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COMPLAINT.

Filed June 17, 1922.

NEW JERSEY SUPREME COURT.

UNION COUNTY.

THEODOR J. HINTZ, *Plaintiff,* *vs.* HENRY S. ROBERTS, *Defendant.*	*Action at Law.*

COMPLAINT.

The plaintiff, Theodor J. Hintz, residing at the Town of Westfield, Union County, New Jersey, says that:

1. At about 10 o'clock Sunday evening, May 14th, 1922, Plaintiff was proceeding in his automobile in a westerly direction along Bowers Street, in the City of Jersey City, and came to a full stop at the junction of Bowers Street and the Hudson County Boulevard.

2. In the middle of the Boulevard, and about in line with the northerly line of Bowers Street, was a traffic booth surmounted by a large signal semaphore with two arms, and a lighted signal lantern with red and green lenses about 10 inches in diameter.

3. A traffic officer was standing at the southerly side of the booth as the plaintiff came to a stop, and immediately thereafter turned the traffic signal so that the words "Go" and the green light faced the plaintiff and Bowers Street, and the words "Stop" and the red light faced northerly on the Boulevard.

4. The plaintiff thereupon proceeded forward and, crossing the easterly side of the Boulevard, turned

in a southerly direction on the Boulevard.

5. At that time this defendant was proceeding in a southerly direction along said Boulevard in an automobile owned and operated by said defendant, and coming from a point to the north of the traffic booth and signals.

6. This defendant carelessly, negligently, and with a reckless and wanton disregard of the rights of the plaintiff, and in reckless and wanton disregard of the traffic rules, and contrary to the statute in such case made and provided, proceeded at a high rate of speed past the signals set against him, and ran into the rear of plaintiff's automobile, causing serious damage thereto.

By reason of the injuries to plaintiff's automobile said plaintiff has paid out large sums of money, and because of the defendant's reckless and wanton negligence and disregard of the plaintiff's rights, said plaintiff is entitled as well to punitive damages.

Plaintiff demands $5,000 damages.

E. A. MERRILL,
Attorney of Plaintiff.

ANSWER.

Filed June 26, 1922.

NEW JERSEY SUPREME COURT.

UNION COUNTY.

THEODOR J. HINTZ, *Plaintiff,* *vs.* HENRY S. ROBERTS, *Defendant.*	*Action at Law.*

ANSWER.

The Answer of Henry S. Roberts to the plaintiff's Complaint.

1. Defendant denies each and every allegation of plaintiff's Complaint.

FIRST SEPARATE DEFENSE.

1. Defendant says that the said plaintiff was guilty of contributory negligence at the time and place of the alleged accident set forth in the plaintiff's Complaint.

SECOND SEPARATE DEFENSE.

1. Defendant says that the said alleged accident charged in the plaintiff's complaint was caused by the negligence of the plaintiff.

THIRD SEPARATE DEFENSE.

1. At the trial the defendant will move to strike out plaintiff's Complaint on the ground that it does not state a cause of action and will particularly move to strike out that part of the Complaint wherein plain-

tiff claims punitive damages on the ground that the plaintiff is not entitled to recover such damages on the facts alleged in Complaint.

FRANK G. TURNER,
Attorney of Defendant.

REPLY.

Filed July 6, 1922.

NEW JERSEY SUPREME COURT.

THEODOR J. HINTZ, *Plaintiff,* *vs.* HENRY S. ROBERTS, *Defendant.*	*Action at Law.*

REPLY.

The plaintiff, replying to the answer of the defendant, filed in this cause, says that:

1. He denies that he was guilty of contributory negligence, as set forth in the defendant's "First Separate Defense."

2. He denies that his negligence caused the accident charged in the complaint, as set forth in the defendant's "Second Separate Defense."

E. A. MERRILL,
Attorney of Plaintiff.

TRANSCRIPT of evidence taken before HON. CARLTON B. PIERCE, Judge and a Jury, at Elizabeth, N. J., October 17, 1922.

THEODOR J. HINTZ, the Plaintiff.

DIRECT EXAMINATION.

By Mr. Merrill:

Q. Mr. Hintz, you are the plaintiff in this action?

A. Yes.

Q. Are you familiar with the aspect of the streets at the junction of Bowers Street with the Hudson County Boulevard in Jersey City?

A. Yes.

Q. I show you a map and I will ask you if that correctly represents the conditions at that point?

THE COURT: Do you offer the map?

MR. MERRILL: I do.

(Map entered in evidence and marked Exhibit P 1).

JOSEPH SULLIVAN, a witness produced on behalf of the Plaintiff.

DIRECT EXAMINATION.

By Mr. Merrill:

Q. Mr. Sullivan, you are an officer in the traffic squad on the Hudson County Boulevard?

A. Yes, sir.

Q. Do you recall being at the junction of Bowers Street and the Boulevard on Sunday evening, May 14th, at about ten p. m.?

A. Yes, sir.

Q. Do you recall a collision occurring at that point and time?

A. Yes, sir.

Q. Where were you standing at that time?

A. At the traffic booth.

Q. And where is the traffic booth?

A. Right at Bowers Street and the Boulevard, in the center of the street.

Q. Will you please point out on that map the location of the traffic booth?

A. The booth is facing south on the Boulevard, and my position is standing right at this corner of the booth. There is a handle right in the center of the booth, running up a pipe, which turns the light in the booth.

By the Court:

Q. Which way is north and south, officer?

A. This is south and this is north.

Q. The Boulevard runs north and south?

A. North and south.

Q. This traffic booth is just a little west of Bowers Street?

A. No. It stands right in the center of the Boulevard.

Q. But a little west of the line of center of Bowers Street?

A. Yes.

Q. You were standing on the south side of that booth?

A. The south side.

Q. You say there is some handle there which regulates what?

A. The light in the tower of the booth.

Q. What does the light indicate, to go or stop?

A. To go and stop.

Q. State what you saw there with reference to this accident?

A. This man Hintz stood about here in Bowers Street, while the red light showed that traffic was stopped.

A. The line comes about fifteen feet from the curb.

By Mr. Turner:

Q. Here is Bowers Street and apparently that is the center?

A. Here is a line coming down there. There is another line crosses here about ten or fifteen feet from the curb stone, and Mr. Hintz was behind that line.

Q. About like that (indicating)?

A. About like that.

MR. TURNER: I will put "H" at that point.

By the Court:

Q. Was he at full stop at that point?

A. He was in a standing position. I then blew the whistle and looked north on the Boulevard and the closest that I saw a car was within four hundred or four hundred and fifty feet, coming in a southerly direction. I turned the sign and blew the whistle and Mr. Hintz started forward.

By Mr. Merrill:

Q. That sign was to indicate what?

A. To indicate to go from Bowers Street, and stop north and south on the Boulevard. Mr. Hintz proceeded from Bowers Street out, making a complete turn around an arrow which comes to the center of the Boulevard, and then turns in a southerly direction. Mr. Hintz got about five feet beyond that arrow, right in the center of the Boulevard, when the car going south passed the signal, and I then heard a smash and both cars had collided, that is, the car going in the southerly direction had struck Mr. Hintz's car in the rear.

By Mr. Turner:

Q. Did you see that, officer, or did you just hear it?

A. That I didn't see.

MR. TURNER: I ask that part be stricken out.

A. I just turned around as the car struck, as I felt the swish of the car going by me, I turned quickly, and

they struck like that, within a moment's notice.

By the Court:

Q. Now, officer, at the time that you gave the signal for the Hintz car to enter the Boulevard, does the signal indicate anything as to people north on the Boulevard?

A. It does. The light turns from green to red.

Q. What does that signify to people coming down the Boulevard?

A. Coming down and going up the Boulevard it signifies to stop.

Q. How long was the signal set at stop for persons coming down the Boulevard, with reference to whether this collision—whether it had been changed before the collision, or whether it still remained at stop?

A. The signal remained at stop for fully five minutes after the collision had happened.

Q. You may state what the fact was with reference to the signal and a person coming down?

A. This car coming down the Boulevard, as I said, was more than a block's distance from the signal when I turned it, and also blew a whistle. The car coming out of Bowers Street came out and was already started on its way down the Boulevard, and got within five feet past the arrow, when this car continued on past the signal, which is a violation of the traffic law.

MR. TURNER: I object to the violation.

Q. What did the signal indicate as to traffic coming down the Boulevard?

A. It indicated stop, and this man continued right on past the signal, striking Mr. Hintz's car in the rear.

Q. State whether this passing the signal was at a time when the signal indicated stop to passengers coming down the Boulevard?

A. It was at a time when he should have stopped, when noticing the signal.

By Mr. Merrill:

Q. Mr. Sullivan, in addition to a red and green lantern, is there anything in the nature of a semaphore on that road?

A. There is.

Q. What is on the semaphore?

A. To go and stop.

Q. When the red signal showed to a person coming down the Boulevard from the north, what showed on the semaphore?

A. A red semaphore showing "stop" in big white letters.

Q. Is there north of your booth a traffic line on the Boulevard?

A. Yes, sir.

Q. And north of that line are there any words?

A. Yes, sir.

Q. What word or words?

A. "Stop."

CROSS EXAMINATION.

By Mr. Turner:

Q. Officer, this happened about what time of night?

A. About ten o'clock.

Q. Dark night?

A. Well, not very dark.

Q. Sunday night.

A. Sunday night.

Q. On Sunday night is there much traffic on the Boulevard, at Bowers Street and the Boulevard?

A. There is occasionally.

Q. This particular night was it a rainy night, or dry?

A. There wasn't much traffic this night.

Q. Was it rainy?

A. No.

Q. What was the condition of the weather?

A. Moderate.

Q. Foggy?

A. That I can't just recall.

Q. No moon, was there?

A. That I didn't look for, either.

Q. You don't recall much? You have to do that every Sunday night, I suppose, don't you, officer? You are on duty every Sunday night?

A. Not every Sunday night. Every other week.

Q. You don't carry these things in your mind, do you?

A. No.

Q. There have been collisions there before, I suppose?

A. Many.

Q. It is somewhat of a dangerous place, isn't it?

A. Well, it isn't dangerous. The street only goes as far as the west side of the Boulevard. There is no street running from the west side to the east, therefore it doesn't make it very dangerous.

Q. How long have you been there, officer?

A. I was there on that one post for about four months steady when this accident happened.

Q. How many collisions have you observed there during that period?

A. I just can't recall that.

Q. Would you say one hundred?

A. No.

Q. A good many, though?

A. Quite a few.

Q. So many that you can't carry them around in your head? Can't remember them, can you?

A. No, sir. Not all. Some.

Q. Officer, just look at this map here. At this point "H" in Bowers Street, Mr. Hintz, the plaintiff, was standing there, wasn't he?

A. Yes, sir.

Q. You observed him there?

A. Yes, sir.

Q. And the signal was set against him, wasn't it?

A. Yes, sir.

Q. Now, how soon after you changed the signal did he swing over in front of your box here?

A. Just as soon as I blew the whistle and waved my hand to him to come out.

Q. In space of time, how many seconds did it take for him to swing over in front of your station there?

A. That I can't just say.

Q. Two or three seconds, I suppose.

A. Probably.

Q. Had you observed the other car before this time?

A. Yes, sir.

Q. Did you observe it when Hintz was in front of your station here?

A. No, sir. I observed that car before I started to turn the sign, before I gave Mr. Hintz the signal to come out.

Q. So that that car was in motion when you turned the sign, was it?

A. Which car?

Q. The other car that you saw coming down the Boulevard?

A. The car coming down the Boulevard was in motion.

Q. Was that in motion when you turned the signal?

A. Yes, sir.

Q. How close was it to the signal?

A. More than a block's distance. I should judge about four hundred and fifty or five hundred feet.

Q. You saw Mr. Hintz swing down here in front of the booth, did you?

A. Yes, sir.

Q. How far beyond the booth was it that the col-

lision occurred?

A. That I should judge was about twenty-five to thirty feet.

Q. Beyond this arrow here?

A. Beyond the booth. He was about five feet beyond the arrow.

Q. How far is the arrow from the booth?

A. I should judge about fifteen or twenty feet.

Q. Then he was about five feet beyond this point of arrow. You didn't see the collision?

A. I saw part of this.

Q. Tell us why you didn't see it all? What was it that changed your attention?

A. As I stand at that booth my back faces the west side of the Boulevard.

Q. Which would be the side opposite Bowers Street?

A. Yes. And the car striking Mr. Hintz's car passed me from behind, and I just turned as he passed, but he went by so fast that he hit Mr. Hintz's car just as I turned around.

Q. Just as you turned around?

A. Just as I turned around.

Q. When you were turning around was your turn in the act of swinging the signal around?

A. No, sir.

Q. When you swing the signal around do you turn?

A. No, sir.

Q. When you manipulate your signal, as I understand it, your back is to the west side of the Boulevard?

A. West side of the Boulevard?

Q. And you face Bowers Street?

A. And I face Bowers Street.

Q. Was there no other car besides Mr. Hintz's car in Bowers Street that time?

A. No, sir.

Q. So you swung your signal just simply to let Mr. Hintz go through?

A. Yes, sir.

Q. Was there anybody else to go through after him?

A. No, sir.

Q. Then as soon as Mr. Hintz got through you swung your signal back, didn't you?

A. No, sir.

Q. Why didn't you?

A. Mr. Hintz didn't get all the way through before he was struck.

Q. Mr. Hintz was travelling then south at the time he was struck, wasn't he?

A. Yes, sir; at the time he was struck.

Q. Were there any other cars coming along here at that time going south?

A. I don't recall.

Q. Do you remember any other cars passing?

A. That I don't recall. There were cars passed after the accident.

Q. How soon after the accident did cars pass?

A. That I don't recall now.

Q. Can you say whether it was within a minute?

A. Well it was not within a minute.

Q. Two minutes?

A. The car that struck Mr. Hintz, I believe was alone coming down the Boulevard. The closest car behind him was about a block's distance behind him.

Q. This car that was about a block's distance behind, did that come on past?

A. No, sir; that car passed.

Q. Did any other cars come on past within the next five minutes?

A. No, sir; not until I turned the sign.

Q. How long did you leave that sign turned against traffic?

A. Until I run over to see if anybody was hurt in the car, and then when I found out there wasn't anybody seriously hurt I went back and turned the sign for traffic to move north and south on the Boulevard.

Q. That didn't occupy five minutes, of course, for you to do that, did it, officer?

A. About five minutes.

Q. This car that you looked at that had been in the collision, what kind of a car was it?

A. A Ford car.

Q. Was it a touring or runabout?

A. Touring.

Q. Open top?

A. Yes.

Q. Regular touring car?

A. Regular touring car.

By the Court:

Q. You are speaking of Mr. Hintz's car, or the other car?

A Yes, sir. Mr. Hintz's car.

RE-DIRECT EXAMINATION:

By Mr. Merrill:

Q. How close to you did the car which collided with the Hintz car pass?

A. About five feet.

MR. MERRILL: That is all.

By the Court:

Q. Officer, what about the speed of Mr. Hintz's car, at which it was going?

A. Mr. Hintz's car?

Q. Yes.

A. That, I should judge, coming out of Bowers Street, he was going at the rate of about five or six miles an hour.

Q. What about the speed of the car that came

down and collided with the Hintz car?

A. Well, from my judgment of the distance—

MR. TURNER: I don't think the witness should give his judgment, unless he observed for the purpose of observing speed.

Q. You saw it coming?

A. I saw it coming.

Q. I understood you to say you heard it, or something, as it passed you?

A. I heard the swish of the car go by.

Q. That you then turned and saw the car at the instant of collision, or about that time?

A. I then turned immediately.

Q. Are you in a position to say how fast that car was going?

A. No, I can't say as to how fast it was going.

Q. What can you say, if anything, with reference to the speed of that car, not in miles?

A. Well, he was above the speed limit, I believe, by the length of time, the short length of time that it took him to get within the distance of the box from where I saw him.

Q. Where is the speed limit?

A. About twenty miles an hour.

By Mr. Turner:

Q. How close are the houses together there on the Boulevard at this point?

A. They come right close to one another. There is no space between them, with the exception of a few.

Q. You allow twenty miles an hour there, do you?

A. We don't allow any more than the speed limit.

Q. Well, the point is this, of course you have to keep traffic moving on the Boulevard, don't you?

A. Yes, sir.

Q. The Boulevard is a busy automobile thoroughfare?

A. Yes, sir.

Q. What is the speed at which you, for instance, if a man passes you in an automobile, what is the speed at which you stop him?

A. About twenty-five, or twenty.

Q. You warn him if he goes that?

A. Yes, sir. Twenty or twenty-five miles an hour.

By Mr. Merrill:

Q. Did you take the name of the occupant of the car which collided with Hintz?

A. Yes, sir.

Q. Did you take the number of the car?

A. Yes, sir.

Q. You asked those questions, and what did they tell you? How many were in the car?

A. There were Mr. Hintz and his wife in his car.

Q. How many in the other car?

A. Two.

Q. Tell what you did to find out whose car it was, and who was driving it?

A. I placed them under arrest immediately and took them over to the sixth precinct Jersey City police and had them booked there on the complaint of Mr. Hintz. He then produced a driver's and owner's license of the car, which he said belonged to him.

Q. Did he give his name?

A. He gave his name.

Q. What did he give?

A. Theodore S. Roberts.

MR. MERRILL: Pardon me, you have the two names mixed up.

MR. TURNER: I think that is improper. I ask for a mistrial. I think I am entitled to a mistrial.

THE COURT: I don't think so,Mr. Turner. I will deny your motion.

A. I can't just recall in my mind just what his first name was. I have that entered in the police blotter.

THE COURT: I will allow any conversation that occurred immediately after the collision, if there was any between you and the occupants of this car that collided with the Hintz car.

MR. TURNER: Prays exception.

A. There was no conversation on my part.

THE COURT: All right.

By Mr. Turner:

Q. Officer, You have just stated that the witness gave the name of Theodore S. Roberts. Is that your best recollection?

A. That I can't just recall, his first name.

Q. When you did state that, that was your recollection?

A. That might have been a mistake on my part?

Q. You don't know whether it was a mistake or not?

A. I do.

Q. If counsel hadn't interrupted you, you wouldn't have thought anything about it?

A. There was a Theodore S. Roberts in the case.

Q. That is the name that you recall, isn't it?

A. His name is Roberts, his last name. His first name I don't recall, that is, the driver of the car.

Q. But you do recall the name of Theodore S., don't you?

A. No, I don't.

Q. You were mistaken when you said that?

A. I might have been.

ELDRED R. CROWE, a witness produced on behalf of the Plaintiff.

DIRECT EXAMINATION.

By Mr. Merrill:

Q. Mr. Crowe, what is your business?

A. I am a Ford agent.

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

A. About fifteen years.

Q. How long have you been connected with the Ford business?

A. Last six and one-half years.

Q. What sort of business do you do with Ford cars?

A. Sell them. I sell new cars, and repair used cars, and general service to the Ford car.

Q. You have a Ford service station?

A. Ford service station; yes, sir. And sales.

Q. Did you examine Mr. Hintz's car at Jersey City before it was brought home?

A. I examined Mr.Hintz's car at Jersey City when it was in a crash on the Boulevard.

Q. When that car was brought back to Westfield, where was it put, if you know?

A. I believe it was brought into my service station.

Q. When did you first examine the car?

A. I couldn't tell you the exact date, but it seems to me that it was the Saturday following the Sunday of the accident. Saturday afternoon.

By the Court:

Q. About a week later.

A. I am not sure about that, because I have no dates, and I didn't make no record of it.

By Mr. Merrill:

Q. Are you acquainted with the prices of Ford parts?

A. I am; yes, sir.

Q. And are you acquainted with the cost of repairs on Ford cars?

A. I am acquainted with the costs of repairs, according to my own shop, as to what the cost would be in my own shop.

Q. Are you a judge, then, of what would be a reasonable charge for repairs, if done in your shop?

A. Yes, sir.

THEODOR J. HINTZ, recalled:

DIRECT EXAMINATION.

By Mr. Merrill:

Q. What is your occupation, Mr. Hintz?

A. Photographer.

Q. What sort of photographic work do you do?

A. Commercial and portraits.

Q. Just what do you mean by commercial work?

A. Why, I am doing commercial work all around the county and country. Just as I am called for.

Q. Does that require photography out of doors, as well as in doors?

A. Out of doors, and also inside. Factory work, machinery, and all that sort.

Q. Mr. Hintz, do you recall being at the corner of Bowers Street and the Boulevard, in Jersey City, in your automobile, at about ten o'clock on Sunday evening, May 14th?

A. Yes.

Q. Who was with you?

A. My wife, Mrs. Hintz.

Q. Was it a clear evening?

A. Yes.

Q. Did you stop on Bowers Street?

A. Yes.

Q. Will you please indicate on the map at about the point you stopped on Bowers Street?

A. About right there. That may be just in front of the line. The line would be probably there, and in back of the line I stopped.

Q. About how many feet back from the easterly side of the Boulevard?

A. Oh, that may be about twelve to fifteen feet.

Q. Why did you stop there?

A. Why I had to stop, because the stop, a red signal was against me when I came out Bowers Street

toward the Boulevard.

Q. Where is the signal located to which you refer? Will you please point it out on the map?

A. Signal right on top of the the booth. That means more in front.

Q. That booth is located about where, relatively to the width of the Boulevard?

A. Exactly. Just about across on this side here.

Q. Across from the northerly side?

A. Just in line, just like this map shows. The map is absolutely correct.

Q. Then the booth is about in line with the northerly side of Bowers Street, and about in the center of the Boulevard?

A. Yes, it is.

Q. I show you a photograph. Does that photograph correctly show conditions at that point, on the evening of May 14th?

A. Yes.

Q. At what point was that photograph taken from?

A. Right on Bowers Street, where my car was standing.

Q. That is, you placed your camera at about the location of your car?

A. Yes.

(Photograph entered in evidence and marked Exhibit P 2).

Q. I show you another photograph and ask you if that correctly shows the condition of the Boulevard, and the traffic post, at the time of the collision?

A. Yes.

Q. From what point was that photograph taken?

A. It was taken right from—showing north.

Q. Looking north, or looking from the north?

A. Looking from the north.

Q. Do you mean by that looking from the north,

looking south?

A. Yes.

Q. Is that the direction from which the car came which collided with your car?

A. Yes, exactly.

MR. MERRILL: I offer that photograph in evidence.

(Photograph entered in evidence and marked Exhibit P 3).

Q. I show you a third photograph and will ask you if that is a correct representation of the Boulevard and the traffic booth at the time in question?

A. Yes.

Q. From what point was that photograph taken?

A. That was taken from south showing north.

Q. What street is that at the right hand side of the picture leading into the Boulevard?

A. That is Bowers street.

Q. What is the white line near the traffic booth, showing on the pavement?

A. There is the arrow leading out of Bowers Street, the line in front of it, this side of the booth, and the line the other side of the booth.

Q. What is the method of lighting the street at this point?

A. There is one of those hanging lamps right on the corner.

Q. Does it shown in that photograph?

A. It does.

MR. MERRILL: I offer this in evidence.

(Photograph entered in evidence and marked Exhibit P 4).

Q. How long did you stop on Bowers Street?

A. Just a few moments, until the signal was changed by the officer.

Q. And where was the officer standing?

A. Like usual, right in front of the booth.

Q. I show you photograph Exhibit P 2. What was the position of the officer at that time, as you can describe it, as applied to that photograph?

A. This is about the position the officer usually has.

Q. No, that is not my question. What was his position at that time?

A. The same as this.

Q. Are there any traffic guides on the pavement at this point?

A. Yes.

Q. Indicate them, please, on the map, the traffic guides on the Boulevard?

A. That is this one here.

Q. That is, there is a mark on the pavement a little north of the traffic booth?

A. Yes. And big letter "STOP" in front of it.

Q. After you stopped on Bowers Street a few minutes what, if anything, happened?

A. Why, I slowly went ahead.

Q. Why did you go ahead?

A. Because the officer changed the signal for me, showing green light, and also the word "go".

Q. After you started your car ahead state what you did and what happened?

A. Why, I proceeded slowly ahead, and as I came into the Boulevard I seen a car on my right side, north, about two blocks away, I judge, and I went ahead and turned with the arrow into the Boulevard. Right after that, I may say, as soon as I turned into the Boulevard, suddenly a car crashed into my right rear side, the car was shoved along, then stopped, the wheel broke and the car fell down.

Q. And after your car came to a stop what did you do?

A. I jumped right out of the car on Mr. Robert's car running board.

Q. Did you speak to the person who was driving the

car which collided with you?

A. Yes.

Q. What name, if any, did he give?

A. Henry S. Roberts.

Q. Did you take the number of the car?

A. I did.

Q. Do you recall the number?

A. Yes.

Q. What is that number, Mr. Hintz?

A. 48393 New Jersey 1922.

MR. MERRILL: I now offer in evidence the certificate of William L. Dill, the Commissioner of Motor Vehicles for the State of New Jersey, that the annexed true copies of the application of Henry Steele Roberts, to whom registration 48393 was issued—

(Certified copy entered in evidence and marked Exhibit P 5).

Q. You stated that you proceeded forward and after the collision you got on the running board and asked the name of the driver. After that what happened?

A. I took the car license number, and then the truck came along and towed my car away, the wreckage car, and then Officer Sullivan placed Roberts under arrest, and we all, Mr. Roberts and his brother, I think, whoever was in his car, my wife and me and Officer Sullivan, drove down to the police station on Central Avenue.

Q. What happened further at the police station?

A. Officer Sullivan made charges against him, and the desk sergeant took his name and address.

By the Court:

Q. Whose name?

A. Roberts' name.

By Mr. Merrill:

Q. Did the driver of the car give his name in the

police station?

A. He did.

Q. What name did he give?

A. Henry S. Roberts.

Q. What happened after that?

A. Desk sergeant took the name, and as soon as they had taken his name they took him to the back room, him and the other gentleman was with him.

Q. Was anything said to you as to any future movements on your part, with reference to this matter?

MR. TURNER: I object.

THE COURT: When?

Q. There in the police station?

A. Yes.

Q. Was anything said while the driver of the automobile was there in the police station, with respect to any future action?

A. Yes.

Q. What?

A. Desk sergeant gave me information—

MR. TURNER: I object to that.

By the Court:

Q. What did he say?

A. He said to me to appear in court on May 23rd as a witness. On May 23rd, that was on Tuesday evening.

By Mr. Merrill:

Q. At this time did you make any charge against Roberts?

A. I didn't.

Q. Did you examine your car?

A. I did.

Q. What damage had been done to it?

A. Why, the wheel was completely smashed, broken, including hub.

Q. What wheel is that?

A. Right rear wheel, including hub, and brake lin-

ing, you know, and the fender was smashed.

Q. Tell us which one?

A. The rear carry tire was driven against the body and dented a little, and there was also the body itself dented in by probably the bumper of Roberts' car.

Q. Never mind that. Go ahead.

A. Everything smashed. That was all. Axle bent, certainly.

Q. You say that a wrecking wagon came up and towed your car to a repair shop?

A. Yes.

Q. Were repairs made at that repair shop?

A. Yes.

Q. What was the name of the repair shop?

A. Hudson Boulevard or Hudson County Auto Repair Shop.

Q. You testified that the wheel was completely broken?

A. Yes.

Q. Was that repaired?

A. Yes. They repaired it. They did not. They replaced it by a new wheel.

Q. You said the hub bearing was broken. Was that replaced?

MR. TURNER: I didn't understand him to say anything about the hub bearing. I understood him to say the hub, but not the hub bearing.

A. I said everything.

Q. You have specified certain damage done to the car. Was that damage repaired?

A. Yes, partly.

Q. Did you go over to the repair shop of the Repair Company with Mr. Crowe?

A. Yes, sir.

Q. Did you see your car at that time with him?

A. Yes.

Q. At the time you and Mr. Crowe looked at this car in the garage, was it in the same condition as it was immediately after the accident?

A. I don't quite understand.

Q. Whether the car was in the same condition at the time you and Crowe saw it in the garage, that it was immediately after the accident? Whether its condition had been changed?

A. It had been changed.

Q. Well, now, specify in what respects?

A. Why, the car, there was the old wheel replaced on my car; there was a fender on; there—

Q. What I want you to testify, Mr. Hintz, is definitely in what respects the condition of the car had changed between the time of the accident and the time Mr. Crowe saw it. Certain things were done, as I understand, in the interim?

A. Yes.

Q. Now, I want to know what those particular things were, and then I can follow up with the next question whether, except for these particulars, it was in the same condition as at the time of the accident?

A. Why, the car was not completely finished, but everything—the car was standing, as I said already, fender, and wheel and rear tire carrier was put on, but the car was standing by another firm to take out that dent. The axle was—

Q. Mr. Hintz, when you and Mr. Crowe examined this car, will you please state what items of damage that were due to the collision were still unrepaired?

A. The axle was bent, after Mr. Crowe examined the car in the insurance man's and my—

Q. Don't say anything except this: What items of damage, caused by the collision, were still unrepaired when you and Mr. Crowe examined the car? Now, confine the answer strictly to that question.

A. The axle was not replaced by a new one.

By the Court:

Q. That was the same, was it, immediately after the accident? The axle was in the same condition as it was immediately after the accident?

A. Yes.

Q. What other items were in the same condition, that Mr. Crowe subsequently repaired?

A. There was an old wheel, old hub put on the car.

Q. I am not asking you what was put on. We are asking you what was the same at the time Crowe saw it, as it was after the accident? Do you mean to say that the wheel Mr. Crowe subsequently repaired was in the same condition at the time he saw it, as it was after the accident?

A. We seen, instead of a new wheel, an old wheel on the car, but it was not the very same wheel which was broken by the collision.

By Mr. Merrill:

Q. The car was taken I think you have testified, from the repair company place to another place to have the body straightened?

A. Yes.

Q. Did you see the car in the place where the body was straightened?

A. I did.

Q. And Mr. Crowe saw it there?

A. He did.

By Mr. Turner:

Q. That was in the same place where you had taken the car to have it repaired, wasn't it?

A. No, it was not.

By Mr. Merrill:

Q. In order to get the car from the auto repair place to the place where the body was to be straightened, what was necessary to be done in order that the car might be taken over there?

Q. Could the car be taken over there, yes or no, on

three wheels?

A. No.

Q. You testified that an old wheel had been put on. Was or was not that a repair for the original wheel that was broken, or was that or not, a temporary expedient to get the car to the other place?

A. I don't know if it was temporary, or for good.

Q. Afterward was or was not the broken wheel replaced with a new wheel?

A. It was replaced by a new wheel.

Q. At the time you and Mr. Crowe saw the car in the place where it had been taken to fix the body, was the body repair completed, or not?

A. Not quite completely.

Q. Now, in addition to the repairs which had not been completed at that time, did or did not Mr. Crowe make other repairs?

A. He did.

Q. Mr. Hintz, what we want to get at is the repairs that were necessary to be done by Mr. Crowe, as the result of this, and in order to get at that you must yourself state in what respect, when Mr. Crowe examined the car first, was it in the same condition as immediately after the collision, and when Mr. Crowe took the car for making repairs?

A. The car was not completed, so Mr. Crowe had to repair different things, like tighten the fender, putting in new boards.

By the Court:

Q. Mr. Hintz, Mr. Crowe made certain repairs to the car, didn't he?

A. He did.

Q. And those repairs were to certain parts of the car?

A. Yes.

Q. Now the question is whether those parts, at the time he got the car, which he later repaired, were in

the same condition as immediately after the accident?

A. No, it was not.

Q. The parts that he repaired, you understand. I am not talking about the repairs made by somebody else.

A. That was in the same condition, the parts he repaired, after the collision, yes, it was.

Q. That is, when he saw it, the parts that he did repair were in the same condition as immediately after the accident?

A. Yes.

By Mr. Merrill:

Q. Can you state that from your recollection?

A. I know he fastened the fender, that the fender was loose, and put in new boards, and all that. Then there was a rim.

Q. Are you unable to remember at this time all of the things that he did?

A. I am unable.

Q. Would it refresh your memory if you looked at the bill already rendered?

MR. TURNER: I object to that.

By the Court:

Q. Did you pay for certain repairs made on the car?

A. I did.

Q. And will the bill refresh your recollection as to the repairs made?

A. Yes.

THE COURT: All right. Examine the bill.

A. Those are the items, yes.

Q. Will you please testify now as to what repairs Mr. Crowe made, on parts which were in the same condition when delivered to him as immediately after the collision?

MR. TURNER: I object to that on the ground it calls for a conclusion; on the ground that

the witness is about to read from a bill which was rendered to him by someone else.

THE COURT: The witness has finally stated that the parts Mr. Crowe repaired were in the same condition at the time Mr. Crowe got the car, as immediately after the accident. Now we will let Mr. Crowe say what he repaired, and whether it was necessary, and what it was worth.

CROSS EXAMINATION.

By Mr. Turner:

Q. On what date did you put this car in the Hudson County garage, or wherever you put it?

A. On Monday morning, that was the following Monday, one week later.

Q. One week later?

A. Yes.

Q. Where was that car from the time of the accident, during that week?

A. In the Hudson Boulevard auto repair shop.

Q. In the Hulson Boulevard auto repair shop?

A. Yes. Jersey City.

Q. You didn't see it during that time, did you?

A. I did.

Q. What was the first date you saw it?

A. I saw it—may I look at the memorandum- On Tuesday evening.

Q. Tuesday evening following the accident?

A. Yes.

Q. This accident happened at half-past ten at night, didn't it?

A. No. Ten o'clock.

Q. The rear wheel was broken, wasn't it?

A. Yes.

Q. Did you get out of the automobile right away?

A. Yes.

Q. Where did you go from the scene of the accident?

A. Up on Roberts' car running board.

Q. Did you go any other place, did you go home, did you go to a police station, or where?

Q. After the accident we went down to the police station.

Q. Who took your car away from this accident?

A. The Hudson auto repair company.

Q. Did you go with it?

A. No.

Q. Did you know where they took it?

A. I did.

Q. Did you see where they took it?

A. I did.

Q. The same night?

A. I did.

Q. Did you go with it?

A. We went to the police station, and from the police station I again went down to the Hudson Auto Repair Company and looked at my car, which was towed and put in the garage.

Q. Was your car there then?

A. It was.

Q. Who towed it up to the Hudson County place?

A. One of those wrecking men of the Hudson Auto Repair Company.

Q. Is he here now?

A. He is not.

Q. Then you saw the car the following Tuesday, did you?

A. After Sunday night, yes.

Q. Then when did you next see it?

A. The following day, or Wednesday, again.

Q. When did you next see it?

A. On Saturday.

Q. Saturday following?

A. Yes.
Q. When did you take it away from there?
A. On Sunday, about noon time.
Q. Sunday noon?
A. Yes, sir.
Q. Exactly one week after the accident?
A. Exactly.
Q. How did you take it away from there?
A. I took it away under her own power.
Q. You drove it away, did you?
A. I drove it away.
Q. You drove it yourself?
A. Yes.
Q. That Sunday where did you drive it to?
A. I drive it down to a friend of mine, because he didn't—
Q. Don't tell us because. Tell us where you drove it to?
A. I drove it to a friend of mine, to get more cash money.
Q. On what street?
A. Union Avenue, Union Hill.
Q. Then you drove back to the garage, did you?
A. Then I drove back to Westfield again.
Q. You drove from Union Hill to Westfield?
A. Yes.
Q. In the same car, and you drove it yourself?
A. Yes.
A. And from that time, that Sunday, the week following the accident, from that time until you gave it to Mr. Crowe, where was it?
A. I kept it in the garage, in my garage over night, up to Monday morning.
Q. Then where did you take it?
A. Up to Mr. Crowe's garage, his repair shop.
Q. When you went back and saw the car in the Hudson County garage, on Tuesday, did you examine

it carefully then?

A. I did.

Q. Was the top of the car there then?

A. Yes.

Q. Was the car dismantled, all taken down?

A. The car stood in the garage exactly—I am referring to Sunday, or to Tuesday?

Q. This is Tuesday?

A. The wheel, that means the stubs of the wheel, with the hub including, they were off the car. The car was absolutely dismantled.

Q. On Tuesday following the accident. What was taken off besides the wheels?

A. There was nothing taken off. The wheel was broken, it was laying, I don't recall, I don't remember if the broken wheel and the rim was laying in the car itself, or if it wasn't. I even didn't see that. I could not tell.

Q. So that the only thing you could see was just that broken wheel?

A. The broken fender was taken off.

Q. Was a new fender on?

A. There was no fender, nothing. Was everything taken off.

Q. The car was all dismantled, was it?

A. Dismantled on Tuesday.

Q. Where was the fender you had had on Sunday, did you see that?

A. Fender on Sunday?

Q. Did you see that fender on Tuesday?

A. No. Everything down already.

Q. Did you see anything else on Tuesday besides the broken wheel?

A. I didn't see anything of the broken wheel.

Q. You didn't see it on Tuesday?

A. Why, no.

Q. You didn't see any of these parts on Tuesday then?

A. I didn't see anything. The car, the tire holder was dismantled, too.

Q. The car had been entirely taken down, had it, on Tuesday?

A. Yes.

Q. And the parts taken away?

A. Yes, the old broken part.

Q. The parts that you say were broken?

A. Yes.

By the Court:

Q. Mr. Hintz, were the parts that Mr. Crowe subsequently repaired injured in the accident, or prior to the accident?

A. No. They was from the accident itself.

Q. The injuries he mentioned came from the accident?

A. They did come from the accident.

By Mr. Turner:

Q. This man that you talked to at the scene of this accident, had you ever seen him before?

Q. I am talking about the man with whom you had the collision at Bowers Street and the Boulevard. Had you ever seen that man before?

A. No.

Q. You didn't know him at all then, did you?

A. No.

Q. And you have never seen him since, have you?

A. Yes, I did.

Q. Since that date?

A. I did.

Q. Did you appear at the police station on May 23rd?

A. Yes. —

Q. When you swung over here from Bowers Street, along this arrow, did you keep close to the arrow ,or did you swing up towards the policeman?

A. No, I kept close to the arrow.

Q. Were you in high speed when you got to the point of the end of the arrow?

A. Low speed.

Q. When did you change from low into high?

A. I didn't have a chance to change from low to high.

Q. Then you were running in low speed all the time, weren't you?

A. All the time.

Q. And you swung into south bound traffic at low speed?

A. I did.

Q. And how far did you travel in low speed?

A. I couldn't recall.

Q. Well, you measured all these streets and everything, didn't you?

A. I can't recall. I only know so much that I was hit pretty near as soon as I turned into the Boulevard.

Q. Nearly as soon as you turned into the Boulevard?

A. It may be—

Q. Point out on this map where you were hit, whereabouts on the Boulevard?

A. Why, about right in along here (indicating). About right here.

Q. You measured that. How far is that from the point where you started to travel?

A. What do you mean, please?

Q. You started to travel when you saw the traffic officer turn the signal, didn't you?

A. Yes.

Q. And then you travelled clear around in the Boulevard, and clear up to the end of this arrow, and

some of it beyond, didn't you?

A. Yes.

Q. You measured that place, didn't you?

A. Yes, I did.

Q. How far is that?

A. Do you mean from here to there, or this way (indicating)?

Q. From the point where you started to travel to where the collision occurred?

A. Why, this is about twelve to fifteen feet here, and this is about thirty feet right up to the center of the Boulevard, and probably I went again about fifteen or twenty feet.

Q. So that all told you travelled about sixty-five or seventy feet?

A. About. Something like that.

Q. All that distance you went in low speed?

A. In low speed, certainly.

Q. Didn't you change it to high at all?

A. Certainly not.

Q. You have only two speeds on a Ford car, low and high?

A. I do.

Q. You start off in low speed and then you put her into high, don't you?

A. I do.

Q. When did you buy this car?

A. On August 3rd, 1921.

Q. Then you had driven this car from August 3rd, 1921, to the time of the collision, and you are still driving it? It was a new car when you bought it?

A. Yes.

Q. Buy it in Westfield?

A. Yes.

Q. Do you use it every day?

A. Yes.

Q. How many miles do you travel a day?

A. Oh, about thirty to thirty-five every day.

Q. So you travel about two hundred miles a week, do you?

A. More than that. About over one thousand miles every month?

Q. What?

A. Every month over one thousand miles.

Q. Had you driven this car twenty thousand miles?

A. I had driven this car up to date fourteen thousand miles.

MR. TURNER: I think that is all.

By the Court:

Q. Do you know the type of car that ran into you?

A. Yes. It was a roadster, one of those sporty models.

Q. What make?

A. I can't recall. I didn't make sure what kind of make it was.

RE-DIRECT EXAMINATION.

By Mr. Merrill:

Q. Mr. Hintz, were there any other damages that you suffered as the result of this collision?

A. Yes.

Q. What other damage did you suffer?

A. Yes. I suffered car expenses.

MR. TURNER: I object to that. That is not within the issue.

By the Court:

Q. Do you mean the hiring of some other car?

A. My own.

Q. Do you mean the repairs to that car?

A. No. While I had the car for repair I had to hire other cars.

By Mr. Merrill:

Q. You have testified that part of your work requires you to go about the country for your commer-

cial photography, and you have just testified that you hired an automobile during that time that you were deprived of the use of your automobile. About how much did you pay out for such automobile hire?

MR. TURNER: I object to that because this witness is not qualified to say whether it is a reasonable charge. There is no proof here of the persons from whom he hired cars. We are entitled to cross examine those people and find out whether they charged a reasonable price.

THE COURT: I will allow him to state just what cars he did hire, and the time he used them, and the question will come up as to what he paid for them.

Q. Will you state, as accurately as you can, Mr. Hintz, the occasion for the use of other cars?

A. I think it is about six dollars—

MR. TURNER: I object.

THE COURT: I don't want any about something. If there was a special occasion when your car was laid up, that you had to make the trip, and hired the car, tell us that you on such an occasion hired a car and paid so much.

MR. MERRILL: This involves charges of fifty and seventy-five cents, and I don't understand any rule of law that requires each individual charge—

THE COURT: Fifty cents has to be proved just as accurately as one hundred dollars, if they insist upon it. It is not usual to spend time over those small matters. If you want to prove it, and they object, you will have to give the legal proof.

MR. MERRILL: That cannot be done. I will ask an exception, however, to that ruling.

Q. Mr. Hintz, we are leaving out the question of these extra charges for a taxi, or automobile, or any-

thing like that, while you were deprived of your automobile. I pass now to another question, and that is, aside from those, were there any other expenses?

A. Yes.

Q. What?

A. I had to buy a tire and tube.

By the Court:

Q. Are you talking about some other tire?

A. No. I am talking about the right hand wheel, of my smashed wheel.

By Mr. Merrill:

Q. Have you paid the bill for that?

A. I did.

Q. Have you it with you?

A. Yes.

Q. What did you pay for the tire and tube?

A. $12.98, I think it is.

Q. And this is the receipted bill?

A. It is.

Q. You have testified that you went over to Jersey City to look at your car. Did that, or did that not constitute an interruption to your business?

MR. TURNER: I object to that on the ground it is immaterial. He might have gone to Niagara Falls and interrupted his business, but that is not this case.

MR. MERRILL: I think when he goes over there to see his car it does come within this, and I think any time he lost by reason of being deprived of the use of his car comes within it.

MR. TURNER: I object to it on the ground it is not within the issue.

THE COURT: Objection sustained.

MR. MERRILL: I ask an exception on the ground that is sufficiently inclusive to include sums that he lost by indirection, as well as direction.

THE COURT: You have your exception. Proceed.

Q. Did you thereafter make a charge against Mr. Roberts, arising out of this accident?

MR. TURNER: I object to that on the ground it is immaterial.

THE COURT: How is it material?

MR. MERRILL: It is material on the ground of punitive damages.

THE COURTS No, the fact that he made a charge is not.

MR. MERRILL: The next question I ask will make it immediately material, so I would like you to allow this question, subject to being stricken out if I don't bring out why it is material.

Q. Was a charge made by you on May 31st, against the defendant Roberts, brought to trial?

MR. TURNER: I object to that on the ground it is immaterial.

MR. MERRILL: I would like to state the ground because it is very clear.

THE COURT: Objection sustained.

MR. MERRILL: Does the Court also rule I am not allowed to state the ground?

THE COURT: I don't think I need to take up the time of the Court about matters as to which I have no doubt. And I think I can cut off argument when it seems to be unnecessary.

MR. MERRILL: I don't want to press anything unnecessarily, yet I think if I could state this the Court could see what I have in mind, and the materiality and the relevance of it.

THE COURT: The question of whether the act was wanton and malicious depends on the facts of the act. Not the fact he made some

charge later.

MR. MERRILL: No.

THE COURT: I have ruled. Proceed.

MR. MERRILL: Prays exception.

ELDRED R. CROWE, re-called:

DIRECT EXAMINATION.

By Mr. Merrill:

Q. I show you, Mr. Crowe, a bill on the letterhead of the Westfield Motor Sales Company. Are you connected with that Sales Company?

A. I am the proprietor of that.

Q. That is simply a trade name?

A. That is; yes, sir.

Q. Did you make certain repairs on a Ford automobile belonging to Mr. Hintz?

A. Yes, sir.

Q. Did you go to Jersey City with Mr. Hintz?

A. Yes, sir.

Q. And did you see the car there?

A. Yes, sir.

Q. Do the repairs stated on that bill cover the repairs made by you?

A. These are repairs made by me; yes, sir. Made by the Westfield Motor Sales Company.

Q. As far as you know, was the condition of the car—

THE COURT: Not as far as he knows. Whether the car, as he finally received it, with reference to the parts that he repaired, was the same as when he first saw it in Jersey City.

A. No, sir; it was not.

By the Court:

Q. With reference to the parts you repaired, I understand certain repairs were made in Jersey City, and you made certain others?

A. Yes. But the car, when it was delivered to me

at Westfield, was not in the same condition as it was when I saw it in Jersey City.

Q. That I understand, but was it in the same condition with reference to the particulars that you repaired? In other words, there had been perhaps repairs made at Jersey City, after you first saw it?

A. Yes.

Q. But certain other matters perhaps were not there repaired, but were turned over to you?

A. Yes.

Q. Now, as to those matters, was it in the same condition when you received it at Westfield as when you first saw it in Jersey City, the matters as to which you made repairs?

A. The repairs that I made were repairs in connection with the—was the finishing up of the job from Jersey City.

By Mr. Merrill:

Q. Will you please state what you did to the car?

A. It was in the shop to have the fender bracket put on, and the wheel was removed, and examined the axles on it, and the car tightened up and gone all over, and seen everything was in proper alignment on the car.

Q. What was a fair and reasonable charge for that work?

By the Court:

Q. What I want to know, Mr. Crowe, is whether this work that was done there was done under your supervision, in the sense you were familiar with it, and know what was done?

A. Yes.

Q. What was a fair and reasonable value of the services and material you rendered?

A. Each operation had its own charge.

Q. Give the items, if you will?

A. As my bill here reads, removing fender iron and replacing a new one, one dollar labor charge.

There was a fender iron and bolt and washer, seven cents. There was a fender iron and bolt, and fender iron itself was fifty cents, the fender iron bolt and nut, eight cents, and there was a labor charge of five dollars.

Q. So that the total reasonable value of services and material you rendered was how much?

A. On the repairs and material furnished on that particular job was twelve dollars and some odd cents. $10.60 for services going to Jersey City.

Q. The total amount of your bill is what?

A. There is ten dollars I charged for going to Jersey City on Saturday afternoon.

Q. That was a reasonable charge for going?

A. I furnished my own car and went over there and took an entire afternoon.

Q. That is a reasonable charge?

A. Yes, sir.

By Mr. Merrill:

Q. The total of that is how much?

A. The total of that service for that afternoon was ten dollars.

Q. That makes a total bill of how much?

A. $22.80.

Q. Did you make an inspection of the car at Jersey City?

A. Yes, sir; I did.

Q. Did Mr. Hintz point out the damage that had been done to the car by this collision?

A. Yes, sir; he showed me what damage had been done by the collision.

Q. Did you make an estimate of the cost of making the necessary repairs?

A. I did, as near as I could under the conditions.

Q. What was your estimate?

MR. TURNER: I object to that, because there is proof here that this car was repaired by a

concern in Jersey City, and we are not called upon to pay some other estimate. They should prove what was charged them by the concern in Jersey City. They can prove that by calling their witness from that garage.

THE COURT: The question of whether they were reasonable is something as to which there should be proof. The question now is whether this witness can give his estimate of what it would cost to put that car in good repair, and restore the injured parts injured by the collision. I think I will sustain the objection.

MR. MERRILL: I would like an exception, because I understand that even if a man comes here and testifies that he did charge it, nevertheless, testimony is available from an expert to state whether that charge is a proper charge, and that is the very objection made at the time.

THE COURT: Yes. but you have not laid your foundation, you have not brought your mechanic to testify what he did do.

MR. MERRILL: It seems to me that can follow the testimony of the expert as to what would be a reasonable charge.

THE COURT: The expert's opinion is based on facts, and we want the facts first.

MR. MERRILL: While the expert in this case is both an expert on the costs, and himself a repairman, it seems to me that an estimated cost by him is pertinent at any stage of the proceedings.

THE COURT: I don't think so, Mr. Merrill. I shall rule against you upon that point.

MR. MERRILL: Prays exception.

By the Court:

Q. Mr. Crowe, I suppose the amount that you testify was reasonable has been paid to you?

A. Yes, sir; it has.
Q. By the plaintiff?
A. Yes, sir.

MR. MERRILL: The witness that I asked to come here on this other bill hasn't come in. I presume I will have to rest on this.

THE COURT: Yes, you will have to rest, unless you have some other witness.

MR. TURNER: If the case rests on $37.18 I shall offer no testimony.

THE COURT: What do you say to that, Mr. Merrill? That brings up the question of punitive damages. I don't myself see any testimony that establishes a basis for punitive damages.

MR. MERRILL: Then I would like to review that part of the evidence which seems to me does show that, and cite several cases in support of it.

(Argument by Mr. Merrill).

THE COURT: The only testimony in this case is that this defendant went past the signal that was set against him, and went past at a speed of about twenty miles an hour, I think that was the testimony; that the plaintiff was going at a rate of about five miles an hour, and that the collision happened immediately as he got by the traffic officer. Now, is there anything in that from which you can impute a wrongful motive, or personal intent to injure?

I think I will submit this case to the jury and charge the law as I understand it with reference to exemplary damages, and let them say whether there is anything here that in their opinion establishes the rule required to be established.

CHARGE TO THE JURY.

Charge to the Jury, by HON. CARLTON B. PIERCE, Common Pleas Judge, as follows:

Gentlemen of the Jury:

This is an action in negligence. The plaintiff brings it to recover damages for what he calls the negligent act of the defendant in injuring the plaintiff.

The first proposition you are to consider is whether the defendant was negligent in the operation of his car, because that is a necessary condition of any recovery by the plaintiff in the action. The plaintiff must first establish by a fair preponderance of proof that the defendant was negligent in the operation of his car. Any person who conducts or operates an automobile is obliged to do so with reasonable care. Reasonable care is the care that an ordinarily prudent person would or should observe under the circumstances disclosed, so that the question of defendant's negligence is really a question of whether he was using reasonable care, the care that an ordinarily prudent person would, at the time this accident occurred. If you find that he was, then the case stops at that point, because, unless the defendant was negligent, there can be no recovery. If you find that he was negligent, then you pass to the next feature in the case.

On this question of whether the defendant was negligent certain facts appear. It appears that the traffic signal was set against this defendant, and that he went past that signal, not only went past, but did so at a speed of some twenty miles an hour. Those are both circumstances, which are not in themselves conclusive, but are circumstances from which you have a right to say the defendant was negligent in the operation of his car.

It appears the plaintiff's car was being driven, the

only testimony is, very slowly, about five miles an hour, coming in from the side street, in accordance with instructions of the traffic officer. As I say, if you decide this first question, that the defendant was not negligent, the case stops there, because there can be no recovery; but if you decide that he was negligent then you pass to the next feature of the case.

The defendant says that the plaintiff himself was negligent, and if that is true, and his negligence contributed to the injury, then the plaintiff would be barred from any recovery. The same rules of negligence apply to contributory negligence that I have defined with reference to the defendant's negligence, that is, there must be the absence of the care a prudent person would observe.

The burden of proving contributory negligence is on the defendant. I am unable to recall myself any circumstance of any description under which you could say the plaintiff was negligent. If you can find any, and apply to it the rule of contributory negligence, and if you find there is any contributory negligence, you would then bar the plaintiff from recovery. If you find that the defendant was negligent, and that the plaintiff was not, then you pass to the question of damages.

The damages the plaintiff can recover in this case, and which he has alleged, are certain sums paid for the automobile. They amount to some $37.15, I think was the proof, and that would be the actual physical damages that the plaintiff has sustained by reason of this accident, if you find a cause of action.

In addition to making a claim for the actual damages sustained, plaintiff charges in his complaint that the defendant was committing a wanton act against him, that is, a reckless and wanton act against him, the plaintiff, and on that theory asks that smart money,

or exemplary damages be given against the defendant.

The law upon that point is this: "The right to award exemplary damages primarily rests upon the single ground, wrongful motive, and where the personal intent to injure is shown, the penalty may be inflicted." Was there any wrongful motive, that is, an active, affirmative intent on the part of this defendant to run into this plaintiff and injure his property? If there was a wrongful motive there can be no doubt that you could award exemplary damages. Let me proceed further with the definition of what may come in under the claim for exemplary damages: "This is true with relation to all trespasses committed against the property of another, which involve malice." There again, you see, is the wrongful motive, or wrongful intent to hurt, or a wanton disregard of the rights of, the person against whom the tortious act is committed. "When the wrongful motive is not inherent in the offence, the burden rests upon the plaintiff of presenting proof from which wrongful motive may be inferred." Of course, the mere fact of a collision does not involve, in itself considered, any wrongful motive or wrongful intent, because collisions occur daily, through carelessness, negligence, and other reasons not involving wrongful intent, so that the mere fact of a collision here does not in itself at all establish any wrongful motive on the part of the defendant. Further, when the Court says that there must be a wanton and reckless disregard of the rights of the plaintiff, that means something directly in connection with the act of damage done. It does not mean simply that every man who drives recklessly can be made to pay exemplary damages, but his recklessness must be in connection with the injury he inflicts. It is not mere recklessness. There must be a connection between the recklessness and the act done, or injury done.

Counsel has dwelt at length upon the necessity of

punishing this defendant for passing that signal. The law itself provides punishment for reckless driving. We are not concerned with that in this case. The object sought by the plaintiff here is to himself collect damages for the reckless driving and the reckless act which he says was committed against him. He is assuming that some act was done and is asking for the benefit of it. As I say, he is entitled to such damages, if there was some wrongful wanton act directed against him, but there is a proper punishment for reckless driving, which in itself will take care of the public interest. The plaintiff is concerned with it simply on the theory that it was directed toward him.

That is the case, and you may take it and render such verdict as you think proper. If you find for the plaintiff, the amount will be $37.18, unless, under the instructions I have given you, you find there has been some wrongful motive, or reckless and wanton act directed against the plaintiff.

MR. TURNER: I want to except to that part of the Court's charge where the Court says they shall find the sum of $37.18 for the plaintiff, unless they find that there was some wanton or malicious act on the part of the defendant, which was directed toward the plaintiff, on the ground that the facts in the case are such that there would be no warrant for the jury finding any exemplary damages.

MR. MERRILL: I want to except to the failure to charge as requested.

MR. MERRILL: And also to take an exception to the definition of malice, as being limited too closely to the question of motive.

Postea.

POSTEA.

Filed October 27, 1922.

NEW JERSEY SUPREME COURT.

Union County.

THEODOR J. HINTZ, *Plaintiff,* vs. HENRY S. ROBERTS, *Defendant.*	*Action at Law.*

POSTEA.

This case was tried before Judge Carleton B. Pierce, with a jury at the Union Circuit, on October 17th, 1922.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for $37.18 (Thirty-seven dollars and eighteen cents).

C. B. PIERCE,

Judge.

NOTICE AND GROUNDS OF APPEAL

Filed January 19, 1923

NEW JERSEY SUPREME COURT.

Union County

THEODOR J. HINTZ, *Plaintiff,* vs. HENRY S. ROBERTS, *Defendant.*	*Action at Law.*

NOTICE AND GROUNDS OF APPEAL.

TO FRANK G. TURNER,
Attorney of Respondent.

TAKE NOTICE that the appellant, THEODOR J. HINTZ, appeals to the Court of Errors and Appeals of the State of New Jersey from the whole of the judgment entered in this cause on the following grounds:

1. Because the trial judge sustained defendant's objection to the following question when he should have over-ruled the objection:

"Q. What was your estimate?"

This question was addressed to plaintiff's witness, Eldred R. Crowe, and its purpose was to bring out the witness' estimate of the cost of repairing the damage to plaintiff's car.

2. Because the trial judge erroneously ruled that an expense of "fifty cents has to be proved just as accurately as one hundred dollars, if they insist on it."

3. Because the trial judge sustained defendant's objection to the following question as not being within

the issue when he should have over-ruled the objection:

> "Q. You have testified that you went over to Jersey City to look at your car. Did that, or did that not, constitute an interruption to your business?"

4. Because the trial judge sustained defendant's objections to the following questions when he should have over-ruled the objections:

> "Q. Did you thereafter make a charge against Mr. Roberts, arising out of this accident?"
>
> "Q. Was a charge made by you on May 31st, against the defendant Roberts, brought to trial?"

5. Because the trial judge erred in attributing to the term "malice" the meaning of wrongful motive directed toward the particular person injured, or "wrongful intent to hurt" such person.

6. Because the trial judge refused the plaintiff's request to charge the jury as follows:

(3)

> If you conclude that the conduct of the defendant showed a wanton and reckless disregard of the rights of the plaintiff and of his safety, you may assess what is termed exemplary damages as a punishment to the defendant.

(4)

> The legal duty of the defendant "was to be on the alert, to observe persons who were in the street, or about to cross the street, and to use reasonable care to avoid colliding with them. He was under a duty to have his automobile under proper control. He was under an obligation to take notice of the conditions

existing in the public street and to propel his car in a manner suitable to those conditions."

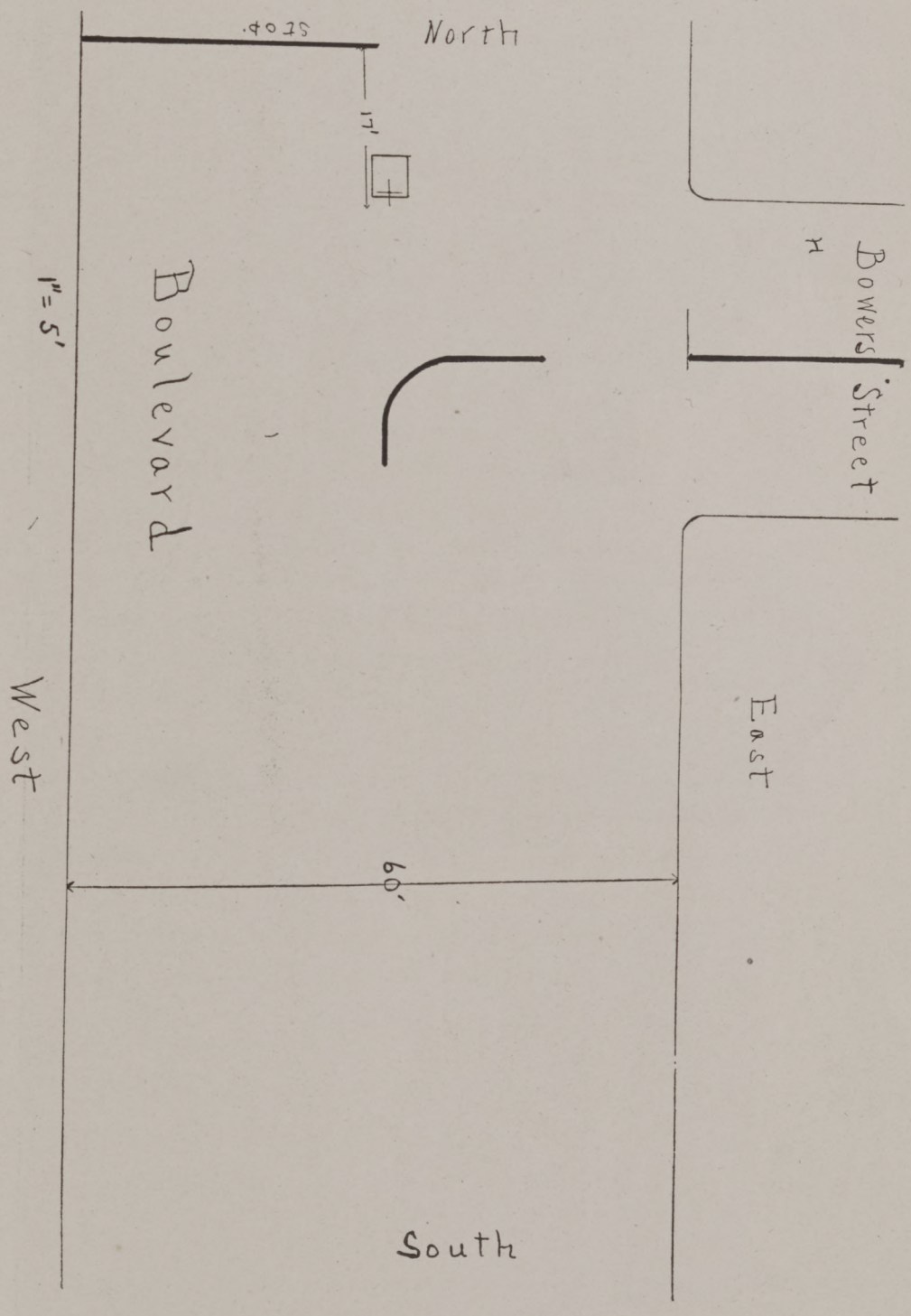
(5)

If you conclude that the plaintiff is entitled to recover you may take into account, besides evidence of the damage to the automobile itself, evidence of the nature of the plaintiff's business, the profits therefrom and the interruption thereto, not as an actual measure of the damage suffered by the plaintiff, but as a guide in the exercise of your discretion in determining the actual damage, for 'the pertinent rule is that when personal property, in the actual use of the owner, is injured by a trespasser, so that the owner is deprived of its use, the special damage necessarily and proximately attendant upon such privation may be proven to augment the damages beyond the diminution in value of the thing injured'.

(6)

If you conclude that the plaintiff is entitled to punitive damages as well as compensatory damage, you may add such punitive sum as you agree upon to the sum agreed upon as compensatory damages.

E. A. MERRILL,
Attorney of Appellant.



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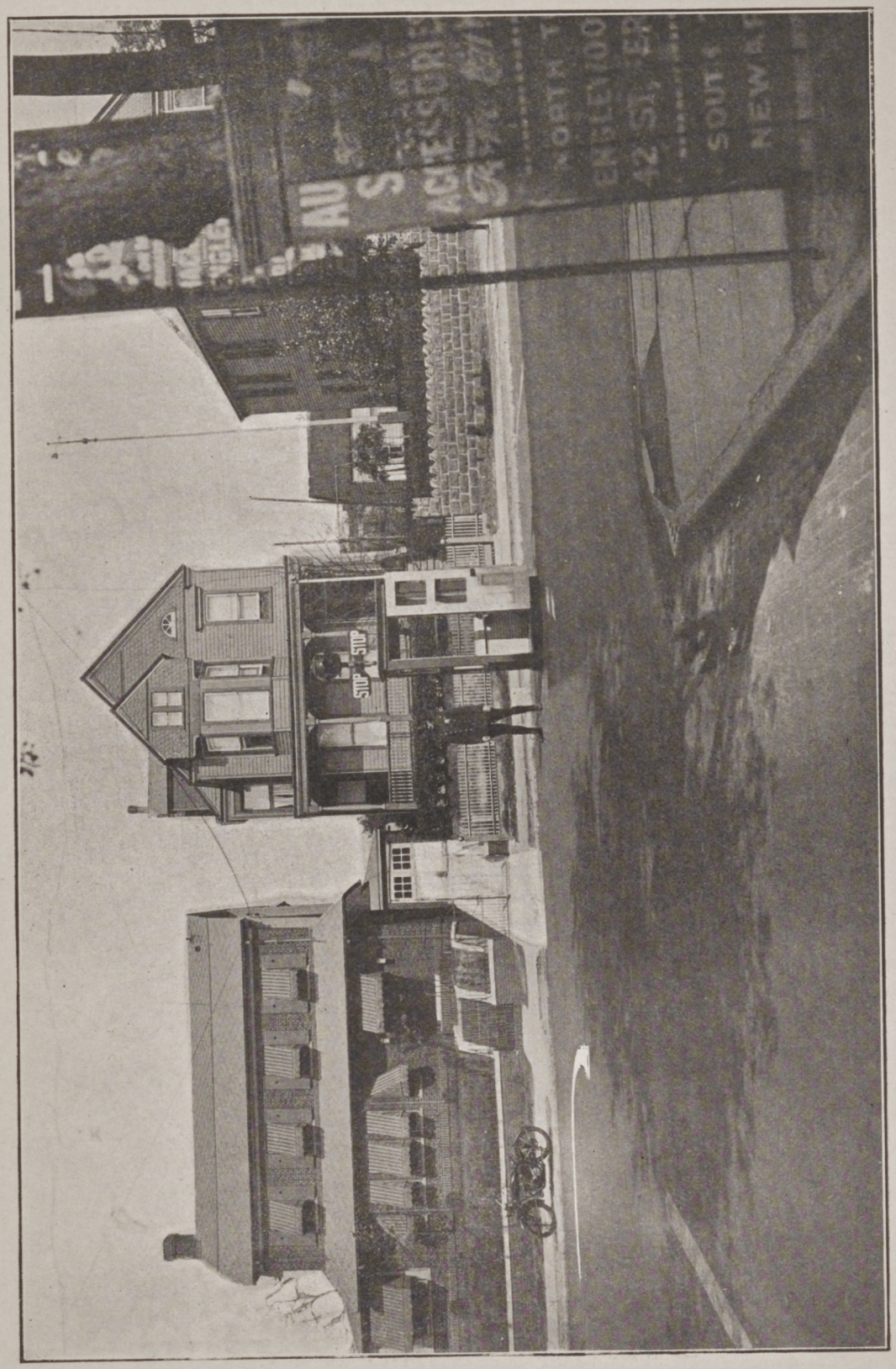

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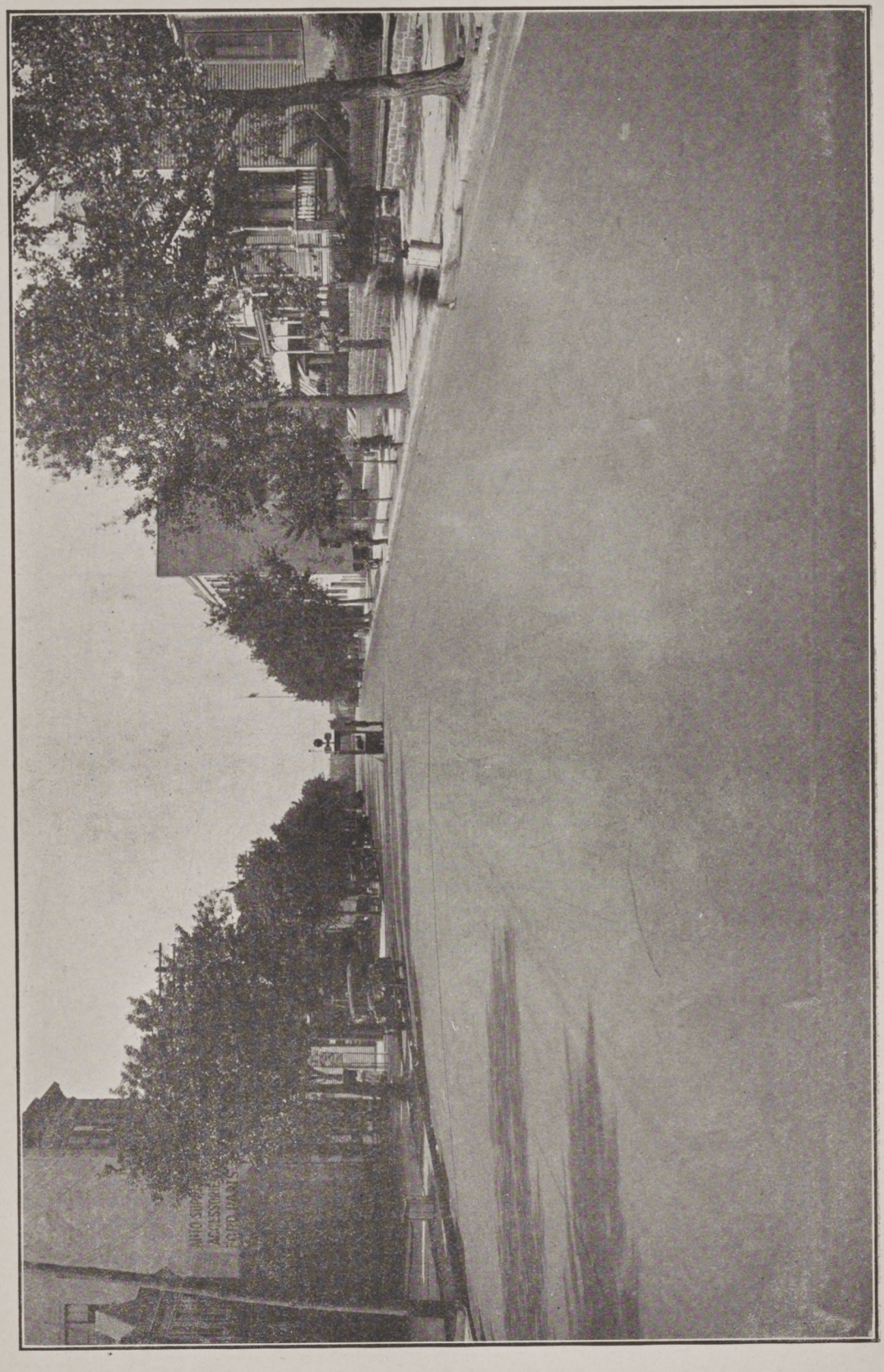

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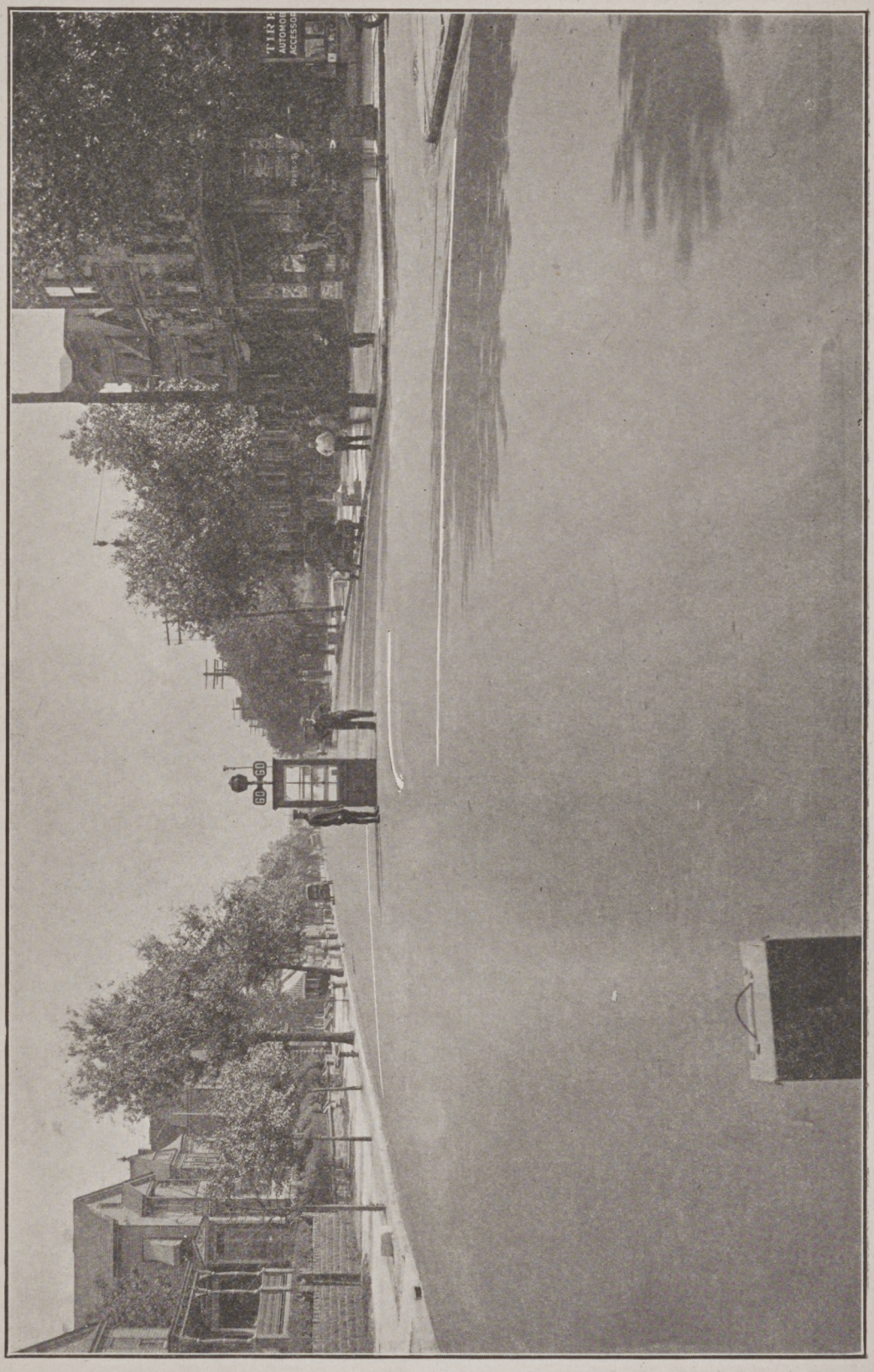

PLAINTIFF'S EXHIBIT NO. 4.

(Write legibly) (Do not fold)

Owner's Name Henry Steele Roberts, (48393)

Address 290 Park Ave. N.Y.C.

STATE OF NEW JERSEY

DEPARTMENT OF STATE—COMMISSIONER OF MOTOR VEHICLES

APPLICATION FOR REGISTRATION OF A PASSENGER VEHICLE

I, the undersigned, the owner of the automobile herein described, hereby apply for registration of said vehicle and for that purpose make the following answers to the questions contained in this application.

DESCRIPTION OF VEHICLE

1921 Registration No.	B.O.S.	Color of Body	Black	Horse Power (S. A. E.)	27
Maker's Name	Buick	Year of Make	1922	Has Car a Reflecting Mirror?	Yes
Serial Number	786702	Model		Do Headlights comply with Law?	Yes
Engine Number	835703	Number of Cylinders	6	What Method have you employed to eliminate	
Kind of Body	Roadster	Bore of Cylinders	3 3/8	dazzle and glare?	Ground lenses

State of New Jersey
County of New York } ss.

New York
Henry Steele Roberts, (name of owner) says that he (he or she) is the above named applicant, (or if a corporation the

(title of office) of (name of corporation) a corporation, the above named applicant), that he (he or she) signed the above application, knows the contents thereof, and hereby makes oath in due form of law that the statements and answers contained therein are true.

Subscribed and sworn to before me this April 1 1922 day of , 192

Aimee Stennard, (signature of officer taking affidavit)

Henry Steele Roberts, (signature of applicant)

(title) Notary

Issued by FRED KUSER at NEW YORK date APR. 1, 1922 Fee $10.80

Form CA 37—12-28-21—M100

PLAINTIFF'S EXHIBIT NO. 5.

New Jersey Court of Errors and Appeals

THEODOR J. HINTZ, *Plaintiff-Appellant,* VS. HENRY S. ROBERTS, *Defendant-Respondent.*	*Action at Law.* *On Appeal*

BRIEF OF THE PLAINTIFF-APPELLANT

This is an appeal from the verdict of a jury in the Union County Circuit of the Supreme Court. The verdict, which was in favor of the appellant, is not questioned so far as it goes, but the plaintiff is aggrieved because the rejection of certain testimony prevented his placing before the jury evidence of the major part of the injuries suffered, and because the trial judge, in effect, charged the jury to limit its consideration to compensatory damages only, notwithstanding the plaintiff had asked for, and should have been awarded, punitive damages.

STATEMENT.

At about ten o'clock on Sunday evening, May 14th, 1922, the plaintiff was traveling in his Ford car in a westerly direction on Bowers Street, Jersey City, and approaching the easterly side of the Hudson County Boulevard. At this point there is, in the middle of the Boulevard, a traffic signal booth, the size, character, and location of which are sufficiently indicated by plaintiff's exhibits facing p. 54. The traffic signal being set against him the plaintiff brought his car to

a full stop on Bowers Street, about twelve or fifteen feet back from the easterly line of the Boulevard. Shortly thereafter the traffic officer stationed at the booth blew his whistle and turned the signal for the Bowers Street traffic to move into and across the Boulevard, and for the north and south Boulevard traffic to stop. Thereupon the plaintiff started his car and moved slowly forward, following the guide arrow on the pavement, at a speed of about five miles per hour. As he came into the Boulevard he looked north and saw defendant's car some 400 to 500 feet away; the traffic officer testified that, before turning the signal, he looked north and defendant's car was then about 450 feet distant (Case p. 8, l. 16; Case p. 12, l. 36). After the plaintiff had crossed the easterly side of the Boulevard he turned south on the westerly side, and had proceeded but a short distance when the defendant's car, passing the signal and the traffic officer (Case, p. 8, line 30), crashed into the rear of his car, driving it forward some forty feet, when the right hand rear wheel collapsed and the cars came to a stop. As the defendant had moved about 450 feet while the plaintiff was moving about 50 or 60 feet the defendant's car was moving some eight or nine times as fast as the plaintiff's car, or at a probable speed of from 40 to 45 miles per hour; an abnormal and reckless rate of speed is also indicated by the fact that, although the plaintiff's car was light and already in motion in the some direction as the defendant's car, the impact was so violent that the spare tire on the rear of plaintiff's car was driven against the car body with sufficient force to make an indentation (Case p. 26, l. 5); if further proof of reckless speed is required it may be found in the distance the cars traveled before coming to a stop. The Boulevard is not only well lighted at this point, but there is a street light directly over the street at the corner (Case p. 22, l. 30), it was a clear night, and

the turning of the signal was notice that cars, or pedestrians, or both, were about to cross or enter the Boulevard.

In wantonness and recklessness the defendant's act was comparable with the act of a locomotive engineer deliberately driving his engine past a signal set against him, with another train in full view, on the chance that the other train would get out of his way in time, and deserving the same condemnation.

Fortunately the plaintiff had turned sufficiently in the direction of the Boulevard traffic so that the collision drove his car forward. Had the defendant struck him broadside his car must have been overturned and the occupants severely injured, if not killed. That they were not killed is little short of a miracle, and no excuse for the defendant.

The collision caused substantial injury to the plaintiff's car, including a broken wheel, broken hub and bearing, ruined tire and tube, bent axle, damaged fender, damaged tire carrier, and indentations in the body. The injuries necessitated the dismantling of the car and were repaired in part in the automobile repair shop at Jersey City to which the wrecked car was towed (Case p. 26, l. 10), in part at another shop where the dents were taken out of the body (Case p. 28, l. 22), and in part at a garage in Westfield (Case p. 42, l. 12).

Following the collision the traffic officer placed the defendant under arrest, the wrecked car was towed to a near-by garage, and officer, plaintiff, and defendant went to the police station, where the officer entered a complaint against the defendant (Case, p. 24, l. 35).

The necessary repairs kept the plaintiff's car out of commission for an entire week, during which time not only was the plaintiff's business interrupted but he was obliged to hire other conveyances in order to

meet his professional engagements.

At the trial testimony was excluded relating to the plaintiff's loss because of the interruption to his business and the necessity of hiring other conveyances, as was also the testimony of an expert repair man as to the reasonable cost of repairing the damage suffered.

Testimony was also excluded bearing upon the question of punitive damages, and the charge to the jury, in affect, withdrew that issue from their consideration.

The plaintiff filed the following grounds of appeal:

1. Because the trial judge sustained defendant's objection to the following question when he should have over-ruled the objection:

"Q. What was your estimate?"

This question was addressed to plaintiff's witness Eldred R. Crowe and its purpose was to bring out the witness' estimate of the cost of repairing the damage to the plaintiff's car.

2. Because the trial judge erroneously ruled that an expense of "fifty cents has to be proved just as accurately as one hundred dollars, if they insist on it."

3. Because the trial judge sustained defendant's objection to the following question as not being within the issue when he should have over-ruled the objection:

> "Q. You have testified that you went over to Jersey City to look at your car. Did that, or did that not, constitute an interruption to your business?"

4. Because the trial judge sustained defendant's objections to the following questions when he should have over-ruled the objections:

"Q. Did you thereafter make a charge against Mr. Roberts, arising out of this accident?"

"Q. Was a charge made by you on May 31st, against the defendant Roberts, brought to trial?"

5. Because the trial judge erred in attributing to the term "malice" the meaning of wrongful motive directed toward the *particular person injured,* or "wrongful intent to hurt" *such* person.

6. Because the trial judge refused the plaintiff's request to charge the jury as follows:

(3)

If you conclude that the conduct of the defendant showed a wanton and reckless disregard of the rights of the plaintiff and of his safety, you may assess what is termed exemplary damages as a punishment to the defendant.

(4)

The legal duty of the defendant "was to be on the alert, to observe persons who were in the street, or about to cross the street, and to use reasonable care to avoid colliding with them. He was under a duty to have his automobile under proper control. He was under an obligation to take notice of the conditions existing in the public street and to propel his car in a manner suitable to those conditions."

(5)

If you conclude that the plaintiff is entitled to recover you may take into account, besides evidence of the damage to the automobile itself, evidence of the nature of the plaintiff's business, the profits therefrom and the interruption thereto, not as an actual measure of the damage suffered by the plaintiff, but as a guide in the exercise of your discretion in de-

termining the actual damage, for the pertinent rule is that when personal property, in the actual use of the owner, is injured by a trespasser, so that the owner is deprived of its use, the special damage necessarily and proximately attendant upon such privation may be proven to augment the damages beyond the diminution in value of the thing injured.

(6)

If you conclude that the plaintiff is entitled to punitive damages as well as compensatory damage, you may add such punitive sum as you agree upon to the sum agreed upon as compensatory damages.

POINT I

THE COURT SHOULD HAVE PERMITTED CROWE TO TESTIFY AS TO THE REASONABLE COST OF MAKING THE REPAIRS.

The plaintiff's witness Crowe is the proprietor of a Ford service station and therefore peculiarly well qualified to pass upon the reasonable cost of repairing Ford cars. (Case p. 18, l. 38). No question was raised as to his qualifications, and the objection was not to his testimony as such but to the order in which his testimony should be given. (Case p. 45, l. 12). The man who had made the major part of the repairs had not arrived at the time Crowe's testimony was offered (Case p. 46, l. 7) and the plaintiff was therefore obliged to rest without any testimony as to the reasonable cost of such repairs.

The plaintiff insists that the competency of Crowe's testimony was wholly unaffected by the order in which it was offered, and by the absence of the man who actually made the repairs. The question put to Crowe was not as to the reasonableness of the repair bill actually paid, but as to Crowe's estimate of the rea-

sonable cost of making the repairs. As stated by the court in sustaining the objection "the question now is whether this witness can give his estimate of what it would cost to put that car in good repair and restore the injured parts injured by the collision." The bill rendered, and evidence of the amount of work done by the repair man, had no immediate relevancy to the question asked Crowe. If no repairs had ever been made the question would certainly have been relevant, material, and competent. Indeed had no repairs been made there would have been no other method of ascertaining the extent of the damage. The fact that repairs were made does not change the rule. As affecting the *right to offer* Crowe's testimony as evidence of the reasonable cost of repairs, evidence of the amount actually paid was wholly immaterial, and as such testimony went to the major part of the damage to the car the ruling was prejudicial error and entitled the plaintiff to a new trial.

POINT II

IN A TORT ACTION SMALL ITEMS OF DAMAGE NEED NOT BE PRECISELY PROVED.

The plaintiff is a commercial photographer whose work takes him to various parts of the state. The loss of the use of his car compelled him to rely upon other means of transportation, including railroads trolleys, and cabs (Case p. 38, l. 40). The individual items excluded were small and manifestly impossible of precise proof, but the aggregate was substantial. In tort actions the rule as to damages is more liberal than in contract actions and, from the very nature of the case, the defendant should not be allowed to escape a reasonable indemnity to the injured party merely because of the impracticability of precisely proving such items. The jury can safely be allowed to judge

of the reasonableness of such charges from their general familiarity with the subject matter.

In *Chaperon* v. *Electric Co.*, 67 Pac. 928, the defendant objected, as a ground of reversal, that testimony of the plaintiff that he paid certain small sums for repairs was not followed by proof of their reasonable value, but the court held that "these small items of expense incurred are matters of such common knowledge that we are disposed to let them rest with the jury who are fully competent and qualified from their own experience to determine as to their reasonableness."

POINT III.

IN A TORT ACTION "THE DAMAGES INCLUDE EVERYTHING OF WHICH THE PLAINTIFF HAS BEEN DEPRIVED AS A PROXIMATE AND NATURAL CONSEQUENCE OF THE INJURY."

The general rule is as stated by Mr. Justice Black in his treatise on the Law and Practice in Accident Cases, at page 285: "In an action of tort the rule of damages is broader than in actions brought for a breach of contract. The damages include everything of which the plaintiff has been deprived as a proximate and natural consequence of the injury."

The trial judge erred in excluding questions relating to the interruption of the plaintiff's business (Case p. 40, l. 24).

The rule as to damages laid down by *Shearman* v. *Redfield*, page 58, and expressing the rule generally followed, is this: "a person guilty of negligence should be held responsible for all the consequences which a prudent and experienced man, fully acquainted with

all the circumstances which in fact existed (whether they could have been ascertained by reasonable diligence or not) would, at the time of the negligent act, have thought reasonably possible to follow, if they had occurred to his mind."

The above rule should be applied with special liberality where the injuries not only naturally and proximately followed the act, but where the act itself was in wanton and reckless disregard not only of the traffic law relating to signals but also of the provision that: "Nothing in this act contained shall permit any person to drive a motor vehicle recklessly, or at any speed greater than is reasonable, having regard to the traffic and use of the highways or so as to endanger the life or limb or to injure the property of any person." Chapter 208, Laws 1921, p. 669.

Further, evidence of such injuries, being a part of the *res gestae,* was competent for its affect upon the question of punitive damages.

POINT IV.

CONCERNING PUNITIVE DAMAGES.

In his treatise on the law of Damages, 4th Ed., Vol. 2, Sec. 393, Mr. Sutherland says that punitive damages "are allowed when a wrongful act is done with a bad motive, or so recklessly as to imply a disregard of social obligations, or where there is negligence so gross as to amount to misconduct and recklessness. If a wrong is done wilfully, that is, if a tort is committed deliberately, recklessly, or by wilful negligence, with a present consciousness of *invading another's right,* or of *exposing him to injury,* an undoubted case is presented for exemplary damages."

In *Lienkauf & Strauss* v. *Morris,* 66 Ala. 406, the court say: "We deduce from the authorities the doc-

trine to be, that exemplary damages are allowable, not only for acts maliciously perpetrated, but also in cases where one knowingly, wantonly and recklessly does an act fraught with probable injury to person or property, and ultimately producing such injury or damage."

Such is the rule supported by the great weight of authority, and consistently followed by the courts of this state. In *Trainer* v. *Wolff,* 58 N. J. L. 381, this court held that punitive damages may be awarded where "the act of the defendant was a wilful trespass," and "done with a wanton and reckless disregard of the plaintiff's rights."

In *Neafie* v. *Hoboken Printing Co.,* 72 N. J. L. 340, and again in *Dreimuller* v. *Rogow,* 93 N. J. L. 1, the Supreme Court remarks that "the right to award exemplary damages primarily rests upon the single ground, wrongful motive." The term "wrongful motive" is the equivalent of the term "legal malice." In *Wendelken* v. *Stone,* 88 N. J. L. 267, this court defined legal malice as "the intentional doing of a wrongful act to the injury of another without just cause or excuse," which is substantially the same definition as given in the early cases of *Bronnage* v. *Prosser,* 4 Barn. and Cresw. R. 255, and *United States* v. *Taylor,* 4 Sumner 584.

The act of which injury is the natural and proximate result, although resting upon "legal malice," is often called "wanton." A good definition of "wantonness" will be found in *Sandrum* vs. *Birmingham Ry. L. & P. Co.,* 153 Ala., 192-204: "Wantonness consists, as we have defined it, in consciousness, on the part of the person charged with it, from his knowledge of existing circumstances and conditions, that his conduct will probably result in injury, and yet, with reckless indifference or disregard of the natural or probable consequences, but *without intention to inflict injury,* he does or fails to do the act."

In *Mo. Pac. Ry. Co.* vs. *Humes,* 115 U. S. 512-521, the court say: "For injuries resulting from a neglect of duties, *in the discharge of which the public is interested,* juries are also permitted to assess exemplary damages."

Punitive damages may be awarded whether the action is in trespass or case, or combines both trespass and case. "The purpose of the award being to punish the wrong-doer, no reason is perceived for holding that the power to inflict punishment is dependent to any extent upon the form of the action by which the injured party seeks redress for the wrong done him by the malicious or wanton trespass committed against his property." *Dreimuller* v. *Rogow,* 93 N. J. L. 1.

Nor will the fact that the defendant is liable in a criminal action affect the right to recover punitive damages. In an early New York case, *Cook* v. *Ellis,* 6 Hill 466, the court observed: "We concede that smart money allowed by a jury and a fine imposed at the suit of the people depend on the same principle. Both are penal and intended to deter others from the commission of like crime. The former, however, becomes *incidentally compensatory* for damages, and at the same time answers the purposes of punishment. The recovery of such damages ought not to be made dependent on what has been done by way of criminal prosecution any more than on what may be done. Nor are we prepared to concede that either a fine, an imprisonment, or both, should be received as evidence to mitigate the damages."

Assault and battery may be punished as a crime in a criminal action, but in *Blackmore* v. *Ellis,* 70 N. J. L. 264, this court held that in a *civil* action for assault and battery punitive damages might be recovered if the defendant's act was actuated by malice; in *Zick* v. *Smith,* 95 N. J. L. 388, the Supreme Court, citing

Blackmore v. *Ellis,* held that while "in some jurisdictions it is the law that punitive damages in a civil action cannot be assessed in an action for assault and battery because the wrong is one for which the wrongdoer may be punished criminally, this principle has never found lodgment in the law of this state. It is illogical. The criminal action is a punishment for the wrong done the public. The punitive damages is a punishment for the wrong done to the individual."

Inasmuch as the law presumes that the actor intends the natural and probable consequences of his act it may be said that an intent, on the part of the defendant, to injure the plaintiff is present as a matter of law. As a matter of fact, however, there not only need be no personal ill-will or hostility against the plaintiff, but there may be a total absence of intent, purpose, desire, or anticipation of injuring anyone. It is only necessary that there shall be "the intentional doing *of a wrongful act* to the injury of another without just cause or excuse"; in other words, if the injury is the natural and proximate result of a wrongful act intentionally done, then punitive damages may be awarded notwithstanding the injury was not within the contemplation of the defendant when he did the wrongful act.

"It is immaterial that these manifestations (of wrong, malice, gross negligence, etc.) kere not intended for the plaintiff but for another." Ruling Case Law, Tit. Damages, Sec. 133.

In *Frink* v. *Coc,* 61 Am. Dec. 141, an Iowa case, Coe brought an action against Frink & Co. for injuries sustained by the careless upsetting of the defendant's coach through the negligent employment of a drunken driver. A judgment in favor of the plaintiff was affirmed, and the court remarked that "if a stage proprietor is guilty of gross negligence it amounts to that kind of gross misconduct which will justify a jury

in giving exemplary damages even where an 'intent or design' to do the injury does not appear."

In *Scarcy* v. *Golden,* 188 S. W. 1098 (Ky.), the defendant was racing with another automobile, and, observing that a horse ridden by the plaintiff was frightened, failed to stop his car as required by the statute. The horse backed into the path of the defendant's automobile, was struck, and both horse and rider were injured. The trial judge denied the plaintiff's request for an instruction authorizing an award of punitive damages and the appellate court held such refusal to be error on the ground that "to warrant punitive damages *the injury need not result from an intentional wrong;* a showing of reckless conduct, or such gross negligence as to indicate a wanton disregard of others, being sufficient."

In *Brasington* v. *South Bound Ry. Co.,* 40 S. E. 665, the defendant had failed to protect, as required by an ordinance, a cut it excavated across a highway. The plaintiff was injured by falling into the excavation and an award of punitive damages was affirmed. The court further held that a complaint alleging that the plaintiff fell into said cut and was injured "by reason of the wanton and reckless carelessness and negligence of the defendant in not properly guarding and protecting said excavation" was sufficient to sustain a charge that the complaint stated facts which would support an award of punitive damages.

In *Roth* v. *L. & N. R. R. Co.,* 130 Ky. 759, the plaintiff, while driving a team across the tracks of the defendant at grade, was struck by defendant's train and injured both in his person and property. The accident was due to the gross negligence of the defendant's watchman, imputed to the defendant, in not lowering the gates, or otherwise calling the approaching train to the attention of the plaintiff. The jury awarded, in addition to compensatory damages, puni-

tive damages in the sum of $2,000, and the judgment was affirmed on appeal.

In *Mandeville* vs. *Courtright et al.* 142 Fed. 97, the plaintiff was injured by the negligent work of an unlicensed dentist employed by the defendants. "There was evidence that the operator upon the plaintiff's jaw was unlicensed as a dentist. The operation itself called for experience, knowledge and skill. These the person who operated seemed to have lacked. It was a great wrong to the plaintiff and a reckless indifference to her welfare to put her in the hands of such an incompetent person. We think that the facts disclosed by the evidence fully justified the jury in awarding to the plaintiff exemplary damages."

An application for a writ of certiorari was denied by the Supreme Court. 202 U. S. 615.

In *Meibus* vs. *Dodge*, 38 Wis. 300, the action was for injuries to a child bitten by a ferocious dog negligently allowed to go at large unmuzzled. The defendant excepted to the charge of the court upon the right to assess punitive damages. The appellate court held that the instruction to the jury "that they might include in their verdict punitory or exemplary damages, providing they were satisfied from the evidence that the defendant has been guilty of gross and criminal negligence in allowing the dog to run at large without being muzzled—that is, had been guilty of such negligence as evinced a wanton disregard of the safety of others" was "fully warranted."

In *Hopkins* vs. *Atl. & St. Lawrence R. R.*, 36 N. H. 9, the plaintiff was injured in a collision between a freight train and a passenger train in which she was riding as a passenger. A verdict which included exemplary damages was affirmed, the court remarking that "gross carelessness, where duty to the public requires the utmost care, has certainly a strong character of cruelty and moral turpitude."

In *Nail* vs. *Tutwiler Coal etc. Co.*, 141 Ala. 374, the defendant wilfully and unnecessarily obstructed the public highway by leaving its cars across the highway, to the injury of the plaintiff. A verdict which included punitive damages was affirmed, the court remarking that the defendant showed "a culpable indifference to the rights of the public."

In *Welch* vs. *Durand*, 36 Conn. 182, the plaintiff was injured by a bullet from a pistol fired recklessly by the defendant. The injury was unintentional, but the bullet glanced and struck the plaintiff. A verdict including exemplary damages was sustained, the court remarking that "the defendant was guilty of wanton misconduct and culpable neglect."

In *N. O., Jackson and Gt. No. R. R. Co.* vs. *Burley*, 40 Miss. 395, the plaintiff was standing on the top of a freight car when other cars of the defendant collided therewith, due to the inexcusable negligence of the servants of the defendant, and the plaintiff was thrown to the ground and injured. An award including punitive damages was upheld.

It is to be observed that in every one of these cases, and many others might be cited, there was no personal intent to harm, no wrongful motive directed to a particular individual, no hostility to the person injured, but the injury was the natural and proximate result of an act general in character, but so wanton, so reckless, and so grossly negligent that the law presumes malice.

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POINT V.

THE TRIAL JUDGE ERRED IN HIS DEFINITIONS OF THE TERMS "MOTIVE," AND "MALICE."

Considerable emphasis has been placed, under Point IV, upon cases where punitive damages have been allowed and sustained in the absence of an affirmative intent to injure anyone, and, in particular, where there could be no possible ground for imputing personal ill-will against the person injured; the cases cited clearly indicate the error of the trial judge in defining "motive" and "malice" as necessarily involving "an active, affirmative intent on the part of this defendant to run into this plaintiff and injure his property" (Case p. 49, l. 10). "Motive," and "malice," and "intent" need not be "active" or "affirmative," they may merely be legally imputed.

Brushing aside the general rule laid down by this court in *Trainer* v. *Wolff,* 58 N. J. L. 381, that punitive damages may be awarded where "the act of the defendant was a wilful trespass," and "done with a wanton and reckless disregard of the plaintiff's rights," and brushing aside the definition of legal malice as "the intentional doing of a wrongful act to the injury of another without just cause or excuse," as stated by this court in *Wendelken* v. *Stone,* 88 N. J. L. 267, the trial judge, after stating that "I don't myself see any testimony that establishes a basis for punitive damages" (Case p. 46, l. 16), charged as follows (Case p. 49, l. 5):

"The law upon that point is this: The right to award exemplary damages primarily rests upon the single ground, wrongful motive, and where the personal intent to injure is shown, the penalty may be inflicted. Was there any wrongful motive, that is, *an*

active, affirmative intent on the part of this defendant to run into this plaintiff and injure his property? If there was a wrongful motive there can be no doubt that you could award exemplary damages. Let me proceed further with the definition of what may come in under the claim for exemplary damages: 'This is true with relation to all trespasses committed against the property of another, which involves malice.' There again, you see, is the wrongful motive, or wrongful intent to hurt, or a wanton disregard of the rights of, the person against whom the tortious act is committed. 'When the wrongful motive is not inherent in the offence, the burden rests upon the plaintiff of presenting proof from which wrongful motive may be inferred.' Of course, the mere fact of a collision does not involve, in itself considered, any wrongful motive or wrongful intent, because collisions occur daily, through carelessness, negligence, and other reasons not involving wrongful intent, so that the mere fact of a collision here does not in itself at all establish any wrongful motive on the part of the defendant. Further, when the court says that there must be a wanton and reckless disregard of the rights of the plaintiff, that means something directly in connection with the act of damage done. It does not mean simply that every man who drives recklessly can be made to pay exemplary damages, but his recklessness must be in connection with the injury he inflicts. It is not mere recklessness. There must be a connection between the recklessness and the act done, or injury done."

The quotations in the charge were read by the trial judge from *Dreimuller* v. *Rogow*, 93 N. J. L. 1, where the supreme court applied the law to a particular state of facts, and in terms which do not justify the interpretation placed upon them by the trial judge.

In brief the trial judge erroneously instructed the jury that the malice which justifies the assessment of

punitive damages must rest upon a "wrongful motive," synonymous with a "wrongful intent to hurt," directed to the very person "*against whom* the tortious act is committed" (Case p. 49, l. 20), and that the burden of proof rests upon the plaintiff to prove that the defendant was actuated by "an active, affirmative intent to run into this plaintiff and injure his property."

This instruction is prefaced by the erroneous assertion that "the plaintiff charges in his complaint that the defendant was committing a wanton act *against him*, that is, a reckless and wanton act *against him, the plaintiff*, and on that theory asks that smart money, or exemplary damages be given against the defendant." (Case p. 48, l. 38).

The impression given by this statement is that the complaint charges that the defendant not only wantonly and recklessly, but deliberately and wilfully ran down this particular individual—that the wantonness and recklessness was the intentional bringing about of the collision as a purposed act. This impression is emphasized by similar expressions occuring later in the charge: the plaintiff seeks to "collect damages for the reckless act which he says was committed *against him*" (Case p. 50, l. 8); "he is entitled to such damages if there was some wrongful wanton act directed *against him*" (Case p. 50, l. 12); "the plaintiff is concerned with it simply on the theory that it was directed *toward him*" (Case p. 50, l. 16); "there again, you see, is the wanton disregard of the rights of the person *against whom* the tortious act is committed" (Case p. 49, l. 18). This is not what the complaint says or intimates. What the complaint does say is this: "6. This defendant carelessly, negligently and with a reckless and wanton disregard of the rights of the plaintiff, and in wanton and reckless disregard of the traffic rules, and contrary to the statute in such cases made and provided, proceeded at a high rate of speed *past*

the signals set against him, and ran into the rear of plaintiff's automobile, causing serious damage thereto." (Case p. 2, l. 11).

The legal malice, the purposed act, the wilful and intentional disregard of right, the wanton and reckless conduct, was the trespass upon the plaintiff's right to security in the safety zone to which he was invited, and from which the defendant was excluded, by the traffic officer; in a sense the defendant's trespass was directed against any person in that zone, not because of personal ill will, or because of an intent to injure some particular individual, but because injury was the natural and probable consequence of such trespass and the law imputes to the actor the natural and probable consequences of his acts, but this aspect was not presented to the jury by the trial judge.

Having thus started the jury on the wrong scent the trial judge then proceeds to keep them on that scent by an erroneous statement of the law applicable to the facts.

Of course, "where the personal intent to injure is shown the penalty may be inflicted," but it does not follow that *only* where the intent to injure is shown may the penalty be inflicted, as intimated by the trial judge when he inquires (Case p. 49, l. 9): "Was there an active, affirmative intent on the part of this defendant to run into this plaintiff?" Suppose there was not "an affirmative intent to run into this plaintiff"—What of it? There was legal malice in the affirmative intent to disregard the plaintiff's rights, when the defendant deliberately, wantonly and recklessly ran by the signal, with a naturally and proximately resulting injury, and that is more than sufficient.

The trial judge also erred, and further misled the jury, in his statements that because "the law itself provides punishment for reckless driving. We are not concerned with that in this case" (Case p. 50, l. 4), and

that "there is a proper punishment for reckless driving which, in itself, will take care of the public interest" (Case p. 50, l. 14). It is true, as stated by the trial judge, that counsel for the plaintiff "dwelt at length upon the necessity of punishing this defendant for passing that signal" (Case p. 49, l. 41), but not for *merely* passing the signal. Punishment was urged because the defendant's malicious act in wantonly and recklessly passing the signal and trespassing upon the plaintiff's right to security resulted in injury to the plaintiff. As remarked by this court in *Kolankiewiz* v. *Burke*, 91 N. J. L. 567, "Everyone is entitled to rely on all safeguards provided by law." The moot question whether, in such case, exemplary damages shall be regarded as a punishment or as a form of compensatory damages is unimportant—in either case such damages are not a punishment for the criminal offense as such, nor a substitute for such punishment.

POINT VI.

THE TRIAL JUDGE ERRED IN INSTRUCTING THE JURY NOT TO AWARD PUNITIVE DAMAGES.

The plaintiff did not allege, or attempt to prove, that the defendant was actuated in fact by a "wrongful motive" synonymous with an "active, affirmative intent to run into this plaintiff and injure his property" (Case p. 49, l. 9), or by a "wrongful intent to hurt" the plaintiff (Case p. 49, l. 19), or that the plaintiff was the "person *against whom* the tortious act was committed" (Case p. 49, l. 21), in the sense of a deliberate and purposed collision. To instruct the jury that such proof was necessary, and that punitive damages could only be awarded if they found *such* "wrongful motive," or a "reckless and wanton act directed *against* the plaintiff" (Case p. 48, l. 40), and as limited

by the instructions as to intent to injure, was to instruct the jury not to award punitive damages.

POINT VII

THE TRIAL JUDGE ERRED IN DENYING PLAINTIFF'S REQUESTS TO CHARGE.

The plaintiff's request should have been granted that the jury be charged: "If you conclude that the conduct of the defendant showed a wanton and reckless disregard of the rights of the plaintiff and of his safety, you may assess what is termed exemplary damages as a punishment to the defendant." The charge is almost in the words of this court in *Trainer* v. *Wolff*, 58 N. J. L. 281, and correctly states the law.

So, also, of the request to charge: "The legal duty of the defendant 'was to be on the alert, to observe persons who were in the street, or about to cross the street, and to use reasonable care to avoid colliding with them. He was under a duty to have his automobile under proper control. He was under an obligation to take notice of the conditions existing in the public street and to propel his car in a manner suitable to those conditions."

This charge is in the very words of this court in *Pool* v. *Brown*, 89 N. J. L. 314. The words to be stressed are "duty" and "obligation." The defendant's wanton and reckless non-observance of his "duty to have his automobile under proper control," and of his "obligation to take notice of the conditions existing in the public street and to propel his car in a manner suitable to those conditions," as disclosed by the uncontradicted testimony, was sufficient to support an award of punitive damages.

The defendant's tort did not begin with the impact of the collision; the plaintiff had a legal right to the

undisturbed possession of the safety zone set off by the act of the traffic officer in setting the signal against the Boulevard traffic, and this legal right imposed upon the defendant the corresponding duty and obligation to respect that right; the defendant's violation of the plaintiff's individual right was itself a tort irrespective of the consequential collision—the collision was in aggravation of the initial tort. Passing a traffic signal may be the violation of a mere public right, and punishable only as such, so long as no particular individual is affected thereby, but when the life or safety of a particular individual is thus put in jeopardy the violation is both of the public and the private right, and if the act is "malicious" or "wanton" in a legal sense and injury follows the act is punishable in a criminal action instituted by the state, in a civil action instituted by the injured party, or in both. The requested charge was intended to bring before the jury the primary duty and obligation resting upon the defendant, and the failure to so charge was prejudicial error.

Nothing could be more conclusive of the attitude of the trial judge with respect to the plaintiff's right to have the question of punitive damages submitted to the jury and his purpose to exclude that question from consideration by the jury, than his failure to charge the simple and true statement that: "If you conclude that the plaintiff is entitled to punitive damages as well as compensatory damage, you may add such punitive sum as you agree upon to the sum agreed upon as compensatory damages."

The statement by the trial judge that he did not "see any testimony that establishes a basis for punitive damages" (Case p. 46, l. 17), and his definition of wrongful motive as "an active, affirmative intent on the part of this defendant to run into this plaintiff and injure his property" (Case p. 49, l. 10), and the failure to charge as requested upon the right to puni-

tive damages, left the jury no alternative but to ignore that issue, to the prejudice of the plaintiff.

POINT VIII

THE FACTS PROVED, AND THE NECESSARY INFERENCES THEREFROM, ESTABLISH A CASE ESPECIAALY APPROPRIATE FOR THE ASSESSMENT OF PUNITIVE DAMAGES.

The court erred in excluding the following questions and in declining to hear the plaintiff's reasons in their support:

Q. Did you thereafter make a charge against Mr. Roberts, arising out of this accident? (Case p. 41, l. 7).

Q. Was a charge made by you on May 31st, against this defendant, brought to trial? (Case p. 41, l. 21).

The purpose of this line of questioning was to establish whether the defendant remained within the jurisdiction or promptly left the State to escape trial and punishment. It could not be brought out on cross-examination because the defendant failed to appear at the trial.

It is an established rule of evidence that when there is a question whether any act was done by a person evidence of any subsequent conduct of such person apparently influenced by the doing of the act, or of any act done in consequence of it, is relevant; here the question, as affecting punitive damages, was as to the wantonness and recklessness of the act, and the defendant's conduct following the collision was important as an indication of what he himself thought of the character of his conduct in putting the life of the

plaintiff and the plaintiff's wife in jeopardy. Upon the issue of punitive damages this line of questioning was material and relevant because the jury might come to one conclusion if it appeared that the defendant had already suffered punishment upon the complaint of the plaintiff, and to a different conclusion if it appeared that the defendant had fled from the State to escape the consequences of his lawlessness.

From another viewpoint the assessment of punitive damages is especially appropriate. The plaintiff is a resident and taxpayer in this state. Upon him falls a proportionate share of the expense of constructing and maintaining our highways, and of the cost of supporting an elaborate and expensive system of traffic signals and officers for the protection of the public upon these highways. He was not only lawfully upon the highway, but he was, at the moment of collision, within a safety zone set apart for his protection. When the traffic officer signaled for him to proceed, and closed the Boulevard at that point to the Boulevard traffic, the plaintiff was given, as against the Boulevard traffic, the exclusive use of that safety zone and he had a right to presume that the law would be obeyed, his rights respected, and his safety assured; relying upon the apparent safety of this zone he had a right to believe that he would not be struck by a motor vehicle proceeding in defiance of law.

The defendant is a non-resident and, presumably, not a taxpayer. He was using the highway under a special license granted non-residents which gave him every privilege, throughout the entire state, accorded a resident and taxpayer. As, in effect, the guest of the state and in the enjoyment of its generous hospitality, he was under a special obligation to obey the rules and regulations imposed for the protection of life and property. He abused our hospitality, disregarded his obligations, was recklessly indifferent to the safety of the lives and property of others, flouted our laws, de-

fied our police, wantonly inflicted an injury, and then, it would seem, attempted to avoid the consequences of his act by escaping from the jurisdiction.

This is not a case where one, proceeding along a highway, merely negligently collides with another. Here the initial wrong was a wilful and intentional trespass upon the plaintiff's right to the protection of the safety zone of which the plaintiff was then in lawful possession, and from which the defendant was wholly excluded. The plaintiff's right to the exclusive use of that safety zone, as against the Boulevard traffic, and to the personal security and safety thereby assured, was a substantial right.

The initial wanton act, the malice of which the injury complained of was the natural and proximate result, was the defendant's wilful and intentional wrong in unlawfully trespassing upon the plaintiff's right to the undisturbed use and occupation of the safety zone. So far as concerns the allowance of punitive damages that wilful and intentional wrong was such negligence as shows that reckless indifference to consequences, and to the rights and safety of others, which is the basis for the allowance of such damages. It is clearly within the rule laid down by the United States Supreme Court in *Milwaukee, etc., R. R. Co.* v. *Arms*, 91 U. S. 489, where the court says that punitive damages may be awarded where the act "was done wilfully, or was the result of that indifference to the rights of others which is equivalent to an intentional violation of them. In that case the jury are authorized, for the sake of public example, to give such additional damages as the circumstances require."

Merely compensatory damages seldom, if ever, cover the actual cost merely of the repairs, and this loss is aggravated by loss of time and business before and during trial, incidental expenses and the various fees and charges incurred in the prosecution of the suit.

It is only fair and just that the plaintiff, where the defendant is guilty of wanton and gross negligence, should be awarded such punitive sum as will be, in fact, merely a reasonable compensation.

POINT IX.

THE RIGHT TO AWARD PUNITIVE DAMAGES IN SUCH CASE SHOULD BE ESTABLISHED AS A MATTER OF PUBLIC POLICY.

Every aspect of this case evidences an extraordinary callousness as regards life, indifference as to rights and obligations, and defiance of law. This young man came over here from New York and at nominal cost was granted the use of all the highways of the state for a period of a year. In his sporty roadster he scorched down the Boulevard at 40 to 45 miles per hour, deliberately ran past a traffic signal which he could not fail to see if he was in a condition to see anything, showed his contempt of the traffic officer by passing within five feet of him, and collided so violently with the plaintiff's car, going in the same direction, that the wonder is that the plaintiff and his wife were not both killed. Arrested, it nowhere appears that he was tried on the officer's complaint, he leaves, or escapes from, the jurisdiction of our criminal courts, and he fails to appear at the trial of the civil suit; charged with gross and culpable negligence he offers no word of explanation, no excuse, no palliating circumstance. But for the statute permitting the service of a summons, in a civil suit, upon the Secretary of State, the defendant would now be beyond the reach of our courts and unless he can be subjected to punitive damages will go unpunished.

And what is true of this defendant is true of others in like circumstances. In a large number of cases the

cost of a civil trial, if only compensatory damages may be recovered however wanton and reckless the act may be, will deter the injured party from seeking redress where the defendant must be sought, and the judgment collected, in another state, for compensatory damages are wholly inadequate to meet the actual costs incurred. It is in the interest of a sound public policy that the non-resident "road hog" who not only abuses our generous hospitality, but breaks our laws, defies our courts, and injures our citizens in a wanton and reckless disregard of their rights, their safety, and their lives, shall be liable to a penalty proportionate to the enormity of his offense. In no other way can be brought home to such ruffians the fact that such conduct will not be tolerated, and that they cannot escape punishment by fleeing the state. When we consider our nearness to New York and Philadelphia, the fact that New Jersey is a thoroughfare for tourists going East, West, North and South, the increasing congestion upon our highways, and the appalling and growing list of casualties, no legal precaution should be omitted, and no legal safeguard set aside which will tend to make travel more safe and the punishment of offenders more certain. The rule as to punitive damages here advocated is supported by the great weight of authority, and is consistent with the practice of this state.

Respectfully submitted,

E. A. MERRILL,

Attorney of Plaintiff-Appellant.

6 2

New Jersey Court of Errors and Appeals

THEODOR J. HINTZ, Plaintiff-Appellant, vs. HENRY S. ROBERTS, Defendant-Respondent.	At Law.

BRIEF FOR RESPONDENT.

Plaintiff recovered a verdict of $37.18 and has taken an appeal.

This was an action for damages growing out of an automobile collision. Plaintiff's automobile was slightly damaged and his principal claim was for punitive damages because of defendant's alleged reckless and wanton negligence and disregard of plaintiff's rights. The case went to the jury solely on evidence offered on behalf of plaintiff. No evidence was offered on behalf of defendant.

The Facts.

At Bowers Street and the Boulevard, Jersey City, there is a traffic officer who occupies a booth where he is supposed to regulate traffic by turning a handle which is connected to a light in the tower of the booth. It turns red for traffic to stop and green for traffic to proceed.

Traffic was open on the Boulevard and the plaintiff was at a stop in Bowers Street, waiting to turn into the Boulevard traffic to go South. Defendant was driving South. Bowers Street

does not cross the Boulevard but enters the Boulevard on the left side as one is going South. As a result of this the driver going South on the Boulevard would have the right of way over the man entering the Boulevard from Bowers Street if it were not for the little police booth, with its red light. This red light to a man driving south would look like the tail light of a motor vehicle.

Officer Sullivan testified (p. 11):

> "Q. There have been collisions there before, I suppose? A. Many.
>
> Q. How many collisions have you observed there during that period (four months)? A. I just can't recall that.
>
> Q. Would you say one hundred? A. No.
>
> Q. A good many though? A. Quite a few."

Defendant's car was in motion when the signal was turned against it.

Plaintiff was driving a Ford touring car and was coming out of Bowers Street at five or six miles an hour. In coming out of Bowers Street he crossed in front of the stop light so that when on the Boulevard the traffic light was set against the plaintiff. He then turned South and went away from the light. Assume that the defendant could see the traffic booth and could see the plaintiff driving south beyond the light, would he not have a right to assume that he could also drive past the light?

It is quite evident that the traffic system is bad and contrary to the common experience of automobile drivers and it accounts for the many accidents that have occurred at this place.

With a condition such as this the jury was justified in finding that punitive damages should not have been awarded against the defendant.

We submit there was no evidence to go to the jury on the question of punitive damages.

GROUND NO. 1.

The question asked of Eldred R. Crowe (p. 44), "What was your estimate," was asked after Mr. Crowe had testified his repair bill was $22.80. The other repairs were made, if at all, by another concern. There was no proof as to what those repairs were. The plaintiff's claim in his complaint (p. 2) was that "plaintiff has paid out large sums of money."

So the question was as to what plaintiff had paid out and not what some other person could estimate "as near as I could under the conditions" (p. 44).

GROUND NO. 2.

We do not know of any rule contrary to the statement of the Court that "fifty cents has to be proved just as accurately as one hundred dollars."

We cannot assume that juries will know the prices of automobile parts. There are a wide range of prices. For illustration, the prices on hub caps range from five cents to two dollars and fifty cents. How can a jury be expected to know the price to allow?

GROUND NO. 3.

The question, "You have testified that you went over to Jersey City to look at your car. Did that, or did that not, constitute an interruption to your business," is not material to this issue. There is no claim in the complaint for an interruption to plaintiff's business.

GROUND NO. 4.

The question, "Did you thereafter make a charge against Mr. Roberts, arising out of this accident?" "Was a charge made by you on May 31st against the defendant Roberts, brought to trial?" were not material to the issue.

The pleadings did not set up a former adjudication. The testimony of the plaintiff was secondary evidence. If a complaint had been made, and was admissible in evidence, it should have been offered or the Court Records should have been offered. This was an effort to prejudice the jury and failed.

GROUND NO. 5.

The Court charged on the question of malice (p. 49):

> "The right to award exemplary damages primarily rests upon the single ground, wrongful motive, and where the personal intent to injure is shown, the penalty may be inflicted. Was there any wrongful motive, that is, an active, affirmative intent on the part of this defendant to run into this plaintiff and injure his property? If there was a wrongful motive there can be no doubt that you could award exemplary damages. Let me proceed further with the definition of what may come under the claim for exemplary damages: 'This is true with relation to all trespasses committed against the property of another, which involve malice.' There again you see, is the wrongful motive, or wrongful intent to hurt, or a wanton disregard of the rights of, the person against whom the tortious act is committed. 'When the wrongful motive is not inherent in the offence, the burden rests upon the plaintiff of presenting proof from which wrongful motives may be inferred.'

> "Further, when the Court says that there must be a wanton and reckless disregard of the rights of the plaintiff, that means something directly in connection with the act of damage done. It does not mean simply that every man who drives recklessly can be made to pay exemplary damages, but his recklessness must be in connection with the injury he inflicts. It is not mere recklessness. There must be a connection between the recklessness and the act done, or injury done."

and on page 50:

> "The object sought by the plaintiff here is to himself collect damages for the reckless driving and the reckless act which he says was committed against him. He is assuming that some act was done and is asking for the benefit of it. As I say, he is entitled to such damages, if there was some wrongful wanton act directed against him, but there is a proper punishment for reckless driving, which in itself will take care of the public interest. The plaintiff is concerned with it simply on the theory that it was directed toward him. That is the case, and you may take it and render such verdict as you think proper. If you find for the plaintiff the amount will be $37.18, unless, under the instructions I have given you, you find there has been some wrongful motive or reckless and wanton act directed against the plaintiff."

We submit this was not prejudicial to the plaintiff. It was prejudicial to the defendant because there was nothing to go to the jury on the question of punitive damages. The defendant does not complain because an intelligent jury found there was no ground for punitive damages and awarded none.

GROUND NO. 6.

Plaintiff claims the Court erroneously refused to charge requests three, four, five and six.

Of these grounds we think request three was fully covered by the charge of the Court.

As to request four the plaintiff was awarded a verdict for damages for the negligence of defendant and he suffered no prejudice because of failure to charge this other than as it was charged.

As to request five, we submit there was no claim made for such damages in the pleadings.

As to request six, the charge fully covered this request and there was no reason for the Court to adopt the specific words of the request to charge.

It is respectfully urged that the judgment should be affirmed.

Frank G. Turner

FRANK G. TURNER,
Attorney and of Counsel with Respondent.