L. 561, 129 A. 139.

The cases cited in defendant's brief at pages 11 and 12 are easily distinguishable from the instant case and the result reached in those cases should in no way control in view of the state of the evidence adduced in the instant case. All of the cases cited in defendant's brief present a state of facts which showed merely the occurrence of an accident, the approximate location of the occurrence and the resultant injuries. The facts presented no solution of how the accident occurred or whether any negligence of the defendant produced it. In sharp contrast, are the facts of the instant case. The defendant's pleadings, as well as the testimony he adduced reveal (paragraphs 2 and 3 of Answer, Case, p. 7, and paragraphs 1, 2 and 4 of the Counterclaim, Case, pp. 9 and 10) that a collision between plaintiff's and defendant's cars occurred at about 4:30 P. M. on Route No. 4 at a point south of Bennett Station and north of Cape May; that immediately

prior to the accident plaintiff was seated in his automobile on the said highway headed in a general northerly direction and defendant was operating and driving his car in a general southerly direction on the said highway. Plaintiff testified (Case, pp. 52, 53 and 68) that he stopped his car on his right hand side of the road, off the road, off the concrete, tried to fix his car, had re-seated himself, and the last action he knew of was when he was leaning over in the act of opening the emergency brake. He was quite sure that he had not started the engine. The fact that he was parked there and had not started when the accident occurred was corroborated by the witness Bradley (Case, pp. 116, 117). This witness stated that just before the accident he noticed a car parked on the right hand side of the road coming from Cape May, which car he afterwards identified as the plaintiff's car, and another car, a red car, traveling at a high rate of speed towards Cape May, and that "almost instantly" after this observation he heard the crash. There was abundant testimony by the witnesses Dickinson (Case, p. 125), Bright (Case, p. 127), Mrs. Bright (Case, p. 133) and Lafferty (Case, p. 235) to the effect that defendant while in an intoxicated condition was driving his car in the vicinity of the scene of the accident, a half-hour prior to the accident. There was equally abundant evidence that defendant was in an intoxicated condition immediately after the accident (Case, pp. 89, 90, 92, 93, 94, 111, 113, 114 and 118). The witness Bradley testified that there was glass on both sides of the road (Case, p. 120), from which a probable inference arises that the contact occurred on the opposite side of the road from that at which the cars finally came to rest. The conclusion is irresistible that this state of evidence gave rise to a factual situation the probable inferences from

which were that defendant in an unfit state sped down the road, crossed to his left hand side and struck the plaintiff's parked car. The Trial Court properly caused this evidence to be thrown into the jury's scales to be balanced with the conflicting and contradictory evidence adduced by the defendant. The inference, if the jury was to believe the plaintiff's evidence, was not only possible, but rather, probable, that defendant's negligence in operating his car, a link in the chain from his primary negligence in assuming to drive when in an unfit condition to the ultimate result was the proximate cause of plaintiff's injuries. See *Napurana v. Young*, 74 N. J. L. 627, at 628, 65 A. 1052, where Mr. Justice FORT said:

“The jury may infer negligence from facts and circumstances which reasonably impute it.”

PROPOSITION II. There was no error in that part of the Trial Court's charge which related to the evidence concerning defendant's intoxication.

Arguing on grounds of appeal Nos. 7-11-14 defendant in his brief at page 15 contends that the Judge's charge was unfair in that he placed undue stress upon the charge of intoxication. A brief survey of the Judge's charge will reveal that there was nothing prejudicial to the defendant's rights in the handling of this issue. Out of 25 paragraphs in the charge the question of intoxication is treated in only 2 paragraphs and part of another. 18 out of 33 of the witnesses produced during the whole trial of the case testified on the question of intoxication of the defendant. This is cogent proof that the issue had important relevancy as regards the major issues

of negligence and causation and could not be disregarded by the Court in its charge. In view of the fact that the defendant's condition at the time of the accident and his physical capacity to drive a car had an important bearing upon the issue of negligence, the Court certainly cannot be said to have over emphasized this question. Furthermore, in treating this issue there was nothing unfair, and the jury was charged that the evidence was conflicting and contradictory and it was for the jury to decide. For example, at page 245 of the Case, line 17, the Trial Court said:

“But mind you, I do not say here that this defendant was intoxicated on the occasion of this collision, nor do I say that if he was intoxicated, he was negligent in the manner in which he operated his automobile on this occasion; because these are questions for you to determine and not for me.”

And again, immediately after referring to the evidence of intoxication, the Court charged on page 242, line 2, as follows:

“All of this conflict in the testimony creates what we speak of as questions of fact, and it is your exclusive duty, members of the jury, to solve these questions of fact.”

PROPOSITION III. There was no error in that part of the Trial Court's charge which related to the manner of the occurrence of the accident.

The defendant next charges (Brief, p. 16) that there was error in the Court's reference to the manner of the accident. This contention is necessarily predicated upon defendant's prior contentions that a nonsuit should have been granted and a verdict should have been directed in favor

of the defendant because there was no evidence of the manner in which the accident occurred. Suffice it to say, that as conclusively proved in Proposition I hereof, *supra*, there is no substantiation in fact for the contention that such evidence was not adduced at the trial. Defendant in his brief refers to "the Court's statement with respect to the car of defendant colliding with or crashing into plaintiff's car as assuming 'facts which are not substantiated by the evidence.' " As hereinabove mentioned both the pleadings and the testimony conclusively show that there was a collision and that there was a crash; for example, referring to the testimony of the witness Bradley (Case, p. 117), as well as the testimony of defendant's own witness Ludlum (Case, pp. 140-141). The evidence upon which the Court might reasonably base its reference to the manner in which the collision, and related crash occurred, are treated herein under Proposition I. It is a well established rule of trial practice that the Trial Judge has a right to make comments on the testimony so long as the jury shall determine the facts and draw their own conclusions therefrom. *Kneip v. N. Y. & Long Branch R. R. Co.*, 102 N. J. L. 374, 131 A. 886; *Silverstein v. Schneider*, 110 N. J. L. 239, 246, 164 A. 480. The Court's charge is interspersed throughout with admonitions of a proper nature.

PROPOSITION IV. There was no error in the admission of testimony concerning defendant's conduct prior to the accident.

Error of the Trial Court is charged in the admission of the testimony of certain witnesses who said that they saw the defendant about half an hour before the accident exhibiting conduct, both in speech, walk, and operation of car, which would

give rise to an inference that the defendant was drunk at that time.

First, it should be noted that defendant's counsel did not make the objections to the admission of this testimony which are now raised in his brief. His first course seems to have been to object to the testimony because the time of the occurrence had not been stated and the man who was said to have been acting in an unusual and peculiar manner was not identified as the defendant. It needs only a cursory examination of the record to show that the Trial Court insisted upon these objections being satisfied (Case, pp. 126, 128), and that defendant's counsel thereafter failed to object upon the ground that these previous occurrences were either too remote or *res inter alios acta*. It is a well established rule of trial practice that counsel must state the grounds of his objection, and that if he states an improper ground when a proper ground existed, the fact that a proper ground existed will not avail to upset the verdict reached in the trial court.

Aside from this flaw in defendant's contention, examination of the principles of evidence inevitably lead to the conclusion that all of this testimony was competent, relevant and proper. As explained by the Trial Court in the ruling upon the nonsuit, this evidence had probative value as regards the issue of negligence, because, taken in connection with the facts of the occurrence of the accident, the fact that immediately preceding the accident a car such as the defendant operated was seen proceeding towards the scene of the accident at a rapid rate of speed, the issue was presented as to whether the defendant was intoxicated at the time of the accident, and hence, in an unfit condition so that he could not have operated his car as a reasonably prudent man should. It is not a question of the admission of testimony of

unrelated acts to show generally negligent proclivities, as argued in defendant's brief on pages 16 and 17, but whether the admission of evidence of the conduct of the defendant under circumstances so clearly related as to time and place as to form the reasonable basis for the inference that defendant was operating his car in a negligent manner at the time of the accident. This type of evidence has the approval of Dean Wigmore, perhaps the greatest of all authors on treatises on evidence. He discusses it generally under the topic of "Evidence to Prove Physical Condition or Capacity" (*I. Wigmore on Evidence*, (2nd Ed. 1923) p. 467, Sec. 219):

"Sec. 219. General Principle. It has been already noted that Physical Capacity or Condition, like most other human attributes, may be evidenced in three ways: (1) by conduct or other manifestations indicating their inward source; (2) by external facts pointing forward to the existence of the quality or condition; (3) by the prior or subsequent existence of the quality or condition, pointing forward or backward to its existence at the time in question. The considerations which affect the validity of the various inferences are simple, depending chiefly on ordinary experience and common sense, and cause little difficulty. The doctrine just examined, that the criminality of conduct which is in itself relevant is no objection to its reception, is frequently illustrated; and the necessity for applying it and for distinguishing the character-rule has given the occasion for most of the rulings. The policies of Unfair Surprise, Undue Prejudice, and Confusion of Issues are here occasionally applicable. But they have ordinarily no real force. The trial Court's discretion is best trusted to determine their validity in the light of the circumstances of each case."

And more specifically, he refers to circumstantial evidence of intoxication (*I. Wigmore on Evidence*, p. 492, Sec. 235):

“Sec. 235. Intoxication. Intoxication, as a mental condition of temporary stupefaction, may be evidence circumstantially in the same general modes that are available for mental capacity or condition in general. (1) It may be evidenced by the person’s conduct. (2) It may be evidenced by predisposing circumstances, *i. e.* by the drinking of intoxicating liquor. (3) *It may be evidenced by his prior or subsequent condition of intoxication within such a time that the condition may be supposed to be continuous.*”

A leading case on this type of testimony as affecting issues similar to that involved in the instant case, and within which, incidentally there is a strong resemblance to the instant case, is *Gibbard v. Evans*, 87 W. Va. 650, 106 S. E. 37. This case was presented on error from the Supreme Court of Appeals of West Virginia to a County Circuit Court. Plaintiff sued for personal injuries sustained by reason of a collision of a car in which plaintiff was driving with an automobile owned and driven by defendant. The testimony of a witness by the name of Ash related to the condition of the defendant at a time from twenty minutes to a half hour before the accident. The testimony of Ash was admitted to the effect that he passed the defendant upon the road near the scene of the accident, and prior thereto; that the defendant had the front end of his car lodged up against a telephone pole; that he was sitting in his car looking down and out sideways of the car; and that returning he again saw the defendant in the road in his car and he seemed to be weaving back and forth, and the driver of Ash’s car had to turn out of the road in order to avoid

the defendant's car. The Appellate Court held that this evidence was properly admitted, ruling as follows (106 S. E. 37, at p. 39):

"The objection to this testimony is that it relates to matters not directly connected with the accident, and not a part of the *res gestae*. In support of this proposition we are cited to *Beard v. Indemnity Ins. Co.*, 65 W. Va. 283, 64 S. E. 119, affirming the general rule that where the issue is whether a person did a particular thing or was in a particular state at some other time is inadmissible. Like most general rules this one has its exceptions. One recognized and applied by this court is that where other actions and conduct of a person accused of wrongdoing were so recently connected in time and circumstances as likely to characterize his conduct and condition on the particular occasion involved, evidence thereof may be properly admitted for that purpose. Besides, if Evans was in fact intoxicated twenty or thirty minutes before the occurrence in question, may not the court take judicial notice that he would not likely be in a sober and responsible state at the end of that time."

We respectfully submit that the above authorities show the correct view of the competency of testimony such as that adduced in the court below by plaintiff through the witnesses, Dickinson, Lafferty, Bright and Mrs. Bright, and that there was no error in the Trial Court's refusal to exclude such testimony or to strike it after it had been presented.

PROPOSITION V. There was no error in that part of the Trial Court's charge which related to damages.

Error is charged (Brief, p. 18) in the charge of the court respecting damages and a short passage of some seven lines is quoted by the defend-

ant as an example of such error. In the first place, the very passage that is objected to is a fair and proper instruction as to the theory upon which a litigant should be compensated for injuries in the event of the liability of his adversary. In the second place, the defendant has fallen into the error of partial quotation. A small passage of this nature is meaningless unless taken in relation to the whole charge. The Trial Court expended much effort and meticulous care in reviewing in its charge the evidence relating to damages sustained by both the plaintiff and by the defendant. And finally, defendant should not be heard to object to a passage of the charge, which if liberal to the plaintiff, was equally liberal to him, for, it is submitted, that at the point in the charge where the language now objected to was used the Trial Court was referring both to the damages alleged to have been sustained by the plaintiff on the main case and to the damages alleged to have been sustained by the defendant on his counterclaim.

PROPOSITION VI. There was no error in the refusal to grant a new trial, assuming that that question is properly before this Court, and no abuse of discretion by the Trial Court in such refusal.

In answering the defendant's charge that the record reveals error in that the Court failed to set aside the verdict because of newly discovered evidence and improper influence upon the jury, the same principle that was invoked herein under Proposition I, *supra*, is clearly applicable. These were points which were specifically assigned as reasons under the rule and were argued upon the return of the rule and treated in the Trial Court's decision upon the rule. They are *res adjudicata* and defendant cannot urge them on this appeal.

But again, assuming, *arguendo*, defendant's contentions in this respect are fallacious because the alleged newly discovered evidence lacks all the essential elements of recognized characteristics of newly discovered evidence. The evidence adduced to show improper influence upon the jury clearly was insufficient and unconvincing as well. Defendant produced a witness, a doctor named Mace, the purport of whose testimony was that the defendant was not intoxicated when she examined him in her hospital after the accident. The purport of the witness Clinton Wilson's testimony was that the school bus which he drove was on the highway at about 3 o'clock in the afternoon, and he passed the defendant's yard and saw him there, but this witness also admitted that he was only one of eight drivers of school buses operating on the highways in question on the date of the accident. Defendant was able to prove nothing by the witness Emmons because he stated that he was not driving a school bus on the day of the accident. The witness Norman Taylor gave testimony clearly devoid of probative value. Mr. and Mrs. Phillips were produced for the purpose of showing that the Brights had made prior contradictory statements to the effect that it was the plaintiff's car which had almost collided with them.

As to all of this testimony, it must certainly be clear that if the defendant's case had been properly investigated the existence of such evidence would have been found. In the first place, from an interview with any of the witnesses who appeared upon the scene of the accident immediately subsequent thereto, it would have been clear that a charge would be made that defendant was intoxicated at the time of the accident. The next step for the person handling the case would have been to have traced the defendant's movements before the accident. Furthermore, it should be

remembered that the trial of this case started on Wednesday afternoon, October 10 (Case, p. 51). The plaintiff had rested his case by about 3 P. M. on the following day, Thursday, October 11 (Case, pp. 116, 137), at which point the defendant's case began. The trial was resumed on Monday, October 15 (Case, p. 177) and finished in the afternoon of that day. Defendant, therefore, had part of Thursday, all day Friday, all day Saturday, all day Sunday and part of Monday in which to procure the evidence adduced on the taking of depositions and to cause these witnesses to appear in court. It appears in the testimony taken on the depositions that all of these witnesses were in the County and available for subpoena during the progress of the trial. Therefore, it is patent that defendant in offering this testimony failed to meet the well established principle of evidence relating to newly discovered evidence which is that before alleged newly discovered evidence can be considered as such for the purpose of obtaining a new trial the party offering it must show strict compliance with the legal requirements to that end and the proffered new testimony must not only be material and convincing but of character such as would tend to reverse the result ~~had it been~~ reached by the jury.

Nightengale v. Public Service Co-ordinated Transport, 8 N. J. Misc. 238, 149 A. 526;

Reid v. North Park & Dodd Trust Co., 10 N. J. Misc. 469, 159 A. 687.

To turn to the question of improper influence upon the jury, the evidence produced by the defendant on the rule was, to say the least, inconclusive and unconvincing and significant of nothing except that one or two jurors had possibly engaged in the common civilities incident to

every-day life and contact between individuals of a community. The witness, Irene Friedman (Case, p. 258) stated in answer to an inquiry as to what she thought of this case, addressed to her in the ladies' room, the proponent of said question being unknown to her, that she did not know what to think of it, that at one time she thought one thing and the next time another. This is one of the alleged contacts to which the defendant refers and of which he attempts to make much in his brief. The other alleged contact, which is denied by the juror in question (Case, pp. 274, 275), was with the defendant's own witness, Phillips, who was present on each day of the trial and testified for the defendant in the main case and a witness upon the taking of the depositions. This alleged contact occurred on the last day of the trial and was communicated to the defendant while the jury was present in its room and deliberating upon the verdict (Case, pp. 291, 292). This alleged contact, as testified to by Phillips (Case, p. 291), consisted in an inquiry by Phillips and a facetious observation by Shaw that probably all the witnesses were lying. How this could be prejudicial to the defendant is hard to ascertain. Furthermore, it is submitted that the alleged improper conduct was that of defendant's own witness Phillips in eliciting any reply from a juror. And it is further submitted that all of this is denied by the juror in question. Moreover the alleged contact was communicated to the defendant during the progress of the trial and the defendant cannot sit idly by and speculate upon the jury's verdict and then finding the verdict is adverse to him complain of alleged misconduct on the part of the jury known to him before the verdict was rendered. See *Murphy v. Zimmerman*, 9 N. J. Misc. 728, in which our Supreme Court said in a *per curiam* opinion:

"The contention on the rule is that the defendant before trial was seen talking near the probation officer's room in the court house with a man who was later drawn on the panel to try the case, that while the attorney for the plaintiffs was summing up this juror was seen to grin and wink at the defendant, and that the juror went down in the same elevator with the defendant after the trial. It is significant that the matter was not, in any of its phases, called to the attention of the court until after the verdict.

All of these allegations are denied. We are not satisfied that the alleged incidents actually occurred, but even on the assumption that they did happen we find no reason for a new trial. The alleged acts of misconduct were known to the plaintiffs, according to the testimony advanced by the latter, contemporaneously with the occurrences. The first incident could have been met by a challenge when the juror was drawn. The second incident should have been followed by timely complaint lodged with the court. It was not for the plaintiffs to sit by and gamble with their knowledge against the verdict."

Error is charged in the exclusion of testimony offered by jurors as to what went on in the jury room but that this testimony is so clearly incompetent needs no further comment save the citation of the following cases:

- Brewster v. Thompson*, 1 N. J. L. 36;
- Randall v. Grover*, 1 N. J. L. 175;
- Tomlin v. Cox*, 19 N. J. L. 76;
- Kennedy v. Kennedy*, 18 N. J. L. 450;
- Deacon v. Shreve*, 22 N. J. L. 176;
- Hutchinson v. Consumers Coal*, 36 N. J. L. 24;
- Lindauer v. Teeter*, 41 N. J. L. 255;
- Peters v. Fogarty*, 55 N. J. L. 386;

Queen v. Jennings, 93 N. J. L. 353;
Bragg v. King, 104 N. J. L. 4;
Mathis Co. v. Cranmer, 9 N. J. Misc. 633.

Of course, it is urged by the defendant in his brief, as a concluding point that the Trial Court abused its discretion in refusing to set aside the verdict and grant a new trial. In view of the character and quality of the evidence adduced by the defendant upon his depositions taken under the rule to show cause, which is fully outlined above, it is respectfully submitted that the Trial Court did not abuse its discretion.

CONCLUSION.

In view of the law as outlined above and the authorities cited in support thereof, it is respectfully urged that the judgment under review should be affirmed.

Respectfully submitted,

KATZENBACH, GILDEA & RUDNER,
Attorneys for and of Counsel with
Plaintiff.

CHARLES A. BONNELL,
WILLIAM V. LEE,
Of Counsel.

#49 May Term, 1935.
49 MAY. T. 1935

New Jersey Court of Errors and Appeals

WILLIAM CHARLES HEILMAN,

Plaintiff-Respondent,

vs.

WILLIAM J. MEADOWS,

Defendant-Appellant.

Action at Law.

On Appeal from
Supreme Court.

REPLY BRIEF OF DEFENDANT-APPELLANT.

Referring to Proposition I of the Argument in the Brief of Plaintiff-Respondent, at pages 5-10, it is respectfully submitted that this portion of the brief should be disregarded. Counsel for the Plaintiff-Respondent are entirely aware of the fact that neither the evidence nor the weight of the evidence pertaining to the main case, that is the question of liability, was in any way adverted to or argued by the Defendant-Appellant on the Rule to Show Cause why the verdict should not be set aside and a new trial granted.

Reason 1, pertaining to the excessiveness of the verdict, and Reason 3 pertaining to the newly discovered evidence, obviously had nothing to do with the questions of liability or of the weight of evidence (see our main brief near the top of page 2). Reason 2 was limited strictly to the question of the bias and prejudice of the jury in its relation to the alleged improper influences upon

the jury and the manner in which it had considered its verdict. The Argument was just as strictly limited and confined to that phase of the case.

At one stage of the Argument before the Trial Court on the Rule, Counsel for the Plaintiff-Respondent started to discuss the evidence pertaining to liability and the weight of evidence, but the Trial Court very promptly admonished him that those phases of the case had *not* been in any way raised or discussed by Counsel for the Defendant-Appellant, but that such argument had been limited strictly as above indicated and that Counsel for Defendant-Appellant had in no wise argued the question of liability or weight of evidence or the bias and prejudice of the jury except in relation to the alleged improper influences upon them. And the Argument on the Rule was strictly confined within those limits by the Court.

It will be noted that in the argument of Plaintiff-Respondent on this proposition, it is nowhere affirmatively asserted that any other course was pursued. We are confident that counsel will acquiesce in our statement of what actually took place on the Argument of the Rule and will in no wise take issue with it.

The argument appears to be directed to the proposition that the phraseology of Reason 2 necessarily involved a review of the evidence and the weight thereof on the main case, and reference is made to the language of the Trial Court in its conclusions, as quoted near the top of page 6 of the brief of Plaintiff-Respondent. That, however, was a mere statement by the way, made by

the Court in passing and, even though the Trial Court did consider the weight of evidence in that respect, that could in no wise bind counsel for the Defendant-Appellant, who meticulously avoided discussing it on the argument.

It is respectfully submitted that said Proposition I of the Argument in the Brief of Plaintiff-Respondent has no place in the Argument of this appeal and should be disregarded.

WALL, HAIGHT, CAREY & HARTPENCE,
*Attorneys for and of Counsel with
Defendant-Appellant.*

ROBERT K. BELL,
JOHN A. HARTPENCE,
of Counsel.

