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Notice of Appeal.

NOTICE OF APPEAL.

Filed April 9, 1921.

Essex County Circuit Court

ROSE O'CONNOR,	}	<i>Plaintiff,</i>	<i>Action at Law.</i>	10
vs.				
SAMUEL ADEKMAN and MEYER & BUSH Co., a corporation,	}	<i>Defendants.</i>	<i>Notice of Appeal.</i>	

*To James R. Nugent, Esq., attorney of plaintiff, and John
A. Matthews, Esq., attorney of defendant, Meyer &
Bush Co., Newark, N. J.:*

20

SIRS:

Please take notice that the defendant, Samuel Adekman, appeals to the Court of Errors and Appeals of New Jersey from the judgment rendered against him in the above-entitled action on March 10, 1921.

Dated April 5th, 1921.

JOHN W. MCGEEHAN, JR.,
Attorney of Defendant,
Samuel Adekman.

30

Service of the within notice is hereby acknowledged this 6th day of April, 1921.

JAMES R. NUGENT,
Attorney of Plaintiff.

JNO. A. MATTHEWS,
Attorney of Defendant,
Meyer & Bush Co.

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Grounds of Appeal.

GROUNDS OF APPEAL.

Filed April 15, 1921.

New Jersey Court of Errors and Appeals

10

ROSE A. O'CONNOR,

Plaintiff-Respondent,

vs.

SAMUEL ADEKMAN,

Defendant-Appellant.

Action at Law.

On Appeal.

*Grounds of
Appeal.*

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To James R. Nugent, Esq., attorney of plaintiff-respondent:

SIR:

Take notice that the defendant-appellant, Samuel Adekman, hereby sets down his grounds of appeal in the above-stated cause, as follows:

30

1. Because the Court failed and refused to grant the motion for non-suit made by the defendant, Samuel Adekman, at the close of the plaintiff's case.

2. Because the Court failed and refused to direct a verdict for the defendant, Samuel Adekman, in accordance with the motion of the defendant at the close of the evidence in the trial of the case.

3. Because the Court charged the jury in part as follows:

40

“The plaintiff being a passenger on a public vehicle for hire she was entitled to a high degree of care on the part of the driver of the vehicle. All that is necessary for her to do is to prove the collision and her injuries, because a collision is *prima*

Grounds of Appeal.

facie proof of negligence on the part of both defendants”

4. Because the Court charged the jury in part as follows:

“Before she can recover money damages against either one of these or both defendants she must prove by the preponderance of the evidence to your satisfaction that the defendants are responsible,” 10

but failed in any part of the charge to instruct the jury that before the defendant, Adekman, could be held it must be established that the defendant, Adekman, was guilty of negligence or any words to this effect.

Respectfully yours,

JOHN W. MCGEEHAN, JR.,
Attorney of Defendant-Appellant.

Service of the within grounds of appeal is hereby acknowledged this 13th day of April, 1921. 20

JAMES R. NUGENT,
Attorney of Plaintiff-Respondent.

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Summons.

THE STATE OF NEW JERSEY to Samuel Adek-
man and Meyer & Bush Co., a corpora-
tion.

(SEAL)

You are summoned to answer the annexed
complaint of Rose A. O'Connor in an
action at law in the Essex County Circuit Court. And
10 take notice that unless you file your answer to said com-
plaint with the Clerk of the Essex County Circuit Court,
at Newark, within twenty days after service upon you of
this writ and the annexed complaint, the plaintiff may
proceed in the suit and judgment may be entered against
you.

WITNESS, Nelson Y. Dungan, Judge of our said Circuit
Court, at Newark, this 20th day of October, 1919.

JOHN H. SCOTT,
Clerk.

20

JAMES R. NUGENT,
Attorney.

30

40

Complaint.

COMPLAINT.

Filed.

ESSEX COUNTY CIRCUIT COURT.

ROSE A. O'CONNOR,

Plaintiff,

vs.

SAMUEL ADEKMAN and MEYER & BUSH
Co., a corporation,

Defendants.

10

Action at Law.

Complaint.

Plaintiff, Rose A. O'Connor, residing in the City of Newark, County of Essex and State of New Jersey, says that:

1. On April 14, 1919, she entered and became a passenger for hire, a certain public conveyance or motor vehicle known as a "jitney," running on South Orange avenue in Vailsburg, in the City of Newark, to Broad street, in said city, the point of destination of the plaintiff, which motor vehicle or jitney was at said time owned and driven by the defendant, Samuel Adekman, whose duty it was to safely carry plaintiff to her destination.

20

2. While conveying the plaintiff as aforesaid, on the crossing of said South Orange avenue and South 16th street, in said city, both being public highways, the said defendant, Samuel Adekman, carelessly and negligently driving his said motor vehicle or jitney, and at the same time and place a certain motor vehicle known as a "motor truck," owned by the defendant, the Meyer & Bush Co., and being negligently and carelessly driven by its servant, whose name is unknown to the plaintiff, ran into and collided with each other, by reason of which collision the said jitney in which plaintiff was riding as aforesaid was demolished and plaintiff was bruised, cut, wounded and otherwise greatly, severely and permanently injured and

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Complaint.

her clothing and other articles about her person destroyed. From which injuries plaintiff endured great pain and suffering, was sick and unable to do any work or attend to her business affairs for a great length of time and expended large sums of money for physicians' services, medicines, care and attendance in and about her injuries
 10 and her business affairs.

3. Plaintiff claims \$5,000 damages for pain, suffering and bodily injuries and \$1,000 for the loss of her clothing and other articles and expenditures of moneys as aforesaid.

JAMES R. NUGENT,
Plaintiff's Attorney.

I hereby appoint and depute John L. Kane to serve the within writ.

20 Witness my hand and seal this 21st day of October, 1919.

JOHN R. FLAVELL,
Sheriff.

By HARVEY W. KEOUGH,
Under Sheriff.

Served the within summons and complaint October 21,
 30 1919, upon Samuel Adekman, the within named defendant, by leaving a true copy thereof at his usual place of abode, #516 Hunterdon street, Newark, with his wife and personally upon Sherman Bush, Pres. of the Meyer & Bush Co., a corporation, the within named defendant, at their place of business, #33 Ward street, Newark, N. J.

JOHN R. FLAVELL,
Sheriff.

By JOHN L. KANE,
Special Deputy.

Answer of Samuel Adekman.

ANSWER OF SAMUEL ADEKMAN.

Filed November 12, 1919.

The answer of the defendant, Samuel Adekman.

The defendant, answering the complaint filed by the plaintiff in the above-entitled cause, says:

1. Paragraph 1 is admitted, except that portion thereof which states that it was the duty of the defendant to safely carry the plaintiff to her destination, which this defendant denies and says that it was his duty to exercise a high degree of care in the operation of his said jitney and in carrying the plaintiff. 10

2. Paragraph 2 is denied, except that this defendant admits that there was a collision between his jitney bus and the motor truck owned and driven by Meyer & Bush Company, which was due solely to the negligence of said Meyer & Bush Company, or its servants. 20

JOHN W. MCGEEHAN, JR.,
Attorney of Defendant,
Samuel Adekman.

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Answer of Meyer & Bush Co.

ANSWER OF MEYER & BUSH CO.

Filed November 13, 1919.

The defendant, Meyer & Bush Co., a corporation, of the State of New Jersey, says that:

10 1. It has no knowledge of the facts set out in paragraph 1 of the complaint and leaves the plaintiff to her proof.

2. The defendant denies the allegations in paragraph 2 of the complaint in so far as the said allegations refer to the defendant, Meyer & Bush Co.

3. Defendant denies the allegations set out in paragraph 3 of the complaint.

FIRST DEFENSE.

20 The defendant, Meyer & Bush Co., by way of defense, says that on the 14th day of April, 1919, its automobile delivery truck was not at the time of the collision under the management of the said defendant, and the driver of the said automobile delivery truck was not at the time of the said collision the servant or agent of the said defendant; nor was the said driver engaged in or about the defendant's business at the time of the alleged collision.

30 The defendant further says that the said collision was caused by the careless and negligent manner in which the said automobile bus was being driven.

The defendant further says that any injuries or damages which were sustained by the plaintiff was due to the careless and negligent manner in which the said automobile bus was operated.

JNO. A. MATTHEWS,
Attorney for Defendant,
Meyer & Bush Co.

*Rule to Show Cause.***RULE.**

Filed May 28, 1920.

Application for this rule having been made in due time according to the rules of this court and sufficient reasons appearing herefore;

It is, on this 27th day of May, 1920, on motion of John A. Matthews, attorney of defendant, Meyer & Bush Company, ordered, that the plaintiff, Rose A. O'Connor, and the defendant, Samuel Adekman, show cause before said court at ten o'clock in the forenoon of the 26th day of June, next, why the verdict rendered in said cause should not be set aside and the judgment for nothing holden, and a new trial be granted to the defendant, Meyer & Bush Company.

It is further ordered that in meantime the said plaintiff be enjoined from taking any further proceedings in said cause upon said verdict.

WORRALL F. MOUNTAIN,
Circuit Court Judge.

Service of the within rule is duly acknowledged this day of May, 1920.

JOHN W. MCGEEHAN, JR.,
Attorney for Samuel Adekman.

JAMES R. NUGENT,
Attorney for Rose O'Connor.

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Rule for Judgment.

RULE FOR JUDGMENT.

Filed September 3, 1920.

10 This action having been tried before the Honorable Worrall F. Mountain, Judge, with a jury, in the presence of counsel for the defendant, Samuel Adekman, on May 21, 1920, and the jury having returned a verdict in favor of the plaintiff, Rose A. O'Connor, and against the defendant, Meyer & Bush Co., for the sum of \$2,750 damages;

IT IS ORDERED, that judgment final be entered in favor of the plaintiff and against the defendant, Meyer & Bush Co., for the said sum of \$2,750 and the plaintiff's costs to be taxed.

Entered 1920, on motion of

20

JAMES R. NUGENT,
Attorney for the Plaintiff.

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*Order Granting New Trial.***ORDER.**

Filed October 7, 1920.

Rule to show cause having been issued in the above-entitled matter and sufficient cause having been shown on behalf of defendant, Meyer & Bush Co., a corporation, by John A. Matthews, its attorney, and it further appearing that James R. Nugent, attorney for the plaintiff, Rose A. O'Connor, has consented and it further appearing that John W. McGeehan, Jr., Esq., attorney for the defendant, Samuel Adekman, although duly served with said rule, not having appeared, it is on this fourth day of October, 1920, on motion of John A. Matthews, attorney for defendant, Meyer & Bush Co., ORDERED, that the verdict rendered in the above-entitled cause be set aside and the judgment in favor of said plaintiff against the defendant, Meyer & Bush Co., as well as the judgment of non-suit entered in favor of said defendant, Samuel Adekman, for nothing holden, and a new trial be granted to the plaintiff and defendants.

WORRALL F. MOUNTAIN,
Circuit Court Judge.

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Judgment.

JUDGMENT.

Filed March 11, 1921.

ESSEX COUNTY CIRCUIT COURT.

10	ROSE A. O'CONNOR,	}	<i>Plaintiff,</i>	<i>Action at Law.</i>
	<i>vs.</i>			
	SAMUEL ADEKMAN and MEYER & BUSH Co., a corporation,		<i>Defendants.</i>	<i>Judgment for Plaintiff.</i>

20 This action was tried before Judge Worrall F. Mountain with a jury at the Essex County Circuit on March 10, 1921. The cause having been heard and submitted to the jury, they return their verdict as follows, viz., that they find \$2,500 for the plaintiff against both defendants.

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of \$2,500 and her costs, which are taxed at \$77.79, making in the whole the sum of twenty-five hundred and seventy-seven dollars and seventy-nine cents.

Judgment entered March 11, 1921, on motion of

JAMES R. NUGENT,
Attorney for Plaintiff.

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*Postea.***POSTEA.**

ESSEX COUNTY CIRCUIT COURT.

29588	}	<i>Action at Law.</i>	
ROSE A. O'CONNOR,		<i>Verdict by a Jury.</i>	10
		<i>Judgment for Plaintiff.</i>	
<i>vs.</i>		<i>Amount \$2,500.00</i>	
SAMUEL ADEKMAN, MEYER & BUSH Co.,		<i>Costs 77.79</i>	
	<i>Defendants.</i>	<i>Total</i>	\$2,577.79

James R. Nugent, attorney of plaintiff:

This action was tried before Judge Worrall F. Mountain with a jury at the Essex County Circuit Court on March 10, 1921. 20

The cause having been heard and submitted to the jury they return their verdict as follows:

They find in favor of the said plaintiff, Rose A. O'Connor, and assess the damages against the defendants, Samuel Adekman and Meyer & Bush Co., in the sum of twenty-five hundred dollars.

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of twenty-five hundred dollars and costs, which are taxed at the sum of seventy-seven dollars and seventy-nine cents, making in the whole the sum of twenty-five hundred and seventy-seven dollars and seventy-nine cents. 30

Judgment entered and signed March 10, 1921.

WILLIAM S. GUMMERE,
Judge.

Book 96 Circuit Court Judgments, page 219.

Certificate of Clerk.

ESSEX COUNTY CLERK'S OFFICE.

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

I, JOHN H. SCOTT, Clerk of the Circuit Court, in and for
 the County of Essex in the State of New Jersey, DO HERE-
 10 BY CERTIFY that the annexed instrument is a true and cor-
 rect copy of all the records and proceedings in the matter
 of Rose A. O'Connor vs. Samuel Adekman, *et al.*, and the
 same is taken from and compared with records of the
 Essex County Circuit Court and as the same now remains
 on the files of said office.

IN TESTIMONY WHEREOF, I have hereunto
 (SEAL) set my hand and affixed the official seal
 of said Court & County, at Newark,
 20 N. J., this 23rd day of April, A. D. 1921.

JOHN H. SCOTT,
Clerk.

30

40

Rose A. O'Connor, direct.

ESSEX COUNTY CIRCUIT COURT.

Wednesday, March 9, 1921.

ROSE A. O'CONNOR,

vs.

SAMUEL ADEKMAN and MEYER & BUSH
COMPANY, a corporation.

Action at Law. 10

Before Hon. Worrall F. Mountain, *J.*, and a jury.

For the plaintiff appear James R. Nugent, Esq., and George W. Anderson, Esq.

For the defendant, Samuel Adekman, appears John W. McGeehan, Jr., Esq.

For the defendant, Meyer & Bush Company, appears John A. Matthews, Esq. 20

A jury is called and sworn.

Mr. Nugent opens for the plaintiff.

Mr. McGeehan opens for the defendant, Samuel Adekman.

Mr. Matthews opens for the defendant, Meyer & Bush Company.

ROSE A. O'CONNOR, plaintiff, sworn in her own behalf. 30

Direct examination by Mr. Nugent.

Q Mrs. O'Connor, you live where? A 20 Dover street, Vailsburg section.

Q Of Newark? A Yes, sir.

Q Where is that street located? A Near the South Orange avenue line.

Q Yes. And you are a widow? A Yes, sir.

Q On the 19th of April, 1919, did you have occasion to use a jitney bus to travel in? A Yes, sir. 40

Rose A. O'Connor, direct.

Q Will you tell us what you did? A I came out to take a car. There was no car in sight, public service car; there was a jitney going down there and I took that; I took it and sat at the extreme end on the left-hand side going down and then I rode down; there were passengers got on, and by the time we got down to the cemetery it was crowded; they were standing up in the jitney and as we got there the jitney seemed to slow down and the next thing I knew we had a crash; that is all I do know.

10

Q Do you know what street the cemetery you described is at; Sixteenth street? A Yes, sir.

Q Then what happened to you after the crash? A I know there was some lady in the jitney bus, and they called somebody to bring me home. I was brought home in an automobile.

Q You must speak louder. A There was one particular lady who knew me in the bus and she called somebody and they got an automobile or something and brought me home, but I do not remember that, only what I was told.

20

Q Well, you were unconscious? A Yes, sir.

Q And you were brought to your home in Dover street? A Yes, sir.

Q What was done to you there? A They put me in bed and they telephoned for the doctor, I guess, but I don't know.

30

Q What doctor did you have? A Dr. Pennington.

Q Is he present here? A Yes, sir.

Q How long were you confined to your bed? A At least six weeks in all.

Q What injury did you sustain? A My arm on this side (indicating) was crushed; I was all black and blue; my head, even yet I can feel the effects of it, and I was all strapped up.

Q The doctor strapped you up? A Yes, sir; I was in straps for, I should say, ten days.

40

Q And then he took the straps off? A Yes, sir.

Rose A. O'Connor, direct.

Q Did you have any bones broken? A Not that I know of.

Q You suffered from shock? A Yes, I certainly did.

Q Did you have pains; have you a pain yet? A Yes, sir; I have.

Q Does the doctor still treat you? A Yes, occasionally. 10

Q For that same injury? A For nervousness, yes.

Q Were you afflicted with nervousness before your injury? A No.

Q Now, Mrs. O'Connor, you live alone, do you? A At the present time I am with my sisters; then I was living alone.

Q Did you have a nurse to attend you? A I could not get a nurse; I had my sister give up her work and come down and take care of me. 20

Q Did you pay your sister for that? A No; I promised to pay her.

Q What did you promise to give her? A \$15 a week if she would come down and take care of me.

Q For how long? A Seven weeks.

Q The doctor, did he send you any bill? A I paid my own bill, but not in full.

Q How much did you pay him? A I paid him \$54.

Q And how much more do you owe him? A That I do not know. 30

Q He has not sent you his bill? A No.

Q Now, your clothing was destroyed, was it? A Yes, sir.

Q What clothing, what part? A My suit, skirt and coat, my hat.

Q Wait a minute. About your suit and skirt. What did that cost you? A It is so long I really forget.

Q About? A I should judge about \$59.

Q And your hat, what did that cost? A \$25. 40

Rose A. O'Connor, cross.

Q Any other articles of clothing? A My teeth. I only had them a short time. They stepped on my head and broke them in two. There were \$75.

Q Broken in your mouth? A Yes, sir; broken in my mouth.

Q What did they cost you to replace? A \$75. Dr. Marshall.

10 Q I will bring you back to this accident. Did you see the collision? A No, I didn't see it; I only felt it.

Q You knew there was a collision then? A Yes, sir.

Q Was the bus moving at that time? A If it was it was going slowly; it felt as though it were slowing down to take on a passenger.

Cross examination by Mr. McGeehan.

Q What was the total value of the clothing that you lost? A I could not say just now.

20 Q Well, you have said that you had a suit destroyed that you think was worth \$59. A Yes, sir.

Q And a hat that was worth \$25? A Yes, sir.

Q Now, was there any other clothing? A I do not know what you want me to say—my skirt.

Q Doesn't the \$59 suit include your skirt? A My silk coat and petticoat, underskirt was all torn.

Q What is the value of the underskirt? A \$7.50.

Q \$7.50? A Yes, sir.

30 Q Now, was there any other clothing destroyed? A I do not remember.

Q There was not. Do you remember testifying, Mrs. O'Connor, on the 21st of May, 1920, in the previous trial of this case? A Yes.

Q Do you remember then testifying that you—that it cost you around \$400 to replace the clothing that you lost? A I do not. I might have, but I do not remember.

40 Q Did you have this question asked you and did you answer as I read: "What did it cost you to replace your

Rose A. O'Connor, cross.

clothing? Answer: It cost me around \$400. Question: \$400? Answer: Yes, sir." Did you not so testify? A. If I did I suppose I meant my doctor's bills, did I not?

Q Did you not testify immediately after that: "Have you paid your doctor? Answer: No. Question: Do you know what his bill is? Answer: Not as yet." A At that time I could not.

10

Q So you could not have included the doctor bill in the statement that your clothing cost you \$400, could you, at that time? A Medicine—I do not really know.

Q It is not so that your clothing cost around \$400? A It is just as I told you; that is the nearest I can remember what they cost me.

Q Mrs. O'Connor, the teeth that were broken were artificial teeth? A Yes.

Q And have you had them replaced? A No, sir; I have not.

20

Q Why do you say that it cost \$75 to replace them? A That is what I paid for them. I did not say to replace them; I said they cost me \$75.

Q Have you had them replaced since this accident at all? A No, I have not.

Q You say you were injured on the 19th of April. You mean the 14th of April, do you not? A On the 14th yes.

Q Now, Mrs. O'Connor, you were seated in the extreme rear of the left-hand seat of the bus, were you not? A Yes.

30

Q And was there any person between you and the rear window of the bus? A Yes, they were standing up, a line of people between me and the window.

Q Was there any person to the right of you on the seat which you occupied? A Yes, sir.

Q Then you were not the last person on the seat? A I was the last. There was one this side of me; I was the last person in the seat.

40

Rose A. O'Connor, cross.

Q Then there was no one to your right or toward the rear of the bus in the seat, from you, was there? I will withdraw that and possibly make it a bit clearer. Could you look out the back window, the rear window of the bus, not on the side but in the rear panel of the jitney bus? A Yes, but where I sat I could not because there
10 was somebody standing in front of me and I could not see.

Q But by turning your head to the right you could look out the rear window of the bus, couldn't you? A I think I could, yes.

Q Now, this bus slowed down, did it, just before the accident? A It seemed as though it was slowing down, yes.

Q How had the bus been traveling from the time you got on, fast or slow? A I could not say that.

Q Eh? A I do not know anything about the speed. It did not seem to be going any too fast.

20 Q It did not seem to be going fast?

Mr. Matthews. "Any too fast," she said.

Q Did you testify on May 21st, 1921, in the previous trial of this case. "Answer: They took on passengers all the way down; it went quite slow, as I thought, and when we got down right opposite Fairmount Cemetery, around there, this other truck came out of the street and all I know we were hit. I did not see it; all I know is that
30 we got hit." Did you so testify? A I did know we got hit; I said that.

Q Did you hear a crash or a noise that indicated you were hit? A Yes, I felt the crash.

Q And after that crash occurred was it then that the bus turned over? A I do not know that; I did not know anything after the crash.

Q Where were you looking when the crash occurred?
A Looking at the people standing in front of me.

40 Q You were not looking out of the bus, then? A No.

Rose A. O'Connor, cross.

Q Do you know what part of the bus was struck? A No, I do not. I take it for granted it was where I sat or very near it, because it felt that way.

Q Could you tell whether it was on the side you sat on or on the other side of the bus? A I could not tell that.

Q Well, do you know what the effect of the crash that you heard was upon the motion of that bus? A (Witness nods no.) 10

Q Do you know what happened then in connection with the crash? A Well, I know there was a jam and then as though everything went to pieces.

Q Now, do you know whether you had crossed Sixteenth street at that time? A I did not know; I could not say that.

Q You were not looking out at that time? A No.

Q Would you say that the bus was going slow; can you describe about how slow it was going at the time the crash occurred? A You know how it feels if you feel a car slowing down, as though it were going to take a passenger on. That is about the speed it was going. 20

Q As though it were going to take a passenger on, and at that time can you say or don't you know whether it was near the curb or near the car tracks? A It seemed as though it were toward the curb, but I could not say that.

Q That is just your impression of it? A Yes, sir.

Q Did you ever pay that \$15 per week to your sister which you say you promised? A No, I did not. 30

Q You have not? She was there seven weeks, was she? A Six or seven weeks; yes, sir.

Q The sister who attended to you, who assisted you or nursed you, lived in the same house with you that time? A Yes, sir.

Q You lived upstairs and she lived down? A I lived downstairs; she lived upstairs.

Q And did she take care of your home while living in her own home? A No; she came downstairs, and helped 40

Rose A. O'Connor, cross.

upstairs and came downstairs to take care of me. My other sister took care of the house upstairs.

Q Is that sister married? A No.

Q Does she keep house for the rest of her family in the house or did she at that time? A The one that came downstairs, yes.

10 Q Who took care of the house for the brothers and sisters while she was downstairs, do you know? A My other sister—two others.

Q What did the other sister do before that? A Well, she used to go to business occasionally.

Q Occasionally? A Yes.

Q Had she been working just prior to the time you were hurt? A No.

Q So she left no employment to take care of the house, did she? A She came because I was sick.

20 Q How long had you had the suit which was damaged?
A I don't know.

Q You don't know? A No; I do not think I had it very long, three or four months, maybe.

Cross examination by Mr. Matthews.

Q How old are you, please? A I have lived in Newark all my life. I guess you can tell by looking at me.

Q I did not hear your answer. A I am over forty-five.

30 Q Do you know how much over forty-five you are? A Yes, I do. Is it necessary to tell just how old I am?

Q Yes, madam. I wanted to know. Have you any real objection to telling me? A Not a bit. I am rather proud of it.

Q What is it? A Fifty-five.

Q Thank you, madam. The morning you were injured you were going to business, were you? A I was going down town on a little business.

40 Q Weren't you in business at that time? A Was I in business?

Rose A. O'Connor, cross.

Q Yes, madam. A Yes, sir.

Q What business?

Mr. Anderson. I object. What difference does it make, if the Court please?

The Court. It might increase her damages. I will admit it.

10

Q What business were you in at that time? A Cafe. My husband left the business and I had to take care of it.

Q How long had your husband been dead at the time of this accident? A He died on the 19th of February.

Q Was that the February immediately preceding? A 1919.

Q You say the bus was pretty well crowded that morning by the time you got to the cemetery? A Yes.

Q There were people standing in the bus, some against the back of the bus? A I might say there were two lines of people.

20

Q And did those two lines of people extend right up to the driver? A I should think so.

Q You say the sister who came downstairs to take charge of your household had not been employed except as housekeeper for upstairs, and that the other sister who took her place upstairs had been previously employed? A Yes, but she was sick and she did not—

Q The household upstairs just consisted of the two girls? A And the three brothers—two brothers; one is married.

30

Q Now, the doctor began to attend you in April, 1919, immediately after this accident? A Yes, sir.

Q And you have already paid him how much? A I have paid him \$54.

Q When did you pay him that, please? A I cannot tell you when. I think it was around July last year.

Q July of last year? Since July of last year have you gotten any bill from him? A Not yet.

40

Rose A. O'Connor, cross.

Q How many times did he see you this week? A This week?

Q Yes. A He has been seeing me every other day and I see him here in court.

Q I mean professionally. A Sunday and Monday—twice this week.

10 Q And treated you? Where did he see you, at his office or at your home? A At my home.

Q How many times did he see you the week previous? A Every other day.

Q And saw you professionally? A Yes.

Q What treatment did he give you? A Why, he has to treat me for nervousness.

Q What was it, do you remember? A No, I do not. I remember this much, he prescribed for me.

20 Q Did he prescribe every other day last week? A Well, had medicine a couple of times and had it renewed.

Q Renewed it a couple of times last week? A And prescribed it.

Q Last week? A Yes.

Q Is that all he did? A And examined me.

Q And the week before? A He had me every other day.

Q And what did he do that time? A Almost the same thing.

30 Q He has been doing that all the time since the accident, has he? A Oh, no. I have nervous spells and I have to send for him and he comes to treat me.

Q Did you have any nervous spell immediately after the death of your husband; weren't you treated at that time? A I had him come to see me at that time.

Q Now, you had your teeth fixed by Dr. Marshall, in the Essex building? A I had them made there.

Q That was in November, 1917? A I do not know just when it was.

40 Q What did they consist of, false teeth inserted in the front or back of your mouth? A Lower jaw.

Rose A. O'Connor, cross.

Q Can you use them at all? A No.

Q You do not have any in there? A I have a partial set now. They were the ones I got before I had them made.

Q I understand, thank you. One more question. Did the doctor render you a bill when you paid him \$54? A Did he?

10

Q Yes. A Yes, sir.

Q Did he give you a receipt for it? A I think he did.

Q Have you that receipt with you? A No.

Q How long were you confined to your bed after this accident? A In all, that is, I was in the house I should say about six weeks, maybe less and maybe more, but around there.

Q Did you go to church on the first Sunday in May, 1919? A I could not say.

20

Q Do you remember seeing this gentleman? Stand up. A Indeed I do.

Q Did you tell him that you went to church? A I do not remember.

Q Were you able to go out at all in early May? A I might have gone out and sat on the back stoop some.

Q I mean do you remember being to anywhere like to church or to the store? A I might have, but I do not remember that I did.

30

Q But your best recollection is that for seven weeks you were not able to get about at all? A Not to get out no.

Q Do you remember when you first went downtown? A No, I do not.

Q Did you go downtown after the seven weeks? A I could not say.

40

Don Epler, direct.

DON EPLER, sworn in behalf of plaintiff.

Direct examination by Mr. Anderson.

Q Doctor, where do you live? A 45 Hillside avenue, Newark.

10 Q How long have you resided there? A About a year and a half, not quite.

Q And prior to that? A 82 Conklin street.

Q You are a regularly licensed physician? A I am.

Q How long have you been practicing? A About fifteen years.

Q In the City of Newark? A In Newark.

Q Are you acquainted with Mrs. O'Connor who has just been on the witness-stand? A I am.

Q Do you remember being called to attend her for any injuries in April, 1919? A Yes, sir.

20 Q Where were you called? A I was called at her residence, 20 Dover street.

Q What did you find the matter with her? A When I got there she was in a semi-conscious condition and on examination I found that she was suffering from concussion of the brain and severe bruises, contusions about the head, on the left side, particularly behind the ear, ecchymosis of the ear, and the left side of the chest a severe bruising, some bruises through the entire left side and was more or less affected, and the shoulder and the
30 left arm showed some bruises, evidences of bruising.

Q Did you find anything the matter with her lower limbs? A I said the entire left side. I meant the lower limbs as well, the legs.

Q Did you treat her for those injuries? A I did.

Q For how long? A At that time as near as I can remember about seven or eight weeks.

Q Will you describe generally the treatment which you gave her? A Well, later on she developed evidence of nervous shock. Of course, we kept her in bed and absolute quiet, gave her nerve sedatives, mild hypnotics and I
40

Don Epler, direct.

strapped the lower side of her chest, over the lower ribs, lower five or six ribs, I think it was.

Q Use any plaster? A Yes, sir; that is what I strapped it with—surgeon's plaster.

Q Did she suffer? A Yes, she suffered severe pain.

Q How about her sleeping? A She could not sleep at first at all; that is why I gave her the hypnotics. It produced sleep. 10

Q They were a sleeping potion, then? A Yes, sir.

Q How long did you have to keep this up? A At that time seven or eight weeks, but since then at intervals we have had to do it quite often since.

Q And continuing down to the present time? A Yes.

Q What is the matter with her at the present time, nervousness? A Yes.

Q Did you know Mrs. O'Connor before this accident happened? A I did. 20

Q Were you the family physician before this accident happened? A I considered myself such, yes.

Q Did you ever treat her for anything before the accident? A For anything?

Q Did you know anything about her condition as to nervousness prior to this accident? A I had never been called to treat her for nervousness; I never discovered any before this.

By the Court.

Q Was she nervous before the accident? A I did not consider her so, your Honor. 30

Q Did you prescribe an ice bag for her?

Mr. Matthews. I object, your Honor, as leading.

The Court. Objection sustained.

Q Did you prescribe anything that you did not mention? A It is very possible. This all took place some time ago and I have forgotten all the details. It is very possible that I did. 40

Don Epler, cross.

Q You said she had—I understood you she had concussion of the brain? A Concussion, yes.

Q And would it be usual to prescribe an ice bag in this case? A Yes, very.

Q What was your bill against Mrs. O'Connor, doctor?

A What was it when? I do not understand what you mean.

10 Q We will say the first treatment, while she was under your constant care for five or ten weeks did you render a bill or haven't you rendered any? A No, not at that time; I believe I did send a bill last summer sometime; I do not remember just when and I do not remember just how much it was, but Mrs. O'Connor paid me something; she did not pay it all at that time.

Q The bill was more than she paid you then? A Yes.

20 Q How much does she owe you now? A Oh, I cannot say positively, but I think in the neighborhood of two hundred or possibly a little over.

Q Well, immediately after the accident, sometime afterward, you attended her very frequently? A I saw her quite frequently. She a little later after that developed a neuritis in the left arm which I diagnosed as a traumatic neuritis.

Q Has she been afflicted with neuritis since that time?

A Yes. At frequent intervals she has trouble with the left arm and also the intercostal nerves between the ribs and the chest walls.

30 Q Is she, in your opinion, cured with reference to neuritis or is she likely to have it? A Well, those cases are liable to recur; I cannot say that I consider her cured, no.

Q What do you say with reference to her nervous condition? A Why, I do not think she is cured of that. Under certain conditions that is apt to recur also.

Cross examination by Mr. McGeehan.

40 Q Doctor, the actual condition that you found her suffering from after the accident was a possible concussion

Don Epler, cross.

of the brain and bruises about the body; isn't that correct? A Yes, sir.

Q Now, concussion of the brain is a shock to the brain, is it not? A It is a jarring, a jolt, you might call it a physical shock of the brain.

Q And it is a temporary condition, is it not? A Yes, temporary condition. 10

Q It does not usually last more than a day, the effect of it? A Yes, it may last much longer than that.

Q It did not in this case, did it? A I believe it did.

Q Did the concussion condition exist more than a day in this case? A Evidence of concussion lasted for two to three days.

Q The evidence of it. And what were those evidences of it that lasted for two or three days? A Periods of apparent semi-consciousness and dilatation of the pupils of the eye. 20

Q When was the last time that she was semi-conscious after the accident, how long after? A Why, during the second and third days, I think it was, as near as I can remember at this time.

Q Don't you think it possible that you are mistaken? A It is always possible to be mistaken.

Q Do you think your recollection of this case was better on the 21st of May, 1920, than it is now? A Naturally.

Q Now, doctor, at any rate the condition of shock to the brain, or concussion of the brain, wore off in two or three days at least, didn't it? A Yes, according to my recollection it did. 30

Q So it left this woman with bruises on the body at that time, didn't it? A Yes, sir; and head.

Q Now, did you strap her about the ribs? A To hold the ribs into place and to cause her to breath more with the other lung.

Q There was no dislocation or fracture of any rib? A There was no fracture or dislocation of any bone, no. 40

Don Epler, cross.

Q There was simply a bruising of the fleshy portion of the body? A I strapped her merely to get a condition of rest.

Q And that strapping or plaster which you refer to is not a plaster cast, is it? A No plaster cast, no.

10 Q Simply a wrapping that a physician puts on, called a physician's plaster? A Yes, sir.

Q Now, doctor, during the seven or eight weeks that you treated her regularly, about the first three or four weeks you called every day, did you? A I think the first two days I was there often, twice a day some days, and after that once a day.

Q For how long? A Why, three or four weeks.

Q And then how often did you come? A About every other day.

Q Up to seven or eight weeks? A Yes.

20 Q In the eighth week after the accident, or near the end of the time of your steady treatment of her, she was able to get around, wasn't she? A She was around the house then.

Q How long prior to that was she able to get around the house? A Why, I think after the third week we let her sit up a little for a short time each day.

Q Now, doctor, what do you mean by "neuritis"? A I mean an inflammation of the nerve.

30 Q An inflammation of the nerve? A Yes.

Q Isn't there doubt in your mind and among medical men as to whether or not there can be such a condition resulting from trauma or injury? A A reasonable doubt, yes.

Q So that there is a reasonable doubt in this and every case whether such neuritis comes from an injury or whether it comes from a nerve condition without trauma? A Yes, that is a possibility.

40 Q Yes, a reasonable possibility, too, isn't it? A A reasonable possibility.

Don Epler, cross.

Q So eliminating for the time being the possible neuritis the only present condition that could be ascribed to the accident would be a nervous condition, isn't that right? A Yes; eliminating that.

Q Now, doctor, this woman is not of a highly nervous type, is she, right now? A I should not say "of a highly nervous type," no. 10

Q Slightly nervous? A Yes.

Q Was her condition on the stand as observed by you today that of a nervous person? A Yes.

Q What acts of hers indicated nervousness? A Why, inability to speak loudly.

Q How do you know that is due to nervousness, doctor? A I don't know.

Q You don't know? A I attribute it to that.

Q Have you ever heard her speak more loudly than she did? A Yes. 20

Q When? A When I called on her professionally.

Q Since this accident? A Yes.

Q How long after the accident was she able to speak louder than she does now? A Several days; four or five days possibly.

Q Wasn't her nervousness a few days after the accident greater than a couple of years after the accident? A Not under certain conditions.

Q Was there anything else except the tone of her voice that indicated nervousness to you? A I detected slight irritability on one occasion. 30

Q On what occasion, doctor? A Why, when she was asked some question, one question she became irritable, which I do not think she would have done if she was not nervous.

Q Have you observed witnesses in court a great deal on the witness stand? A Somewhat.

Q Do you know whether persons whose nerves are in good condition often become irritable in a conversation with an attorney? A I do not know that. 40

Don Epler, cross.

Q So you are not very sure of your test of nervousness based on her ability? A Certainly not.

Q These sleeping potions that you gave her, are you sure that you gave her those during seven or eight weeks following the accident or was it only the first two or three days? A I could not remember.

10 Q Did I understand you correctly to say she did not sleep at all first and that you gave her sleeping potions for seven or eight weeks? A Why—

Q Yes or no. Didn't you so testify? A I do not remember so doing.

Q That is not correct, if you did? A I do not remember how long I did.

Q You say your memory you think was better on May 21st than now as to those things? A Yes.

20 Q Did you testify in May, or on May 21st, 1920, at the previous trial of this case as follows: "Question: At the time you gave her these sleeping powders was immediately after the accident, was it not, and for some time afterwards? Answer: Yes; I have given them to her at other times, too, since that." That is not the part—and the next question: "Question: And was she or was she not then under great pain as the result of these injuries? Answer: Why, the first few days she was, yes, at that time. I also gave opiates for the first two or three days, but not with an idea of combating the insomnia." Is that correct that you gave her opiates the first two or three days? A Yes, that is correct.

30 Q Now, this condition of the shoulder; when did she last complain to you about it? A Last week.

Q How long before that had she complained about it? A Why, I cannot say positively, but every few weeks, and she has had trouble with it, to my knowledge.

40 Q Have you treated her for it? A I have seen her at intervals and prescribed for her, yes.

Don Epler, cross.

Q What treatment did you give for that, doctor? A Well, I use different treatments according to the severity of the pain.

Q What treatment do you use in this case, or have you used? A I simply prescribed a little liniment to rub it with and some powders, I think it was, to take internally.

10

Cross examination by Mr. Matthews.

Q You say you gave her powders for her shoulder?

A I think that is the form I gave it in.

Q Do you remember what the prescription was, those powders? A I do.

Q What was it? A Pulverized Dovers, phenacetin and bicarbonate of soda.

Q The Dover powder was for what, to make her sleep?

A No; it is a heart opiate.

20

Q It is an opiate to make a person sleep? A It will do that.

Q What was the phenacetin for? A To relieve the pain.

Q To relieve pain? A Yes, sir.

Q And the sodium was used to tone the stomach? A Yes.

Q Correct the effect of the medicine? A Exactly.

Q Is that all that you ever prescribed in a powder for her shoulder? A No; I prescribed other combinations.

30

Q What other combinations? A I cannot remember just now.

Q Do you remember any other beside the one you have described? A I believe I have used some aspirin; just what the combination was I do not recall.

Q You never gave her any electric treatment, doctor? A Only the light and heat treatment.

Q When did you give her that? A That was a long time ago; I do not remember—over a year.

40

Don Epler, cross.

Q Since then you have not given her any electric treatment for that shoulder; is that right? A I do not think I have.

Q What liniment did you give her, your own or a standard make like Sloan's? A A combination of my own.

10 Q And has this shoulder responded to your prescription of Dover powders and phenacetin and the combination of liniment? A Well, it is better.

Q Now, doctor, at the last trial you testified that you were in the habit of sending Mrs. O'Connor a bill twice a year for medical services; you were asked: "When was the last bill you rendered?" and you answered, "I can't say positively; I am in the habit of sending Mrs. O'Connor a bill twice a year only; that is usually in January and July." Is that right? A I think it is.

20 Q You sent her one last July? A I did.

Q And do you know how much it was for? A I do not remember; something over \$50.

Q And have you records, doctor, of your visits? A Certainly.

Q What do you keep, a card system? A No; it is a bookkeeping system for physicians.

Q What does it consist of, a book or some cards? A Two books, day book and ledger.

30 Q In the day book did you put the visits each day? A Yes.

Q Have you all of Mrs. O'Connor's visits indicated in the book? A Every one of them.

Q Can you produce the book? A Yes.

Q Now, you do not remember—you have not looked up your book to find out how many visits you have made up to and including the last time you saw her, have you?

A No; I have not had time to look.

40 Q You were here yesterday, doctor, weren't you? A I was.

Don Epler, cross.

- Q Were you in court all day? A Most of the day.
- Q And were you in court last week any day? A No.
- Q When were you subpoenaed to come here, doctor?
- A I received the subpoena Saturday night.
- Q And you did not look at your books to total your visits during that time? A No.
- Q Nor did you add up the bills? A No. 10
- Q So this is merely a haphazard guess that it is over \$200 that she owes you? A It is an estimate.
- Q And it covers from July until now, doesn't it? A No.
- Q And didn't you send the bill last July? A Yes.
- Q And wasn't the bill something over \$50? A Yes.
- Q Did you hear Mrs. O'Connor say she testified she paid \$54 last July? A I do not remember how much it was.
- Q And you did not look at your books at all preparatory to coming here? A No. 20
- Q If she did pay you \$54 last July it was not everything that she owed you last July? A No.
- Q But the bill that you submitted was for everything up to that time? A Up to that time.
- Q And you say it was something around \$50, doctor?
- A It was something over.
- Q Well, was it over \$60? A Yes.
- Q It was over \$60; why did you say over \$50? A Well, if I could remember just what it was I would have said the exact figures. 30
- Q Was it over \$70? A I do not think it was.
- Q You are not sure? A No.
- Q If she paid you \$54 in July and it was over \$70 then she owed you \$15 balance? A If it was that way.
- Q But the balance over the \$200 is visits from last July up to and including this last visit that you made to her, is that right? A That would be right.
- Q Then your books will show that? A The books will show whatever it is. 40

Don Epler, cross.

Q You were talking to Mr. McGeehan about traumatic neuritis. What other neuritis do you have besides traumatic neuritis? A A number of other—toxic neurosis.

Q Did you ever treat Mrs. O'Connor for toxic of any kind? A I do not think I have, no.

10 Q Now, doctor, will you try to refresh your memory a bit? A Well, if I have I do not recall it at the present time.

Q You would not say you did not as far as your memory goes now? A No.

Q Were you called in to quiet her immediately after the death of her husband? A I was called in to see her naturally.

Q What do you mean, "naturally"? A I had been treating her husband; the most natural thing in the world would be for me to come and see her afterward.

20 Q Socially, or were you called upon to see her professionally? A I was not called upon. I told her I would come to see her and I did.

Q When did you tell her you would come to see her, at the time of the death of her husband? A Yes.

Q And did you treat her at that time? A I think I prescribed some simple little nerve sedative.

Q As a matter of fact, you gave her an opiate at the time, didn't you? A I do not remember.

30 Q Would your books show that, doctor? A No.

Q Did you keep any history of the visits at all? A Certainly.

Q How many times did you see her after the death of her husband and this accident? A I do not know.

Q Would your books show that? A Probably.

Q Do you know whether you saw her three times before the funeral of her husband or not, between his death and his funeral? A I could not say.

40 Q You saw her more than once? A I may have, but I cannot say.

Don Epler, cross.

Q And each time she came she was in a nervous condition on account of the circumstances and you gave her some kind of a sedative? A Either gave her something or told her to continue taking what she was taking; I do not remember.

Q Well, do you know from treating the family and treating her at that time whether the death of her husband was sudden such as to cause the shock or was it something expected? A It was something expected. 10

Q How long had he been ill? A About a week or ten days; the last day or two we expected his death.

Q And where was she living at the time? A 20 Dover street.

Q Now, doctor, you told Mr. McGeehan she was able to be up and about and that after the third week you let her sit up; you went to treat her on the 14th day of April—I think that was the day of the accident? A Yes. 20

Q Three weeks after that would carry you into the first week of May? A Yes.

Q Don't you know, doctor, as a matter of fact, that Mrs. O'Connor had been to the church in the first week of May? A I do not.

Q Would you say she was not? A I do not know.

Q When you say you let her sit up you do not mean to tell us you came there and said, "Now she may sit up in the house an hour or two today," or did you say she could get up an hour? A I told her she could get up for a while and when she got tired she should go back. 30

Q You were calling every day at that time? A I am not positive whether I came every day then or every other day.

Q Your book would show that, wouldn't it, doctor? A Yes.

Q During the first week of May do you know of your own knowledge or had you been told by her that she had been out? A Told by whom? 40

Don Epler, cross.

Q By her. A Oh, no.

Q Did any of the family tell you she had been out of the house? A I do not remember anybody telling me, no.

10 Q Did you ever treat her at your office since this accident? A Why, I do not remember having treated her at the office, no.

Q Would your book show that, whether it was office or house treatment? A Yes.

Q What were the opiates you prescribed on the third day after the accident? A I do not remember just now whether I gave her codeine or morphine; I think it was one or the other.

Q Did you give her codeine or morphine the day of the accident? A I do not remember; I do not think I did; I am not sure about that.

20 Q Did you give her any opiate at all the first day, the day of the accident? A I do not think so; I am not sure.

Q And the second day? A Probably the second day I would have been more likely to have done so; the pain would be more severe after the shock.

Q But it is not what it may have been that you gave her. You do not remember of your own knowledge that you did give her opiates on the second day? A Not just the day.

30 Q And were the opiates sufficient to cause a semi-conscious condition? A No.

Q They would not make her sleep? A Not in small doses that I would give her.

Q You gave the doses personally or did you direct them to be given by someone else? A By someone else.

Q And you prescribed them in the form of powder? A I cannot remember what form I prescribed them in.

40 Q If the party in attendance had given more than the specific dose you stated would it have caused a semi-conscious condition? A If they gave too much it would.

Marjorie Berg, direct.

Q You came there during the first few days and found her semi-conscious? A Yes.

Q Then you told Mr. McGeehan that you predicated the fact that she was nervous upon the way she acted upon the stand today, is that it? A I said she was nervous here, was the way I understood the question.

Q And the nervousness here was manifested you said 10
by two phenomena? A Two that I noticed.

Q The inability to speak loudly and the fact that she showed an irritability when asked about her age and her husband's business? A Yes.

Q And that is the only reason you say that she acted nervous on the stand? A Yes.

MARJORIE BERG, sworn in behalf of plaintiff.

Direct examination by Mr. Nugent.

Q You reside where? A 20 Richelieu terrace. 20

Q What part of the city is that in? A Four blocks from the city line, South Orange line.

Q And the same direction that Dover street is? A Yes.

Q Did you board—on the 14th of April did you get on a jitney bus at your street? A Yes, I did.

Q Was that the bus that was in this accident? A It was.

Q And whereabouts did you get on board? A Riche- 30
lieu terrace.

Q How far did you ride before the accident occurred? What street? A Sixteenth street.

Q What happened when you got there? A I do not know.

Q You were in the bus? A Yes.

Q Were you near Mrs. O'Connor? A Alongside of her.

Q Sit alongside of her? Was there a crash? A Yes, there was a crash. 40

Walter Thomas Van Nortwick, direct.

Q What happened after that crash? A I do not remember what happened. People took us out of the bus.

Q And what did you do then after getting out of the bus? A Why, a man that I know came along and took us home in his car.

Q What is his name? A Lehman.

10 Q And whom did he take home in the car, yourself?
A And Mrs. O'Connor.

Q Did you ride to Mrs. O'Connor's house with her?
A I did.

Q And who took her out of Mr. Lehman's car? A Her two brothers.

Q And carried her into the house. What was her condition at that time, do you remember? A No, I do not.

Q Was she hurt? A She certainly looked it; she could not get out alone.

20 Q Was her clothing disarranged in any way? A Yes, sir.

Q And her hat on? A Yes, sir; I guess it was on; I did not see it.

Q Do you remember where the jitney was when you were taken out? A No, I do not.

Q Were you inside the jitney or outside? A Where?

Q Of the jitney when the accident occurred. A When the accident?

30 Q You were inside the jitney when the accident occurred? A Yes, I was sitting in the jitney.

Q And somebody took you out of it? A Yes.

Cross examination waived.

WALTER THOMAS VAN NORTWICK, sworn in behalf of plaintiff.

Direct examination by Mr. Nugent.

40 Q Mr. Van Nortwick, where do you live? A 61 Whitney street, Newark.

Walter Thomas Van Nortwick, direct.

Q What section of the city is that? A That is one block above Congress street near the Velodrome.

Q In the same direction as Dover street? A Yes, sir.

Q Did you become a passenger on a jitney bus on the 14th of April, 1919? A Yes, sir.

Q Whose jitney bus was it? A Samuel Adekman.

10

Q And where did you board the bus? A Why, I just forget, but I believe that I got on at Whitney street.

Q And which direction did you ride in? A Down-town.

Q Do you remember reaching Sixteenth street? A I do.

Q What occurred there? A Why, the chauffeur of the bus slowed down to pick up a passenger, as far as I can remember, and about that time a truck came out of Sixteenth street and hit him in the rear and turned him over.

20

Q Whose truck was it, do you know? A Meyer & Bush's.

Q What happened after the bus was turned over? A Well, they went to work getting the people out.

Q Were you injured? A I was.

Q Badly? A No, not very.

Q Did you help get the people out? A I could not. They had to get me out.

30

Q Did you see the position of the truck and the bus before the accident? A I did.

Q And where were you riding at the time? A I was on the right-hand seat, first seat opposite the driver.

Q What called your attention to the truck? A Why, I do not just know; I happened to look out that way, the same as anybody might do when they are riding.

Q How far away was the bus from the—I mean the truck from the bus at that time? A Well, when I first see the truck, why, the chauffeur of the jitney bus was

40

Walter Thomas Van Nortwick, direct.

going to cross Sixteenth street, slowing down to pick this passenger up.

Q And you then saw the truck coming along? A Coming along, yes.

Q Did the bus stop? A That I do not remember whether he stopped or not, because just about that time
10 we were over.

Q Over altogether? A Over on the side and in the middle of the car tracks.

Q And where was the bus when the truck hit it? A Well, about a foot or two from the gutter; you got to pull pretty close to the gutter to pick up a passenger.

Mr. Matthews. I ask that that be stricken out, what you "got to" do.

The Court. I will strike that out, the last part
20 of that answer.

Q (*By the Court.*) When you first saw this truck, Mr. Van Nortwick, whereabouts was the auto bus? A If I remember right, it was about fifty or seventy-five feet coming down Sixteenth street towards South Orange avenue when I first saw it.

By the Court.

Q That is where the truck was? A That is where
30 the truck was.

Q Where was your bus? A We were about the middle of Sixteenth street then.

Q And the bus was how far, seventy-five feet? A The auto car was about fifty or seventy-five feet, if I remember right.

By Mr. Nugent.

Q How much further did the bus go then before it was hit? A Why, the bus was about the middle of Sixteenth
40 street when I first saw this truck coming, and the bus

Walter Thomas Van Nortwick, cross.

just about cleared Sixteenth street—a few feet to the rear sticking out Sixteenth street.

Q And then it was hit? A Yes.

Cross examination by Mr. McGeehan.

Q You say the bus had just about cleared Sixteenth street, meaning the front was beyond the east curb? A 10
Yes.

Q That is when the actual striking took place? A
Yes.

Q Do you know what part of the bus was struck by the auto car? A I know it was the right-hand rear side.

Q Now, what did you observe about the truck as it was up Sixteenth street, did you see who was driving it? A
I did.

Q Who was driving it? A Some colored gentleman.

Q Would you know that colored gentleman if you saw him? A Yes, I think I would. 20

Q Is he in court here today, do you know? A I do not see anybody who is colored.

Q Well, look a little further. A -You got me now.

Mr. McGeehan. Mr. Matthews, any objection to having the witness arise?

Mr. Matthews. No objection to you identifying him for the witness, if that is what you mean. 30

(Witness does not rise.)

Q You see no colored person in this room? You may look all over the court room to find that person. A Can I leave here?

Q Why, if it is necessary I think the Court will permit you to leave your seat.

(Witness leaves seat.)

A There is the gentleman (indicating).

Walter Thomas Van Nortwick, cross.

Q Indicating Mr. Randall. Now, was anyone else riding on the truck with the man you have pointed out?

A No, sir.

Q As I understand it, the truck was fifty or seventy-five feet away from South Orange avenue in Sixteenth street when the bus was about in the middle of Sixteenth street? A As far as I can recollect; yes, sir.

Q Was that truck coming slow or fast when you saw it? A I should judge between thirty and thirty-five miles an hour.

Q Coming fast, would you say? A Fast, too fast.

Q And were there any other vehicles in front of it on Sixteenth street? A No, sir.

Q Was there any object of any kind in Sixteenth street at South Orange avenue in the way of that truck as it came along there? A Only the cemetery; we did not stop.

Mr. Matthews. I ask that that be stricken out as not responsive, your Honor.

Mr. McGeehan. I think that is responsive.

The Court. I will leave that in, I think.

Q Now, when you saw this truck did you see whether it was coming in the middle of the street or near to one of the curbs of Sixteenth street? A I believe it was near the right-hand curb; it might have been in the middle, but I do not just remember.

Q Well, did you see whether it was turning at the time you saw it or whether it was coming on a straight course? A When I first saw it it was seventy-five feet, fifty or seventy-five feet away.

Q And was it running parallel with the curbs of that street? A Yes, sir.

Q Did you hear any horns blown by it? A No, sir.

Walter Thomas Van Nortwick, cross.

Q When your bus was in the middle of Sixteenth street how near was the front of it then to the down town or easterly curb of Sixteenth street? A Probably eight feet, ten feet.

Q Eight or ten feet? A I do not know just how wide Sixteenth street is there.

Q But the front of your bus was within eight or ten feet of the easterly curb? A Yes. 10

Q Then do you know how far the rear of it protruded into Sixteenth street at the time the truck hit it in the right rear? A Not far.

Q About how far, do you know? A Probably a foot or two.

Q And was it after the truck ran into it that it turned over? A Yes, sir.

Q Do you know what part of the truck hit that bus in the right rear end? A No, I cannot answer that. 20

Q Did you say— A It was the front right end. It was the front, but I do not know which side.

Q You know it was the front. Did you look around and see the contact between the two of them? A I did later.

Q After you were taken out of the jitney bus did you know the relative positions of the truck and the bus; where they were? A Yes. 30

Q Where was the jitney bus? A The jitney was lying diag—the rear end was in the car track and the front end facing toward the gutter; the bus was partly down the sewer with the right wheel; it was down a hole there, anyway.

Q By “sewer” you mean the aperature coming in the sewer at the corner there? A Yes, sir.

Q Now, what wheel of the truck was there? A Right wheel.

Q Front or rear wheel? A The front wheel. 40

Walter Thomas Van Nortwick, cross.

Q And was any part of the truck then still in Sixteenth street? A Yes, sir; the rear was in Sixteenth street.

Q Now, the jitney bus, you say the rear wheels were out towards the car tracks and the front wheels in toward the curb? A Yes, sir.

10 Q Lying there diagonally; how near to the curb were the front wheels of the jitney bus? A I do not remember how close it was, but I remember that was the way it was laying.

Q Can you judge the distance between the car tracks and the curb at that point; do you know about what distance there is between the curb and the car tracks of South Orange avenue at that point? A I know about. Just a minute. Probably about fifteen foot there.

20 Q Now, about how long is the jitney bus or was the jitney bus? A That might have been from front to rear about twelve feet, I judge.

Q About twelve feet, you think? Now, how near to the car tracks were the rear wheels? A The rear wheels were on the car tracks.

Q How near to the curb were the front wheels? A I cannot say.

Q On which side did this bus lie when it was overturned? A On the left side.

30 Q Do you know how close to the curb the rear wheels of the jitney were, or the right rear wheel was when it was run into by the truck? A Probably a foot or two.

Q Do you know what caused the rear wheels to be upon the car tracks or near the car tracks after it turned over? A That is the way it was hit.

Q It was knocked in that direction? A Yes, sir.

40 Q Now, when it turned over on its left side do you know how much nearer that rear wheel was to the car tracks than before it was struck? A Yes, a good ways.

Walter Thomas Van Nortwick, cross.

Q It was near, was it; it was on the car tracks? A It was on the car tracks.

Q Now, if the right wheel was within two or three feet of the curb when it was struck how near to the car tracks was the left rear wheel when the bus was struck?

A The right wheel was not within two or three feet.

Q Sir? A The right wheel was not within two or three feet; it was within one or two feet. 10

Q Then, how near was the left rear wheel to the car track at that same time? A I do not know just how close.

Q How wide was the bus, do you know? A I do not know.

Q Do you know approximately how many feet there are between the right rear wheel and the left rear wheel?

A No, I do not know.

Q What was the motion of the jitney bus at the time it was so struck? Had it come to a stop as yet? A I do not remember whether it came to a stop or not; I know it was slowing down to pick up a passenger. 20

Q Did you see the passenger waiting for it? A Yes, some lady, yes.

Q And if it were moving was it moving fast or slow? A Very slow.

Q Very slow. Had the passenger begun to board the jitney when the collision took place? A I do not remember that. 30

Q Do you know how near to that passenger the bus got when it was struck? A I do not remember that, either.

Q Were there people standing in the bus? A A few.

Q How many would you say about? A Probably five or six, four or five, something like that.

Q Were there any passengers crowded between the driver and the doorway? A No, sir. 40

Walter Thomas Van Nortwick, cross.

Q Was there anything to obstruct the view of the driver through the doorway—was there any vehicle or any object? A No, sir.

Q To obstruct the path of the truck coming out of Sixteenth street into South Orange avenue? A No, sir.

10 *Cross examination by Mr. Matthews.*

Q You were a jitney driver at that time, weren't you?

A I was.

Q You are now, aren't you? A I am.

Q Do you know Samuel Adekman? A Yes, I do.

Q Rode with him often? A I have.

Q Ever drive for him? A No, sir.

Q Did he ever drive for you? A No, sir.

Q Did he ever drive for the same company you drove for? A No, sir.

20 Q Where was your line at this time? A South Orange avenue.

Q The same line that Sam Adekman drove his bus on, wasn't it? A Yes, sir.

Q Now, you say you were sitting down in this jitney bus? A I was.

Q Now, as a matter of fact, you were standing up, weren't you? A No, sir.

Q Didn't you hear Mrs. O'Connor testify here today?

30 A I cannot help what Mrs. O'Connor testified.

Q Did you hear her testify? Yes or no. A What?

Q Did you hear her say there were two lines of people in this jitney when the accident occurred? A I did not hear that.

Q Were there two lines? A Not to my knowledge.

Q What do you mean, "to my knowledge"; is it recollection? A What do you expect?

Q I expect you to give us as a fact. Is it a fact that there were two lines standing? A Why, not to my knowledge, there was not two lines of people in the bus.

40

Walter Thomas Van Nortwick, cross.

Q Then you say positively no, there was not two lines of people in that bus? A Yes, sir.

Q And you say you were standing on the right-hand side of the bus, that is the side so you can see Sixteenth street? A Yes.

Q And was the driver between you and the door? A The driver was on the right-hand side. 10

Q Was he between you and the door; did the seat extend up beyond him? A Well, I do not just remember how that car was built; I believe the driver's seat was in front of the seat where I was sitting.

Q And in order for you to see all that you saw so vividly you had to see out one of the doors or windows, didn't you? A Yes, sir.

Q Which did you see out of, door or window? A I believe I looked out the door. 20

Q In order to look out the door you had to look across Mr. Adekman, didn't you? A No, not on the side I was sitting.

Q It was a left-drive car and you were on the right? A Yes, sir.

Q How were you looking, toward the right or toward the left? A Right.

Q The driver was not between you and the scene of the accident? A No, the driver was on the left-hand side of me. 30

Q And you were on the driver's right or left? A On the driver's right.

Q And as you came down Sixteenth street was on your right or left? A I come down South Orange avenue.

Q As you came down South Orange avenue Sixteenth street was on your right or left, which? A On my right.

Q You were facing Sixteenth street, as a matter of fact, weren't you? A If I was sitting the way I am sitting now, I would be; I was sitting backwards, like this 40

Walter Thomas Van Nortwick, cross.

(indicating), but I just happened to turn around like that (indicating).

Q You were sitting backwards and you just happened to turn around at that time. You had been talking to Sam, hadn't you? A No.

10 Q Never said a word to him? A Might have passed the time of day.

Q That is all? A That is all I recollect.

Q You did not talk to him from the time you got on until the scene of the accident except to pass the time of the day? A That is all I remember.

Q And just as you got to Sixteenth street you happened to turn and saw this condition you described to us, is that right? A Yes, sir.

Q Now, the auto truck was coming out of Sixteenth street, wasn't it? A Right.

20 Q It was on the right of the jitney, had the right of way, as I understand it.

Mr. Nugent. I object.

A No.

Q Why not? A The jitney bus had the right of way.

Q Why so? A He was crossed to the lower corner.

Q What is the rule as to a jitney or any other vehicle, which vehicle has the right of way?

30 *Mr. Nugent.* I object.

The Court. I sustain the objection.

Q But he was coming on your right side, wasn't he? A Yes.

Q And you say that there were only four or five passengers standing? A That is all I recollect.

Q And your recollection is knowledge. You know there were only four or five standing? A Certainly.

Q Your eyesight is very good, isn't it? A Well, it might be and it might not be.

40 Q What do you mean by that, please? A I have not had them tested very often.

Walter Thomas Van Nortwick, cross.

Q Have you had them tested at all? A Some time ago I did.

Q When? A Two or three years ago.

Q Did you wear glasses? A I do occasionally when I read.

Q Only for reading? A That is about all.

Q You do not wear them when you are driving? A No. 10

Q Have you had them tested in two or three days? A No.

Q Well, your sight is pretty good? A It is supposed to be.

Q And you saw fifty or seventy-five feet up the street this morning and saw this Meyer & Bush truck coming about thirty or thirty-five miles an hour? A Yes, sir.

Q You just happened to turn and see them? A Yes. 20

Q How long were you looking at it before you judged its speed? A Well, I might have been looking at it a minute or two.

Q You cannot be mistaken about that? A No, sir.

Q It was not any more than two minutes, was it? A No. It didn't take the chauffeur any longer—

Q Was it any longer than two minutes? Yes or no. A No.

Q It was not any less than a minute? A No. 30

Q So, from the time you first saw this truck fifty or seventy-five feet up the street and up to the time this accident happened at least a minute expired, is that right? A Yes, sir.

Q Is your recollection of the time as good as your recollection of distance? A I believe it is.

Q Where is Whitney street with reference to Dover street; is it above it towards South Orange or towards Newark? A Whitney street is a good ways down this way towards down town. 40

Walter Thomas Van Nortwick, cross.

Q When you got into the jitney bus at Whitney street were all the seats occupied except the seat you took? A They was not taken.

Q About how many people were in the jitney bus when you got in at Whitney street? A Wait a minute; let me think.

10 Q Go ahead and think. A There might have been eight or nine.

Q There were eight or nine seats vacant or taken? A Oh, no, taken.

Q How many seats in that jitney? A I do not know; I believe it seated twelve or fifteen, something like that.

Q Did you see the young lady that was just on the stand, did you see her in the jitney? A Well, I do not remember whether she was in the jitney or not.

20 Q Did you see Mrs. O'Connor in the jitney? A I have seen her; yes, sir.

Q Did you see her this morning when you got on the jitney? A No, not to my knowledge.

Q What morning do you think I mean when I say "this morning"? A The morning of the accident.

Q The same chauffeur doesn't drive that bus any more, does he? A He daresn't.

Q He daresn't, and so he does not drive it any more?
30 A No.

Mr. Nugent. I object. It doesn't matter whether he does or not.

Q Now, do you recall, Mr. Van Nortwick, what part of the street Sam was driving when he was coming down? A Yes; Sam was on the right-hand side coming down.

Q He never tracked any of the distance? A What do you mean "tracked"?

Q Running in the track. A No.

40 Q You are sure he did not? A Yes, sir.

Walter Thomas Van Nortwick, cross.

Q Not one of the wheels was over the car track at any time from the point you got on to the scene of the accident? A Positively not.

Q How about when you got to Nineteenth street and the carbarns there; do you remember anything happening there? A When we got to Nineteenth street, I do not just remember, but I do not think he tracked it there, there are too many frogs there. 10

Q He had to go across there? A Naturally.

Q Was he on the track at any time? A Crossing it in the track; you mean riding in the track?

Q Was any part of his bus in the track from the time you got on until the time of this accident? A Here is Nineteenth street is this way (indicating); the tracks is in the center of the street and also Ys for the trolleys to run in there; naturally he cannot cross unless he goes further on the left side of the street. 20

Q So, naturally, he was on the track? A I would not call it on the track—crossing it.

Q When he crossed the Ys at Nineteenth street did he proceed on the right side of the road? A He came out on the right in the gutter again.

Q When he came to that turn-out just below Nineteenth street what did he do there? A I do not remember; he might have went right over and might have pulled out of it; I do not remember that part of it just what he done there. 30

Adjourned to Thursday, March 10, 1921.

Walter Thomas Van Nortwick, cross.

SECOND DAY.

Thursday, March 10, 1921.

Continued pursuant to adjournment.

Counsel as before stated.

10 WALTER THOMAS VAN NORTWICK, resumes the stand in behalf of plaintiff.

Further cross examination by Mr. Matthews.

Q I understood you yesterday to say you were sitting on the last seat on the right-hand side of the bus. I was sitting on the first seat.

Q Well, the first seat as you entered the door? A Yes.

Q Right at the door? A Yes, sir.

20 Q And that means on the right-hand side of the bus going down South Orange avenue? A Yes.

Q Now, you told one of the counsel that the truck was partly in Sixteenth street when the collision occurred, that is to say that beef truck, is that true? A Yes, part of it was in Sixteenth street.

Q And you saw that? A Yes, sir.

Q And you say the jitney was about twelve feet long? A Something like that.

30 Q And at the time of the impact it had passed all but two or three feet of its length beyond the easterly corner of Sixteenth street and South Orange avenue? A Just the lower corner, you mean?

Q Lower corner, yes. A Yes, sir.

Q What was immediately in front of you as you passed? A Sir?

Q What was immediately in front of you as you passed? A Nothing was in front of me.

40 Q What was immediately in back of your head? A The window.

Charles Bender, direct.

Q And what was immediately at your left? A Passengers.

Q And what was immediately at your right? A The front of the bus.

Q The front of the bus and the door, is that right? A The front and the door, yes.

Cross examination by Mr. McGeehan.

10

Q Immediately after the accident happened did you hear the colored man whom you indicated in court here who was driving the truck, make any statement as to how the accident happened? A I did.

Q What did he say? A He said he really did not know how it happened.

Q Did he say anything further? A Not that I can recollect at this time.

Q Did he say for whom he drove the truck? A I do not remember whether he did or not.

20

CHARLES BENDER, sworn in behalf of plaintiff.

Direct examination by Mr. Nugent.

Q You are a police officer of the City of Newark? A Yes, sir.

Q Attached to what precinct? A Seventh.

Q Where is the Seventh located? A 908 South Orange avenue.

30

Q Do you recollect being called to the scene of an accident on April 14, 1919, at South Sixteenth street and South Orange avenue? A Yes, sir.

Q What time did you arrive there about? A About a quarter to eleven, I think.

Q Tell us what you saw when you arrived there? A When I arrived there, why, they -- we must have got a telephone some time after the accident -- all the injured people was inside the saloon; there was two city ambulances there, they were backed up, right back up against

40

Charles Bender, direct.

the curb, and I went inside to let the officer see if I could help him any; there was nothing for me to do, so I came out by the patrol wagon. There was doctors there and the jitney.

Q And the jitney, what condition was it in? A The rear panels were smashed and windows were shattered; glass all over the car tracks.

Q And where did it lay? A The jitney lay about thirty feet east of Sixteenth street standing erect.

Q It was standing at that time? A Yes, sir.

Q Was there a motor car there? A There was a motor car; there was an auto truck there, it was on Sixteenth street facing north.

Q Did you notice any sign on the motor car? A Any sign?

Q Yes, as to whom it belonged to? A No; I did not; the driver was there.

Q Did you see the driver of the truck? A Yes, and I asked him whom he was driving for and he said Meyer & Bush.

Q What did you do in pursuance of his orders? A I Officer Lutchens who brought out Mrs. Matthews, she lived on Curling avenue, and the officer put Meyer & Bush's driver and the jitney driver—we took this lady home and took these two men up to the precinct.

Q Who was your superior officer at that time? A Captain Linder.

Q Did he give you any orders to execute in relation to the truck? A Yes; he asked me—

Mr. Matthews. I object.

The Court. I sustain the objection.

Q What did you do then with the driver? A Then took the auto truck around the block up South Orange avenue and over Seventeenth street, down Fifteenth avenue—down Fourteenth avenue and back on Sixteenth street to inspect the brakes.

Charles Bender, cross.

Q (By the Court.) Did you drive it yourself? A Yes, sir; I drove it myself.

Q What did you find as to the brakes? A I found the foot brakes was all right, but the emergency brake would not hold.

Cross examination by Mr. McGeehan.

10

Q You are speaking of the Meyer & Bush truck now, are you? A Meyer & Bush truck, yes.

Q Did you test that truck or those trucks in the course of your duty in the Police Department? A No; it is not our duty. We have mechanics to inspect the brakes. The three mechanics were at home, so Captain Linder asked me.

Q Do you drive a motor truck? A I drive a patrol wagon for the Police Department.

Q When you say the emergency brake did not work just describe what effect on the progress of the truck the application of that brake had. A I guess I was running ten or twelve or fifteen miles and I threw out my clutch and then I tried for the brake; the foot brake worked all right; the car came to a stop and then I tried the emergency alone without putting my foot on the foot brake and the car would not come to a stop, it kept right on rolling.

20

Q Kept right on rolling? A Yes, sir.

Q Now, with what foot is the clutch worked on this truck? A On the left foot.

30

Q And the foot brake is the right foot pedal? A Yes.

Q Where is the emergency brake? A The emergency is on the side where the shifts are.

Q That is a hand brake, is it? A That is a hand brake.

Q How heavy a truck was this? A How heavy a truck?

Q Yes. A Ton or ton and a half truck.

40

Charles Bender, cross.

Q You mean that it weighed about a ton and a half?

A No, it is a ton and a half truck; I could not say exactly.

Q Do you know the name of the man who was driving that truck? A His name?

Q Yes. A No, I do not.

10 Q Have you seen him in court or do you see him in court now? A Yes, sir. Not the one on the end. The man that is smiling.

Q Mr. Randall? A Randall, yes.

Q And you said, officer, that the truck was facing north; that would be across South Orange avenue, would it not? A The truck was facing north, yes; it was facing toward the cemetery.

20 Q That is correct? A That is the way I seen the truck.

Q And was it in Sixteenth street wholly or partly at that time? A It was in Sixteenth street by the right crosswalk of the sidewalk, right in back of it, right in by the crosswalk.

Q What side of the truck, the front or the rear? A I should say the truck was about even with the building line of South Orange avenue.

30 Q And where was the truck at that time when you saw it? A The front of the truck was about even with the building line of South Orange avenue.

Q Now, do you know whether the truck had been moved from the time of the accident to the time you saw it? A That I do not know.

Q Do you know whether the jitney had been moved from the time you got there until the time— A The glass was lying in the car tracks; it was not.

Q And it was standing upright when you saw it? A Yes, standing upright.

40 Q Now, was there glass on the car tracks? A On the car tracks; yes, sir.

Charles Bender, cross.

Q Was there glass between the car tracks and the curb? A Between the car track and the curb?

Q Yes. A Well, of course, I did not—I could not—I did not pay that much attention.

Q But you do remember that some was on the car tracks? A Yes, sir.

Q How far is it from the curb to the car tracks there, officer? A I should judge twelve feet. 10

Q About twelve feet? A Yes, sir.

Q How wide was the jitney bus, in your opinion, that you looked at then? A How wide?

Q Yes, sir. I mean the width between the wheels. A Oh, the width was from this part here (indicating) over to—about six or seven feet, I guess.

Q Are you talking about the length or width? A No, the width. 20

Q From where to where? A From the body to the body. 20

Q I am asking you what is the width of this bus between the wheels from one back wheel to the other back wheel across the rear of the bus? A I do not know; about four or five feet, I guess.

Q About as wide as the car tracks, isn't it? A Yes, sir.

Q Now, how far above the ground were the windows of that bus? A How far above the ground? 30

Q Above the ground. How high were the windows? A I should say about five feet, I guess.

Q You do not know what side that bus had turned over on, do you? A No, I do not.

Q Now, what part of the car tracks did this glass rest upon, whereabouts? A Going east.

Q Eastbound car tracks? A Eastbound car tracks.

Q That is the car track on the right-hand side of South Orange avenue going down town? A Yes, sir.

Q Is that right? A Yes, sir. 40

Charles Bender, cross.

Q Did you see any marks in the pavement? A Any marks what?

Q Any marks in the pavement on South Orange avenue or Sixteenth street indicating where the collision had taken place? A I did not pay no attention. You see that is part—we do not make no report and do not take no statements. The officer on the wagon does that.

10 Q You did not examine the pavement then? A No.

Q Did you examine the bus for marks of damage to it? A Why, I gave it—when I seen the jitney bus when it was damaged then I went over and looked at the truck.

Q How was the jitney bus damaged, where? A The rear panels they were all out, smashed in and the glass was out.

Q In the rear of the bus? A Yes, and the windows was all out, glass, and as far as I could see there must have been something the matter with the engine because the two front wheels they stood like this (indicating), kind of bent in.

Q What was the condition of the panels in the rear that you speak of, describe that more closely. A How were they?

Q Yes. A Why, they were caved right in, there was a hole there.

Q Was that at the right rear corner? A Why, I should judge it was almost in the middle; it might have been just a trifle to the right.

Q Trifle off what to the rear? A To the right.

Q To the right of what? A Of the machine.

Q You mean in the middle of the rear of the bus? A Yes.

Q Not in the middle of the side? A No, in the rear.

Q Nearer to the right-hand corner? A Yes.

Q And it was pushed in there? A Yes.

Charles Bender, cross.

Q And did you notice any damage to the truck; where was the truck damaged? A The truck, I did not see no damage to it.

Cross examination by Mr. Matthews.

Q Did you look at the truck? A I just gave it a glance.

10

Q Do you think you would recognize a picture of that truck if I showed it to you (handing witness picture)? A Well, I would not say whether this was the same truck.

Q Let me show you the front view and let me see whether you would say it was or not? A Why, of course, this front curtain was not down; there was no curtain on it, this curtain here (indicating).

Q You examined the truck and drove it around the block? A That curtain was not there.

Q Without the curtain does it look like the truck? A Yes, without the curtain.

20

Q When you got into that truck how did you get on? A On the front left side.

Q What kind of a drive, left or right? A Right-hand drive.

Q Did you get on the left or right? A Left, out from the street.

Q You are sure she was a right drive? A Yes, this is right-hand drive.

30

Q I show you a picture there and ask you what that picture indicates, what drive; sit back of the wheel now. A As far as I can say it is right-hand drive.

Q To your judgment it is right-hand? A Yes.

Q Do you notice anything about the front left fender of that truck? A No, I do not.

Q There was not a mark on the truck at all, then, was there? A I did not examine the truck as closely as all that; I just gave it a glance to see whether it was demolished the same as the other.

40

Charles Bender, cross.

Q You remember testifying in the Orange court in the case of Bersetta against Meyer and Bush Company in which I was counsel? A Yes, sir.

Q You say you tested the emergency brake? A Yes, sir.

10 Q And how did you test it? A Why, just started the car, I was running about ten or fifteen miles an hour, and threw in the clutch; I did not put my foot on the foot brake, just tried it with the emergency brake.

Q You understand all about the mechanics on automobiles? A No, sir; I am not a mechanic.

Q How long had you been driving a car at the time you tested the Meyer and Bush truck? A For the police department.

Q For how long? A The last seven years.

Q How many times had you tested a truck up to this time? A Never tested one.

20 Q How many times had you driven a truck up to this time? A A truck? Why, I drove a truck I guess about three years.

Q For whom? A Why, for my brother-in-law.

Q What is his name? A Joe Ball.

Q Where was it, in Newark? A Yes, he broke his arm and I drove the truck for him.

Q How many times did you drive it? A Four times.

Q What kind of a truck was it? A That was—

30 Q Was it a Ford? A No, it was a shift truck; I cannot remember the name of it.

Q That is the only experience you had with trucks? A Yes, sir.

Q Now, you say when you applied the emergency you did not apply the foot brake at the same time? A No, sir.

Q And is that a test for an emergency brake to apply it and not apply the foot brake? A I guess so.

40 Q Now, as a matter of fact don't you apply both together? A No, sir.

Charles Bender, cross.

Q Isn't it a fact the real test of the emergency brake is to try both together? A Not to my estimation.

Q Do you remember testifying as follows in the Orange District Court: "So far as you know, and as a matter of fact, didn't you apply both together, the foot and the emergency brakes; isn't that the real test of the emergency brake?" And you answered: "Yes, sir." Do you remember testifying that way? A No, sir; I do not. 10

Q Will you say you did not testify that way? A I do not remember.

Q Is that the real test of an emergency brake? A As far as I know I tried it without putting in the foot brake.

Q Who was with you when you made that test of the emergency brake of that truck? A Why, Officer Carl Widmer.

Q From where, the Seventh? A No, I think he is in headquarters; he is a motor-cycle man. 20

Q Don't you know it is one of the rules of the department that no one but a mechanic shall test a car that has been in an accident? A That I do not; I am not a mechanic.

Q I am asking you about the rules of the police department. Don't you know it is one of the rules of the police department that no one but the mechanic shall test the car that has been in an accident? A I could not tell you that. I just went under orders of Captain Linder, he is my captain. 30

Q You did not examine the jitney bus at all outside of looking at it? A No, sir.

Q You did not look at their brakes? A The mechanic done that later on.

Q What mechanic? A Mr. Bectall.

Q Where did he do it? A Right on South Orange avenue.

Q And when did he do it, do you know? A Why, the same day. 40

Charles Henry Randall, direct.

Q Were you there when he did it? A Why, I was there, yes.

Q You were there when he did it yourself. And Mr. Bectall, is he here today in court? A No, sir; I do not think so.

10 Q What is Mr. Bectall's first name? A I could not tell you myself—Conrad, Cooney, we call him—Conrad.

Q Did you look at the brake bands of this car? A No, sir.

Q Did you examine any of the mechanism of the emergency brake at all? A No, sir.

Q All you did was to try it this way and she didn't hold? A Yes, sir.

Q You tried it without applying the foot brakes at the same time? A Yes, sir.

Re-direct examination by Mr. Nugent.

20 Q Have you seen this truck since the accident? A Have I seen it since the accident?

Q Yes. A I have seen it standing in front of the Orange District Court.

Q How long ago was that? A Why, I do not just remember. I should judge about three months after.

Q Couple of months after? A Yes, sir.

30 CHARLES HENRY RANDALL, sworn in behalf of plaintiff.

Direct examination by Mr. Nugent.

Q Mr. Randall, whom were you employed by in April, 1919? A Meyer and Bush.

Q Mr. Randall, how long had you been in their employment? A About eleven years.

Q And what were your duties in connection with your work?

40 *Mr. Matthews.* I object, your Honor please, as immaterial.

Charles Henry Randall, cross.

The Court. I will admit it.

Counsel for defendant, Meyer and Bush Company prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q Answer. A Delivered meat.

Q In connection with that did you drive a motor truck? A Yes. 10

Q And on the day of the accident you drove a motor truck belonging to Meyer and Bush? A Yes, sir.

Q What was in the truck? A Meat, side of meat, at the time of the accident.

Q What was in it when you started in the morning? A A load of meat.

Q Before the accident did you deliver a side of meat to one of their customers just before the accident? A I delivered a side of beef to Fred Ast, Twentieth street. 20

Q Where was his place? A Nineteenth avenue.

Q And you had had some beef on the truck? A Side of beef.

Q Who was that to be delivered to? A Dick O'Connor.

Q So you left Ast's and went to O'Connor's? A Yes, sir.

Q Did you deliver the beef to O'Connor? A After the accident I did. 30

Q Where was O'Connor's place? A Wiggins avenue and Kipp street.

Cross examination by Mr. McGeehan.

Q When you came over Sixteenth street and came to the intersection of it with South Orange avenue you intended to turn down South Orange avenue, did you? A That was my intentions.

Q South Orange avenue was a well paved street at that time, was it not? A I think so. 40

Charles Henry Randall, cross.

Q It was the nearest well paved street running to the center of the city from the place where you had been, Nineteenth avenue and Twentieth street, was it not? A I do not remember that, whether it was or not.

Q What other main thoroughfare runs from there down town that was well paved? A That was the nearest
10 street to me that took me where I wanted to go.

Q Where is O'Connor's place, did you say? A Wiggins avenue and Kipp street.

Q What section of the city does that lie in? A That lies over there near—well, below Springfield avenue.

Q Below Springfield avenue—do you mean south of Springfield avenue? A This side.

Q Between South Orange avenue and Springfield avenue? A Around by Bergen street, around there some place.

Q Bergen street runs? A I think around by Waverly
20 avenue; I think you go over Waverly avenue to get into Wiggins avenue, if I am not mistaken; it is over that way some place.

Q How many miles is O'Connor's from where you were? A At Nineteenth avenue.

Q And Twentieth street? A I do not know.

Q Quite a run? A A good, little run.

Q You had to go from Twentieth street down to the vicinity of Bergen street or First street before you were
30 near O'Connor's place, did you not? A First street don't run over there.

Q Bergen street is a continuation of First street, is it not? A Yes, sir.

Q And Bergen street is therefore at least twenty blocks away from Twentieth street, isn't it? A I do not know how far it is.

Q It is only a little run from Bergen street to Twentieth street? A It is a little run, yes.

Q And you had to traverse that distance to get near
40 to Kipp street, did you not? A Yes, sir.

Charles Henry Randall, cross.

Q And how far is South Orange avenue from Nineteenth avenue? A From Nineteenth avenue?

Q Yes. A I think Nineteenth avenue runs into South Orange avenue.

Q It runs into South Orange avenue? A I think so, if I am not mistaken; I do not know whether it do or not; I am not sure, but it runs in that direction. 10

Q Eh? A I am not sure whether it runs in that direction.

Q Now, you had this side of beef to deliver to O'Connor and you intended to deliver it that day, did you not? A That day, yes.

Q What time did this accident happen? A As near as I can get to it, between ten and eleven o'clock, but I am not sure about the time.

Q In the morning? A About 10:55, I think; I did have the time once, but between ten and eleven o'clock. 20

Q In the morning? A In the morning; yes, sir.

Q At what time would you report in at the noon hour? A We have no particular time to report in.

Q What time did you usually report? A It depends on what I had to do.

Q And all you had to do was to report to O'Connor before you got rid of the load of beef? A O'Connor was my last stop.

Q So at 10:55 you had to go—between then and noon-time you had to deliver this side of beef to O'Connor? A 10:55 I delivered a side of beef to O'Connor. 30

Q And that side of beef you were to deliver for your employers, Meyer & Bush, were you not? A Yes, sir.

Q Now, you intended to deliver that side of beef to O'Connor in the morning, did you not? A After—I intended to deliver it after I got through where I was going.

Q But you intended to deliver that before you returned to Meyer & Bush's place that morning, didn't you? 40

Charles Henry Randall, cross.

A I intended to deliver it before I returned to Meyer & Bush's place, yes.

Q Now, you intended to go elsewhere in addition to O'Connor's, did you, on that morning? A I intended to go some place before I delivered the side of beef, that is where I was on my way to then.

10 Q But that place was in the general direction of O'Connor, wasn't it? A No, sir; it was not.

Q Where was that place? A Between Seventh and Eighth street on Central avenue—501.

Q Between Seventh and Eighth street? A On Central avenue.

Q Whose place was that? A I do not know the owner of the place, but I know the janitor; that is who I was going there to see.

20 Q You drove that truck yourself, did you not? A Yes, sir.

Q Beside delivering the beef? A I do not understand it.

Q You drove that truck yourself in addition to carrying any beef to the place that Meyer & Bush sells in? A Yes, sure, I did delivering and driving.

Cross examination by Mr. Matthews.

30 Q So that you say, Mr. Randall, that you were going to see a janitor between Seventh and Eighth street on Central avenue? A Yes.

Q Did you have any permission from your employer to do that? A No, sir; not that morning.

Q What was that business that you were going on? A I was going to see him about getting in the Pythian Lodge.

Q You say that was not the direction you should have gone to go from Ast's to O'Connor's? A No, sir; that was not the direction I should have gone.

40 Q And you say that O'Connor's was over at— A Wiggins avenue and Kipp street.

Motion for Non-suit.

Q Winans avenue? A Wiggins avenue.

Mr. Nugent. The right pronunciation is Winans.

Q That is near Woodlawn Cemetery? A Yes, sir; right near there.

Q This accident happened in front of the Fairmount Cemetery? A Yes, sir. 10

Q And Fairmount Cemetery is opposite Sixteenth street on South Orange avenue? A Yes.

Q And Woodlawn Cemetery is opposite Winans avenue, is it not? A Yes, sir.

Q Now, you told Mr. McGeehan you intended turning down South Orange avenue. Had you turned into South Orange avenue before this accident happened? A Yes, I turned South Orange avenue down right opposite the saloon on South Orange avenue. 20

PLAINTIFF RESTS.

Mr. McGeehan. I want to move for a non-suit as to the defendant, Adekman. The only testimony that throws any light upon the question of the manner of happening of the accident is the testimony, I think, of Van Nortwick, coupled with the evidence of where the accident happened given by the police officer as to the scattering of glass, but outside of that there is no testimony as to how the injuries were sustained by the plaintiff. Now, Van Nortwick says, and I think this matter can be determined on the effect of his testimony, he says that the jitney bus was in the middle of Sixteenth street going slowly when the truck was fifty or seventy-five feet up Sixteenth street going rapidly, that the jitney had cleared the easterly curb all except two or three feet when the truck ran into the rear of the bus, it then being almost to a standstill. Now, that is the only testimony in 30 40

Motion for Non-suit.

10 the case as to the manner of happening of the accident and I think that that, far from supplying the necessary evidence for negligence on the part of the defendant, Adekman by a direct proof, affirmatively shows that he was not guilty of any injury that resulted to the plaintiff, and I think there should be a non-suit as to Adekman.

Mr. Matthews. In relation to the contention of counsel for Adekman, I call your Honor's attention to the fact that Van Nortwick's testimony is given while he is sitting on the right-hand side of the bus with his face almost totally away from the accident, and he says he looked up to see what happened, but I just asked Mr. Randall on the stand and he says his truck had turned fully into South Orange avenue—

20 *Mr. McGeehan.* He did not say that, "fully."

Mr. Matthews. It seems to me that the testimony of Van Nortwick, who was jitney driver and knew Adekman—jitney driver on the same line—given from the position he was in, would be unfair to grant a non-suit to the jitney driver under the circumstances of the case thus far. On the contrary, it seems to me there is no evidence on the part of the plaintiff to prove negligence on the part of the defendant, Meyer & Bush. I submit a non-suit should not be granted in favor of Adekman.

30 And, on the other hand, I think we are entitled to one.

The Court. I will hear the defense of both Adekman and Meyer & Bush and deny both motions. Your objections may be noted on the record.

40 Counsel for defendant, Adekman, prays an exception to this ruling of the Court.

Minerva Weber, direct.

Exception noted as ground of appeal.

Counsel for defendant, Meyer & Bush prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

MINERVA WEBER, sworn in behalf of defendant, Adekman. 10

Direct examination by Mr. McGeehan.

Q Where do you live, please? A 99 Bloomfield avenue.

Q And were you a passenger in the jitney bus of Adekman on the day of the accident that has been testified to here? A Yes.

Q Where were you sitting? A I was not sitting; I was standing.

Q Where were you standing? A I was about the second or third from the door. 20

Q Second or third from the front door of the jitney bus? A Yes, sir.

Q And which way were you facing, left or right-hand side of the bus? A Sixteenth street, facing Sixteenth street.

Q Sixteenth street ends on the south side of South Orange avenue, does it not? A Yes, sir.

Q And you were then facing south, or toward the right-hand side of South Orange avenue going down? A Yes, sir. 30

Q Now, was there any obstruction between you and the window? A No.

Q There was not? A No.

Q Were any persons standing between you and the window? A Not standing—Mrs. Miracle's little daughter was.

Q Were they seated or standing? A Standing.

Q Were any persons seated in front of you? A None. 40

Minerva Weber, direct.

Q Did they obscure your vision or view through the window? A No, sir.

Q Where had you boarded this bus? A Bloomfield avenue.

Q And had you ridden in that position in the bus from Bloomfield avenue down to the point of the accident? A
10 Yes, sir.

Q Now, when you got to or near Sixteenth street, what happened? A Why, the jitney stopped at the opposite corner from the saloon and took a passenger on.

Q The opposite corner from the saloon is the uptown or downtown corner? A The uptown.

Q That is towards Vailsburg or towards Newark? A Vailsburg.

Q And what street was this that it stopped at? A Sixteenth street.

20 Q And then did it proceed after that? A Very slowly.

Q And to cross Sixteenth street? A Yes, sir.

Q How far did it get before you saw something? A Why, we were past the Sixteenth street corner; I did not know anything, but after the truck hit us the jitney was on two wheels and balancing over towards the car tracks, and then we went over.

Q Where were you when the jitney was struck, or where was the jitney, I mean? A It was past the Six-
30 teenth street corner.

Q Was it past which corner? A Past the saloon corner going downtown.

Q Had it crossed Sixteenth street? A Yes, sir.

Q And was any part of it beyond the easterly or downtown corner of Sixteenth street and South Orange avenue? A No, sir.

Q Where was the front of the bus when the truck hit it? A Why, it was a good deal past the saloon on the
40 corner.

Minerva Weber, direct.

Q A good deal past the saloon. You say it had crossed Sixteenth street? A Yes, sir.

Mr. Matthews. I object to the question as leading. It is his own witness, your Honor please. She says the bus had passed the saloon, no part of it was beyond Sixteenth street.

Mr. McGeehan. No, she did not say that.

10

Q And had the bus or hadn't it crossed Sixteenth street when it was struck? A Why, we were just proceeding on when the truck hit the jitney in the rear of the car.

Q Yes, but I am asking you had the bus or had not it crossed the width of Sixteenth street when it was struck? A We were past Sixteenth street.

Q Are you speaking of the paved portion of Sixteenth street? A Yes, sir.

20

Q Now, is there a saloon on one of the corners? A Yes, sir.

Q Which corner is the saloon on? A The downtown corner.

Q The downtown corner. That would be the easterly corner, would it? A I guess so.

Q Well, the west is towards Vailsburg; east is toward Broad and Market streets; now, is it the east or west corner that the saloon is on? A The east.

30

Q The easterly. Now, you say the bus had passed the street or had crossed the street when the truck hit it? A (No answer.)

Q Was the bus moving or standing still when the truck struck it? A Going very slowly.

Q But it had not come to a stop?

Mr. Matthews. I object to that as leading and unnecessary.

Mr. McGeehan. I will withdraw it.

40

Minerva Weber, direct.

Q Had the bus come to a stop when it was struck? A We stopped at the opposite corner and picked up a passenger and were going over slow and then we were hit.

Q Had the bus come to a stop when it was struck? A Yes, sir; it went over on two wheels.

10 Q When the bus was struck by the truck was it moving or not? A I do not know.

Q Eh? A I do not remember anything after we were hit.

Q Please listen to the question, Mrs. Weber. I am asking you whether the bus was moving or not when it was hit by the truck. A Very slowly.

Q Now, what part of the bus was struck by the truck? A The rear.

Q What part of the bus? A I do not know.

20 Q Eh? A I do not know.

Q Was it the side that you were looking out of or not?

Mr. Matthews. I think, your Honor please, that question is leading.

The Court. Objection sustained.

Mr. McGeehan. I withdraw it.

30 Q Did you see what struck the bus? A Not until after they took us out.

Q Now, did you hear any sound of a collision? A No, sir.

Q Could you tell from that sound what part of the bus was struck? A (No answer.)

Q How do you know the rear of the truck was struck? A Because we was past the corner and going downtown.

Q Then, when the collision occurred what was the effect of that on the bus, just what happened to the bus then,

Minerva Weber, direct.

as you remember it? A As I remember it we were balancing on two wheels.

Q Which wheels were you balancing on, right or left?

A Facing the car tracks.

Q Nearer the car tracks? A Yes, and I do not remember anything until they picked us up.

Q Did the bus after balancing on the two wheels turn over? A Yes, sir. 10

Q And on which side did it turn over? A Towards the car tracks.

Q Would that be the left or right side of the bus?

A The left side.

Q Now, when the bus turned over you were later removed from it, were you? A Yes, sir.

Q Were you hurt? A Yes, sir.

Q Did you see where the bus was then when you were removed from it? A Lying on the ground.

Q Beg your pardon? A It was laying on the ground. 20

Q And in what position, what part of it was on the ground? A Why, it was turned over on the side.

Q On which side? A Facing the car tracks, the left side.

Q Now, where was it, if you remember, the top of the bus, as it lay on its left side, on South Orange avenue, just where was the top of the bus? A Facing the car tracks.

Q Facing the car tracks? A Yes, sir. 30

Q Do you remember if any part of the bus or if the top of the bus was on the car tracks or not? A I do not think we fell over that far; we fell over towards the car tracks.

Q Where was the bus with reference to the corner, I mean with reference to the corner of Sixteenth street and South Orange avenue, the south corner? A After it was struck?

Q When it lay on its side? A It was very near the curb facing the car tracks. 40

Minerva Weber, cross.

Q Did you see where the motor truck was, the beef truck? A No, sir.

Q Did you see any truck there beside the jitney bus after the accident? A I seen the truck.

Q You did, and where was that? A Why, the front part, the two wheels, was facing the rear of the jitney.

10 Q Facing the rear of the pitney? A Going down South Orange avenue.

Q And where were the rear wheels of the truck? A That is the back wheel?

Q Yes, the back wheels, I mean. A Facing Sixteenth street, half-way in Sixteenth street.

Q Half-way in Sixteenth street. And did you see who had been driving that truck? A No, sir; not until they took us in that saloon, and then I knew it was a colored man because the officer got him.

20 Q Did you hear that colored man make any statement or say anything after the accident? A The officer had him and he called up Meyer & Bush and he said he was in another accident.

Q He said that to Meyer & Bush? A Yes, sir; over the 'phone.

Q "In another accident"? A That is what he said.

Q Did any representative of Meyer & Bush come there pursuant to that 'phone call? A I do not know; they took me to the hospital then.

30 *Cross examination by Mr. Matthews.*

Q Were you hurt? A Yes, sir.

Q Do you remember this telephone call and what this man said, colored man said, as bad as you were hurt; did you ever talk to this man about this accident? A Never saw him in my life.

Q Did you ever talk to Mr. McGeehan and never saw him? A I saw him before.

40 Q Never talked to him about the case? A Never had an introduction until I got on this witness stand.

Minerva Weber, cross.

Q Never talked to anybody about this case at all? A My friends and my mother.

Q You were subpoenaed here? A Yes, sir.

Q And you want to tell us you never talked to Mr. McGeehan about this case? A Positive of it.

Q Or to Mr. Adekman there? A Never spoke to Mr. Adekman. 10

Q Never spoke to anybody about it? A No.

Q The bus was balancing on its left wheel before it went over? A Yes, sir.

Q You remember that, too? A Yes, sir; I remember we were hit.

Q You remember it was balancing on the left wheel. You remember also that you were standing up? A Yes, sir.

Q And you remember Mrs. Miracle's youngster was standing beside— A Mrs. Miracle was standing beside me. 20

Q How many others were standing beside you? A I did not pay any attention.

Q You even paid attention to what the colored man said in the saloon; just think a minute. How many other people were standing beside you? A I know there were people in back of me.

Q How many people between you and the driver? A There was not anybody that— 30

Q I am not asking you that. I asked you how many people were between you and the driver? A I do not remember.

Q Was there anybody? A I could not tell you; I was not looking for an accident that morning.

Q I am not asking you that. I am asking you whether there was not anybody between you and the driver. A I do not know.

Q Now, did you see Mr. Van Nortwick that day? A No, sir. 40

Minerva Weber, cross.

Q You saw him here on the stand this morning? A Yes, sir.

Q Did you ever see him before? A On the stand before?

Q I mean did you ever see him before you saw him on the stand here in court? A No, sir.

10 Q You do not remember seeing him in the bus, then? A No, sir.

Q When you got on the car at— What was the name of your street—Brookdale avenue. There were no seats? A No.

Q How far away from Sixteenth street is Brookdale avenue? A That is past the Velodrome.

Q That is the bicycle track? A Eight blocks above that.

20 Q And at the time you got on, eight blocks above the Velodrome all the seats were occupied? A Yes, sir.

Q Did any people get on after you got on? A Yes, sir.

Q How many, if you remember? A I do not remember.

Q Were there two lines of standees on the jitney bus at the time of the accident? A Yes, sir.

Q Now, you say you could see out the window; you mean the window directly in front of you? A Yes, sir.

30 Q And it was out that window that you told Mr. McGeehan that you did not see anything; what did you mean when you said, "I did not see anything; I did not see the truck"? A Coming down the street, because I was speaking to Mrs. Miracle's daughter.

Q How old is she? A Ten years old.

Q Was she standing to your left or right? A Left.

40 Q That is one person that was between you and the driver, then, isn't it, Mrs. Miracle's daughter? A The driver's seat was quite a ways away from me, from where I was standing.

Minerva Weber, cross.

Q Now, where was Mrs. Miracle? A Standing on this side, facing out towards the way where we live.

Q Up towards Vailsburg, so she was on your right-hand side? A Yes.

Q And you say the jitney bus stopped at the Vailsburg side of Sixteenth street and South Orange avenue, to a full stop? A Yes, sir. 10

Q And you were talking to Mrs. Miracle's daughter at that time and somebody got in? A Yes, sir.

Q A lady? A I cannot tell you.

Q Did she stand near you or did she go beyond you? A I could not tell you; I do not know whether it was a lady or man; I did not pay attention.

Q Was there a woman behind you? A Yes, sir.

Q There were not two lines, then, in front? A There were people, but not crowded lines, people could get in between one another. 20

Q Do you know whether you had to get out of the way to let people in at Sixteenth street on the Vailsburg end? A No.

Q You do not remember that? A No.

Q And you cannot be mistaken that the bus stopped at the Vailsburg corner of Sixteenth street and South Orange avenue to pick up a passenger? A It stopped there. 30

Q You are absolutely sure it came to a full stop? A Yes, sir.

Q And then you are just as certain that it started up again and proceeded across Sixteenth street? A Yes, sir.

Q And you are just as certain that you did not see anything but you felt an impact? A Yes.

Q And it is because you felt an impact you believe it was struck in the rear; you did not see any striking at all? A No, sir. 40

Minerva Weber, cross.

Q Then the next thing you know after the accident is that you were balancing on the left wheel, right? A Yes, sir.

Q And that is the wheel near the car track? A Yes, sir.

Q And the next thing you saw was after you were
10 taken out of the jitney bus? A Yes, sir.

Q And after you were taken out you said you saw the car had fallen over on its left side and that the front of the jitney bus was near to the car tracks? A Yes, sir.

Q And which way were you taken out, by the way? A Why, I think the whole front was broken, the doors and all on Sixteenth street, and I think they took us out that way.

Q The whole door was broken? A The whole jitney went to smash.

Q Did you say the door side was impossible to get
20 out? A It was laying down and we had to crawl under.

Q How was the door? A I could not tell you; I was too excited.

Q Where were you taken out, through the front part? A Yes, sir.

Q That was all smashed up? A Yes, sir.

Q And after you were taken out you noticed that the front wheels of the truck which had this impact were in South Orange avenue and that the rear wheels were in
30 Sixteenth street? A Yes, because—

Q That is right, yes or no, that is what you noticed, is that right? A Yes, sir.

Q The front wheels were in South Orange avenue and the rear wheels were in Sixteenth street? A Yes, sir.

Q Then you were taken into a saloon? A They sat us on the curb first.

Q And then after you went in the saloon? A Yes, they took us in the saloon and called an ambulance.

Q And then you heard Randall telephone? A Yes.

Q Who else was there? A A lot of people.
40

Sadie A. Miracle, direct.

Q Did you see this officer that was on the stand this morning? A No, I do not remember.

Q Did you see any policemen there at the time? A There were a lot of policemen there at the time.

Re-direct examination by Mr. McGeehan.

Q How did you happen to hear the conversation on the telephone between the driver and supposedly Meyer and Bush? A Well, after they took us off the curb and took us inside, why, my arm was stiff and Dr. Danzy came over to attend me, and we were all standing around there and there were two officers had this colored man, and they told him to call up the employer. 10

Mr. Matthews. I object to what they told him.

Q Was it then you heard him speak to his employer? A Yes, sir. 20

SADIE A. MIRACLE, sworn in behalf of defendant Adekman.

Direct examination by Mr. McGeehan.

Q Where do you live? A 99 Brookdale avenue.

Q And were you a passenger in the jitney bus which figures in this accident? A I was.

Q Where were you riding, Mrs. Miracle? A I was riding downtown. 30

Q Were you seated or standing in the bus? Just what was your position in the bus? A I was standing, the third one from the rear, facing the right at Sixteenth street.

Q Now, were you with Mrs. Weber? A Yes, sir.

Q Had you met in the bus or were you going downtown together? A We were going downtown together.

Q And were you standing next to her? A Yes, sir.

Q What was the first knowledge you had of an accident or an impending accident? A Why, the jitney slowed 40

Sadie A. Miracle, direct.

down at the far side of Sixteenth street and he started up and was going very slowly, and when he got about half way across the street I saw this big truck coming at such a rate of speed and I noticed he did not make any attempt to slow down, and I felt there would be an accident if he did not swerve enough to avert it.

10 Q When you first saw it the jitney was in the middle of Sixteenth street? A Yes, sir.

Q How far up Sixteenth street was the truck at that time? A Why, I should judge anywhere's between thirty and fifty feet; it was about the same width of the street back, the length would be equal to the width of the street.

Q Can you indicate in this court room how far it was from you when you saw it? A As near as I can judge it would be about to the first row of seats.

20 Q To the first row of spectators' seats? A Yes.

Q Where in the street was the truck driving at that time? A It was driving to the right.

Q To the right? A Yes.

Q Was it nearer the curb or nearer the center of the street? A Well, it was not in the center of the street; he was more to the right.

Q Was he near the center? A Well, I do not know. I know he was not driving right down the middle of the road; I know he was to the right.

30 Q Was he nearer to the curb or nearer to the center of the street? A I should judge he was nearer to the curb.

Q Now, at that time how far was the front of your bus from the corner of Sixteenth street and South Orange avenue, from the south corner? A You mean at the time I saw the truck?

Q Yes; how far from the corner was the front of the jitney bus? A Well, he had crossed the center because I was the third from the rear; the front of the jitney had
40 crossed the center of Sixteenth street.

Sadie A. Miracle, direct.

Q I see. Were you in the center of the street when you saw the truck? A Yes, sir.

Q The position you personally were in? A Yes, sir.

Q And then the bus had gone beyond the center, the distance of you to the front of the bus? A Yes.

Q Do you know about how many feet there is from a point of the third passenger to the rear to the front of the hood of a bus, of this bus? A I could not really tell you; it was a small jitney; just the exact feet I could not tell you. 10

Q How many feet were you from the rear panel, the extreme rear of that bus? A Why, I was the third person.

Q The third person. Well, just how far, can you indicate with your hands about the number of feet you were from the rear of the bus? A I do not like to exaggerate and still I would not like to underrate it either. 20

Q How many people were seated between where you were and the end of the bus on the lengthwise seat? A About three people.

Q And you were the width of three people seated from the end of the bus? A Yes, sir.

Q And it was then the truck was thirty or fifty feet on Sixteenth street? A Yes, sir.

Q Now, did you continue to watch the truck? A Yes, sir. 30

Q Did you see it come into collision with the jitney bus? A Well, I cannot say that I just saw it strike. He was at the sidewalk which was not more than two or three feet away from us the last I saw of it.

Q Who was at the sidewalk? A The truck, the big truck when he got so close I was relieved; I thought that we had escaped the accident; I thought that within that time he had put on the brakes or something.

Mr. Matthews. I object to what she thought. 40

Sadie A. Miracle, direct.

Q And you continued to watch the truck, did you? A Yes.

Q Do you know where the jitney bus was, where the rear of the jitney bus was when the collision took place?

A Well, the rear of the jitney bus could not be more than two or three feet over from the sidewalk, that is
10 extending over the curb.

Q Extending over the curb into Sixteenth street? A Yes, sir.

Q And where was the rest of the jitney bus? A The front part of it?

Q All except those two or three feet. A Well, it had crossed Sixteenth street and was on South Orange avenue.

Q You say it had crossed? A Yes, sir.

Q Now, what part of the bus came in contact, if you know, with the truck, or what part of the bus was struck
20 by the truck? A Why, I should judge the rear right-hand corner.

Q Now, did you see the truck at the time of the contract? A No, sir.

Q Eh? A I did not see it.

Q Where were you looking or what did you do at the time? A Why, when the truck got within two or three feet of us I thought—not knowing anything about it I thought the truck had stopped.

30 *Mr. Nugent.* I object to what she thought.

Mr. McGeehan. I will consent that that be stricken out.

Q And when the truck was within three feet or you what did you do or where did you look? A I turned my head to see who was coming in the jitney.

Q Had the jitney come to a stop at that time? A Not quite.

Q Was it almost at a stop, Mrs. Miracle? A Yes,
40 sir.

Sadie A. Miracle, direct.

Q And you looked to see who was getting on? A Yes, sir.

Q Was someone getting on at that time? A Yes.

Q Were they in the act of boarding the bus then? A That I cannot really tell you.

Q Did you say whether there was anyone waiting for it? A There was a woman waiting. 10

Q A woman waiting? A Yes, sir.

Q Now, when you saw the truck of Meyer and Bush three feet away just where was it then and what direction was it going in? A The Meyer and Bush truck was coming over Sixteenth street.

Q When you saw it the last time before the accident did you see it up to within three feet of your jitney? A Yes, sir; I did.

Q Which direction was it pointing then? A North. 20

Q North? A Yes.

Q Had it turned in any direction from its course along Sixteenth street? A No, sir.

Q Was there anything in the entire width of Sixteenth street in front of that truck? A No, sir.

Q Was there anything to obstruct its passage into South Orange avenue? A No, sir.

Q Were there any other vehicles on South Orange avenue that would prevent its turning into— A No, sir. 30

Mr. Matthews. I object to that question, your Honor please. She is not competent to testify.

The Court. I will admit it.

Counsel for defendant, Meyer & Bush Company prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q I think you answered no. A I answered no.

Q What happened to the bus when it was struck? A When it was struck it partly turned over and naturally 40

Sadie A. Miracle, cross.

the people falling over threw it over and it went down on its side.

Q Which side did it fall on? A The left side.

Q Did you notice when you were taken out of the bus how near to the car tracks the top of it was, or any portion of it was? A Why, as near as I can remember it
10 was thrown right over on the car tracks.

Q Right over on the car tracks? A Yes, sir.

Q What part of the bus was on the car tracks? A Why, the left-hand side.

Q Eh? A The left-hand side.

Q And how many feet, if you know, did any part of the bus protrude over the car tracks? A Why, as near as I can remember the whole side was; it was practically on the nearest car track.

Q The side was? A Yes, sir.
20

Q Now, do you know how far the bottom of the wheels were away from the car track? A No, sir; I did not notice when I got out.

Q Do you know whether the truck lay parallel with the car tracks or one end nearer than the other to the curb? A Why, the rear was swung around so that it was—that the front wheels were toward the gutter, the rear of the truck was on the car tracks.

Q Did you hear any remark or statement made by the driver of the truck immediately after the accident? A
30 Yes, sir; I heard the same as Mrs. Weber.

Q What did you hear? A I heard him telephone to Meyer & Bush and ask for Mr. Meyer and he told him he had an accident and told him where it was.

Q And told him where it was? A Yes.

Q Do you know whether Mr. Meyer came up there? A I was taken to the hospital.

Cross examination by Mr. Matthews.

Q You say he asked for Mr. Meyer? A Yes.
40

Sadie A. Miracle, cross.

Q You cannot be mistaken about that name? A Positively not.

Q That is the name he asked for, Mr. Meyer? A Mr. Meyer.

Q You tell me that you were standing up in the bus? A Yes, sir.

Q And your little daughter and Mrs. Weber were with you, is that right? A Yes, sir. 10

Q And did the bus stop on the Vailsburg end of Sixteenth street and South Orange avenue to pick up a passenger? A We stopped—whether we picked a passenger or not I cannot say.

Q He did stop? A Yes, sir; he did.

Q A full stop? A Yes, sir.

Q And you don't know whether he picked a passenger up or not? A I don't know.

Q And then he started up again? A Yes, sir.

Q And he was going to pick up another passenger on the other side of the street, that is your testimony? A Yes, sir. 20

Q And you were looking out of the window as you were crossing Sixteenth street, is that right? A Yes, sir.

Q Were there people sitting in front of you? A They were sitting, yes.

Q And were there people to your right? A Yes, sir.

Q And were there people to your left? A Yes, sir. 30

Q Standing? A Yes, sir.

Q On both sides of you? A Yes, sir.

Q And had you been talking to Mrs. Weber at all? A No, sir.

Q Now, it was while you were in that position, standing three feet from the end of the bus with people standing on your right and people standing on your left, and and people sitting on the seat in front of you that you saw the truck thirty or fifty feet up Sixteenth street? A Yes, sir. 40

Sadie A. Miracle, cross.

Q And you saw it after the jitney had started from the Vailsburg corner of Sixteenth street and South Orange avenue, is that right? A Yes, sir.

Q Because it had made a full stop there? A Yes, sir.

10 Q It was in the middle, however, of Sixteenth street at the crossing that you first noticed the truck, is that right? A Yes.

Q About the middle. Do you know how wide Sixteenth street is at that point? A I do not.

Q Can you give us an estimate about that by distance in this room? A I have heard it testified here in court that it is fifty feet.

Q Whom did you hear testify to that? A I could not tell you just now—somebody that was on the stand.

20 Q Some lady? A Some man.

Q So you think it was fifty feet wide? A I have no idea of distance.

Q You have no idea of distance? A Not in feet at all.

30 Q Then when you tell Mr. McGeehan that the truck was thirty or fifty feet up the street that idea of distance is not at all accurate; you haven't any idea in feet? A Just judging from what I have heard the width of the street was; I have heard it was fifty feet and I told them the distance up the street was the width of the street.

Q You just told me now you had not any idea of distance in feet, and so when you tell me you saw the auto truck fifty feet up the street you are rather guessing because of you not having any idea of distance in feet, is that right? A I answer as best I can. Mr. McGeehan asked me for the distance in feet and I answered him the best of my ability, hearing it in court here.

40 Q Answer me to the best of your ability now. Is the distance thirty or fifty feet when you told Mr. McGee-

Sadie A. Miracle, cross.

han a guess, because you have no idea of distance in feet? A Yes, sir.

Q Now, thank you. The jitney bus was in the middle of Sixteenth street when you saw this truck up thirty or fifty feet, the distance that we are talking about? A Yes, sir.

Q So this jitney bus had to travel about twenty-five feet before it came to the corner, is that right? A That is my recollection. I was standing, but the front of the bus was beyond that; I was the third from the rear and I am speaking from where I was at the center of Sixteenth street. 10

Q The front of the bus was even beyond that? A Yes, sir.

Q So it had less than twenty-five feet to travel while the auto car was going the rest of the way? A Yes.

Q Now, where was the jitney bus exactly when you last saw the auto car, the beef truck? A The jitney bus? 20

Q Yes. A The jitney bus was slowing down.

Q Where was it? A At Sixteenth street.

Q Eh? A At the south-east corner of Sixteenth street.

Q It was at the corner when you last saw it? A Yes.

Q And when you last saw it the auto truck was only two or three feet away from the jitney, right? A Yes, sir.

Q And then your attention was diverted to a passenger getting on, is that right? A Yes. 30

Q And you did not see any more? A Yes, sir.

Q But you did see there was a woman waiting there? A Yes, sir.

Q Waiting on the Newark side of South Orange avenue and Sixteenth street? A Yes, sir.

Q So that between the time you saw the truck two or three feet away and the time of the impact you had looked and you saw the woman standing waiting to board that jitney, is that right? A Yes, sir. 40

Sadie A. Miracle, re-direct.

Q Now, you say that when the jitney was thrown over that the left-hand side, the whole of that side, you said to Mr. McGeehan, was practically on the nearest car tracks, is that correct? A Yes, sir.

Q How were you taken out? A I walked out.

Q How? A I walked out.

10 Q You walked out? A Yes, sir.

Q Before or after it was righted? A Before.

Q Which way? A Out through the front.

Q Over the engine way? A As near as I can remember, the whole front was torn open; I walked out the front, that is, the front of the bus.

Q The whole front was torn open right? A Yes, sir.

Q Where was the front of the jitney bus when the stop was made on the Vailsburg end of Sixteenth street and South Orange avenue? A The truck?

20 Q The front of the jitney bus when you made the stop nearest to Vailsburg? A Why, I do not just remember. He stopped where he always stopped; there is a stone cutter's place there, and the people mostly always stand right near the telegraph pole there.

Q At the corner? A Yes, sir.

Q There was nothing to obscure the view of Meyer & Bush's driver and there is a stoneyard there, but the driver could have seen that jitney bus, couldn't he? A Yes, surely.

30 *Re-direct examination* by Mr. McGeehan.

Q When you said the front of the jitney bus was torn out, what did you mean, what part of the truck, Mrs. Miracle? A Why, where the motor is and the glass.

Q Where the windshield is? A Yes, sir.

Mr. Matthews. I object to his leading the witness.

The Court. I sustain the objection.

Albert J. Henderson, direct.

Q Do you know what composes that front part of the jitney bus that was out, what material it is made of?

A It is the framework and glass and then the motor.

Q What part was out; what was out of the front part that you have spoken of? A Why, all the glass, framework; it was all torn out.

Q Was all the glass out? A Yes, sir.

10

Q Do you remember whether any of the framework was broken or torn? A I could not really tell you accurately.

ALBERT J. HENDERSON, sworn in behalf of defendant Adekman.

Direct examination by Mr. McGeehan.

Q Where do you live? A 69 St. Paul avenue.

Q And what is your business? A Salesman.

20

Q Were you a passenger in the jitney bus that figured in this collision? A I was.

Q Were you seated or standing? A I was seated behind the driver, the next seat behind the driver.

Q That was on which side of the bus, left or right? A On the left-hand side.

Q Where had you boarded the bus, Mr. Henderson? A At St. Paul avenue.

Q And were still riding in it at the time it turned over? A Yes, sir.

30

Q Did you see the truck that has been testified about before the accident occurred? A Just for a moment.

Q And when you saw it for a moment where was it? A Well, just as I saw it the bus turned over; I just saw it a short fraction of a time before the bus turned over.

Q And where was it then? A Where was it then?

Q The truck, just before you saw the bus turn over? A It was in Sixteenth street.

40

Albert J. Henderson, direct.

Q Where was the bus when it was struck, just describe the position that that was in? A It was on South Orange avenue, on the easterly corner of Sixteenth street and South Orange avenue.

10 Q When you say it was on the easterly corner just what do you mean, what was its position with respect to the curblineline of Sixteenth street and South Orange avenue?

A Well, it was a few feet past the curblineline and it was coming to a stop.

Q Do you know how much of the rear of the bus was not past the curblineline of Sixteenth street at the time of the striking? A No, I could not say just now.

Q How much of the bus was past the corner or past the easterly side of Sixteenth street when it was struck?

A Just about a few feet beyond the door.

20 Q A few feet beyond the door? A Beyond the door, yes.

Q Now, was the hood past? A Yes, sir.

Q Was the door past and step? A Yes, I believe it was.

Q And a few feet in addition to that? A I believe so, yes.

Q Do you know what the width of Sixteenth street is at that point from curblineline to curblineline? A I judge about forty feet.

30 Q Do you know whether there were any other vehicles in Sixteenth street or South Orange avenue in front of the forty-foot width of Sixteenth street at the time?

A There were no vehicles in Sixteenth street; I do not think there were any in South Orange avenue.

Q What would you judge the length of the jitney bus to be from the front of the hood to the rear of the body?

A About thirty feet, thirty-five feet.

Q The length of the jitney bus? A I am giving an awful wide bus—I don't know.

40

Albert J. Henderson, direct.

Q How does it compare with the width of Sixteenth street? A Well, I guess two of them would fit in there in Sixteenth street, lengthwise.

Q Can you indicate in this room from where you sit—stand up if you wish—what in your opinion is the length of that jitney bus? A About the distance of the end of the rail here down to the end of that rail there (indicating)—this railing here. 10

Q The length of the rail of the jury box? A Of the jury box, yes. It might be a little bit longer, I don't know.

Mr. McGeehan. Has your Honor the measurement of the rail?

The Court. No.

Mr. McGeehan. May I ask that that be measured? 20

(Rail measurement by Mr. Sullivan as 12 feet 5 inches.)

Q Now, after the collision between the two vehicles, Mr. Henderson, did you observe the position the jitney was in in the street after it was over, when you got out? A When I got out, I was the last one to get out, the rear of the jitney bus was over towards the car track and the hood of it was facing the curb.

Q Now, how near to the curb was the hood of the jitney bus? A Oh, a couple of feet. 30

Q Well, indicate from where you sit how far it was? A I would say it was about three or four feet, anyway.

Q You think it was three or four feet away? A Yes.

Q And the rear of it was nearer to the car tracks? A Yes.

Q Did you see whether there were any marks on the rear of the jitney bus? A No, I do not remember.

Q You do not remember that. Do you know what part of the jitney bus was struck by the truck? A No, I could not say. 40

Albert J. Henderson, direct.

Q Did you see the compact between the truck and the jitney bus? A No, I do not remember seeing it.

Q Did you hear it? A I heard the crash, yes.

Q Where did the crash come from? A It sounded—well, it came down, further down from where I was sitting.

10 Q Further down where? A Toward the end of the bus.

Q When that crash was heard by you did you see what effect it had on the condition of the jitney bus? A I did not see, but I felt.

Q What did you feel? A I felt it turned, sort of a turning over and I went to get out and I got ahold of the railing. I went over faster than I could get up.

Q It went faster than you could get up after the crash and before it toppled over? A Yes, sir.

20 Q And when you left the bus, did you see where the truck was standing? A That was around Sixteenth street when I got out of the bus.

Q Sixteenth street? A Yes, sir.

Q Do you know whether it had been moved from the time of the accident up till the time when you saw it? A If I remember right I think they were just walking away from pushing it around, from pushing it back.

Q Did you see them pushing it? A I cannot say I did. I saw—there was a crowd around and I saw some men getting her; it appeared to me as though they were—

30 Q Not what appeared to you. Did you see? A No, I cannot say I saw a person around.

Q Where was the truck when you saw it? A In Sixteenth street.

Q Was any part of it in South Orange avenue? A No, not at that time.

Q Not at that time? A No, not at that time; no, sir.

Q Did you see any marks on the truck? A No, sir; I didn't look.

Albert J. Henderson, direct.

Q Did you see—who was driving the truck when you saw it before the accident? A A colored gentleman.

Q Would you recognize him if you saw him now? A Well, not from the view that I had of the truck, but I recognize him from being around the truck after the collision.

Q Did you hear him say anything after the collision? 10

Mr. Matthews. I object, if your Honor please, as not part of the *res gestae*.

Q Immediately after the accident occurred? A No, I was in the bus before I got out.

Q Were you the last one to get out of the bus? A The last one to get out of the bus.

Q How long a time elapsed from the time of this accident until you got out of the bus? A It appeared pretty long—three or four minutes. 20

Q When you got out was the crowd congregating? A They were, yes.

Q What was the colored man doing then? A I think he was either standing alongside of the truck, I believe—I was nowhere near the crowd; I came out of the front of the bus where the windshield was, and when I came out I saw a colored gentleman at the side of the truck.

Q Answer this yes or no. Did you or did you not hear the colored man say anything at that time? A No; I would say no. 30

Q Did you hear him say anything afterwards, yes or no? A No.

Q Where were you taken after you were taken out of the bus? A I just wandered around there for a few minutes and then I went in the saloon and I had a drink and I had a sample case on the front of the jitney bus and I had forgotten all about it for four or five minutes and then I went back to get it and the car was laying on top of that; when they righted the car I took that off. 40

Albert J. Henderson, cross.

Q Were you in the saloon at any time when the colored man telephoned to anyone? A I might have been in, but I did not pay any attention to it.

Cross examination by Mr. Matthews.

10 Q Did you say, Mr. Henderson, that you got on the bus at St. Paul avenue? A Yes, sir.

Q What time of morning was it? A About ten o'clock, I guess.

Q You were going to business? A I was going to business; yes, sir.

Q And did the bus stop on the Vailsburg end of Sixteenth street and South Orange avenue? A I do not remember whether it did or whether it did not.

20 Q Do you remember testifying up in East Orange court in a case, in which I was counsel, involving this accident? A I remember a few things; I do not remember everything.

Q Do you remember saying at that time that the bus did not stop on the Vailsburg end of Sixteenth street and South Orange avenue? A I do not remember saying that, I do not remember; I do not think it did stop there; I know it stopped on the lower corner.

30 Q Your best recollection is that it did not stop on the Vailsburg end of Sixteenth street and South Orange avenue? A I do not think it did; that is my best recollection.

Q And your recollection in the trial in September, 1919, was that too, was it not, that was the trial at East Orange? A That is the same trial you were in?

Q Yes. A Yes, I would say so.

Q That was your recollection, that it did not stop at the Vailsburg end of South Orange avenue and Sixteenth street? A Yes, sir.

40 Q It was slowing down to stop at the opposite side? A Yes, sir.

Albert J. Henderson, cross.

Q Do you know whether he came down in the car tracks any distance at all? A Well, how far preceding the accident?

Q Well, say from Nineteenth street to the scene of the accident, was he tracking? A I do not remember that now; I do not remember that.

Q Were there people standing in the jitney bus? A 10
Yes, there were a few.

Q How many? A I don't know.

Q Did you see the lady that was on the stand last, Mrs. Miracle? A No, I did not see her.

Q Did you see Mrs. Weber? A No, I do not remember seeing her.

Q Or the Miracle little girl? A No.

Q Did you see Van Nortwick? A I believe I did; yes, sir.

Q He was sitting right opposite you? A Sitting in 20
the front seat, yes, that is right—sitting in what they call the door seat, he would be facing me if he was sitting straight; I do not know how he was sitting for the time, whether he was straight or whether he turned around, or what he did.

Q If he was sitting straight on the seat his back would be to South Sixteenth street and his face towards you? A Yes, sir; it is uncomfortable seat and many a time he had to turn the other way. 30

Q You do not know whether he was facing you? A I don't know.

Q And you say you did not see the auto car at all until— A Just a moment later; the vision I had of it I was looking out—the seat I was seated in was somewhat in the position I am sitting in now; there is a rest in back of the driver like this (indicating), and I was looking out the windshield, out through the hood of the car all the way down; of course, I occasionally turned to look over a side street, and as we were crossing Sixteenth 40

Albert J. Henderson, cross.

street, the distance, I do not know just where it was, I know we were headed for the easterly curb.

Q You were headed for a curb? A Yes, sir; the bus was headed for the curb.

Q You do not know whether he had tracked up to that point; by tracking I mean riding in the car tracks?

10 A No, we were not in the car track, we were over, we were closer to the curb before we struck Sixteenth street, I know that.

Q Which end of Sixteenth street, the Vailsburg end or the Newark end? A The Vailsburg end. We were—we were not in the car tracks from Seventeenth to Sixteenth street.

Q You know that at any time you cannot be mistaken? A I am positive we were not in the car tracks.

20 Q Do you remember saying in East Orange that you were tracking from Seventeenth street to the scene of the accident? A I do not remember.

Q Well, was your recollection any better then than it is now. A Well, the case was younger then than it is now.

Q Two years younger? A Yes.

Q And you say you think the length of the jitney was about the length of the rail in front of the gentlemen of the jury? A Yes, the bus, the body of it, I would judge.

30 Q Exclusive of the motor? A Yes, oh, yes, I believe the whole bus would be eighteen or twenty feet; I have not measured it; I had no occasion.

Q Eighteen to twenty feet? A Yes, sir.

Q And you approximate that width at Sixteenth street is about forty feet? A Yes, sir.

Q And you also told Mr. McGeehan that you think that two of those buses would fit in that straight? A Lengthwise, yes. Some are larger than others.

40 Q And you did not see the accident? A I did not see it, I felt it; I was in the other end of it.

Samuel Adekman, direct.

Q You did not see it? A I did not see the accident.

SAMUEL ADEKMAN, defendant, sworn in his own behalf.

Direct examination by Mr. McGeehan.

Q You are one of the defendants in this case, are you not? A Yes, sir. 10

Q And did you operate the jitney bus figuring in this case on April 14, 1919? A Yes, sir.

Q And were you the owner of that bus? A Yes, sir.

Q What line did you operate on? A South Orange.

Q What route did that carry you over; what was your route on the South Orange line, what street would you cover on your running on the South Orange avenue line; where would you go from and to where? A Going from the tubes up and down. 20

Q Up and down what street? A South Orange avenue.

Q What direction were you driving your bus the day this accident happened? A Downtown.

Q That is east? A Yes, sir.

Q Where had you made your last stop, as you remember, before this accident? A The last stop.

Q Yes. A Sixteenth street.

Q What side of Sixteenth street did you stop on? A The opposite corner. 30

Q The opposite corner from the accident? A Yes, sir.

Q And after you stopped there did you proceed to cross Sixteenth street? A Sure.

Q Answer so the stenographer can hear. A I was across Sixteenth street.

Q How far—when did you see first the truck of Meyer & Bush company? A When I come to the west corner I saw him. 40

Samuel Adekman, direct.

Q When you came to the west corner? A Yes, sir.

Q How far up Sixteenth street was he then? A Well, he was probably one hundred feet or more.

Q That is when you were at the west corner? A Yes, sir.

10 Q Then what did you do? A I crossed Sixteenth street.

Q Did you cross slow or fast? A Not very fast because there was a lady standing on the corner of Sixteenth street, eastern corner, and I stopped for that lady.

Q A lady was standing there? A Yes, sir.

Q And where were you when the truck came into collision with you? A I was right on the corner.

Q On the corner? A Yes, sir.

20 Q Had your bus come to a standstill or not when it was struck? A Pretty near come to a stop.

Q Pretty near; not quite? A No, sir.

Q When you were in the middle of the street, the middle of Sixteenth street with your bus did you notice where the truck was then? A Did I notice where the truck was then?

Q Yes. A In Sixteenth street.

Q Yes. But how far up Sixteenth street was he then, about? A When I was in the middle of the street?

Q Yes. A That was about fifty feet away.

30 Q And when he struck you what part of your car was hit? A Why, it must have hit the rear.

Mr. Nugent. I object to what he must have done; I think he ought to testify to what he knows.

Mr. McGeehan. I will consent that that be stricken out.

The Court. Strike that out.

Q Do you know where he struck you with his truck?

40 A In the rear.

Samuel Adekman, direct.

Q In the rear? A Yes, sir.

Q And what happened to your truck after, or to your bus, after the truck struck you in the rear? A Turned over.

Q Where did it turn over? A On the left side.

Q Did you get out of the bus after the collision? A Yes, sir; I was the last one. 10

Q What was the condition of the bus after it had capsized; after it had turned over what was broken on it, what was the damage to it? A The whole body was broken.

Q Sir? A The whole body was broken.

Q Was it broken in the rear? A Pretty near the whole body was shot?

Q Was there any glass in it that as not broken? A All the glass was broken, all the windows were broken.

Q Now, what is in the front of your bus, Mr. Adekman, in front of you as driver? A Windshield. 20

Q What is the windshield made of? A Glass, too.

Q And how much glass is there there? A Why—

Q What is the size of that windshield glass in front? A There is two glasses and a windshield opens up?

Q Do they extend the width of the front of the bus? A No, sir; just the height.

Q Didn't the windshield extend from side to side of the bus in front? A It is not complete through the bus.

Q Is it complete through the front of the bus? A Yes, sir. 30

Q And how high is it in front of the bus, how wide, what is the height of it from the bottom to the top about, the windshield? A I cannot tell you that.

Q About how high? A About as high as this (indicating).

Q Indicating about two feet? A I could not tell you; it is about this width (indicating.)

Q Now, was that broken after the accident? A Yes, sir. 40

Samuel Adekman, cross.

Q Were the glasses or panes of glass broken in the sides after the accident? A What?

Q Were the panes in the windows on the side of the bus broken after the accident? A Yes, sir.

Q Did you look at the truck that ran into you after the accident? A I did.

10 Q Was there anything damaged on that that you could see? A No, sir.

Q Did you look at the mudguards on the truck? A I did look at—all over the truck.

Q Did you see any damage to it? A No, sir.

Cross examination by Mr. Matthews.

Q Mr. Adekman, do you remember testifying in the East Orange District Court in one of these cases in which I was counsel? A Yes, sir.

20 Q When did you first see the auto truck? A When I first seen it?

Q Yes. A When I came to the first corner.

Q Did you stop at the first corner? A First?

Q You did not stop and pick up a passenger at the first corner? A No, sir.

Q You did not come to a stop on the Vailsburg end of Sixteenth street and South Orange avenue? A No, sir.

Q That is positively so? A Yes, sir.

30 Q And on the Vailsburg end of Sixteenth street and South Orange avenue was a stoneyard, isn't there? A There was.

Q And there was nothing to obstruct the vision of a truck beyond that stoneyard? A No, sir.

Q Nor your vision across that stoneyard of that truck; there was nothing to obstruct your vision across that stoneyard up to the auto truck? A There is a little shanty.

40 Q There is something to obstruct the vision of the driver of the auto truck, is that right? A Yes, sir.

Samuel Adekman, cross.

Q And had you passed the shanty when you first saw the auto truck? A Come to the corner.

Q Is the shanty right on the corner? A No, sir; on the line, on that stoneyard.

Q Was it on the corner of the stoneyard? A That is something like between the lot, you know.

Q I don't know. A There is a lot there—stones there. 10

Q There are stones there? A Wood on the place there; the shanty is something like a little further away from the curb.

Q So that you had to pass the shanty before you saw the auto car, is that right? A Yes, sir.

Q And what was the position of your jitney when you first saw the auto car with reference to the Vailsburg end of South Sixteenth street? A When I first saw the auto truck I was on the west corner. 20

Q That means the front of your jitney bus or the rear of it was at the west corner? A The front of it.

Q You had not yet started to cross Sixteenth street? A No, sir.

Q Right? A Yes, sir.

Q And at that time you say the auto car was one hundred feet up Sixteenth street? A Yes.

Q And that there was a lady standing on the south corner, that is on the opposite corner, rather? A On the east corner. 30

Q On the east corner, yes. So it was when you were at the upper corner that you saw the auto bus for the first time? A Yes, sir.

Q On the Vailsburg corner? A Yes, sir.

Q Now, you changed your speed, didn't you, when you came to Sixteenth street at the opposite corner to pick up that woman? A I did.

Q And at what speed were you going when you changed? A I was coming probably six or eight miles an hour. 40

Samuel Adekman, cross.

Q Do you remember testifying in the East Orange District Court that you were going twelve miles an hour?

A Twelve miles an hour.

Q Yes. A I did over the road.

Q I mean at Sixteenth street. A Not on that speed.

10 Q Where had you changed from twelve miles an hour to lower? A When I saw that passenger.

Q And when did you first see that passenger? A When I first saw him?

Q Yes. A I was between here—between Seventeenth street and Sixteenth street.

Q You saw him half way up the other block? A Yes, sir.

Q Was it a him or a her? A It was a lady.

20 Q And then in the middle of the block between Sixteenth and Seventeenth street and before you saw the auto car you changed your speed from twelve to lower?

A I changed my speed when I came to the last corner.

Q To the west corner of Sixteenth street? A Yes, sir.

Q And what was your speed when you came to the west corner, before you changed—from twelve miles an hour, how do you fix that? A How do I fix it?

Q Yes, how do you fix it? A Yes, I was going twelve miles an hour; I had a speedometer on.

30 Q And you looked at it at the corner of Sixteenth street and South Orange avenue? A I did not look at the speedometer, but I knew the rate of speed I was going all the time and I was going that time the speed that I was going all the time.

Q And you never exceeded twelve miles an hour from the time you left your point of starting until you reached Sixteenth street? A I always slow up when I see a passenger.

40 Q You never went at a speed of greater than twelve miles an hour from the time you started until you

Samuel Adekman, cross.

reached Sixteenth street and South Orange avenue? A I did change.

Q But you never went more than twelve miles an hour? A Never.

Q What time did you start on that trip? A I could not tell you; I know it was ten-thirty when that accident happened. 10

Q You were standing third in the line? A Ten-thirty when the accident happened.

Q You cannot be mistaken about that time? A No, sir; I remember it was ten-thirty.

Q How do you remember? A I remember because I looked at my watch.

Q Did you look at your watch before or after you were hit? A No, sir.

Q "No, sir" means yes? A When the accident happened I took out my watch because I wanted to make out a report, and it was ten-thirty. 20

Q Now, where were you sitting when you took out your watch? A Where was I sitting?

Q Yes. A Outside.

Q Outside? A Outside of the car after the accident happened.

Q Don't you know, as a matter of fact, it was five minutes of eleven when this accident happened? A No, sir. 30

Q You are absolutely certain it was not? A Exactly ten-thirty.

Q And your watch was keeping correct time that day, wasn't it? A That I could not tell.

Q Then, you do not know whether it was eleven or ten-thirty? A My watch was going.

Q What kind of a watch was it? A The same kind I got now (indicating).

Q Keep good time? A Yes, sir.

Q Was it keeping good time that day? A Yes, sir. 40

Samuel Adekman, cross.

Q So you are reasonably certain your watch was going? A Yes.

Q It was that watch you looked at and it said ten-thirty? A Yes.

Q And you looked at it right after you got out of the bus? A Yes, sir.

10 Q What did you change your speed to—from what to what? A To pick up the passenger.

Q What speed did you change to? A To six and eight miles an hour.

Q How many speeds are on your bus? A How many speeds?

Q Yes, how many speeds—one, two or three? A Three speeds.

Q And were you in first speed or third when you changed? A Yes.

20 Q Were you in first, second or third when you changed the speed? A No, sir; I was in high speed at that time.

Q You were in high speed when you changed? A Yes, sir.

Q What is the best time you get out of it on high speed? A Eh?

Q What is the best time you get on the high speed on that jitney? A She was—about eighteen miles an hour.

30 Q And how did you reduce from eighteen to twelve? A I slackened up on the gas.

Q When did you slacken up on your gas? A As soon as I came to Sixteenth street.

Q So you slackened up from eighteen to twelve when you came to Sixteenth street? A No; I slackened from twelve to six.

Q Did you look at the speedometer to see whether it was six or eight? A No.

40 Q How do you judge it was six or eight? A I had ridden on there enough and I think I can judge.

Samuel Adekman, cross.

Q What is the fastest time you get out of second speed? A I could not tell you.

Q What speed do you have to be in to stop your car? A About two miles an hour.

Q About two miles an hour? A Three miles, something like that.

Q Two to three miles an hour. Now, when did you give her the gas to reduce her from two to three miles an hour? A When did I give the gas? 10

Q Check the gas, or whatever you do? A When I came to a stop.

Q Had you already passed the corner when you came to two or three miles an hour? A Pretty near.

Q And your car had passed the corner of Sixteenth street and South Orange avenue when you came to the stop; what corner, the Newark corner, the down corner? A It was not exactly cleared the corner; about two feet behind the corner. 20

Q How do you fix that distance of two feet behind the corner? A Something like that; I cannot tell you exactly.

Q Why do you say two feet? A I judge.

Q How long is your truck? A Between eighteen and twenty feet.

Q Eighteen to twenty feet long? That is from the front of the engine to the rear of the body? A Yes, sir. 30

Q And how wide is it? A That I could not tell you.

Q Can you give us an idea? A I cannot tell you; I cannot give you the least idea.

Q What is the gauge of it, how wide is it between the wheels? A I cannot tell you that.

Q Can you track with it, can you run it in the car tracks? A Yes.

Q You did not run in the car tracks at all that day, did you? A No, there is no idea to get on the car tracks when the road is clear. 40

Samuel Adekman, cross.

Q (*By the Court.*) The road was clear all the way from the time you started to the time of the accident? A About that spot.

Q Was the road clear all the way from the point you started up to the point of the accident? A I do not know.

10 Q So you don't know whether you were on the track at any point at all? A I was not on the tracks.

Q At any point? A No, sir.

Q That is correct; you cannot be mistaken about that? A That is right.

Q Eh? A Not on the track at all.

Q How many people were in your bus? A Well, when I come to Sixteenth street there was about sixteen people or seventeen, something like that.

Q And how many does your bus seat? A Thirteen.

20 Q So there were only three people standing, is that right? A Yes, sir; must be right.

Q "Must be"? Now, do you know? A No, I don't know.

Q How do you know there were sixteen people when you came to Sixteenth street? A I know it.

Q How do you know? A I can imagine how the bus was loaded.

Q And do you know that all the seats were taken, is that right? A Yes, sir.

30 Q And you know you have thirteen seats in the car? A Yes, sir.

Q And you say there were sixteen people? A Yes, sir.

Q That made— A Sixteen or seventeen.

Q And that made three or four standing? A Yes, sir.

Q And were they standing in the front or back? A Standing in the back.

40 Q Was there one line of them or two lines of them? A I cannot put in my bus two lines; it is a small bus.

Samuel Adekman, cross.

Q Did you hear Mrs. O'Connor testify? A Well?

Q Did you hear Mrs. O'Connor testify? A I did.

Q Did you hear her say there were two lines of people? A I did.

Q That is not so, is it? A No, sir.

Q And you do not know how wide your bus is? A Well, would you give me a chance to explain how that bus was? 10

Q I do not want to know anything about how it was. A At that time we had Paterson bodies and on the Paterson body was enough room for sitting capacity so how could I put two lines?

Q I am not talking about the two lines. I am through with the two lines. A There is not enough room for two.

Q You had one line? A Yes.

Q Now, how wide is the bus? A I cannot tell you. 20

Q No idea at all? A No, sir.

Q How wide is it from side to side across the inside? I cannot tell you that either.

Q How wide is it from the driver's seat to the door?

A I cannot tell you that; I never measured it.

Q You have a left drive car? A Yes, sir.

Q You told Mr. McGeehan that in the front the windshield runs all the way across the front of the car? A No, sir.

Q How far across? A There is one complete window on the front and outside a windshield. 30

Q Did you blow your horn? A Yes, sir.

Q And slackened your speed? A Yes, sir.

Q Picked up the passenger? A Yes, sir.

Q You have had three or four accidents, haven't you?

Mr. McGeehan. I object.

The Court. I sustain the objection.

Q Didn't you talk with the colored man immediately after the accident? A Yes, sir. 40

Samuel Adekman, cross.

Q Didn't you tell him you had an accident before? A Never had an accident before that.

Q Sir? A I never had an accident before that.

Q Have you talked to him since then? A Since then? No, sir. Never saw him since then.

Q Didn't you testify in the East Orange District
10 Court—

Mr. McGeehan. I object, your Honor please.

A I never did.

Mr. McGeehan. One minute, please, Adekman. When an objection is made do not answer.

The Court. I will admit it. The question was answered; the question is admitted; it is directed towards discrediting the witness.

Q How long have you been driving a car? A At
20 that time about two and a half years.

Q What? A Two years, something like that.

Q Do you drive a car now? A Yes, sir.

Mr. McGeehan. I object.

The Court. I sustain the objection.

Q You say there was no damage to the truck, Adekman, at all? A No, sir.

Q You looked it all over? A Yes.

30 Q Looked it over carefully? A Yes, sir.

Q Looked at the mudguard; there was a bumper on it, wasn't there? A Yes, sir.

Q There was not even a scratch on the bumper? A Eh?

Q There was not even a scratch on the bumper? A There was not anything at all.

Q Nothing at all, and you looked it over carefully, didn't you? A Yes, sir.

Q Now, after you saw the car—the auto car one
40 hundred feet up Sixteenth street when you were on the

Samuel Adekman, cross.

Vailsburg corner of South Sixteenth street and South Orange avenue, did you begin to see the auto car before the time of the accident? A Before the time of the accident?

Q Yes. A Did I see it after I passed Sixteenth?

Q No, after you first saw him. A After I first saw him? 10

Q Yes. A I saw him.

Q Where was he when you saw him the second time? A About fifty feet away.

Q Where were you then? A I was right in the center of Sixteenth street.

Q Now, does that mean that the front part of your bus was at the center or the rear part of your bus was at the center? A The whole bus was in the center of the street.

Q Well, was the whole bus right in the center or was it to the north end of the center, the north side of the center? A I was pretty near on the corner when he was about fifty feet away. 20

Q You were pretty near to the Newark corner of Sixteenth street and South Orange avenue when he was fifty feet up the street? A Yes.

Q And your bus, you say, is from eighteen to twenty feet long? A Yes.

Q And that was the last time you saw him? A Yes. 30

Q And you were going at that time about six miles an hour? A Yes, sir.

Q Anyway, you had almost got down to two miles an hour then, hadn't you? A When I stop I think the rate of speed is about two miles an hour.

Q What was your speed when you saw him fifty feet away? A Six miles an hour.

Q And proceeding at that six miles an hour you had gone the length of your bus again before the accident happened? A Yes, sir. 40

Samuel Adekman, cross.

Q And your bus had not quite cleared the corner? A Yes, sir.

Q And you think you were hit in the rear? A I think?

Q You think you were hit in the rear? A I was hit in the rear.

10 Q How do you know? A How do I know?

Q Did you see the thing hit you? A No, I did not.

Q Now, you say—when the bus toppled over did it topple over on the car tracks; yes or no? A The top of the bus?

Q Yes. A Was it near the track?

Q Was it near? A Near the first track.

Q It was not on the track, was it? A No.

Q You are sure of that? A No, sir.

Q Are you sure of it? A Yes, sir.

20 Q Did you hear Mrs. Miracle testify? A What am I to know Mrs. Miracle?

Q You heard her testify? A Yes.

Q Did you hear her say the side of your bus was lying in the nearest cartrack? A Yes, sir.

Q That is not correct? A I do not know.

Q You say that it was not. Was it? A This is her imagination and this is yours.

30 Q So you are testifying from your imagination, is that right? A Yes—not imagination, no; I was looking at the bus when he was running there.

Q You sued Meyer & Bush, didn't you?

Mr. McGeehan. I object.

The Court. I sustain the objection.

Mr. Matthews. Your Honor, please, I think that is competent.

(Further argument.)

The Court. I sustain the objection.

40 Counsel for defendant, Meyer & Bush Company, prays an exception to this ruling of the Court.

Samuel Adekman, cross.

Exception noted as ground of appeal.

Mr. Matthews. Then, if your Honor, please, I suppose his testimony in the East Orange District Court I cannot examine on.

The Court. I understood you simply read that to contradict him.

Mr. Matthews. Yes, I did read it to contradict him at that time; therefore, I cannot question him along those lines now. It was admitted in East Orange. I want to cross examine him on it. 10.

Q Did you see Van Nortwick on the bus that morning?
A What?

Q Did you see Van Nortwick in the bus that morning?
A I did see him in the bus?

Q Yes. A I can't tell you.

Q You know Van Nortwick, don't you? A Sure I do. 20

Q Didn't he speak to you when he got in? A He didn't speak to me.

Q Did you hear him testify? A Yes.

Q Did you hear him say he bade you the time of day?
A Eh?

Q Did you hear him say he bade the time of day to you, "Good morning," or whatever it was? A No, sir.

Q That is not so? A No.

Q You did not talk to him any of the distance down?
A No, sir I never do talk when I drive the bus. 30

Q And you did not talk to him this morning? A No, sir.

Q He was sitting immediately at your right-hand? A I don't even know where he was sitting; I don't watch the passengers; I watch the front.

Q All the time? A Yes, sir.

Q But you were not watching the front when you looked at Sixteenth street? A When I come to that street it is my business to look out. 40

Charles A. Randall, direct.

Q And there was a man on your right coming, wasn't there? A Certainly.

Q How heavy is your bus? A I could not tell you.

Q Haven't any idea at all? A No, sir.

Q One ton, two ton, ten ton? A I never weighed him.

10 Q Of course you never weighed him. You bought him, though? A Eh?

Q You bought the bus? A Yes.

Q You didn't make any inquiry as to the weight of the bus? What make was it? A Reo.

Q How many cylinders? A Four cylinders.

Q And you bought the body, did you, separate and had it put on the Reo? A Yes, sir.

Q And yet you have no idea of the weight of it? A No, sir.

20

DEFENDANT ADEKMAN RESTS.

CHARLES A. RANDALL recalled in behalf of defendant Meyer & Bush Company.

Direct examination by Mr. Matthews.

Q You were employed by Meyer & Bush at the time of this accident complained of in this suit, weren't you? A Yes, sir.

30 Q Employed as a driver on one of their meat trucks? A Yes, sir.

Q And had you left the place that morning with a load of beef? A Yes, sir.

Q It was the 14th of April, 1919? A Yes, sir.

Q What was the last delivery you had made before this accident? A Nineteenth avenue and Twentieth street, or Twentieth street and Nineteenth avenue, I get them mixed up, it is either one or the other.

40 Q And then you delivered to a man named Ast? A Yes, sir; Ast.

Charles A. Randall, direct.

Q And after you left Mr. Ast where was your next delivery to be made? A Richard O'Connor.

Q Where was that? A Wiggins avenue and Kipp street.

Q I think you told us that was opposite Woodlawn Cemetery? A Kipp street comes right up to the cemetery, but if you go down about half a block from the cemetery you come to O'Connor's. 10

Q This accident happened, Mr. Randall, at the corner of Sixteenth street and South Orange avenue or near there? A Yes, sir.

Q And that is opposite—Sixteenth street is opposite Fairmount avenue? A Yes, some cemetery; I don't know the name of the cemetery.

Q Where were you going at the time of the accident? A I was going over to Joe Williams.

Q Where does Joe live? A Between Seventh and Eighth street on Central avenue. 20

Q For what purpose were you going to see him, about beef? A No, sir; I was going to see him about application blank for the Knights of Pythias.

Q Did you have permission from your employers to go there? A No, sir.

Q Did you tell Mr. Bush that you were going there? A No, sir.

Q Had Mr. Bush told you at any time it was all right for you to go there? A No, sir. 30

Q And how did you proceed when you left Ast's place, how did you go? A I went up Sixteenth street—Sixteenth avenue, rather, until I got to Sixteenth street, and then I come over to South Orange avenue.

Q And what way were you intending going after you reached South Orange avenue if you had not had an accident? A I was going over South Orange avenue to some avenue,—I don't have no particular street to cross over, as long as I come to Seventh or Eighth street, see? I had no particular street to cross over. 40

Charles A. Randall, direct.

Q There was an accident at the corner of Sixteenth street and South Orange avenue? A Yes.

Q And the accident was caused by a collision between your truck and the jitney bus, was it not? A Yes, sir.

10 Q Now, will you tell us just what the facts and circumstances were of your collision as you know them from having seen them? A Up Sixteenth street I seen the jitney bus approaching Sixteenth street and I got complete around the corner, I throw my clutch in, it has got a dog, a auto car has got a clutch what they call a dog, a safety clutch, and it is not like other cars; you can push down and the dog will go down, it is what they call a safety dog; you don't have to put the brakes on, all you have to do it to put the clutch in and then you can coast. I pushed in my clutch and I was going right around the corner, and just as I got opposite that iron post on South Orange avenue, iron telegraph post, or electrical post, or
20 something there, he stretched me, the bus stretched me right in the left rear part of the mud fender, knocked me right up on the post, on the walk.

Q At the time the bus struck you as you have described, what was the position of your car with reference to South Orange avenue and Sixteenth street, how was your auto car facing? A The car was facing down town.

30 Q And had you completely negotiated the corner? A Yes; I had got all the way around the corner.

Q And the jitney bus hit you on the front left fender of its rear? A Yes, sir.

Q And then you were driven up against an iron telegraph pole somewhere in the vicinity of South Orange avenue and Sixteenth street? A Yes, sir.

Q Did he blow a horn? A No, sir.

40 Q And after the accident, Mr. Randall, you say—did you call up and tell your boss, "I have had another accident"? A No, sir; I had not been in any accident to amount to anything; why should I tell him that?

Charles A. Randall, direct.

Q Did you call him up? A Yes, sir; I called him up.

Q What did you say? A I called him to send someone up to get the truck; I was in an accident and there was an officer arrested me and I said, "I got to call my boss because I got meat on the bus and I don't want it to go stale."

Q And you said, "I have been in an accident"? A 10
In an accident; yes, sir.

Q Whom did you speak to? A Mr. Bush.

Q Did you ask for Mr. Meyer? A Mr. Meyer is not there. Why would I ask for him? He is not there.

Q What do you mean? A Mr. Meyer wouldn't be there unless he comes to buy something; he only comes there once in a while, once or twice a week when he wants a steak.

Q You mean he is not a member of the firm? A I 20
don't know about that, but he never stays around there like Mr. Bush.

Q So it was Mr. Bush you spoke to? A Yes, sir.

Q And you are absolutely certain you did not ask for or speak to Mr. Meyer? A No, I did not call him. He is never around there; I don't think he is a member of the firm there.

Q And do you know the condition of the brakes on your car that day? A The brakes seemed to work all 30
right for me that day.

Q Had you any occasion to use the emergency that day? A When I stopped, but I had no occasion to use it, but when I stopped I put it on.

Q You pulled it up; do you use your emergency in conjunction with your foot brake or use it all by itself? A Emergency, clutch and everything; you got to put your foot on the clutch and brake and put your hand on this emergency.

Q Can you test the emergency without using the foot brake? A No, sir. 40

Charles A. Randall, direct.

Q How long have you been driving a car? A Between five and six years.

Q And you say you can't test the emergency without also using the foot brake? A No, sir; you got to throw your foot on your clutch and put your foot on the brake and then put your hand on and pull back the brake, that
10 is the emergency.

Q Did you look at your brake immediately after the accident, Mr. Randall? A Yes, sir.

Q And did you observe any marks on it? A On the mud fender.

Q Which mud fender? A The left mud fender.

Q The left front or rear? A Yes, sir.

Q Front or rear? A The rear part of the mud fender.

Q Of which one, front or rear? What was the mud
20 fender on, front or rear wheels? A Yes, sir; left front rear fender.

Q It is the left front part of that rear mud fender? A Yes, sir.

Q Do you recognize that picture that I show you as a picture of your car? A Yes, sir.

Q Does that correctly depict the condition of your car after the accident? A Yes, sir.

Q Do you know that it does? A Yes, sir.

30 Q Do you recognize it as a correct picture of your car immediately after the accident? A Yes, sir.

Q How do you recognize it? A I had a lantern standing there and I remember the mudguard.

Q I show you another picture and ask you if that is a picture of any part or portion of your truck? A I should say that is the front part, yes.

Q Now, you say, Mr. Randall, that the only part of your car that was damaged was that left front mud fender? A Yes, sir.

40 Q And it was damaged in the rear?

Charles A. Randall, cross.

Mr. McGeehan. I object to reference to them until they are in evidence.

Mr. Matthews. I will offer the picture in evidence, your Honor.

Cross examination by Mr. McGeehan.

Q Were you present when these were taken? A 10
Yes, sir.

Q Who took them? A I don't know the gentleman's name.

Q How long after the accident were they taken? A
After I got down town.

Q You drove the truck after the accident and before these pictures were taken? A I drove the truck down town, yes.

Q How many miles did you drive it? A I don't know how far it is from up there down there. I went from there to O'Connor's and from O'Connor's down town. 20

Q Was the top up on your car at the time of the accident? A Top up?

Q Yes, as shown in this picture (indicating). A I do not understand what you mean.

Q Does this condition show the condition of the front and windshield and sides of the car at the time of the accident? A Yes, sir. 30

Q Was your windshield up? A Yes, sir.

Q At the time the accident occurred? A It was down; it was not up.

Q Were the curtains on the side—you can see? A There were. I got to tie them strong to hold it.

Q Didn't you tie that after the accident? A I don't know.

Q Were the side curtains down at the time of the accident the same as they appear in this picture? A Yes.

Q Are you sure? A Yes, sir. 40

Charles A. Randall, further direct.

Mr. McGeehan. I object to the pictures.

(Pictures marked Exhibit D. 1 and Exhibit D. 2.)

Examined by Mr. Matthews.

10 Q How heavy was your truck, Mr. Randall? A I think the last time we weighed it it weighed forty-five hundred, either forty-five or fifty-five hundred.

Q Two and a half ton truck? A Two ton truck.

Q Two ton truck. Now, you say that, referring to Exhibit D. 2, you say that at the center where the pencil mark X is is the only mark that was on your truck after this accident? A That is the only mark—the mud fender.

Q Did you look it all over? A Yes, sir.

20 Q Where was the jitney bus riding at the time you first saw it; what part of South Orange avenue? A It seemed to be in the middle of the car tracks.

Q When it was overturned, Mr. Randall, what was its position, if you know? A To tell the truth I hardly know how they were, to tell any truth about it.

Q Where was it lying when you saw it first? A It was overturned and it seemed to me that the rear end was laying in the car tracks.

30 Q And your auto car, what was the position of that? A My auto car was turned just like I came down South Orange avenue and here it is comes straight down and knocked up against this post on the walk, turned completely around facing the post.

Q Was your car moved after the accident? A Yes.

Q Who moved it? A Some gentleman; I don't know—motorcycle cop. I think it was left to me to move it.

Q Where did you move it? A Around into Sixteenth street.

40 Q Did the jitney change its position from the time you first saw him until the time of this accident? A I cannot say whether he did or not. When I turned around the corner I could not see him; I was on the right hand

Charles A. Randall, cross.

side. After I got complete around the corner I could not see him then.

Q Did you observe anybody standing on that corner waiting to board that jitney? A No, sir; I did not.

Q Well, did you look? A I did not take no particular notice, but I don't know none that I can remember.

Cross examination by Mr. McGeehan.

10

Q On what part of your car does your emergency brake operate? A On the right-hand side.

Q On what part of the running gear of your car does it operate in order to stop the corner? A Of the outside.

Q Does it work on the brake drums on your rear wheels or upon your clutch mechanism? A I do not understand.

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

Q Where does the emergency brake work to stop the car; where does it apply the friction that stops your car? A It works with the foot brake.

20

Q Eh? A It works in with the foot brake on the outside.

Q Where does your foot brake apply the pressure on the wheels or on your clutch in order to stop your car?

A On the wheel.

Q On the rear wheel? A I do not know about the rear wheel or what wheels; it must be the rear wheels.

Q You do not know? A It could not stop on the front wheels; there is no brake there.

30

Q Your driving power is through your rear wheels, isn't it? A Yes, sir.

Q Now, have you brake bands on your rear wheels? A I do not know.

Q Do you know what the brake band is? A No; I don't know; I don't know mechanics.

Q Don't you know that all brakes work through the contraction of a brake band on a surface that causes friction and stops the car? A Certainly, it must.

40

Charles A. Randall, cross.

Q But you never have examined the brake mechanism? A I never had nothing to do; we always had a mechanic look after that.

Q When you push the clutch in that takes the motor off of your wheel, doesn't it? A Yes.

10 Q And you can coast along with your left foot pushing your clutch in, can't you? A Yes.

Q Now, if your foot brake is working and you push on your foot brake, that will stop your car? A No, sir; you cannot stop altogether; it depends on how hard you push it.

Q Then your foot brake would not alone stop your car? A Yes, sir; it would.

Q Then why do you say it would not? A I say that depends on how hard you push it.

20 Q Then if you push your clutch in with your left foot and push your right foot hard on the brake it will stop? A You can run—you can stop by putting the clutch and brake in.

Q If you put your clutch in with your left foot and then without touching your emergency brake push your foot on your foot brake it will stop your car if your brake is working, won't it? A It will, yes.

Q That is without using the emergency brake? A Yes, sir.

30 Q Now, if your emergency brake is working and you push your clutch in with your left foot to take the motor off and pull on your emergency brake, if it is working, that will stop your car, won't it? A You have got to put your other clutch in and other brake.

Q You would put your clutch in to put your motor off? A You have got to use both brakes to put on the emergency.

40 Q Doesn't your emergency brake work independent of your foot brake? A It do, yes, but that is only a temporary brake, foot brake, but if you want to use the emergency you have to use them both.

Charles A. Randall, cross.

Q Have you ever run a car with your emergency brake running properly? A Yes, sir.

Q And do you mean to say that your emergency brake has never been able to stop your car unless you also put your foot brake on? A The man that broke me in told me to do that.

Q How long before this accident were you broken in to run a motor truck? A I have been driving five or six years. 10

Q And do you mean to tell me an emergency brake won't stop a car without the foot brake? A The gentleman told me that broke me in.

Q And who is that gentleman? A I don't know.

Q Did you try it? A I don't know; as to what?

Q When this accident happened did you use your emergency brake at all? A No, sir.

Q Does the emergency brake add any pressure, does it help you stop your car if you use it with the foot brake? A You can stop it at once. 20

Q In this case, in this accident, you did not use that emergency brake, did you? A No, sir; I did not think there was any need of it.

Q Now, how far up Sixteenth street were you when you saw this jitney first? A I don't know; I was—I guess I was about one hundred feet from the corner, something like that.

Q How far? A One hundred feet. 30

Q About a hundred feet away from the corner. Now, there is where your truck was when you first saw the jitney bus, that is right, isn't it? A Yes, sir.

Q Now, where was the jitney bus when you were one hundred feet up Sixteenth street? A He was approaching Sixteenth street.

Q And how close to Sixteenth street was it? A I can't tell you exactly.

Q Well, now, tell us what you remember. A I guess about ten or fifteen feet. 40

Charles A. Randall, cross.

Q He was about at the corner, wasn't he? A Pretty close to it.

Q Then you were one hundred feet up Sixteenth street? A About that. I cannot tell you exactly.

Q Now, he then went into the line of Sixteenth street along South Orange avenue? A What do you mean "in line"? 10

Q After you first saw him he started to cross Sixteenth street on South Orange avenue? A He was approaching Sixteenth street, I did not see him when he was crossing.

Q You did not see him at all? A I never noticed that.

Q Why didn't you notice that jitney while he was crossing the width of Sixteenth street at all? A Because I thought I had gotten around the corner out of his way. 20

Q You were one hundred feet up Sixteenth street, you testified? A I do not know exactly how far I was.

Q You have said one hundred feet. Do you mean to change your statement? A No, I said it might have been one hundred feet. I do not know exactly.

Q From the time you were one hundred feet up there you did not see that jitney bus again, did you? A What do you mean?

Q I will repeat it. From the time you were one hundred feet up Sixteenth street from the corner of South Orange avenue until the accident you did not see the jitney again? A I did not see the jitney until I turned around the corner. 30

Q When you were one hundred feet up the street the jitney as within ten feet of the corner of Sixteenth street on South Orange avenue, wasn't it? A Yes, sir.

Q Now, which was going faster, you or the jitney? A I cannot tell you that.

Q You couldn't tell us that, eh? You had a good view of the jitney, didn't you? A I could not tell how fast 40

Charles A. Randall, cross.

he was going or how fast I was going myself; all I can do is to guess at it.

Q You didn't see that jitney at all before the accident?

A Certainly I seen the jitney.

Q Then why can't you tell how fast he was going? A I can't tell how fast he was coming.

Q You didn't look very closely at it, did you? A I 10
seen him coming.

Q You saw him coming one hundred feet away, didn't you? A About that.

Q And he was coming at right angles to your course?

A Right angles? He was coming right straight down the middle of the track.

Q Ten feet away from the middle of the street? A When I first see him.

Q Where was he next? A He got around the corner; I seen him after I had gotten around the corner after the 20
accident ocured and then I seen him after.

Q Do I understand you correctly that you saw him ten feet from the corner, he was ten feet from the corner?

A Ten or fifteen.

Q And then the next time you saw him you had turned the corner and he was lying in the street? A After I got around the corner I didn't see him no more.

Q You mean when you say you did not see him "no more"— A After I turned the corner I didn't see him 30
no more.

Q I want you to answer this question please, if you will. When did you see him next after you saw him ten feet from the corner? Now tell us that. A When I seen him he was in the car tracks.

Q When did you see him next after you saw him ten feet from the corner? A I seen him approaching the corner, that is all.

Q That is all, isn't it? A I seen him, and he was coming along South Orange avenue and I turned the corner and I thought I got clean out of his way and I 40

Charles A. Randall, cross.

cannot see him no more after I turned because he was on the left-hand side of me.

Q Then do you want to say to the jury that you saw him ten feet from the corner and then the first time you saw him was after you turned? A I did not see him no more after I turned the corner; I seen him coming all the time.

10 Q Did you keep watching him? A Certainly I did.

Q All right. Let us take that up. You saw him when you were one hundred feet away from South Orange avenue and you kept on watching him, didn't you? A I seen him until after I turned the corner.

Q When he was in the middle of Sixteenth street where were you? A I had gotten around the corner—what do you mean after he crossed—after he approached the corner?

20 Q You said you kept watching him and I asked you where he was—where you were when you saw him in the middle of Sixteenth street? A When I first seen him he was in the middle.

Q Oh, when you first got a glimpse of that bus he was in the middle of Sixteenth street? A Yes, sir.

Q Do you want to change your story that he was ten feet away from the corner? A I say about ten or fifteen feet away from the corner, it seemed to me; I don't know exactly.

30 Q Ten or fifteen feet. A Approaching the corner ten or fifteen feet in the middle of the street, I do not mean approaching the corner, coming to Sixteenth street, I mean.

Q Then is when you were one hundred feet up the street? A I said about that.

Q Now, when you were fifty feet away from South Orange avenue where was the jitney then? A The jitney was about fifty feet, in my estimation.

40 Q You don't know. Were you looking at the jitney when you were half way to the corner from where you first saw it? A I was looking at it, yes.

Charles A. Randall, cross.

Q Then where was he? A He was coming right on down South Orange avenue.

Q How many feet had he traveled from the time you first saw him? A I do not know that.

Q He was going very slowly, wasn't he? A I cannot say that.

Q You cannot say that? A After I turned the corner I do not know how fast he was going. 10

Q I do not want to know that. When you saw him how fast was he going, slow or fast, not how many miles an hour? A He seemed to be coming kind of fast and then not so fast either; he didn't seem to be coming so fast.

Q Did you see the cemetery there? A Yes, sir.

Q I was wondering. Now, I do not want to waste time. I wish you would answer this question. A I am answering to the best of my knowledge. 20

Q Did you continue to watch that jitney bus from the time you first saw it ten feet away from the corner? A I continued to watch it, sir, until I had gotten around the corner and then I could not see it no more.

Q When you were turning the corner where was the jitney bus then? A He was coming right straight down the middle of the track.

Q When you were going around the curb corner he was in the middle of the track? A Yes, sir. 30

Q You say that, do you? A Yes, sir; that is when I was turning.

Q Now, your seat, your driver's seat, is right at the front—shown in these photographs as directly over your front wheels, is it not? A No, sir; that is not over the front wheels; the front wheels is on the side; it didn't extend exactly over the front wheels.

Q Your driving wheel is directly over the top of your axle of your front wheels, isn't it? A No, sir; it is a little bit behind. 40

Charles A. Randall, cross.

Q Now, if the truck that you were driving was turning the corner while the jitney bus was still out in the car tracks tell us how you collided with the jitney right opposite your front driver's seat without seeing that jitney when it came in contact with your car? A Well, I did not know I collided; I thought he collided with me; I
10 I think he collided with me, this evidence say.

Q What part of his bus collided with you? A I cannot tell you that because, you see, that is behind me.

Q The part where the mudguard is damaged is right opposite you, isn't it? A In the first place I was not looking.

Q Do you say on this picture the point that was damaged is not opposite your seat? A If he goes into there I cannot see because I am not looking back.

Q You don't know what part of this big jitney bus
20 collided with your car? A I am not positive.

Q You were not looking at the bus when it struck you? A If I had I would tried to have gotten out of his way.

Q You would have used those two brakes, wouldn't you? A Why would I use the brakes? That wouldn't stop me if he was coming behind me.

Q Did you say your truck was on the car tracks when it was struck? A No, sir.

Q Where was it? A It was coming down on this
30 side of the car tracks.

Q How close to the curb were you when you say you turned the corner? A I don't know.

Q Did you make a close turn or a long swing? A I come around as close as I could without striking the curb so if he come down I would be out of the way.

Q So you had the jitney in mind? A Yes, sir; and anybody else would if they saw the car.

Q You were not looking at him? A No, I could not
40 see him.

Charles A. Randall, cross.

Q Do you know whether it was the front or rear of that jitney that run into your truck? A I don't know which part hit me.

Q Well, was it the rear of that jitney that backed into you, so far as you know? A I cannot say what part of the jitney hit me.

Q Then how far down South Orange avenue did you get after the accident? A I got completely around the corner. 10

Q Then how long did you travel from Fifteenth street, about how many feet did you go? A I suppose I was about eight or ten feet, something like that, I don't know.

Q And you were moving along, were you? A Yes, I was moving, yes.

Q And after the jitney ran into you what did you do to stop your car going down town? A The car stopped itself. 20

Q It stopped itself? A Yes, after it jammed into that post it stopped itself.

Q It jammed into the post, did it? A After he knocked me into the post it jammed and stopped itself.

Q Were there any marks on the right-hand side of your car showing where it jammed into the post? A It jammed into the front of it. There is an iron fender in front of that to protect your radiator.

Q That is what hit the post, eh? A That is what hit the post. 30

Q The jitney jammed you into that post? A Yes, sir.

Q How far is that iron post from the corner of Sixteenth street? A I don't know exactly.

Q Well, it is about how far? A Well, it might be about eight or ten or twelve feet, something like that, I cannot tell you exactly.

Q How long is your truck? A I don't know that.

Q Approximately how long? A I can't tell.

Q It is more than eight feet? A I suppose it is. 40

Charles A. Randall, cross.

Q And yet you say you had gotten completely into South Orange avenue? A Yes, sir.

Q When you were struck? A Yes, sir.

Q And then you were knocked with the front of your bus into that pole? A Yes, sir; the cop helped me push it off.

10 Q Then your truck was in line with Sixteenth street when you hit the pole? A No, sir; my truck was in South Orange avenue.

Q And when it stopped it was right up against the curb? A Against the iron post at the curb.

Q Will you tell us why you and the police officer then moved that truck up South Orange avenue and backed it around into Sixteenth street when it was standing, according to your statement, right at the curb when it came to a stop? A We did not push it up South Orange
20 avenue; we backed it up that way and turned it and come around the corner.

Q Into Sixteenth street? A We pushed it right off the walk.

Q Off what walk? A Off the walk in Sixteenth avenue; it jumped the curb right up against the post.

Q It did jump the curb? A Yes, sir.

Q Didn't it jump the corner curb? A No, sir.

Q Are you sure of that? A I know so.

30 Q Wasn't it blocking the crosswalk at Sixteenth street? A No, sir.

Q And wasn't it backed into Sixteenth street by the police officer and you? A It was backed from where he struck me into Sixteenth street.

Q Did you have to make any turn in backing that truck to the position where it rested finally? A Yes, we backed right this way and turned the car that way (indicating) and came right around the corner.

40 Q How did you do that if it were already on South Orange avenue near to the curb? A Well, you got to

Charles A. Randall, cross.

turn it around to get out of there; you can't come straight the way you were; you had to back it back.

Q Why didn't you push it forward? A That was across the avenue.

Q If you had pushed it forward? A It would have went into the saloon, but if I pushed it back it would have went across the avenue.

10

Q You called up Meyer & Bush after the accident? A Yes, sir.

Q Did Mr. Bush come there after the accident? A Mr. Bush's son did; he didn't.

Q Mr. Bush examined your car then? A Yes, sir. I will tell you the truth. I don't know whether he did or not, because I was up at the station house.

Q You were arrested? A I was put under arrest.

Q Did you make any statement to the police officer at the time you were arrested? A No, sir.

20

Q Didn't you state you didn't know how it happened at that time? A I do not remember.

Q You don't tell this jury you did not say how it happened? A I say I do not remember.

Q You do not deny you said, "I do not know how the accident happened"? A I do not remember saying that.

Q As a matter of fact you did not know how it happened, did you, Mr. Randall? A I told the best of my knowledge, sir, how I thought it happened.

Q But you are not sure? A I could not tell because I could not see how the jitney hit me.

30

Q You did not at any time apply your brakes in this entire situation, did you? A You do not have to apply your brakes because the dog on the clutch would answer sufficient, that would slow it down.

Q You relied on the clutch to slow it? A The clutch and the dog, you don't have to rely on—

Q Your left pedal will slow down your car? A The left pedal? That is the clutch, certainly; if you throw the clutch in that will slow it down.

40

Charles A. Randall, cross.

Q Without touching your brakes at all? A Of course you would have to put your foot on the brake if you want to—

Q You did not put your foot on the brake? A I didn't put my foot on the brake because I didn't think it needed it.

10 Q Something that you hit stopped your car, didn't it, as a matter of fact? A No, sir; something hit me stopped it.

Q You said you hit the pole and that is what stopped it. A The pole is what stopped it—it stalled.

Q Did you have a talk with Mr. Bush after this accident when he came around to the scene of the accident?

Mr. Matthews. I object as immaterial. It is not part of the *res gestae*.

Mr. McGeehan. I will withdraw that.

20 Q You say Mr. Bush came to the point where the accident happened? A Mr. Bush's son.

Q Did he go down to the point downtown where the photograph was taken? A Well, he went down to the beef house; he was down there when the man came down to the beef house to have the car taken.

Q When was that, the same day? A The same day, the same afternoon.

30 Q Did you touch this mudguard after the accident occurred? A I did not; no, sir.

Q Do you mean to tell me you ran down town with this mudguard right behind your front wheel? A It didn't touch.

Q Didn't you push it so it would touch it? A No, sir; I didn't touch it.

Q Did you drive with your car in that condition? A Yes, sir; I did.

40 Q All the way down to your beef house? A Yes, sir; you can see yourself it is not touching the wheel (indicating).

Charles A. Randall, cross.

Q Didn't you push it in so it would not touch it? A No, sir; I did not touch it.

Q Did you deliver that side of beef that afternoon? A I did, yes.

Q Were there a great many people around after the accident occurred? A There seemed to be quite a lot of people. 10

Q Have you any of those people here to-day that you know? A I don't know; no.

Q All you thought about was whether your beef would go stale?

Objected to.

Objection sustained.

Q Why did you 'phone Mr. Bush?

Objected to as immaterial.

Objection sustained. 20

The Court. Please do not ask the same questions five or six times in different forms.

Q What was your purpose in 'phoning Mr. Bush if you say you were on an errand of your own at the time the accident happened? A I had that—most any man would do that if he is working for a man and has an accident he would call up his boss to let him know.

Q Did you deliver that beef later in the day to that Mr. O'Connor? A Yes, sir. 30

Q Did you go to that place where you said you intended to go about the Knights of Pythias? A I did not.

Q Did you have any appointment to meet that man at noon time? A No special appointment, but I told him the week before that I would be up there the following week; I did not have no special day.

Q Is that man here today that you intended to see? A Yes, sir. 40

Edgar H. Garrison, direct.

Q You simply told him generally you would be there to meet him? A I told him I would be up there sometime next week, I said, "yes, I will be up there sometime next week to get that application blank for the Knights of Pythias"; we didn't have no special time; he is a mechanic and he is around there most all the time.

10 Q What way did you usually go from Nineteenth avenue and Twentieth street down to Winans avenue where O'Connor's place—what road would you take down if you did not take South Orange avenue? A I could not say that; we have different ways. Sometimes we go one way and sometimes another. That morning I think I backed out Twentieth street because my car was facing Sixteenth avenue, and I say I backed out, and I would have backed out and went up one street.

20 Q You do not know just which way you would have gone? A Certainly not. I had no right to go over that way.

Q (*By Mr. Matthews.*) And when they took you down to the police station they took Adekman, too? A Yes.

EDGAR H. GARRISON, sworn in behalf of defendant Meyer & Bush Company.

Direct examination by Mr. Matthews.

30 Q You are employed by the Meyer & Bush Company?
A I am.

Q You were in April, 1919? A Yes, sir.

Q And in what capacity then? A Shipping clerk.

Q Are you the man who has charge of the routes of drivers and delivery? A Yes, sir.

Q And did you have charge of the route of this Mr. Randall that testified here this morning? A Yes, sir.

Q And have you the book showing the route for the 14th of April, 1919? A Yes, sir.

40 Q Can you produce that record? A Yes, sir.

Edgar H. Garrison, cross.

Q Will you turn to it? What is this book that you produce? A It is a book where the driver signs.

Q And in whose handwriting is the book? A That is the outside shipping clerk.

Q You do not make this record? A No.

Q Is it made under your supervision? A Yes.

Q What did you have to do with the supervising of the making up of this record? A Why, I do not understand. 10

Q You say you supervised the making up of this record; how do you supervise; did you look at it after it was made or did you see the men? A I see the men.

Q Who made this record on the 14th of April? A James Mitchell.

Q Do you know his handwriting? A Yes, sir.

Q Do you recognize that as his handwriting (indicating)? A Yes, sir. 20

Q What does that record you have there show? A It shows the driver who takes out the meat and the part he goes to.

Q The driver whose record you have there is Mr. Randall? A Yes, sir.

Q And what deliveries did he have that day? A Well, he had about ten deliveries.

Q "About," or did he have ten; you have got the book. A Nine deliveries.

Q Is any one of those deliveries 501 Central avenue, Newark, New Jersey? A No, sir. 30

Q Was there a delivery for one Ast at Twentieth street and Nineteenth? A Yes, sir; Twentieth street and Nineteenth.

Q Is there a delivery for O'Connor at Winans avenue and Kipp street? A Yes, sir.

Cross examination by Mr. McGeehan.

Q What other deliveries are shown there than the two that you spoke of? A There is one Sauer, he is up in Twentieth street. 40

Edgar H. Garrison, cross.

Q On Twentieth street? A Yes, sir.

Q Docs your record show the addresses of your customers? A No, just the names.

Q Just the names? A Yes, sir.

Q This is a receipt book, isn't it? A Yes, sir.

Q That the driver takes out? A Yes, sir.

10 Q You do not see the signature placed upon it for the receipt by Randall, do you? A He has another book where he gets the receipts; I have not got that.

Q Where is Mr. Sauer's place of business located? A I think he is on Twentieth street.

Q Near where? A Near Clinton avenue.

Q Twentieth street near Clinton avenue. Where is Mr. Schlesinger's place? A He is on Mulberry street.

Q Near where? A Near Cottage.

20 Q Where is Mr. Cohn's; is that the name? A He is on Clinton avenue.

Q Clinton avenue near where? A He is near Bergen street.

Q Mr. Schneider? A Schneider is on Ridgwood avenue and Avon.

Q Ridgewood and Avon. Mr. Day? A Bergen street near Clinton.

Q Now, there was a delivery for 113 Seventh avenue, was there not? A It is not signed by his name there.

30 Q Doesn't this book show two calves to go to 113 Seventh avenue and also 174 Eighth street or Eighth avenue? A Not signed by Randall.

Q It is on Randall's page, isn't it? A There is two or three drivers on the same page there.

Q What other driver is shown there? A Dandy.

Q What is the name of the concern after O'Connor's name that a delivery is under Randall's? A Here is Randall (indicating).

40 Q I am speaking of the name under Randall; under O'Connor, who is that? A That is on Clinton avenue.

Eugene Allen Bush, direct.

Q Were there two articles to be delivered to him? A There was two pieces.

Q Now, in the going out upon the route of the driver after the beef is delivered to him does your concern maintain any control over how he goes from one place to another? A Well, as a rule we pretty near know where he goes.

Q You do not direct him as to who is to have the delivery first and who next? A We do not.

Q You leave that to the driver? A Leave that to the driver and take it in rotation.

Q You send your driver out with a supply of meat? A Yes, sir.

Q And he is due back there at noon time to replenish that supply? A He is due around noon or a little after.

Q And what time at noon time? A They expect a driver that goes out in the morning to get back at half-past one or two o'clock at the latest.

Q And if he delivers all his beef before that he is supposed to come in, is he not? A Yes.

Q So that while he has meat on the truck he is supposed to keep on the job until he delivers it and cleans it up and then comes back for more, is that right? A Yes, sir; that is right.

EUGENE ALLEN BUSH, sworn in behalf of defendant Meyer & Bush Company.

Direct examination by Mr. Matthews.

Q Mr. Bush, you are of the Meyer & Bush Company? A Yes, sir.

Q Your father and you in the business? A Yes, sir.

Q Is Mr. Meyer in the business? A Mr. Meyer has not been connected with the business for the last five years.

Q Mr. Meyer at the place? A He might step down and buy a piece of meat; it is charged to him the same as

Eugene Allen Bush, direct.

any other customer; that is the only thing we ever see of him.

Q Were you in the store when Randall telephoned down the day of this accident? A I was.

Q Was Mr. Meyer there? A No, he was not.

Q Then Mr. Meyer did not talk over the telephone to Mr. Randall? A My father talked to him.

Q Did you go to the scene of the accident? A I got in a Ford car and went up just as soon as I could.

Q And did you ride down in the auto car with this policeman? A I did.

Q That was supposed to be testing it? A I did.

Q Did you notice whether the brakes worked or not? A Why, the brakes worked well; he tested them and I tested them, too.

Q Did he say anything to you when he tested them about their not working? A He did not say anything to me.

Q And you tested them at the same time in his presence? A Yes.

Q And after the accident were you present when a photo was taken? A Yes; I was; I sent for a man to take the photograph.

Q I show you Exhibits D. 1 and D. 2 and ask you are those two of the photographs that you received from the photographer whom you sent for and who took the pictures? A Those are the two photographs.

Q Do those two photographs correctly represent the truck as it appeared after the accident? A Yes, sir; the same as it was up on the avenue immediately after the accident. It was driven down in front of the place and then we sent for the photographer and then he took these photographs.

Q You stood there while they were taken? A I did.

Q Who had charge of Randall, had you? A No, not directly; I supervise the drivers to some extent.

Eugene Allen Bush, cross.

Q Did you at any time, to the extent that you have supervision over Randall and the other drivers, authorize Randall to go through Kipp street? A No, not at all. All the drivers are supposed to come back as soon as they can.

Q Did you at any time condone or ratify what he did? A No, I did not.

10

Cross examination by Mr. McGeehan.

Q Are you familiar with the construction of trucks, of this particular truck? A I am; yes, sir.

Q Aren't the emergency and foot brake independent of each other as in all cars? A They are.

Q And isn't it possible to test an emergency brake on any automobile, including this one, independent of foot brakes? A I could not say on any automobile, but on this particular one it is.

20

Q And with the putting in of the clutch and with the pulling back of the emergency brake, if it is working properly, it would stop the car? A It would stop the car.

Q Without the application of the foot brake? A Without the application.

Q Where was the truck when you got there? A It was on Sixteenth street, alongside of the curb, close to the curb.

Q How far back from the curbline of South Orange avenue? A Enough to allow passage for the cross-walk.

30

Re-direct examination by Mr. Matthews.

Q And did you stop the car without the foot-brake, applying the emergency? A Yes, sir.

Re-cross examination by Mr. McGeehan.

Q Did you see the policeman try that? A I did; I was sitting along—I was right with him.

40

Joseph S. Williams, direct.

Q How did it work for him? A The same as it did for me.

Q Did you hear him testify? A I did not.

Q You were not here when he testified in this case?
A I was not.

10 JOSEPH S. WILLIAMS, sworn in behalf of defendant,
Meyer & Bush Company.

Direct examination by Mr. Matthews.

Q Mr. Williams, do you know Mr. Randall, who testified here this morning? A I do.

Q And do you remember whether in April, 1919, you had any conversation with him about joining the Knights of Pythias?

Mr. Nugent. I object.

20 A A few days before that.

The Court. On what ground to you object?

Mr. Nugent. Randall did not get to this man's house. If he had got there it might be said that he was on his business, but he did not reach that point. I do not see as it has anything to do with the case.

The Court. You may answer that question.

30 A A few days previous to that time I told him that I had a blank that he could come and get.

Q Talk louder, please. A I told him a few days previously to the 16th, I think—

Q 14th it was, in April? A In April, yes; I told him I wanted him to join the lodge, we had a dispensation, that I had a blank that he could get to be examined by the doctor and he told me sometime during next week he would come up and get it.

40 Q Where do you live? A Between Seventh and Eighth streets, on Central avenue, 501.

Motions for Direction of Verdict.

Q What is your occupation? A Janitor.

Q Is that an apartment out there? A Yes.

Q That is where you were living then? A Yes.

Q Are you an officer of the lodge of the Knights of Pythias? A Yes.

Cross examination by Mr. McGeehan.

Q Do you know where Randall lived at that time? 10

A I do not know exactly the number; I know about where he lived.

Q About where? A Over on Peshine avenue.

Q Was it night or daytime that you spoke about the Knights of Pythias? A It was night, on the corner of Lafayette and Broad street.

Q At night? A Yes, sir.

Q And you had no appointment for him to come to your place on the 14th of April? A No particular day. 20

Q You did not see him on the 14th of April? A Not on the 14th.

Q Did he ever come to you in regard to it? A He never has come for that blank. I gave it to another fellow.

DEFENDANTS REST.

Mr. Matthews. I make a motion for a non-suit and to direct on the dual ground that first of all Randall, driving Meyer & Bush's car, was on an errand of his own and entirely without the scope of his employer, and in the second place, under the plaintiff's allegation in his complaint, there is no evidence on it to go to the jury on negligence of Meyer & Bush. 30

The Court. I will deny that motion and your objection may be noted.

Mr. McGeehan. I wish to renew my motion for a non-suit and direction of a verdict on the same ground stated for an application for a non-suit. 40

Charge to Jury.

The Court. I will deny your motion.

Mr. McGeehan. Your Honor will note my objection, please.

The Court. Yes.

Mr. McGeehan sums up for defendant, Adekman.

10 Mr. Matthews sums up for defendant, Meyer & Bush.

Mr. Nugent sums up for plaintiff.

CHARGE.

The Court charges the jury as follows:

MOUNTAIN, J.

20 Gentlemen of the Jury: The plaintiff in this case was, on the 14th day of April, 1919, a passenger in a jitney driven by one of the defendants, Samuel Adekman, and after she had boarded the jitney she was carried by the jitney as a passenger in an easterly direction on South Orange avenue. Samuel Adekman, the owner of the jitney, was operating it himself. When the jitney bus came to the intersection of Sixteenth street and South Orange avenue the jitney driver says that he made
30 an observation and he looked south on Sixteenth street and he saw this truck belonging to Meyer & Bush about one hundred feet south of South Orange avenue, that he then crossed the street and that he was almost past the east corner of this street when the rear end of his bus was struck by the truck of Meyer & Bush, driven by one Randall, with the result that it turned over.

Now, Mrs. O'Connor, who is the plaintiff in this suit, did not see the truck coming, and from the testimony I judge that the first knowledge she had was when the
40 accident happened. The defendant, Samuel Adekman, in-

Charge to Jury.

sists that he was so far across Sixteenth street as to— that is, that he was not only so far across, but had arrived at the intersection before the truck so as to give him a virtual right of way, and he is corroborated in that by the fact that the truck hit the rear part of the jitney, as I understood it, near the right rear wheel. Now, Meyer & Bush deny that they were negligent on the one hand and aver on the other hand that Randall was not acting within the scope of his employment, that is, that he was about his own independent business and pleasure at the time this took place.

10

Well, first as to the negligence or indications of negligence: Randall, as I understood it, said that he saw this jitney bus when he was about one hundred feet up Sixteenth street and at that time the jitney bus was within ten feet of the west corner, and thereafter both machines proceeded, but Randall insists that he thought that he had plenty of room and he turned the corner to the right and the jitney bus struck him on the rear part of the left-hand mudguard, and that it struck him so that he could not see it; that is, at the moment of contact he did not see the jitney bus, and he insists that the photographs produced show that situation. He alleges that at the time or just prior to the accident that the jitney bus was in the car tracks. The driver of the jitney bus does not agree to that and I think the witnesses called to corroborate Adekman also disagree with the statement that the jitney bus was in the car tracks. Now, Mrs. O'Connor brings this action because she says that one or both of these defendants are responsible for the injuries which she received, but before she can recover money damages against either one of these or both defendants she must prove by the preponderance of the evidence to your satisfaction that the defendants are responsible.

20

30

Now, what duty did Adekman, the driver of the bus, owe to the plaintiff. From the time that she boarded

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Charge to Jury.

his bus Adekman owed her a high degree of care to take her to the place where she wished to alight and to her destination. Did he exhibit that high degree of care or did he not? Because that is the measure of his duty. The other defendant, Meyer & Bush, was required to use reasonable care in the operation of its motor truck, and if it did not use reasonable care, and I will refer to that more in detail in a moment, why, it can be held provided the failure to use that care amounted to negligence. Both of these drivers of these respective vehicles had reciprocal rights on the street, that is, so far as they were concerned, and their relationship to one another in the use of the street. But these two drivers were approaching one another at a street intersection and it was the duty of the operator of each vehicle to use reasonable care in the control and management of his respective vehicle on approaching the intersection at Sixteenth street and South Orange avenue; each driver was required to use such care in the operation of his respective vehicle as a reasonably careful and prudent man would have exercised under similar conditions. This is the general rule and the common law doctrine, but in 1915 the legislature of this State imposed an additional duty upon the drivers of automobiles at street intersections. This increase of the duties imposed by the common law is found in the Traffic Act, which provides that either driver of a vehicle approaching the intersection of a street or public road shall grant the right of way at such intersection to any vehicle approaching from his right, but, gentlemen of the jury, this section of the Traffic Act does not give the automobile driver or motor truck driver approaching from the right an arbitrary right of way; it does not relieve him from his duty of using reasonable care to avoid colliding with the other vehicle should its driver disregard such right. In other words, this section of the Traffic Act is not intended to provide an

Charge to Jury.

exclusively hard and fast rule applicable to all hazards and all situations regardless of actual conditions, and thus liberate from culpability one who adheres to the regulations and is otherwise reckless and indifferent. Now, perhaps I can explain that more lucidly by saying this to you. Originally, when two drivers approached one another at a street intersection they each had the duty of observing reasonable care to avoid an accident, which is, as I have described it, such care as an ordinarily careful man would have exercised under similar conditions, but as they approached nearer and nearer to the intersection where their machines might come together there might be some doubt on the part of both drivers (and this was before the passage of the Traffic Act) as to which should go ahead, very much as we sometimes meet on the sidewalk and pirouette in front of one another. Then the Traffic Act came along and said when you approach the street in that manner the driver approaching from the right shall have the right of way, but, gentlemen, although that additional duty is imposed, it does not mean that that right of way is so arbitrary that he can go ahead regardless of the situation that exists. It does not mean that he must not still use reasonable care in the operation of his truck or automobile.

It has been said and is one of the contentions of Meyer & Bush that Randall was not acting within the scope of their employment. That question I am going to leave to you. He was driving a truck belonging to Meyer & Bush; he had started out in the regular course of his duties to deliver meat; all of the meat had not been delivered; it was customary for him when the meat was delivered to return to the establishment from which he had set forth. He still had this one shoulder of beef to deliver and had decided that he would go and see a friend of his in regard to obtaining an application for admission, I believe, to the Pythias Lodge.

Charge to Jury.

Now, there are certain deviations from the course of duty by a servant which amounts to such a divorce of the duties of the master as to be independent, so that anything done after that break in the relations is not attributable to the master, but to the servant himself.

- 10 The law in this State is as follows: If Randall was using the automobile truck in the business of Meyer & Bush within the scope of his employment and it is shown to your satisfaction that the act which Randall did and which it is alleged was a cause of the injury was expressly or by necessary implication within the line of his duty under his employment, and you find Randall was negligent in the performance of his duty, then Meyer & Bush can be held. This has been concisely stated by the highest court of this state as follows: "To render
- 20 a master liable"—that is in this case Meyer & Bush—"for the negligent act of the servant must be done for the purpose of executing the master's orders and in doing his work and while actually engaged in serving the master, and it is not enough to say that the injuries complained of would not have been committed without the facilities afforded by the servant's relation to his master." Measuring the situation by that law you will determine whether Meyer & Bush are to be held, but, of course, before you can hold them, if you find that
- 30 Randall was acting within the scope of his employment, as I indicated, and was a servant of Meyer & Bush at the time of this accident, you must find that Randall was negligent in operating the motor truck.

Now, to come back to Mrs. O'Connor, the plaintiff in this case: There is no proof that this lady did anything except to quietly ride in this bus until this unfortunate accident took place, and if you find that either or both of the defendants are liable, then Mrs. O'Connor is entitled to damages for the bodily injury which

40 she has sustained and for her pain and suffering. Her

Charge to Jury.

doctor testified that after the accident she was in a semi-conscious condition, that she suffered from contusions of the head and bruises on the left side of her chest and that there were evidences of concussion of the brain, that he strapped her left side with surgeon's plasters and that as a result of this accident she has suffered not only from pain but from nervousness, and he seemed to think that there is a probability that neuritis of which she is suffering, she says, might have been caused by this, although he admitted on the witness stand that there was reasonable doubt as to whether neuritis comes from trauma. After this accident she was confined to her bed for six weeks, and before the accident she states that she was in a good condition of health and not nervous. A further element of damages which may be considered by you—because you are trying to compensate her in money for these things—is the nervous shock which she has sustained and the mental agitation which followed this shock, and continuing further you can consider and award her an amount which you think is fair and reasonable for her doctors' bills. 10

I understand that she paid her doctor \$54 and still owes him about \$200. She would further be entitled to any money which she has paid out in an endeavor to cure herself, and in that connection I think she found it necessary to obtain her sister's help. If you find it was necessary for her to do that, if that help was necessitated by this accident and the accident was the proximate cause of that necessity, then you can consider that her sister, if you find it is a reasonable amount, would be entitled to receive \$15 a week for seven weeks. Her hat was ruined and cost \$25; her suit, I think, cost \$59, or she valued it at \$59, and her underskirt at \$7.50. The damages which you can award for those are not the cost prices, but the difference in value of these articles between the time just before the accident and after 20 30 40

Exceptions to Charge.

the accident as nearly as you can calculate it; and then she alleges that her teeth, her false teeth, were cracked or broken by someone at the time of the accident, and I think she said they cost her \$75; I do not recall when she purchased them, but that is an indication of their value, and, of course, their value at the time of the
 10 accident and not what she paid is what you should consider as being proper.

Do you wish me to charge these, or do you think I have covered them?

Mr. Nugent. I would like to have them charged.

The Court. I am asked by the plaintiff to charge as follows:

1. "If the driver of the truck of the defendant, Meyer & Bush, was using the truck on the day in question
 20 in his master's business and had not completed his duties and had the truck in possession and using it within the scope of his employment his master will be held responsible even though the driver's acts were contrary to his orders."

2. "The plaintiff being a passenger on a public vehicle for hire she was entitled to a high degree of care on the part of the driver of the vehicle. All that is necessary for her to do is to prove the collision and her
 30 injuries, because a collision is *prima facie* proof of negligence on the part of both defendants."

(The jury retires.)

Mr. McGeehan. I ask an exception to the entire charge of the Court as requested by the plaintiff, and particularly that portion which was the second request to charge, stating that it is sufficient for the plaintiff to prove an accident and the fact that there were injuries sustained and that the happening of the collision is
 40 proof of negligence or of liability. I also ask an ex-

Exceptions to Charge.

ception to that portion of the charge which states that before the plaintiff may recover she must prove by a preponderance of the evidence that the defendants are responsible, and the failure anywhere within the entire charge of the Court to say that before the plaintiff can recover from the defendant, Adekman, he must be found guilty of negligence.

10

Exceptions noted as ground of appeal.

Mr. Matthews. I wish to take an exception particularly to that point in which your Honor said that the further element of damage is the nervous shock that the woman sustained and the mental agitation consequent thereon. Also may I object to that part of your Honor's charge in which you charged the first request of the plaintiff to charge and also the second request of the plaintiff to charge. And also a general exception.

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Exceptions noted as ground of appeal.

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New Jersey Court of Errors and Appeals

ROSE A. O'CONNOR,

Plaintiff-Respondent,

vs.

SAMUEL ADEKMAN, *et al,*

Defendant-Appellant.

Action at Law.

*On Appeal from
Essex Circuit
Court.*

BRIEF OF JAMES R. NUGENT, Of Counsel with Plaintiff-Respondent.

The plaintiff recovered \$2,500, damages for injuries growing out of a collision between a motor Bus, or Jitney, in which she was riding as a passenger, owned and operated at the time of the accident by the defendant Samuel Adekman, and a motor delivery truck owned by the defendant Meyer & Bush Co., and at the time of the accident driven by an employee in the delivery of meat for said company.

The Jitney was filled with passengers, who were in a helpless position and all of whom seem to have been more or less injured, and a number like the plaintiff, so seriously that they do not know exactly what occurred except that there was a collision. The Jitney upset and practically demolished; the passengers taken out of it and into a neighboring saloon, and some, like the plaintiff, sent away in ambulances and other vehicles.

I.

The first ground of appeal by the defendant Adekman is because the Court refused him a non-suit, which the plaintiff contends was properly refused.

1. The collision happened on April 14, 1919, at about 10 o'clock in the forenoon, on South Orange Ave., at the junction, or end of South 16th street, at or near the southwesterly corner; a stone yard is located on the north-west corner; a cemetery along South Orange Ave., opposite the end of South 16th street; a saloon near the scene of the accident, and car tracks in the middle of South Orange Avenue. These points and objects are mentioned in the testimony.

The testimony of the plaintiff and her witnesses shows that the appellant Adekman, was driving his Jitney on the right hand side of South Orange Avenue towards the center of Newark, and when he reached the north-west corner of South 16th street, a prospective passenger appeared on the south-west corner and in passing the end of South 16th street, he slowed down for this passenger and had nearly stopped near the curb of South Orange Avenue with two or three feet of the rear of the Jitney extending into the opening of South 16th street, when the collision took place.

Plaintiff (p. 16) Van Nortwick (p. 41-42).

The plaintiff, nor any of her witnesses who were passengers saw the truck before the accident except Van Nortwick, who says (p. 42) that when the Jitney was about the middle of 16th street, he saw the Truck 50 or 75 feet away on South 16th street, coming towards South Orange Ave., very fast (p. 44).

He further says there was no other vehicles or other objects in front of it nor on South Orange Avenue (p. 44).

Adekman was in a position to see the Truck coming as soon as he started passing the end of South 16th street, and if he had the safety of his passengers in mind as he should have had, instead of the nickel of the passenger on the South-west corner, he would have watched the approach of the Truck, and could, and should have averted the collision by stopping until the Truck turned into South Orange Ave., or by speeding up and running away from it. Here negligence on the part of Adekman clearly appears. Besides Randall, the driver of the Meyer & Bush Truck, was a witness for plaintiff, and on page 69 says he had turned into South Orange Ave., before the accident happened. If this were true then the other witnesses for the plaintiff were mistaken and it was for the jury to determine how the accident really happened and who was negligent. So under the evidence, when the plaintiff rested her case, the non-suit was properly refused.

2. This was a collision, which is *prima facie* proof of negligence on the part of the defendants.

It was a triangular suit, made so by the pleadings as well as the facts. The plaintiff charging both defendants with negligence, and both defendants, by their answers admitting the collision and charging the other with the negligence that caused it. Complaint (p. 5). Answer of Adekman (p. 7). Answer of Meyer & Bush

(p. 8), and each were in Court prepared to prove their allegations against the other. So for this reason a non-suit could not have been granted Adekman until Meyer & Bush had presented their side of the case.

II.

The second ground of appeal is because the Court refused to direct a verdict for Adekman.

In addition to the proof of negligence mentioned under Point I, we have further evidence of negligence in the testimony of Adekman (p. 99-100), that he saw the Truck when he was at the North-west corner and it was then probably 100 feet up South 16th street, and that he then slowly crossed to the South-west corner to pick up a passenger when he was struck by the Truck. But it does not appear that he paid any attention to the approach of the Truck from the time he first saw it until the accident.

In addition is the testimony of Randall, the driver of the Truck, witness for Meyer & Bush, who testifies, on (p. 116) that he got completely around the corner into South Orange Ave., when he was struck by the Jitney in the left rear part of the mud fender. Photographs were then introduced, and which the witness testified showed the injury to the mud guard. (p. 113). Thus, under the evidence the question of negligence became one for the jury and the direction of verdict was properly refused

III.

The third ground for appeal is because the Court charged the jury in part as follows:

“The plaintiff being a passenger on a public vehicle for hire she was entitled to a high degree of care on the part of the driver of the vehicle.”

This is the law, *Schott v. Weiss* (E. & A.) 92 L. 494, holds that a Jitney Bus owner who carries passengers for hire is a common carrier of passengers and owes them a high degree of care for their safety.”

Continuing the charge, “All that is necessary for her (the plaintiff) to do is to prove the collision and her “injuries, because a collision is *prima facie* proof of negligence on the part of both defendants.”

This part of the charge is also supported by law.

In *Ward v. Phil'a etc.*, Del. Sup. Ct., 76 At., 613, holds—that a collision between cars causing injury to a passenger casts upon the carrier the burden of showing that the accident was not due to its negligence.

So held in *Simons v. Rhode Island*, (R. I.) 66 At. 613.

So held in *Panent v. Rhode Island*, (R. I.) 72 At. 865.

Car collided with another *prima facie* proof of negligence, *Enos v. Rhode Island*, 67 At. 5.

Derailment of a train *prima facie* proof of negligence *Parker v. Boston*, (Vt.) 79 At. 865.

“In a suit brought against a street railway company by a passenger for injuries caused by the derailment of the car, proof of the happening of the accident is sufficient to charge the company with negligence, and to place upon it the burden of showing that the injuries were not received through any fault on its part.”

Bergen Co. Traction Co. v. Demarest, 62 N. J. L., 755 (E. & A.)

“Where a street car collided with a wagon in a public street, it was proper, in an action for injuries to a passenger caused thereby, to refuse to instruct that plaintiff must establish negligence by a preponderance of the evidence since, under the doctrine of *res ipsa loquiter*, proof of a collision raised a presumption of negligence on the part of the defendant, requiring it to establish that the motorman was not in fact negligent.”

Shay v. Camden, Etc., 66 N. J. L., 334 (E. & A.)

IV.

The fourth ground of appeal is because the Court charged the jury in part as follows:

“Before she (plaintiff) can recover money damages against either one of these or both defendants she must prove by the preponderance of the evidence to your satisfaction that the defendants are responsible.”

but failed in any part of the charge to instruct the jury that before the defendant Adekman could be held it must be established that the defendant Adekman was guilty of negligence or words to that effect.

This last quotation from the charge is clearly in favor of the defendants and against the plaintiff and the law as held in *Shay v. Camden*, 66 L. 334 above quoted. Nevertheless Adekman had the benefit of it, and to be “responsible” would mean that he committed or omitted something which caused the accident, or by which it might have been avoided, and is equivalent to negligence.

Besides the verdict was justified by the evidence.

The accident happened at about 10 a. m., when everybody could see what was going on. There is undisputed testimony by two or three witnesses that both streets were clear of other vehicles. Adekman testifies that he saw the Truck when he was at the opposite corner from where the accident took place and it was then about 100 feet away. (p. 99-100). Notwithstanding his duty to his passengers he paid no further attention to it until it struck his Jitney, or he struck it.

Randall, the driver of the Truck of Meyer & Bush, testifies on page 123 that he saw the Jitney when it was 10 or 15 feet above the northwest corner of South Orange Ave., and he was then about 100 feet away, and that he had turned the corner into South Orange Ave., when the Jitney ran into his Truck, (p. 116.)

No excuse appears for the accident happening at all and none could be given, because either Adekman or Randall could have prevented it. There is clear and unmistakable proof of negligence on the part of Adekman as well as on the part of Randall, so the plaintiff contends that under the pleadings and testimony the judgment should be sustained.

Respectfully submitted,

JAMES R. NUGENT,
*Of Counsel with Plaintiff
and Appellee*

New Jersey Court of Errors and Appeals

ROSE A. O'CONNOR, <i>Plaintiff-Respondent,</i>	}	<i>Action at Law.</i> <i>On Appeal</i> <i>from Essex</i> <i>Circuit Court.</i>
<i>vs.</i>		
SAMUEL ADEKMAN, <i>Defendant-Appellant.</i>		

BRIEF OF JOHN W. MCGEEHAN, JR., FOR DEFENDANT-APPELLANT.

This is an appeal by Samuel Adekman, one of two defendants against whom judgment was recovered by the above-named plaintiff in the Essex County Circuit Court. The plaintiff was a passenger in a jitney bus owned and operated by the defendant-appellant, which came into collision with a motor truck owned and operated by the other defendant, the Meyer & Bush Co., a corporation, as the result of which plaintiff sustained injuries. The defense interposed by the respective answers of each defendant was a denial of negligence on the part of each defendant and the assertion of each defendant that the other defendant's negligence was the sole cause of the collision and the ensuing injury to the plaintiff. Judgment for the plaintiff was rendered against both defendants and only the defendant Adekman appeals from that verdict.

This defendant relies chiefly upon the third ground of appeal, and this will be argued first in connection with the fourth ground of appeal as both of these grounds of appeal are based upon the alleged erroneous charge of the Court to the jury.

GROUNDS OF APPEAL.

Third and Fourth Grounds of Appeal.

3. Because the Court charged the jury in part as follows:

“The plaintiff being a passenger on a public vehicle for hire she was entitled to a high degree of care on the part of the driver of the vehicle. All that is necessary for her to do is to prove the collision and her injuries, because a collision is *prima facie* proof of negligence on the part of both defendants.”

4. Because the Court charged the jury in part as follows:

“Before she can recover money damages against either one of these or both defendants she must prove by the preponderance of the evidence to your satisfaction that the defendants are responsible,”

but failed in any part of the charge to instruct the jury that before the defendant Adekman could be held it must be established that the defendant Adekman was guilty of negligence or any words to this effect.

It is respectfully submitted that the portion of the charge quoted in the third ground of appeal, and to be found on page 148 of the Case, together with exception thereto, which the Court instructed the jury in compliance with the second request of the plaintiff to charge, constituted error which was clearly calculated to mislead the jury in its verdict by creating in their minds the improper belief that the plaintiff was entitled to recover damages from both of the defendants without any proof of their negligence, except the proof of the happening of a collision and her injuries. This portion of the charge was particularly harmful to the defendants in view of the fact that nowhere in the entire charge does the Court specifically instruct the jury, with respect to the defendant-appellant Adekman, that before recovery may be had from this defendant, his negligence or the negligence of his servant must be proven by the plaintiff

as a proximate cause of the injury. The nearest approach that the Court makes to such a charge is on page 143, where it charged the jury that:

“Before she can recover money damages against either one of these or both defendants she must prove by the preponderance of the evidence to your satisfaction that the defendants are *responsible*.”

This portion of the charge if it did not in itself constitute error, certainly at least does not clarify or correct the erroneous impression to be gained by the jury from the portion of the charge referred to in the third ground of appeal.

In view of the fact, therefore, that as to the defendant Adekman the only portion of the charge which refers to the matter of negligence on his part being the statement that:

“All that is necessary for her to do is to prove the collision and her injuries, because a collision is *prima facie* proof of negligence on the part of both defendants,”

the sole question seems to be as to whether or not this proposition is a correct statement of the law applying to the case and it is the appellant's contention that it is not.

It is submitted that in this case the burden of proof was upon the plaintiff to prove by a preponderance of the evidence that the defendant Adekman was guilty of negligence which was the proximate cause of the collision which resulted in injury to the plaintiff. The rule as to common carriers undoubtedly imposed upon this defendant the duty of exercising a high degree of care, so that a slight disregard of this high degree of care would constitute negligence upon his part, but such negligence should have been shown and it is submitted that the mere proof of the collision and her injuries is not sufficient, as the Court charged, to entitle her to recover, and it is further submitted that a collision is not “*prima facie* proof of negligence on the part of both defendants.”

Even if this were a case in which the *res ipsa loquitur* rule might apply, it does not obviate the necessity for a finding of negligence on the part of the defendant before a verdict may be rendered against him, it merely applies
 “when the thing shown speaks of the negligence of the defendant, not merely of the happening of the accident.”

Paynter v. Bridgeton, etc., Traction Co., 67 N. J. L. 619, 52 Atl. 367, and even then the effect of the application of the doctrine is merely to obligate the defendant to explain the reason for the accident, and, in the event of a failure to satisfactorily explain, a finding of the *fact of negligence* may be predicated upon the proofs of the accident, but the necessity of such finding of negligence upon the whole case has never been questioned. As was said in the leading case of *Bahr v. Lombard, etc. Co.*, 53 N. J. L. 233 (p. 237):

“The principle is quite institutional, that whenever a right of action springs from the conduct of a defendant, the plaintiff must present proof of the facts necessary to the recovery which he seeks. It is, furthermore, the general rule of law, that the mere proof of the occurrence of an accident raises no presumption of negligence.”

The Court, then, after explaining the class of cases in which the doctrine of *res ipsa loquitur* applies, goes on to say (on p. 239):

“Notwithstanding the generality of the language here used, it is evident that this phrase clearly imports that there must, in each case, be something in the facts that speaks of the negligence of the defendant.”

The utmost effect of the application of the rule of *res ipsa loquitur* is to call upon the defendant for an explanation of the reasons for the occurrence and for a defense. See *Mumma v. Easton, etc. R. Co.*, 73 N. J. L. 653.

Certainly even if the doctrine of *res ipsa loquitur* applied to the case at bar it was improper for the Court to charge the jury:

“All that is necessary for her to do is to prove the collision and her injuries, because a collision is *prima facie* proof of negligence on the part of both defendants.”

Taking the plain and literal meaning of the Court, the jury could draw no conclusion from the charge except that if the plaintiff were injured and if a collision was proven that was all that it was necessary for her to do in order to recover from both defendants. In the trial of the case, the collision and injuries were admitted and the whole defense was based on the issue of negligence.

And it is submitted by this defendant that the facts in the case at bar did not even warrant the application of the rule of *res ipsa loquitur*, for the injuries to the plaintiff were sustained through the collision of two vehicles, one a jitney bus and the other an auto truck, owned by separate defendants, and none of the elements exist which would take this case out of the general and ordinary rules applying to an issue upon negligence for an alleged tort, and the case comes within the doctrine expounded in the case of *Paynter v. Bridgeton, etc., Tr. Co.*, 67 N. J. L. 619, wherein the Court stated:

“the mere happening of the accident raised no presumption of the negligence of the defendant. It was necessary to show, by direct evidence, that the defendant was responsible for the accident, or to show the existence of such circumstances as would justify the inference that the injury was caused by the wrongful act of the defendant, and would exclude the idea that it was due to a cause with which the defendant was unconnected,”

citing *Suburban Electric Co. v. Nugent*, 29 Vroom 659; *Houston v. Traphagen*, 18 *Id.* 23; *Benedict v. Potts*, 41 L. R. A. 478.

The fact that the plaintiff herein proved the collision between the jitney bus and the auto truck to have been

the cause of her injury would of itself remove this case from the realm of the application of *res ipsa loquitur*, for the cause of the injury was thereby shown and would not necessarily

“exclude the idea that it was due to a cause with which the defendant was unconnected.”

The Supreme Court of New Jersey in the case of *Wagner v. Public Service Railway Co. and Sievers*, which was decided at the November Term, 1919, in which the *per curiam* opinion (Number 42) does not appear to have been reported, held in a case exactly similar to the one at bar wherein the plaintiff was a passenger in a jitney bus which collided with a trolley car and which arose on a rule to show cause, which was made absolute, that,

“The excerpts from the charge which we have recited are plainly erroneous. The fundamental question in the case was whether the defendants, or either of them, were under a legal obligation to compensate the plaintiffs for the injuries received by the wife; and that question depended upon whether the proofs showed that the accident was the direct result of negligence on the part either of the motorman operating the trolley car, or of the driver of the jitney bus, or of both of them. The burden of proving such negligence rested upon the plaintiffs, and the question whether the proofs offered by them for that purpose—supplemented, perhaps by proofs offered on behalf of the defendants—showed such negligence, was a question of fact to be submitted to and determined by the jury. Instead of leaving that matter to them, however, the trial court disposed of it as a matter of law, by necessary implication, when he told the jury that the plaintiff was entitled to recovery, and that the only matter for them to determine was the amount of the recovery, and whether that amount should be assessed upon one or the other or both of the defendants. This was clearly error, and that it was injurious goes without saying.”

It is submitted that in the case at bar the Trial Court charged with equal error as in the *Wagner* case that the

plaintiff was entitled to recover without submitting the question of negligence to the jury when it stated:

“All that is necessary for her to do is to prove the collision and her injuries.”

And it cannot be considered that this error was harmless because it goes to the very heart of the issue involved in the trial of the case and the injury of it is not ameliorated by any correct charge upon the point of negligence in the entire charge, for nowhere in the entire charge does the Court instruct the jury that before this defendant can be held he must be proven to have been guilty of some negligence and even if the word “responsible” could be considered as having a meaning in law synonymous with negligence it is certainly clear that by responsible the jury would take it to mean that the collision figured in by both vehicles fixed the responsibility under the charge of the Court, and even if the Court had corrected or did correct in another portion of the charge the misdirection above quoted, this would not cure the same, because, as stated in the case of *Ruchman v. Bergholz*, 37 N. J. L. 437:

“it is true the parties to a suit have a right to have the law truly declared, but it is also true that a judgment will not be reversed for an error, however manifest, which has done no injustice. But it should be clear that the party complaining has not been injured by the error, and if there is reasonable doubt on that point, it is the duty of the Court to give him the benefit of it.”

First and Second Grounds of Appeal:

1. Because the Court failed and refused to grant the motion for non-suit made by the defendant at the close of the plaintiff's case.

2. Because the Court failed and refused to direct a verdict for the defendant, Samuel Adekman, in accordance with the motion of the defendant at the close of the evidence in the trial of the case.

These grounds, involving as they do virtually the same questions based upon the evidence in the case, will be argued together.

The motion for non-suit (p. 69) was based upon the ground that the evidence in the plaintiff's case failed to show any negligence whatever on the part of the defendant, Adekman, and that on the contrary it affirmatively showed the absence of negligence on his part. The same grounds were urged on the motion for direction of verdict (p. 41).

An examination of the testimony of the various witnesses for the plaintiff will disclose absolutely no testimony that would prove negligence or warrant the inference of negligence on the part of the defendant, Adekman. The testimony of plaintiff, Rose A. O'Connor, beginning page 15, throws no light on the manner of the happening of the collision. She testifies (p. 18):

“Q I will bring you back to this accident. Did you see the collision? A No, I didn't see it; I only felt it.

Q You knew there was a collision then? A Yes, sir.

Q Was the bus moving at that time? A If it was it was going slowly; it felt as though it were slowing down to take on a passenger.”

The next witness for the plaintiff was Dr. Don Epler, who testified as to injuries but did not see the accident.

The next witness, Marjorie Berg, beginning page 39, does not testify to seeing anything of the accident except when she heard the crash.

Walter Van Nortwick, beginning page 40, testified that he was a passenger on the bus and said:

“Q Do you remember reaching Sixteenth street? A I do.

Q What occurred there? A Why, the chauffeur of the bus slowed down to pick up a passenger, as far as I can remember, and about that time a truck came out of Sixteenth street and hit him in the rear and turned him over.”

This same witness (p. 42) testified as follows:

“Q (By the Court.) When you first saw this truck, Mr. Van Nortwick, whereabouts was the auto bus? A If I remember right, it was about fifty or seventy-five feet coming down Sixteenth street towards South Orange avenue when I first saw it.

By the Court.

Q That is where the truck was? A That is where the truck was.

Q Where was your bus? A We were about the middle of Sixteenth street then.

Q And the bus was how far, seventy-five feet? A The auto car was about fifty or seventy-five feet, if I remember right.

By Mr. Nugent.

Q How much further did the bus go then before it was hit? A Why, the bus was about the middle of Sixteenth street when I first saw his truck coming, and the bus just about cleared Sixteenth street—a few feet to the rear sticking out Sixteenth street.

Q And then it was hit? A Yes.”

The following questions and answers, on page 43, make it clear that the jitney bus which was going east on South Orange avenue, was in the center of the crossing at Sixteenth street when the auto truck was fifty or seventy-five feet up Sixteenth street and that the jitney bus was coming to a stop and all but a few feet of the bus had cleared the easterly curb line of Sixteenth street when the auto truck ran into the rear right end of the jitney bus causing it to capsize (see p. 44).

It is submitted that the testimony of this witness clearly shows and is susceptible of no other interpretation that there was no negligence on the part of the defendant, Adekman, in the operation of the jitney bus and that this testimony constituted direct evidence of lack of evidence on the part of the defendant, Adekman.

The next witness was Officer Charles Bender, whose testimony begins on page 55. This officer arrived after the accident had occurred and could throw no light upon

the occurrence. The only part of his testimony (p. 57) that would relate to the question of negligence was that part which referred to the testing of the brakes on the auto truck of the other defendant, Meyer & Bush Co., one of which he testified was defective. No part of his testimony could form a basis of a finding of negligence on the part of the defendant, Adekman.

The next witness called by the plaintiff was one Randall, whose testimony appears page 64. This witness was the employee of the defendant, Meyer & Bush Co., who drove the truck of that defendant which figured in the collision. He was examined merely upon the question of his employment by the defendant, Meyer & Bush Co., and none of his testimony refers to the manner of happening of the accident.

It is submitted, therefore, that the burden of proof was upon the plaintiff to prove that the defendant, Samuel Adekman, was negligent in the operation of his jitney bus, and that such negligence was the proximate cause of the injury to the plaintiff. It is admitted that if there were any evidence whatever in the plaintiff's case, which, taken in its most favorable light, would warrant the inference of negligence, the motion for non-suit should not have been granted; but it is submitted that if there were no evidence whatever of negligence or any fact or circumstance that would warrant the inference of negligence on the part of the defendant Adekman that then this motion for non-suit should have been granted. As was above stated, none of the witnesses produced by the plaintiff gave any testimony whatever as to the happening of the accident, except the witness Van Nortwick, and it is respectfully submitted that not only does his testimony taken in part or in whole fail to show any negligence on the part of the defendant Adekman, but on the contrary it conclusively shows the exercise of complete care on his part and the striking of his bus on the right rear corner as it was coming to a stop after traversing the entire width of the inter-

secting Sixteenth street and while all but a few feet of of the bus had cleared the further curb line of Sixteenth street.

It is respectfully submitted that for the reasons stated in the motion for non-suit, the Trial Court should have granted the motion for the defendant Adekman for a non-suit at the close of the defendant's case and that the failure to grant this motion constituted harmful error to the defendant.

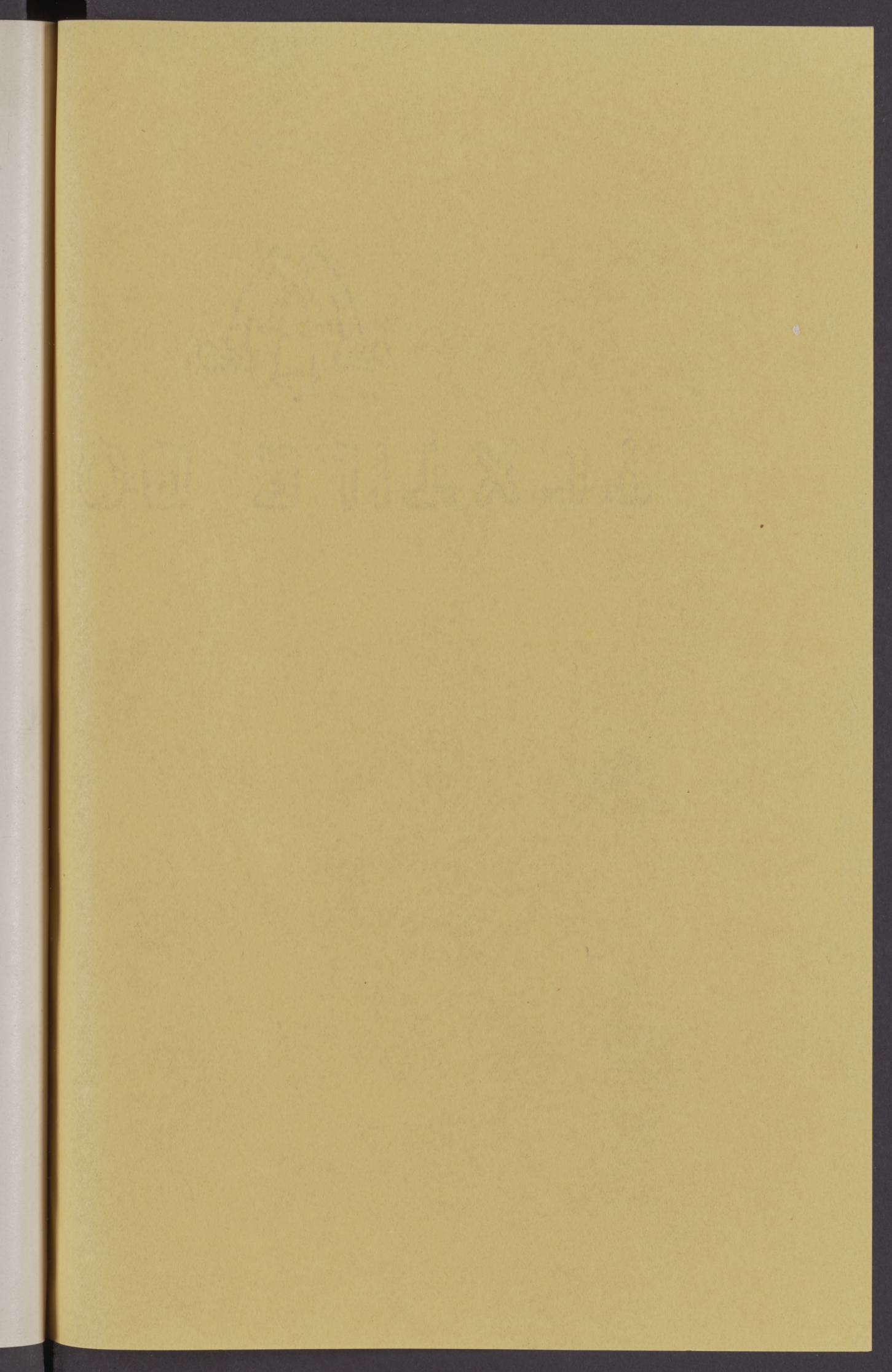
In the defense of Adekman, all of the witnesses, including Minerva Weber (p. 41), Sadie A. Miracle (p. 81), Albert J. Henderson (p. 91), and Samuel Adekman (p. 99), testified to the same state of facts that were testified to by the witness Van Nortwick for the plaintiff.

It is submitted that on the motion for direction of verdict by the defendant Adekman, the testimony to be considered by the Court was the testimony of the plaintiff's witnesses and the testimony of this defendant's witnesses and that an examination of all of this testimony conclusively shows that the defendant Samuel Adekman was guilty of no negligence, and that the motion for direction of verdict should have been granted.

The attention of the Court is respectfully called to the great preponderance of testimony showing no negligence on the part of the defendant Adekman to be considered also in conjunction with the alleged erroneous charge of the Court upon the question of the sufficiency of proof of the collision alone for recovery by the plaintiff, as it is submitted that the great amount of evidence negating the negligence of the defendant Adekman would undoubtedly entitle him to a verdict from the jury if the Court had not charged the jury that it was sufficient for the plaintiff to prove the collision and her injuries because the collision was *prima facie* proof of negligence.

For all of the reasons above set forth, it is hereby respectfully urged that the verdict in favor of the plaintiff as against the defendant Samuel Adekman be reversed.

JOHN W. MCGEEHAN, JR.,
Attorney for and of Counsel with
Defendant-Appellant, Samuel Adekman.





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