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**Summons.**

10

*The State of New Jersey*: Joseph Brtan, and Gabriel Brtan, 307 Grant Avenue, Jersey City, N. J. (L.S.)

You are Summoned to answer the annexed complaint of Catherine Warsley, as Administratrix *ad pros.* of the estate of Paul Warsley, deceased, in an action at law in the New Jersey Supreme (Hudson County) Court. And take notice that unless you file your answer to said complaint with the Clerk of the said New Jersey Supreme Court at Trenton within 20 days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you. 20

Witness, WILLIAM S. GUMMERE, Chief Justice of the Supreme Court at Trenton, this 3rd day of February, nineteen hundred and Thirty-three. 30

FRED L. BLOODGOOD,  
Clerk.

EDWARD STOVER, Attorney  
One Newark Street,  
Hoboken, N. J.

40

**Complaint.**

## NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

10	CATHERINE WARSLEY, as admin- istratrix <i>ad prosequendum</i> of the ESTATE OF PAUL WARS- LLEY, deceased, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div>	}	Action at Law.
	vs.		
	JOSEPH BR TAN and G ABRIEL BR TAN, <div style="text-align: right; padding-right: 20px;">Defendants.</div>		

20 Plaintiff, Catherine Warsley, as Administra-  
 trix *ad prosequendum* of the Estate of Paul  
 Warsley, deceased, (and deceased, in his life-  
 time), residing in the City of Bayonne, County of  
 Hudson and State of New Jersey, says that:

## FIRST COUNT.

30 1. On or about November 25th, 1932, plain-  
 tiff's intestate, Paul Warsley, was lawfully cross-  
 ing Avenue C, in the City of Bayonne, County of  
 Hudson and State of New Jersey, at or near the  
 point where 57th Street of said City, intersects  
 Avenue C, Bayonne.

40 2. On the aforesaid date, the defendant Jos-  
 eph Brtan, was the driver of a certain automobile  
 which he was operating and driving near, at or  
 on the intersection of 57th Street and Avenue C,  
 in Bayonne, as aforesaid.

*Complaint.*

3. It then and there became the duty of the defendant, Joseph Brtan, to use reasonable care to avoid hitting plaintiff's intestate, and to use reasonable care to avoid a collision.

4. Notwithstanding said duty was attached to and placed on defendant, Joseph Brtan, he utterly and wholly disregarded same, and by virtue of the negligence, carelessness and unskilfulness of defendant, Joseph Brtan, as hereinafter stated, the said automobile violently struck plaintiff's intestate, while latter was using due care in crossing said intersection of Avenue C and 57th Street, Bayonne, New Jersey, and injured him so severely and fatally, that he died as a result thereof on or about November 26th, 1932. 10

5. The negligence, carelessness and unskilfulness of the defendant, Joseph Brtan, consisted in that he was engaged in the performance of a highly dangerous act, to wit: driving said aforementioned automobile at an unlawful and reckless rate of speed; in that he failed to use reasonable and proper care to govern, manage and control said automobile; in that he failed to give any warning of his rapid and unlawful approach to plaintiff's intestate, or in failing to do so at the proper time; in failing to obey existing Traffic Act of 1928 and any Traffic Act in N. J.; in losing control of said machine; in having a defective or no windshield wiper; in causing it to acquire great momentum; in permitting said automobile to be and remain equipped with defective brakes and other appliances; in failing to bring said car to a slowdown and standstill; in failing to give plaintiff's intestate the right of way, in latter being a pedestrian, in crowding the front seat so 20 30 40

*Complaint.*

10 he could not properly manage this automobile, and to otherwise use reasonable care and precaution to avoid colliding with plaintiff's intestate, altho defendant, Joseph Brtan, had ample opportunity so to do, before striking plaintiff's intestate; in recklessly disregarding the duty cast upon defendant, Joseph Brtan, in running down plaintiff's intestate; and defendant, Joseph Brtan, was in divers other ways negligent and careless in the control and operation of the said automobile, in consequence of which the accident aforesaid occurred.

6. Said plaintiff's intestate left him surviving his wife, Catherine Warsley, Elizabeth Kalafsky, a daughter, Albert E. Warsley, a son, Helen Warsley, a daughter, Nicholas Warsley, a son,  
 20 James Warsley, a son, Katherine Fitzpatrick, a daughter, and Paul Warsley, a son, who are his only next of kin, and have suffered pecuniary loss by reason of his death.

7. On or about the 5th day of January, 1933, letters of administration *ad prosequendum* were granted upon the estate of Paul Warsley, by the Surrogate of Hudson County, to plaintiff, Catherine Warsley, and were accepted by her, and said  
 30 Catherine Warsley, administratrix, qualified and took upon herself the burden of administering the said estate.

8. This action was commenced within two years after the death of plaintiff's intestate.

Plaintiff demands as damages on first count the sum of \$20,000 with costs of court.

*Complaint.*

## SECOND COUNT.

Plaintiff, Catherine Warsley, administratrix, as above alleged, complaining against the defendant, Joseph Brtan, says that:

1. She repeats the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 of first count, and makes same part hereof. 10

2. As a result of said accident, plaintiff, Catherine Warsley, was obliged to expend large sums of money for medicines, physicians and hospital attendance, and administratrix's expenses, in the administration of said deceased's estate.

Plaintiff, Catherine Warsley, administratrix, demands as damages on second count the sum of \$20,000 with costs of court. 20

## THIRD COUNT.

Plaintiff, Catherine Warsley, administratrix, as above alleged, complaining against the defendant, Gabriel Brtan, says that:

1. She repeats the allegations of paragraph 1 of first count, and makes same part hereof.

2. On the aforesaid day, defendant, Gabriel Brtan, was the owner of the automobile, mentioned in paragraph 2 of the first count, which was being driven and operated by defendant, Joseph Brtan. 30

2½. It then and there became the duty of the defendant, Gabriel Brtan, thru his agents, servants and employees, to use reasonable care to avoid hitting plaintiff's intestate, and to use reasonable care to avoid a collision. 40

*Complaint.*

3. When the automobile owned by the defendant, Gabriel Brtan, reached a short distance from the plaintiff's intestate, at said above mentioned time and place, the said defendant, Gabriel Brtan, (notwithstanding the duty attached to defendant and his drivers), thru his agents, servants and employees, operated and controlled the same so negligently and carelessly, that said car of defendant, Gabriel Brtan, was driven with great force and impact into and against the plaintiff's intestate, causing great internal and other injuries to plaintiff's intestate, as a result of which he died shortly afterwards.

4. The negligence of the defendant, Gabriel Brtan, consisted in that altho, he, his agents, servants or employees, was in the possession and use of said automobile, he did not use reasonable care to propel the same at a rate of speed and momentum safe for people using said highway; and used unlawful and reckless speed upon said highway; he, his agents, servants and employees, failed to apply the brakes on said automobile, and did not apply same at the proper time, he, his agents, servants and employees, did not use reasonable care to keep a lookout where he was going, and the direction in which he drove his said automobile, immediately prior to the time of said accident; he, his agents, servants or employees, recklessly steered his said automobile towards, at and against the plaintiff's intestate; he, his agents, servants or employees drove at such an excessive and high rate of speed so as to lose control of said automobile; he, thru his agents, servants or employees, drove said automobile while equipped with defective brakes and other appliances; he, his agents, servants or em-

*Complaint.*

ployees, gave no warning or signal of the rapid and unlawful approach of his automobile; he, thru his agents, servants or employees, employed an incompetent driver, or hired said automobile to an incompetent driver, the latter going to the left of traffic signal, and failed to obey existing Traffic Act of 1928, and any Traffic Act in N. J.; and defendant, Gabriel Brtan, thru his agents and servants, failed to give plaintiff's intestate the right of way, the latter being a pedestrian, defendant was negligent in having a defective or no windshield wiper, and in crowding the front seat so he could not properly manage his machine, and did otherwise, so negligently, carelessly and recklessly operate and control said automobile, that by reason of said divers acts of negligence on the part of defendant, Gabriel Brtan, his agents, servants or employees, the accident aforesaid occurred. 10 20

5. The driver of said automobile Joseph Brtan, was engaged in and about the said defendant's (Gabriel Brtan's) business, and was authorized to drive said automobile at said time, by said defendant, Gabriel Brtan.

6. Plaintiff repeats the allegations of paragraph 6 of the first count and makes the same part hereof. 30

7. Plaintiff repeats the allegations of paragraph 7 of the first count and makes the same part hereof.

8. Plaintiff repeats the allegations of paragraph 8 of the first count and makes the same part hereof.

*Complaint.*

Plaintiff demands as damages on the third count the sum of \$20,000 with costs of this suit.

## FOURTH COUNT.

10 Plaintiff, Catherine Warsley, administratrix as above alleged, complaining against the defendant, Gabriel Brtan, says that:

1. She repeats the allegations of paragraphs 1, 2, 2½, 3, 4, 5, 6, 7, and 8 of third count, and makes same part hereof.

2. As a result of said accident, plaintiff, Catherine Warsley, was obliged to expend large sums of money for medicines, physicians and hospital attendance, and administratrix's expenses, in the administration of said deceased's estate.

20 Plaintiff, Catherine Warsley, administratrix, demands as damages on fourth count the sum of \$20,000 with costs of court.

EDWARD STOVER,  
Attorney for Plaintiff.

30

40



*Answer.*

clusive, and make them part of this count as though fully set forth herein.

2. The defendants deny each and every allegation contained in paragraph 2 of the second count.

## THIRD COUNT.

10

1. The defendants repeat and reiterate their answers to the first count, and make them part of this count as though fully set forth herein.

2. The defendants deny each and every allegation contained in paragraphs 2, 2½, 3, 4, 5, 6 and 7 of the third count.

## FOURTH COUNT.

20

1. The defendants repeat and reiterate their answers to paragraphs 1 to 8 inclusive of the third count, and make them part of this count as though fully set forth herein.

2. The defendants deny each and every allegation contained in paragraph 2 of the fourth count.

## FIRST SEPARATE DEFENSE.

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The defendants were free from any and all negligence.

## SECOND SEPARATE DEFENSE.

The plaintiff's, intestate, was guilty of contributory negligence in that at the time and place set forth in the complaint, he failed to make proper or necessary observations for his own safety, or for the conditions of traffic then and there existent. He attempted to cross the highway at a dangerous and improper place, and in the path-

40

*Answer.*

way of known perils. He failed to heed warnings and signals given him, and in other divers ways was careless, reckless and negligent.

HYMAN SEGAL,  
Attorney for Defendant.

**Reply.**

Filed March 14, 1933.

10

NEW JERSEY SUPREME COURT.

CATHERINE WARSLEY, as administratrix *ad prosequendum* of the ESTATE OF PAUL WARSLEY, deceased,

Plaintiff,

vs.

JOSEPH BRTAN and GABRIEL BRTAN,  
Defendants.

Action at Law. 20

Plaintiff replying to the defendants answer says:

30

REPLY TO FIRST SEPARATE DEFENSE,

She denies the allegations of the first separate defense.

REPLY TO SECOND SEPARATE DEFENSE.

She denies the allegations of the 2nd separate defense.

EDWARD STOVER, Atty.  
1 Newark Street,  
Hoboken, N. J. 40

**Postea.**

## NEW JERSEY SUPREME COURT.

10	CATHERINE WARSLEY, as admin- istratrix <i>ad prosequendum</i> of the ESTATE OF PAUL WARS- LEY, deceased,  Plaintiff,  vs.  GABRIEL BR TAN, Defendant.	}	Action at Law. On Postea.
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\$3000.00  
 83.87

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\$3083.87

20

It is ordered that judgment be and hereby is entered in favor of plaintiff and against the defendant for the sum of three thousand dollars besides costs to be taxed nisi.

Entered March 16, 1934.

On motion of  
 EDWARD STOVER,  
 Attorney.

30

40

**Judgment.**

Entered March 16, 1934.

## NEW JERSEY SUPREME COURT.

CATHERINE WARSLEY, as admin- istratrix <i>ad prosequendum</i> of the ESTATE OF PAUL WARS- LEY, deceased,  Plaintiff,  vs.  GABRIEL BRTAN, Defendant.	}	Action at Law.	10
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\$3000.00	
83.87	

\$3083.87	20
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It is ordered that judgment be and hereby is entered in favor of plaintiff and against the defendant for the sum of three thousand dollars besides costs to be taxed nisi.

On motion of  
 EDWARD STOVER,  
 Attorney.

30

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**Notice of Appeal.**

Filed March 27, 1934.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

10	CATHERINE WARSLEY, as admin- istratrix <i>ad prosequendum</i> of the ESTATE OF PAUL WARS- LEY, deceased, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div>	}	Action at Law.
	vs.		
20	JOSEPH BR TAN and G A B R I E L BR TAN, <div style="text-align: right; padding-right: 20px;">Defendants.</div>		

To the above named Plaintiff and/or EDWARD  
 STOVER, Esq., her Attorney:

PLEASE TAKE NOTICE that the defendant Gabriel  
 Brtan appeals to the New Jersey Court of Errors  
 & Appeals from the whole of the judgment enter-  
 ed in the above entitled cause on March 13, 1934.

30  
 A. A. MELNIKER,  
 Attorney of Defendant.

Service acknowledged this March 26, 1934.

EDWARD STOVER,  
 Attorney of Plaintiff-Respondent.

**Grounds of Appeal.**

Filed April 21, 1934.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

CATHERINE WARSLEY, as admin-  
istratrix *ad prosequendum* of  
the ESTATE OF PAUL WARS-  
LEY, deceased,

Plaintiff-Respondent,

vs.

JOSEPH BR TAN and G A B R I E L  
BR TAN,  
Defendants-Appellants.

10

Action at Law.

20

To the above named Plaintiff and/or EDWARD  
STOVER, Esq., her attorney:

PLEASE TAKE NOTICE that the following are the  
grounds of appeal in the above entitled cause:

1. Because the Trial Court erroneously denied  
defendants' motion for a non-suit at the conclu-  
sion of the plaintiff's case.

2. Because the Trial Court erroneously denied  
the motion for a non-suit with respect to the de-  
fendant Gabriel Brtan at the conclusion of the  
whole case.

30

3. Because the Trial Court denied a motion  
for direction of a verdict in favor of the defend-  
ants Joseph Brtan and Gabriel Brtan at the con-  
clusion of the whole case.

40

*Grounds of Appeal.*

4. Because the Trial Court erroneously admitted into evidence over the defendants' objection, a transcript from the records of death of Hudson County.

A. A. MELNIKER,  
Attorney of Defendant-Appellant,  
Gabriel Brtan.

10

Service acknowledged this April 19, 1934.

EDWARD STOVER,  
Attorney for Plaintiff-Respondent.

20

30

40

**Testimony.**

## NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

---

CATHERINE WARSLEY, as admin-  
istratrix *ad prosequendum* of  
the ESTATE OF PAUL WARS-  
LEY, deceased,

Plaintiff,

vs.

JOSEPH BRTAN and GABRIEL  
BRTAN,  
Defendants.

---

10

Action at Law.

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Jersey City, New Jersey,  
March 12, 1934.

Before—HON. HENRY E. ACKERSON, Judge,  
and a jury.

## APPEARANCES:

EDWARD STOVER, ESQ.,  
Attorney for the Plaintiff.

HYMAN SEGAL, ESQ., by AARON MELNIKER,  
Esq., Attorney for the Defendants.

30

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(A jury was impaneled and sworn.)

Mr. Melniker: I would like, with the Court's permission, to enter on the record a disclaimer of liability insofar as the Consolidated Indemnity Insurance Company is concerned and reserving all our rights to disclaim liability on the ground of lack of cooperation on the part of the assured.

(Opening to the jury by counsel.)

40

*Testimony.*

Mr. Stover: I might say at the outset counsel has unintentionally misinformed the jury and the Court that Gabriel was not the owner and the driver.

Mr. Melniker: I say he was the owner.

10 Mr. Stover: I have got the written admissions of the attorney of record. I submitted interrogatories to him. Here is the answer I got, that he was driving for his father on the business of his father.

Mr. Melniker: We do admit ownership, but I have nothing here to indicate to me—in fact, my information is the boy was driving his car for his own purpose, for his own pleasure.

20 Mr. Stover: I now offer in evidence the written interrogatories and the written stipulation by counsel for the other side, the attorney of record.

The Court: Is there any objection to it?

Mr. Melniker: No objection to it.

(The papers above referred to were received and marked in evidence P-1 and P-2.)

Mr. Melniker: We admit the ownership of Gabriel; we admit the operation by Joseph.

30 Mr. Stover: If the Court please, I offer in evidence a certified copy of the letters of administration *ad prosequendum* of the estate of Paul Worsley in which authority is given to Catherine Worsley to prosecute this claim.

Mr. Melniker: No objection.

(The paper above referred to was received and marked in evidence P-3).

40 Mr. Stover: If the Court please, I now offer in

*Testimony.*

evidence transcript from the records of death of Hudson County in pursuance of the evidence act and all of the statements and facts therein contained.

Mr. Melniker: I object to that.

The Court: It will be received.

(The paper above referred to was received and marked in evidence P-4.) 10

Mr. Melniker: May I ask an exception?

The Court: Yes.

Mr. Stover: I served a notice to amend on the other side. It is simply to move the place of the accident from 57th Street to 56th Street. The complaint says 57th.

The Court: Changing it to 56th Street, is that the idea?

Mr. Stover: I will offer this in evidence. 20

The Court: All right. It may be marked. It will be allowed. That should be properly addressed to the Court.

Mr. Stover: I will ask the Court to permit the amendment then.

I now offer in evidence certified copy of the record of the Department of Motor Vehicles as to the ownership of Gabriel Brtan.

Mr. Melniker: We have already admitted it. 30

The Court: It is merely cumulative. If you wish to offer it, you may. It is admitted already.

(The paper above referred to was received and marked in evidence P-5).

Mr. Stover: Catherine Worsley.

Mr. Melniker: If your Honor please, before the witness is called, I object to the introduction of this paper. I did not suspect what my friend was up to. 40

*Testimony.*

Mr. Stover: I object to that statement.

Mr. Melniker: I apologize.

The Court: I cannot hear any grounds now. It is marked.

Mr. Melniker: I want to call your attention to something here that should not go in.

10 The Court: I cannot take cognizance of that now.

Mr. Melniker: I object and ask for an exception. I don't think it is too late for your Honor to correct a ruling that may be erroneous.

The Court: When a thing goes in by consent?

Mr. Melniker: I object to the introduction of the paper and ask for an exception.

20 The Court: There is no exception or anything of the kind. You are in error about that. I said it would merely go in as cumulative.

Mr. Melniker: I would like to move it now be stricken from the record as unnecessary proof because the fact is admitted.

The Court: That has not been shown to the jury. It will be excluded. In other words, inasmuch as it has not been shown to the jury, the Court now strikes it out upon counsel's motion and of its own motion. It contains matter which would be very prejudicial.

30 Mr. Stover: If the Court please, may I have an exception to that ruling?

The Court: You may, but I will withdraw a juror if you insist on it.

Mr. Stover: I will not insist on it.

The Court: Counsel waives his objection.

(Exhibit heretofore marked P-5 was thereupon excluded as an exhibit.)

*Catherine Worsley—Direct.*

CATHERINE WORSLEY, called as a witness in her own behalf, testifying through an interpreter, being sworn, was examined as follows:

*Direct-examination by Mr. Stover:*

Q. Where do you live, Mrs. Worsley? A. 318 Armstrong Avenue.

Q. What city? A. Jersey City. 10

Q. Where did you live on or about November 25, 1932? A. 366 Woodlawn Avenue.

Q. What city? A. Jersey City.

Q. What was the name of your husband? A. Paul.

Q. Is Paul alive now? A. No.

Q. When did he die? A. November, 1932.

Q. What day of November? A. Twenty-fifth.

Q. What? A. Twenty-fifth. 20

Q. What was the age of your husband at the time of his death? A. Fifty-eight.

Q. What was his condition of health before he died? A. Good.

Q. How many were in your family when he died? A. One boy and one girl.

Q. Were they living home? A. She was married but she is living with me.

Q. How old were you at the time of your husband's death? A. Fifty-five. I am fifty-seven now. 30

Q. What was your condition of health at the time of your husband's death? A. All right.

Q. Were you working just before your husband's death? A. No.

Q. Who was supporting you? A. My husband; and I had a son and my daughter worked.

Q. How old was your son and your daughter? A. You mean the one that is working? 40

*Catherine Worsley—Direct.*

Q. No. The one that was home at the time of the death? A. Seventeen. He is now seventeen. He was sixteen then.

Q. Who was supporting him? A. I was helping to support him.

10 Q. Where did you get the money from? A. My husband.

Q. And your daughter, what is her name? A. Catherine Fitzpatrick.

Q. How old was she at the time of your husband's death? A. Eighteen.

Q. Who was supporting her at the time? A. I did because her husband was not working.

Q. Who was supporting her? A. My husband, he was working, he was supporting her.

20 Q. What was the business of your husband before his death? A. Shoemaker.

Q. Where did he have his job? A. Bayonne, Prospect Avenue, 222.

Q. Was he the only one working there at that shop? A. Yes.

Q. How much was he contributing to you per week? A. At that time when he died, he was giving me between twenty-five and thirty, but before that it was forty dollars a week.

30 Q. Do you know how much he earned at that business? A. Yes, because he gave me the money.

Q. Did you sometimes go to that business? A. Yes.

Q. Did you see how much he made? A. Yes.

Q. How much did he make per week just previous?

Mr. Melniker: I object to that. She was not there all the time. On her own testimony she went there "sometimes".

40 The Court: Sustain the objection.

*Catherine Worsley—Direct.*

Q. How many times were you there when he worked, on an average? A. Sometimes two or three times a week but not every day.

The Court: She has already said he was making twenty-five to thirty dollars a week.

Q. Did he give you all of his earnings?

10

Mr. Melniker: I object to that. How does she know that?

The Court: What did he give you?

The Witness: Not always the same. Between twenty-five and thirty dollars a week.

Q. Did he have a doctor before he was injured? A. Before that, never.

Q. How tall was he and how heavy? A. Five feet something. I can't say for sure. About one hundred and forty-five. I don't know for sure.

20

Q. Now, did you see him on the day before he was injured? A. Yes. Just before he went to work.

Q. When did he go to work? A. Friday morning, eight o'clock.

Q. What was his condition before he went to work? A. All right. Good.

Q. When did you next see him after that? A. When they brought his body Sunday morning.

30

Q. Did you look at his body and his head? A. I did, but I couldn't see very good.

Q. What did you remember seeing? A. I saw a big lump and I saw a wound there in back.

Q. Was he dead then? A. He wasn't alive.

Q. Was that wound that you have just stated and that lump there before when he left in the morning? A. No.

40

*Catherine Worsley—Cross.*

Q. How many hours a day did your husband work on an average? A. Well, he came home at nine o'clock; then Saturday and Friday he would come later.

Mr. Stover: Cross examine.

10 *Cross-examination by Mr. Melniker:*

Q. How many children are living home with you, Mrs. Worsley? A. Two—three.

Q. What are their names? A. Nick; Helen, and Paul.

Q. How old is Nick? A. Twenty-six.

Q. How old is Helen? A. Twenty-eight.

Q. How old is Paul? A. Seventeen now.

Q. Does Nick work? A. Yes.

20 Q. Helen, does she work? A. Yes.

Q. Paul, does he work? A. No.

Q. What does he do? A. He is going to school.

*By the Court:*

Q. How many children all told? A. Seven altogether.

Q. And the oldest is how old? A. Thirty-five.

Q. And the youngest? A. Seventeen.

30 *By Mr. Melniker:*

Q. Now, did you work? A. No.

Q. You kept house? A. Yes.

Q. How old did you say you were? A. Fifty-seven.

Q. What is the state of your health? A. All right.

40 Q. Has it always been? A. I was all right before but then I was very much frightened when my husband was dead, but I am all right now.

*Catherine Worsley—Cross.*

Q. How old was your husband at the time of this accident? A. Fifty-eight.

Q. Was he working steadily up to the time of the accident? A. Yes.

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

Q. And where were you living at the time of this accident? A. 366 Woodlawn Avenue.

Q. And how long had you lived there? A. 10  
About five years.

Q. How long had your husband his shoe shop down at 222 Prospect Avenue; that is, up to the time of the accident? A. About two months.

Q. Now, let us see. 222 Prospect Avenue, that is in Bayonne, isn't it? A. Yes.

Q. Near what street? A. It is around Avenue C. I don't know for sure.

Q. You said you had been there. Had you been there? A. My husband has a shop there. 20

Q. Did you testify or was I mistaken that you visited him at his shop? A. No, not there.

Q. You never were there, were you? A. Only there to see him working during the day.

Q. What is that? I asked you had you ever been to his shop in Bayonne. Will you tell us that? A. Yes.

Q. How many times were you there? A. About two or three times a week. 30

Q. Where is this shop in Bayonne? A. 220 Prospect Avenue.

Q. Where is that? A. I can't say, only when I got on the car I know where to get off.

Q. Well, where do you get off? A. I went to the Boulevard and got off at 30th Street.

Q. What do you mean, that you went to the Boulevard? A. I took the Boulevard bus.

Q. Where did you get the Boulevard bus? A. 40

*Catherine Worsley—Cross.*

From where we live. We live near the Boulevard.

Q. You mean at Woodlawn Avenue, Jersey City? A. Yes.

Q. You got the Boulevard bus to Bayonne and you got off at 30th Street in Bayonne, is that right? A. Yes. Then I went to Prospect Avenue.  
10

Q. Then when you got off the bus which way did you go? A. To the left.

Q. Along 30th Street? A. Yes, sir.

Q. And you crossed over the railroad? A. Yes.

Q. Now, how near 30th Street was your husband's shop? A. Not far. A few houses.

Q. How big a place was it? A. Not a very big room. It is a small shop.

Q. Small room? A. Yes. One room only.

Q. How much rent did he pay? A. Twelve dollars.  
20

Q. Twelve dollars a month? A. Yes.

Q. Now, you are positive about the time of this accident you had a boy at school? A. Yes.

Q. And you kept house for your husband and your children? A. Yes.

Q. Well, when did you go down to visit your husband's shoe shop in Bayonne? A. Some time in the afternoon; whenever I found the time.  
30

Q. What for? A. Just go down to see him, that is all.

Q. Didn't he come home every night? A. Yes.

Q. You used to see him in the morning when he left to go to work? A. Yes.

Q. Why did you go down to visit him at his shop in Bayonne in the afternoon? A. Just to pass the time away.

Q. Didn't you say that because you wanted to be able to testify about how much your husband  
40

*Catherine Worsley—Cross.*

earned? A. No; because I knew how much he made.

Q. You went down there in the afternoon just to pass the time away, is that right? A. Yes.

Q. How long did you say? A. Sometimes I went ahead myself; sometimes I waited until he was going home.

Q. How long, as a rule, would you stay there? 10  
A. Well, when I went there like during the day, then I would wait there until nine o'clock and we would come home together.

Q. You always went in the afternoon, didn't you? A. Yes.

Q. Now, at any time that you were there, all these afternoons, how much money did you see your husband take in? A. Sometimes eight—ten dollars.

Q. Did you see him take in eight or ten dollars every time you went there? A. No, not every day that way. 20

Q. What was the least you ever saw him take in? A. Five or six dollars, but then Saturday night the most money he would bring.

Q. This happened two or three times a week, is that right? A. Yes.

Q. And he was down in this place in Prospect Avenue for two months? A. Yes. 30

Q. How soon after he moved to Prospect Avenue did you start going down to visit him at his shop? A. I went there with him to pick out the store.

Q. How soon after he opened the store did you go down to visit him in the afternoon? A. Maybe the next day it was.

Q. Now, do you know how much he took in a week except from what he told you? A. He always gave me all the money. 40

*Catherine Worsley—Cross.*

Mr. Melniker: I ask that that be stricken out as not responsive.

The Court: Strike it out.

Q. The question is, Mrs. Worsley, do you know how much he took in a week except for what he told you? A. He told me.

10

Mr. Melniker: If your Honor please, I think at this time I want to move that her testimony with respect to how much he took in be stricken from the record.

The Court: There is not anything to that effect except she says it was paid over to her, twenty-five or thirty dollars, of course.

Mr. Melniker: I think she has also testified—

20

The Court: Anything as to what he made may be stricken out.

*By the Court:*

Q. How much did he turn over to you? A. He gave me all the money, twenty-five to thirty dollars a week.

Q. That is what he gave you every week? A. Yes.

*By Mr. Melniker:*

30

Q. Now, where did he have his shop before he went to 222 Prospect Avenue? A. Also on Prospect Avenue, but I don't know the number.

Q. Did you ever visit that place? A. Yes.

Q. How many blocks away was it from this new place? A. One block.

Q. How long was he at the other address? A. He wasn't in Bayonne very long so I can't say how long he was there.

40

*Catherine Worsley—Cross.*

Q. Was the other address the first place he was in in Bayonne? A. It was Prospect Avenue but the number I don't know.

Q. How long was he in Bayonne altogether? A. Two years.

Q. Was he in more than two places in Bayonne? A. Three places in Bayonne he had.

Q. Where was the first place? A. Also on Prospect Avenue but I don't know the number.

Q. Near what street? A. 22nd.

Q. Did you visit him there, too? A. Yes.

Q. How long was he in that place? A. About six months.

Q. Then he moved to Prospect Avenue near what street? A. 30th Street.

Q. How long was he in that place? A. I don't remember.

Q. Did you visit him there? A. Yes.

Q. And he was in this new place only two months, is that right? A. Yes, sir.

Q. Why did he move? A. Well, because he paid a higher rent. He paid \$15 in the other place and this place here was twelve.

Q. So, this fifteen dollars a month was too high for him, was it? A. Yes, because the same kind of room he got for twelve dollars.

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CLAUDE KLAPPER, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

*Direct-examination by Mr. Stover:*

Q. Where do you live, Dr. Klapper? A. I live in the New York Foundling Hospital.

40

*Claude Klapper—Direct.*

Q. Were you connected with the Bayonne Hospital on or about November 25th, 1932? A. I was.

Q. Do you remember what happened on that day at ten o'clock? A. I do.

Mr. Melniker: At night, is that?

10 Q. Is that at night, Doctor? A. Ten at night.

Q. Do you remember what happened or will the records of the hospital refresh your memory? A. I remember in a general way and I have looked at the record so I do remember what happened at ten o'clock that night.

Q. Tell us in your own words what happened. A. I was called out on—at that time I was riding ambulance, taking care of the emergency room. I was called down. When I got down there there  
20 was a man on the table, examined him, found he had been injured, had a fracture of his left leg and a state of shock.

Q. Did you see any blood on him? A. He was bleeding from the leg.

The Court: Mr. Stover, isn't it admitted that this man died of the injuries received in the automobile accident?

Mr. Melniker: I really don't know, your  
30 Honor. I know that he died, I will admit, but as to the cause—

Q. Did he die? A. He did die.

Q. From what did he die? A. He died from the fracture and the associated shock.

Q. Would you say that the injuries were the probable cause of his death? A. Yes.

*By the Court:*

Q. And he died when? A. Died the next morn-  
40 ing.

*Claude Klapper—Direct.*

*By Mr. Stover:*

Q. Now, doctor, did you smell this man's breath? A. I don't remember having smelled it. I have no record of it.

Q. Would the hospital records show what the condition of his breath was? A. No; they would not. It would make no definite statement as to the condition of his breath. 10

Q. If I showed you the records of the hospital would they refresh your memory? A. If there were a statement made it would refresh my memory.

Mr. Stover: I call for the records of the hospital.

The Court: Is it your purpose to prove that the man was drunk?

Mr. Stover: It is my purpose to prove the man was sober. 20

The Court: Let us wait until it is attacked.

Mr. Stover: The only difference is this doctor wants to get away and he won't be here tomorrow.

Q. Is this the record of his death, Doctor; I mean, of his case? A. This is his case record.

*By the Court:* 30

Q. Is that made by you? A. No. Part of it—no. That is not my personal record.

*By Mr. Stover:*

Q. Was that record made in your presence, Doctor? A. This record was not made in my presence.

Q. Was that made at your dictation? A. No.

Q. I show you another record and ask you 40

*Claude Klapper—Direct.*

whether you remember that? A. This record was made at my dictation.

*By the Court:*

Q. Made by what? A. At my dictation.

*By Mr. Stover:*

10 Q. Use that to refresh your memory. What does that show?

Mr. Melniker: May I inquire at this time who made the record?

The Witness: This record was made by the night superintendent a Miss Gels at the hospital.

Mr. Melniker: When was it made?

20 The Witness: It was made at ten o'clock on 11/25/32.

Mr. Melniker: In your presence?

The Witness: In my presence.

Q. Using that to refresh your memory, Doctor, what is there? A. There is no statement made as to the condition of the man's breath, simply—the statement is simply a list of his injuries.

Q. Are those a list of injuries which you have just testified to? A. Yes.

30 Q. If the man's breath had smelled of liquor would that record show or would there be an entry? A. If we had smelled liquor it would have been put down; that is, if we had not missed the smell of liquor.

Q. There is no entry there, is there, about liquor? A. There is no entry as to the condition of the man's breath at all.

*Claude Klapper—Cross.*  
*Claude Klapper—Redirect.*  
*Claude Klapper—Recross.*

*Cross-examination by Mr. Melniker:*

Q. As I understand your testimony, Doctor, if you had smelled liquor on his breath you would have noted it? A. We would have noted it.

Q. The fact it is not there does not necessarily prove you made any effort to find it? A. That is right. 10

Q. He may have had liquor on his breath without your having noticed it? A. That is possible.

Q. You did not make any point of smelling his breath? A. Whether or not I did, that I can't say.

Q. There is nothing in the record to indicate whether you did or didn't smell his breath? A. No. 20

*Redirect-examination by Mr. Stover:*

Q. If you had smelled his breath and there was liquor, would you have put that down on the record? A. Yes.

*Recross-examination by Mr. Melniker:*

Q. That indicates, therefore, you did not smell his breath, doesn't it? A. It indicates that if I did—it indicates I did not smell his breath. 30

*By Mr. Stover:*

Q. It would indicate you didn't? A. It would indicate either I did not smell his breath or paid no attention to it, or that there was no smell of liquor on his breath; one or the other.

*John J. Wrigley—Direct.*

JOHN J. WRIGLEY, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

*Direct-examination by Mr. Stover:*

10 Q. Where do you live, Lieutenant? A. Forty West 40th Street, Bayonne, New Jersey.

Q. You were not at the accident, were you? A. No, sir.

Q. Did you speak to the defendant Brtan, Joseph Brtan? A. Yes, sir.

Q. On the 25th day of November, 1932? A. On the 26th.

Q. Now, Lieutenant, tell us all what he said, with one exception, just what the judge warned you not to say. Is that clear to you now? Do you understand me? A. Yes, sir, very clear.

20 Q. Go ahead. A. He said he was driving the car.

Mr. Melniker: I would like to have it noted this is objected to insofar as the defendant Gabriel is concerned.

The Court: It is received at the present time only as it may affect the defendant Joseph Brtan, not regarding Gabriel Brtan.

30 A. He said he was driving the car and he struck a man at Avenue C and 57th Street, and another fellow was in the car with him named Sabo; they got out of the car, picked him up, put him in the car, and took him to the Bayonne Hospital.

Q. Did he tell you whether he saw the man before he struck him? A. He said he didn't see him before he struck him.

Q. Sure about that? A. He said he came out from behind a truck. That is what he told me.

40 Q. Now, did he say anything else except what

*John J. Wrigley—Direct.*

the judge warned you not to say, if you remember?

Mr. Melniker: If your Honor please, I must object to the implication involved in counsel's question. He did it again. The first time he did it I did not object. He indicated in his question this man said something else which this witness has been instructed not to say. 10

The Court: The witness has told me that there was no such statement made anyway.

Mr. Melniker: I heard him say that to your Honor.

The Court: Anyway, it would be a matter that was immaterial in this case, gentlemen, so you need not worry. It will have no significance in this case at all. 20

Mr. Stover: I will withdraw any further questions from this witness. You can cross-examine.

*Cross-examination by Mr. Melniker:*

Q. Lieutenant, didn't he tell you that this man who was hurt ran out from in front of a truck that was parked there at the corner? A. Yes. He said he came out from in front of a truck. 30

Q. Do you recall him saying that the truck had been stopped there by the signal, traffic signal? A. The truck was stopped there, that is what he said.

Q. Didn't he say something about the traffic signal? A. No. He didn't say anything about the signal.

Q. Didn't he tell you he was slowing down for the traffic signal and this man ran out? A. No. He didn't say nothing about that. 40

*John J. Wrigley—Cross. . .*

Q. You are sure? A. I am sure. It was raining that night, too.

Q. He told you it was raining? A. I know it was raining, too, because I always make note of the weather conditions.

10 Q. You didn't see him until the day after the accident? A. I seen him the night before but I was fingerprinting him the day after the accident when this man died.

Q. That is the time you spoke to him? A. Yes; that is the time.

Q. At that time did he tell you that the truck was stopped for the traffic light? A. No. He didn't say nothing to me about any traffic light at all.

20 Q. Didn't he tell you he was slowing down for the traffic light? A. No. He didn't say nothing about that.

Q. He did say this man ran out in front of this truck that was parked? A. Yes, sir.

Q. And ran into his car? A. Yes, sir.

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NICHOLAS WORSLEY, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

30 *Direct-examination by Mr. Stover:*

Q. You are the son of Catherine Worsley, this lady here? A. I am.

Q. How old are you? A. Twenty-six.

Q. Where do you now live? A. 318 Armstrong Avenue.

Q. Jersey City? A. Right.

Q. Do you recall November 25th, 1932? A. I do.

40 Q. As a result of information that was given to

*Nicholas Worsley—Direct.*

you what did you do on the following day? A. Saturday, the following day, I got in touch with police headquarters at Bayonne.

Q. Well, don't tell us anything about that. What did you do with reference to going to the home of Joseph Brtan? A. Well, I interviewed him.

Q. When? A. On Sunday, November 27th. 10

Q. What time of the day was that? A. Sunday morning.

Q. All right. Now, just tell us the pertinent part of the talk.

Mr. Melniker: I want to object at this time insofar as the defendant Gabriel is concerned.

The Court: Yes. It would not have any binding effect on Gabriel Brtan, because insofar as appears now by the admissions, he was the owner of the car. Anyone driving it for him would have no right to make any admissions that would bind him. This only applies to Joseph, the driver of the car, who made the statement which the witness is going to tell us about. Keep those things in mind. There is a distinction. 20

Mr. Stover: I offer it only as pertaining to Joseph. 30

Q. What did you say to Joseph and what did Joseph say to you? A. I interviewed him as to the result of the accident. I wanted information, as much as possible. He told me—he said he was going to Bayonne from Jersey City, and as he approached the intersection of 56th Street and Avenue C he said my father stepped out in front of a truck—

*Nicholas Worsley—Direct.*

Q. What? A. He said my father stepped out there in front of a truck. He said it was raining that night and kind of misty. He said he could not see so very good and he said it happened—he said the accident happened, the front bumper hit him and before he tried to avoid hitting him and he swerved his car to the right and he said it happened so quick he did not know what happened. I asked him was the windshield wiper working. Well, he did not tell me yes or no, and a lot of the questions I asked him he would not give me the right answer. I asked him as to the driver's license and so forth. He said I could get that at police headquarters.

Q. Was that the only time you had a talk with Britan? A. Except I went down with Bob once after the accident.

Q. Well, did you see him with a man by the name of Bob? A. I did.

Q. What was the talk there, keeping in mind that little slip of paper, excluding what that says on the slip of paper? A. We asked him a lot of questions with reference to the case. He said he was told by his attorney not to say anything.

Q. Did he speak about the accident? A. He would not tell us. He said he would not say anything after that. He refused to talk.

Mr. Stover: Cross-examine.

*Cross-examination by Mr. Melniker:*

Q. He refused to what? A. To talk to us.

Q. How do you spell your name? A. W-o-r-s-l-e-y.

Q. Is that the way your father spelled his name, too? A. He did.

*Nicholas Worsley—Cross.*

Q. Now, where did you see Mr. Brtan? A. I saw him down at his home in Grand Street.

Q. What number? Do you know? A. I can't recall that.

Q. What time of the day was it? A. Well, it was morning. As far as I remember it was nice. The sun was out.

Q. The next day, was it, after the accident? A. 10  
Yes, sir.

Q. What day did the accident happen? A. The accident occurred Friday night and I interviewed him Sunday morning.

Q. On Sunday morning he told you the accident happened at 56th Street and Avenue C, is that right? A. Yes.

Q. Are you sure he didn't say 57th Street? A. 56th Street.

Q. 56th Street? A. Yes, sir. 20

Q. Are you sure about that? A. Yes, sir.

Q. Did you tell your lawyer it was 56th Street? A. I told him.

Q. When did you tell him that? A. Well, when we took the case up with him.

Q. How soon after the accident? A. Over a month or so.

Q. Did you make out a statement as to what happened in this conversation? A. At the time 30  
I did.

Q. You are quite sure this man said 56th Street? A. Yes, sir.

Q. And you told your lawyer 56th Street? A. Yes, sir.

Q. Do you know how your lawyer happened to mention 57th Street in the Complaint? A. I can't explain that.

Q. Did you know that he had done it?

*Nicholas Worsley—Cross.*

Mr. Stover: I object, if the Court please, as not material.

The Court: Overrule the objection.

Mr. Melniker: The materiality, if your Honor will recall—

The Court: That is all right. Go ahead.

10 Q. Did you know that, Mr. Worsley? Did you know your lawyer had originally charged in the complaint this accident happened at or near the point where 57th Street intersects Avenue C?

The Court: Did you know that?

The Witness: No, sir.

Q. Do you know where your lawyer got that information? A. The information I gave him was 56th Street.

20 Q. Do you know where he got the information about 57th Street? A. I can't explain that.

Q. Did you go down there to the scene of the accident? A. Yes, sir, I did.

Q. Did you observe the traffic lights at that intersection at that point? A. At the point of the accident there was no traffic light.

Q. Where is the nearest traffic light? A. On 55th Street.

Q. Isn't there one at 56th Street? A. No, sir.

30 Q. Is there one at 54th Street? A. Yes, sir.

Q. Is there one at 55th Street? A. Yes, sir.

Q. One at 56th? A. No, sir.

Q. One at 57th Street? A. No, sir.

Q. This man tells you that it happened at 56th Street? A. Yes, sir.

Q. He tells you your father had stepped out from in front of a truck? A. He did.

Q. Did he tell you whether the truck was parked

*Nicholas Worsley—Cross.*

there? A. Yes, sir. He said he stepped out in front of a parked truck.

Q. Did he tell you that the truck was stopped for a traffic light? A. No. He didn't tell me that.

Q. Did he tell you why the truck was stopped? A. No. He did not tell me that.

Q. Did he tell you that he himself was slowing down for the traffic light? A. No. He did not mention anything about traffic lights. 10

Q. Did he tell he had slowed down just before this accident happened? A. He didn't tell me about slowing down because I probably did not ask him all the questions I should have.

Q. But he did tell you it was raining very heavily? A. He did not say very heavily. He said it was raining that night. I know myself it was raining. 20

Q. Raining between nine and ten that night? A. Yes, sir.

Q. Where were you at that time? A. I can't explain that.

Q. Were you in Bayonne? A. No, sir.

Q. Wherever you were was it raining? A. Yes, sir.

Q. Quite heavily, wasn't it? A. It was raining. I won't say quite heavily. It was drizzling, raining. 30

Q. He told you he tried to avoid hitting your father, didn't he? A. Yes. He said after he tried to avoid hitting him and he swerved the car to the right and the bumper struck my father.

Q. Did he tell you your father ran into the car? A. No. He didn't say that. He stepped out in front of the car. Did not run into the car. He admitted to me he struck my father with his car.

Q. Didn't he tell you your father ran out in 40

*Nicholas Worsley—Redirect.*

front of this truck and ran right into the car? A. He didn't say he ran into the car. He said he stepped in front of the car and he bumped into him.

Q. He told you the whole thing happened so quickly he could not help it; he could not avoid it?

10 A. He said he could not avoid it.

*Redirect-examination by Mr. Stover:*

Q. Are you familiar with the scene of the accident? A. I am.

Q. Did you make any plan of the scene of the accident? A. I did.

Q. When did you make this plan (handing witness paper)? A. Oh, a few days after the accident.

20 Q. Was the condition with reference to the length, widths and distances the same when you made it as it was at the time of the accident? A. It was the same.

Q. Is this the plan you made? A. Yes, sir.

Q. Did you make the measurements in connection with anyone else? A. Yes, sir.

Q. With whom? A. Mr. Dehnz and my cousin Dr. Barris.

30 Q. Are those measurements there correct? A. They are.

Q. In what direction does Avenue C travel? A. Travels from north to south.

Q. In what direction does 56th Street travel? A. East to west.

Q. Are these measurements here correct? A. They are.

Mr. Stover: At this stage I offer it in evidence.

40 Mr. Melniker: No objection subject to

*Nicholas Worsley—Redirect.*

my cross-examining. There are a lot of things on here which I think are not proper. I have no objection to the plan.

Mr. Stover: I will consent those notes be torn off.

(The plan was received and marked P-6.)

*By Mr. Melniker:*

10

Q. How long after the accident do you say you made this, Mr. Worsley? A. I made it when we took the case up with Mr. Stover.

Mr. Melniker: If your Honor please, I have just looked at this more carefully. I thought it was just a plan of the street crossing. It is more than that. They have got on here where he was dragged; where he was hit. I object to that. I thought this was just a plan of the street crossing which I would not object to.

20

Mr. Stover: I will connect that up afterwards. I am only offering—

*By the Court:*

Q. It is not drawn to scale, is it? A. I drew it a scale as to measurements there, the width of the street, two hundred and twenty feet.

Q. Yes, but the diagram is not a scale showing the scalage in accordance with the distances there, is it? A. On the one block it is. The one block distance there.

30

The Court: Sustain the objection. You ought to look at these things before you allow them to go in, Mr. Melniker. The court not having seen it and counsel not having seen it, I sustain the objection and let the markings be stricken out.

40

*Nicholas Worsley—Redirect.*

Mr. Stover: I offer it with the exception of those red marks as to the impact and only as to the size of the streets and between the rails.

The Court: As in Macbeth I can't say "away damn spot".

10

Mr. Stover: No.

Mr. Melniker: It is all spotted up.

Mr. Stover: I will use it to refresh his recollection. Counsel can object.

The Court: If there is any physical evidence as can justify his conclusions as stated on the map, he can refresh his recollection, but I don't know that he can do it from hearsay.

*By Mr. Stover:*

20

Q. How many car tracks are there on Avenue C? A. Two car tracks.

The Court: Two sets, you mean?

The Witness: Two sets.

Q. Will this refresh your memory as to their width and the distances from the curb as to the car tracks? A. It will.

30

The Court: All right. Tell us the distance.

Q. Using this to refresh your memory how far is it from the westerly curb of Avenue C to the nearest rail of the nearest track? A. Twenty-two feet nine inches.

Q. How far is it from that rail to the next rail which would be the westerly track? A. Five feet.

40

Q. How far is it from the nearest rail of the westerly track to the nearest rail of the easterly track? A. Four feet six inches.

*Nicholas Worsley—Redirect.*

Q. Then we reach the easterly track. How wide is it from rail to rail? A. Five feet.

Q. How wide is it from the nearest rail of the easterly track to the easterly curb? A. Twenty-two feet nine inches.

Q. How far and how wide are the houses apart from 56th Street to 55th Street bordering on Avenue C? 10

The Court: It may be admitted that this is a residential district, may it not?

Mr. Melniker: Except this, if this accident happened where the police officer said it was, 57th Street, there are not any houses there at all. The houses all stop at 56th Street or 55th Street.

The Court: 56th Street itself is a residential district? 20

Mr. Melniker: Up to that point going north.

The Court: All right. Let it appear on the record.

Mr. Melniker: Going north from Bayonne it is built up to 55th Street. From there on there are no buildings there at all.

Q. How wide are the houses apart from 56th Street to 55th Street? A. You mean considering the driveway? 30

Q. Yes. A. Driveway?

Q. Are they more or less than twenty-five feet apart considering the driveway? A. They are about twenty-five feet apart.

Mr. Melniker: They are all built up. I will concede it.

Mr. Stover: If they are all built up, if that is admitted— 40

*Nicholas Worsley—Redirect.*

Q. They are all built up, aren't they? A. They are.

Q. And the houses on the other side between 56th and 55th Streets, are they all built up there, too? A. They are.

10 Q. You say you made those measurements in connection with whom? A. Mr. Dehnz and Dr. Barris.

Q. Is Mr. Dehnz in court? A. Yes.

Q. Now, did you observe whether there are any signal lights either on 56th or 55th Street? A. There are signal lights on 55th Street.

Q. Are there any signal lights on 56th Street? A. No, sir.

20 Q. Did you observe whether there is any tree between 55th Street and 56th Street? A. Yes, sir.

Q. On what side is that tree? A. On the southwest corner—the southwest side—there is a tree.

Q. Is the tree on the corner or is it away from 55th Street? Look at the map. Don't look in the air, please, my dear sir, look at that map and will you show us where the tree is? Point out. How far is that tree from the corner of 56th Street? A. Seventy feet.

30 Q. In what direction is that tree from 56th Street? A. South.

Q. Is it on the westerly side of Avenue C or on the easterly side of Avenue C? A. On the westerly side.

Q. Now, did you measure 56th Street? A. I did.

Q. How wide did you measure that? A. Two hundred and twenty feet.

Q. Fifty-sixth Street? Did you measure 56th Street? A. I did.

40

*Nicholas Worsley—Redirect.*

The Court: How wide do you say it is?

Q. How wide is 56th Street? A. Thirty-six feet.

Q. Why did you say two hundred and twenty just now? A. I misunderstood your statement. The length of the street—I thought you meant the length of the street.

Q. What is the length from the corner of 56th Street and Avenue C—from this corner—to 55th Street and Avenue C? A. 220 feet.

10

Q. Now, did you measure the distance—the catcorner distance—of the northeast corner of 56th Street and Avenue C to the southwest corner of 56th Street and Avenue C? A. Yes, sir.

Q. How long is that? A. Seventy-three feet.

Q. Did you measure the distance from the northwest corner of 56th Street and Avenue C—this point—to the southeast corner of 56th Street and Avenue C? Did you measure that? A. I did.

20

Q. How much did you measure that to be? A. Seventy-three feet.

Q. Did you measure the distance from the easterly curb of Avenue C to the westerly curb of Avenue C? A. Yes, sir.

Q. How much did you measure that? A. Sixty feet.

Q. Is that correct? A. Yes.

30

Q. Did you observe this place with reference to lights? A. I did.

Q. Where did you find the lights? A. On 55th Street and Avenue C.

Q. Did you find any lights in the middle of the block? A. No, sir. May I ask do you mean traffic light?

Q. Any light? A. Public Service light, yes.

Q. Where was the Public Service light? A. There was three of them in the block.

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*Nicholas Worsley—Redirect.*

Q. Tell us where the three were. A. One on the corner—on the southwest corner of 56th Street and Avenue C; one around the middle of the block.

Q. Where is the one in the middle of the block? On the easterly or the westerly side of Avenue C? A. On the westerly side of Avenue C.

10 Q. Will you please point where it is? You said there was a light on the westerly side of Avenue C. How far from the nearest corner is that light—the nearest corner of 56th Street and Avenue C? A. About a hundred and ten feet.

Q. Did you observe any other light on the easterly side of Avenue C between 55th and 56th Street? A. No, sir.

Q. I thought you— A. On the west side. You asked me the west side.

20 Q. No. I asked you about the east side. I ask you again. Did you observe any light on the east side of Avenue C between 55th and 56th Street? A. Yes.

Q. How far from the southeast corner was this light? A. About approximately 110 feet.

Q. From the nearest corner—southeast corner? A. Southeast corner. There is lights on each side of the street.

30 Q. Just confine yourself to what I am asking you. Did you observe where there were traffic signals? A. I did.

Q. Where were they? A. At 55th Street and Avenue C.

Mr. Stover: If the court please, I offer that plan with reference only to the distances in evidence.

40 Mr. Melniker: I object to it because it contains on it material that is incompetent.

*Nicholas Worsley—Recross.*

The Court: Sustain the objection.

(Recess until 10 a. m. March 13, 1934.)

After Recess, March 13, 1934, 10 a. m.

NICHOLAS WORSLEY, resumes the stand. 10

*Recross-examination by Mr. Melniker:*

Q. Mr. Worsley, did you ever go down to visit your father at his place of business in Bayonne?

A. I did.

Q. How many times were you there? A. Well, I would go there now and then. Maybe once every two weeks.

Q. This place that he was in last, were you there? A. Yes, I was there. 20

Q. When you went down how did you go? A. I traveled by car.

Q. Driving, you mean? A. I did. Drive.

Q. Will you look at this photograph and tell us whether or not that is the picture of the place where your father's place of business was? Don't you recognize the house? A. I don't recognize the house. I recognize the store.

Q. Do you recognize the house? You don't recognize the house? A. I recognize the store. 30

The Court: It must have been in a house. The photograph shows a store in a building. If you recognize the store you must recognize the building, don't you?

The Witness: Yes.

Q. Which one is it in? In that one with the "X" mark under it? A. Yes, sir.

Q. Are you sure it was not in this next one? 40

*Nicholas Worsley—Recross.*

A. Did you ask me the last place he was in; the last store he was in?

Q. Yes. A. The last store he was in I would say was the center one and the previous one I could tell that because the windows were separated with four panes. I put a sign on his window. I remember the last place was a plain window.

10 Q. Where do you say the last place was? A. I would say the last place was the center building.

Q. Mark "Y" under that; not the one you first marked "X"? A. No. This last place was the center building.

Mr. Melniker: I want to mark this photograph for identification.

(The photograph above referred to was received and marked for identification D-1.)

20 Q. Looking at this photograph D-1 for identification, would you say that the middle house is the one that he last had his shop in? A. Yes, sir.

Q. I have marked it with a "Y" underneath it. That is right, is it? A. Yes, sir.

Q. How long was his shop in that place? A. About two months.

30 Q. You say that before that his shop was in the store next door? A. I would not say the store next door. I would say the store was—got the windows made up of four panes.

Q. Didn't you say it was in the store next door a minute ago? A. I didn't say the store next door. I said the store previous to the one he moved in here, the store with four windows.

Q. Did you ever visit the store he was in before he was in this one marked "Y"? A. Yes, sir.

40 Q. Can't you tell this jury whether it was next door or not? A. I won't say next door. It was in the next block.

*Nicholas Worsley—Recross.*

Q. This one you just identified is next door to it. A. That is not next door.

Q. Could you mistake the house next door for the house on the next block? A. I know his first store was located a block away where this one is located in now.

Q. This "X" you have marked means nothing at all, then? A. I misunderstood the way you asked the question, the last store or the first store. 10

Q. You misunderstood me? A. You asked the first store he was in. You said, "Is this the store?"

Q. So you marked this with the "X" as the first one? A. I say the front of the shop, the way the windows are squared off resemble the first shop.

Q. When I asked you where he had his store first, what was your answer? You thought this was the store, didn't you? A. Yes. 20

Q. Now you don't think it is, is that right? A. I will say "No," because when you asked the question—I got the question clear now—when you asked me the last store—where was this store—this middle store here, that is the last place he was in.

Q. Where was the store before this one? A. Before that that was about a block away.

Q. Did you ever visit that store? A. I did. 30

Q. Are you familiar with this neighborhood? A. I won't say so familiar. I have been down there. I knew how to get there.

Q. You have been down around there? A. I have.

Q. This Prospect Avenue is the last street in Bayonne next to the bay, isn't it? A. It is across the bridge.

Q. It is across the railroad and it is the last 40

*Manning A. Dehnz—Direct.*

street going up to the bay, isn't it? A. I think it is. I would say yes.

Q. It is between 30th and 31st, isn't it? A. I cross a bridge. I won't say exactly what street it is. I knew how to get there. I crossed over the little bridge.

10 Q. You crossed over on the 30th Street bridge?  
A. I don't know whether it was 30th Street, but I know where the bridge is when I go around with a car. When I see the bridge I know you go over.

Q. That is near the end of Prospect Avenue, isn't it? A. Near the end, yes, sir.

Q. Near the end of Prospect Avenue? A. Yes.

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20 MANNING A. DEHNZ, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

*Direct-examination by Mr. Stover:*

Q. Where do you live, Mr. Dehnz? A. 202 Dewey Street, Newark, New Jersey.

Q. How old are you? A. Twenty-one.

30 Q. Where were you employed on November 25, 1932? A. Capitol Oil Company, 56th Street and Avenue C, Bayonne.

Q. What were you doing just before ten o'clock that night? A. Replacing a battery in the car in the driveway of the service station.

Q. Did you hear anything? A. I heard a crash.

Q. When you heard the crash what did you do?  
A. I immediately turned around.

40 Q. What did you see? A. I saw a Chrysler roadster just passing a truck at the intersection of Avenue C and 56th Street.

*Manning A. Dehnz—Direct.*

Q. When you heard the crash what else did you see? A. Well, they just kept right on going.

Q. How far did the car go after the crash? A. About seventy feet.

Q. What was the speed of this car? A. I say about forty miles an hour.

Q. Was this the Brtan car? Did you afterwards find out it was the Brtan car? A. It was, yes, sir. 10

Q. Now, did you see any man there? A. I saw a man laying in front of the left front wheel where the car stopped.

Q. When you heard the crash—what caused the crash? A. The impact of Mr. Worsley's body against the car.

Q. You say the car traveled after the impact about forty miles? 20

Mr. Melniker: He did not say that.

The Witness: Seventy feet.

Q. Excuse me. I am wrong. How many feet? A. About seventy.

Q. What happened to the body after the impact? How far did that travel, if any? A. The body traveled the same distance the car did.

Q. Now, where was this crash? On what street? A. On Avenue C. 30

Q. What city? A. Bayonne.

Q. That happened on November 25th, did it, 1932? A. November 25th, about ten o'clock at night.

Q. Now, when you saw the car traveling and stop, what did you do? A. I immediately ran over to give my assistance.

Q. Tell us what happened without my leading you. A. Well, I got there—just before I got there why, two girls jumped out of the front seat of 40

*Manning A. Dehnz—Direct.*

the roadster and they looked at the body and they screamed and ran away.

Q. How many people were in the front seat before the girl jumped out? A. There was four.

Q. What was the size of that front seat? A. It was built to hold two.

10 Q. Now, when the girls ran out where did they run to? A. They ran up towards 55th Street; then I think they ran around the corner.

Q. Well, what did you do when they ran out? A. I just kept on going over until I got to the scene of the accident.

Q. Now, just tell us what happened. What did you do and what did you see? A. Well, immediately I tried to pick Mr. Worsley up, but I was not strong enough to pick him up alone, so one of the fellows in the car, he helped me to pick him up.

20 Q. Who helped you out? A. I don't know which fellow it was. One of the two fellows in the roadster.

Mr. Stover: If the court please, may I at this point ask the court to instruct the witness about the other matter that we have written something on the paper and shown to the other witnesses?

30 Mr. Melniker: I think this play has gone about as far as it should go.

Mr. Stover: It is no play.

Mr. Melniker: I don't believe there is any basis for this, the constant suggestion counsel is throwing into this case. I think it is done deliberately for the purpose of creating an atmosphere in this case prejudicial to the defendant.

40 The Court: Whether it is or not, I might say to the jury it is an infinitesimal matter

*Manning A. Dehnz—Direct.*

that has no bearing in this case, or, in other words, a matter that does not concern this case, but would concern, possibly, some other aspect of the matter that is not at all before you. I assure you that if it had anything to do with this case you would hear it.

(To witness): Now, Mr. Witness, do you know what I am referring to? 10

The Witness: No, I don't.

The Court: I wish counsel would take care of these things and not make the court act as scrivener for counsel.

Mr. Melniker: While I realize the matter is discretionary, I think for the purpose of protecting my rights, I think I ought to make a motion for a mistrial. I think counsel has injected this air of mystery and suspicion in this case for the purpose of creating an atmosphere prejudicial to the defendant. 20

The Court: I will have to deny that motion because there has nothing been said.

Mr. Melniker: The constant reiterations to the witness admonishing him not to say something.

The Court: The court instructed the jury it has no concern whatever in this case. It may involve some other people who may have some arise in the future that is not concerned with these people at all. Therefore, they don't want any record that would intimidate or prejudice these other people, that is all. In other words, it does not concern this defendant or this plaintiff at all and has no bearing upon it, not the slightest. There is no mystery about it except some people outside of the court house do 30 40

*Manning A. Dehnz—Direct.*

not wish their names brought into the thing. That is all right, but it does not reflect in any way upon the plaintiff here or the defendant here; does not concern them at all. That is why I am keeping it out.

Q. You say you saw Mr. Worsley? A. I did.

10 Q. What was the condition of Mr. Worsley?  
A. He was bleeding about the head and his leg was—I put my hand down to pick him up, one under his armpit; one under his leg—one leg felt oozy to me. I imagine his leg was pretty well banged up, too.

Q. What do you mean by “oozing”? A. It felt bloody to me.

Q. Did you afterwards look at your hand? A. I did not take notice to it.

20 Q. In what position was the car and Mr. Worsley? A. The car was stopped right in the car tracks. Mr. Worsley was laying by the left front wheel of the car.

Q. What car? A. Of the car that hit him.

Q. Was the wheel over on him? A. No, it was not. He was just laying up against the wheel.

30 Q. Now, did you notice Mr. Worsley’s head?  
A. I noticed blood running down on the top—the side rather. He was staring straight ahead. He was sort of dazed, like.

Q. Did you lean over Mr. Worsley? A. I did when I bent down I had to stoop down, like. I was very close to him. I had to pick him up.

Q. Were you able to smell his breath? A. I did.

Q. Did you notice anything about his breath?  
A. No, sir; no liquor or anything on his breath.

40 Q. What did you do with Mr. Worsley then?  
A. The other fellow helped me and we put him on

*Manning A. Dehnz—Direct.*

the running board. While he was there one of the fellows leaning against the car that was in the car—leaning against the car—he says, “He is drunk.” He wasn’t near enough to smell his breath. That was the other fellow that was not helping me. After that we put him in a car and took him to the hospital.

Q. Did you observe any truck there at the intersection? A. Mr. Brtan, the driver of the roadster that hit Mr. Worsley, was just in the act of passing the truck at the crosswalk and that is where the accident happened and he was still even with the truck when he stopped. The truck was just the same distance with him, but the truck kept right on going and the truck stopped up at the corner. Before the accident happened the light was red. After Mr. Worsley was laying in the front wheel, the light was still red. The truck was waiting for the light up on the corner at that time.

Q. Do I understand the truck was not standing still then? Was it? A. No. The truck was moving the same as Mr. Brtan.

Q. And when the crash occurred, how was the truck with Mr. Brtan’s car? A. They were both right opposite each other neck and neck.

Q. Were they both going? A. They were both going south.

Q. Did you notice what was the speed of the truck? A. The truck was going about thirty-five and the other car was hitting about forty, just about passing him.

Q. Did you hear the Worsley car blow a horn? A. No, I didn’t.

Q. Did you hear any signal at all? A. There wasn’t any.

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*Manning A. Dehnz—Direct.*

*By the Court:*

Q. All you heard was the crash? How far were you away from the car at that time? A. About seventy-five feet.

*By Mr. Stover:*

10 Q. What was the neighborhood, was it noisy or quiet at that time? A. It was a very quiet neighborhood around there due to the hour.

*By the Court:*

Q. What did you say about a red light? Was there a traffic light at this intersection? A. There is a traffic light up at 55th Street.

*By Mr. Stover:*

20 Q. Where did the impact happen? At what street? A. On 56th and Avenue C, right at the cross-walk.

*By the Court:*

Q. Wait a minute. What do you mean by "cross-walk"? A. Where pedestrians are supposed to cross.

Q. From corner to corner? A. From corner to corner.

30 Q. When you looked around you mean to say this man's body was at or near that crosswalk? A. No; it was not. His body was afterwards laying up in front of the car where the car stopped.

Q. I am not talking about afterwards. You just now said the accident occurred at a crosswalk. What made you say that? A. That is where I heard the crash.

40 Q. The crash was back at the crosswalk? A. Yes, sir.

*Manning A. Dehnz—Direct.**By Mr. Stover:*

Q. Where was the car—where was the Britan car traveling then with reference to the street?

A. It was traveling right on the car tracks.

Q. Did you observe the car tracks at that time?

A. Yes.

Q. What was their condition? A. Wet. It was drizzling. It was slippery. 10

Q. How many car tracks are there there? A. There is four there. There is two rows of tracks.

Q. The tracks go on Avenue C, I understand?

A. Yes.

Q. Have you had some experience in driving automobiles? A. I have.

Q. Have you driven cars yourself? A. Yes, sir.

Q. Do you know the speed of cars? Can you recognize the speed of cars? A. I can. 20

Q. On what track was Mr. Worsley when you heard the impact? A. The car that hit Mr. Worsley was right on the car track, just on the right hand car track of Avenue C.

Q. Now, this automobile, the car that Mr. Britan had, what sort of a car was this? A. This was a Chrysler roadster.

Q. What was in the rear of that? A. There was a rumble seat and it was closed.

Q. Is that a residential section around there do you know? A. Yes, sir, it is. 30

Q. Could you draw us a diagram on the blackboard? A. Yes.

Q. Of the scene of the accident? A. Yes.

Q. I will ask you please to step up and do so. A. (Witness complies.)

Q. Now, where were you standing when you heard the impact? A. (Indicating).

Q. How many feet away from the impact was that? A. About seventy-five feet. 40

*Manning A. Dehnz—Direct.*

Q. Show us where the impact happened? A. (Witness indicates.)

Q. How wide is it from rail to rail on that track that you marked the "X"? A. It is five feet.

Q. How wide is the distance between the two tracks from rail to rail? A. About four and a half feet.

10 Q. How wide is the space from the westerly curb of Avenue C to the nearest rail? A. That is twenty-three feet.

Q. Now, your mark "X" shows where the impact happened, is that right? A. That is right.

Q. Now, please show us where the car stopped, the Brtan car? A. Right about there.

Q. How far is that distance between the two "X's"? A. That is exactly about seventy feet.

20 Q. Show us again where the car stopped and the body stopped first? A. Right here.

Q. How far is that from the westerly curb of Avenue C? A. About twenty-eight feet.

Q. How wide is 56th Street? A. 56th Street is thirty-six feet.

Q. Now, was there a tree on the westerly curb of Avenue C between 55th and 56th Street? A. Yes, sir. There was a tree right here at the curb.

30 Q. How far was that from the nearest corner? A. That was about seventy feet.

Q. Is that where the body stopped? A. The body stopped out here on the rail.

Q. Right opposite the tree? A. Yes, right opposite the tree.

Q. Now, where were the red lights that you were speaking about before? A. On 55th Street, right here.

40 Q. Were there any other lights there around that block? A. Just the illuminating lights, that is all.

*Manning A. Dehnz—Cross.**By the Court:*

Q. There were no traffic lights at 56th Street where the accident occurred? A. No. 55th Street.

*By Mr. Stover:*

Q. Were there any lights there? Any Public Service lights? A. There is a light right on the corner here, one right here, and one right here. 10

Q. Were those lights lit at the time? A. They were.

Q. Where is the Capitol Oil Station you are employed at? A. Right here.

*Cross-examination by Mr. Melniker:*

Q. When did you make these measurements, Mr. Dehnz? A. The measurements were made about two months after, I guess. 20

Q. Did you check them up on the map since then? A. I have not looked at the map since then. We measured right afterwards with a ruler. Measured everything right there.

Q. Who did you measure them with? A. Mr. Worsley and another fellow.

Q. Mr. Worsley that was on the stand? A. Yes, sir.

Q. Didn't you go over this sketch that Mr. Stover had in his hand when he was examining you last night? A. No, sir. 30

Q. Right here in court? Did you go over this case with Mr. Stover? A. No, sir.

Q. Never have? A. No, sir. I had nothing to do with that sketch. I did not make anything or have anything to do with it.

Q. No. I asked you whether you went over this case with Mr. Stover? A. I talked it over with

*Manning A. Dehnz—Cross.*

him, of course. I talked it over this morning and every day I have been in court.

Q. How many days have you been in court? A. About four days—five days now.

Q. Three or four days you have been in court and you talked it over with him every day you were in court? A. Yes, sir.

10 Q. And you went over all these figures with him? A. Yes, sir.

Q. And he never had this sketch in front of him any time he was talking to you? A. He had it in front of him, yes, sir, but I did not have the sketch.

Q. How long did you work down there? A. Three years.

20 Q. That is right near the city line, isn't it, between Bayonne and Jersey City? A. Yes, sir.

Q. In fact, 77th Street, the next street north, is the last street in Bayonne? A. 57th.

Q. 57th, I meant to say. That is right, isn't it? A. Yes, sir.

30 Q. People coming over from Avenue B or the Boulevard that—that are coming down the Boulevard or Avenue B and want to come over to Avenue C, that would be the last street they could come over on, 57th? A. On the Boulevard, yes, if they come over that way.

Q. That is the last street they could come over to Avenue C from? A. No. The dirt street the next block down.

Q. That would not take them to Avenue C? A. Yes, it would.

Q. Doesn't it hit the canal before it gets to Avenue C? A. No, sir.

Q. Where does that dirt street hit Avenue C? A. It hits on the other side—let us see now—I

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*Manning A. Dehnz—Cross.*

ain't sure whether it hits on this side or further on the other side.

Q. You are quite sure it doesn't, now that you think of it? A. The dirt street is on this side of the canal.

Q. What is that? A. The dirt street is on this side of the canal.

Q. Which street? A. The dirt street is on this side of the canal. 10

Q. The dirt street? A. Yes, sir.

Q. There is a dirt street between 57th Street and the canal, is that right? Don't shake your head. Say yes or no. A. Yes.

Q. Now, you are sure about that? A. I wouldn't say positive. I know the street is there.

Q. You are not positive, are you? A. I am not positive that the street crosses the canal or what, but it is down there. 20

Q. Don't you know 57th Street is the last street before you hit the canal, and there are only a few feet between 57th Street and the canal? A. There is another street. 58th Street is right there.

Q. Between 57th Street and the canal? A. Yes, sir.

Q. Don't you know there isn't room between 57th Street and the canal for another street? A. Then it is after the canal. 30

Q. After the canal? A. Yes.

Q. That is a little different, isn't it? A. I guess so.

Q. That is the other side of the canal, isn't it? A. I guess so.

Q. So you have been there three years right across the street from 57th Street and you are not sure about whether 57th Street is the last street to the canal or not? A. It is the last paved street. 40

*Manning A. Dehnz—Cross.*

Q. Is it the last street to the canal or not, paved or unpaved? A. It is.

Q. You are sure about that? A. Yes, sir.

Q. You were in a little doubt about it before, weren't you? A. I don't go down that way much. I don't look down that way much.

10 Q. You don't look down that way much, although it is across the street from your gas station? A. No. It is down below—two blocks below.

Q. 57th Street is next or 56th? A. One block the station. 58th is two blocks.

Q. 57th Street is next to your station, isn't it? A. That is right.

Q. Your station takes half of the block between 56th and 57th? A. No, sir.

20 Q. How much of it? A. It is just on the corner. It takes about one-third.

Q. You have been there every day for three years? A. Yes, sir.

Q. You are in doubt whether there was a street between 57th Street and the canal, is that right? A. The canal runs on an angle, that is why I don't know for sure.

Q. You are in doubt? A. I know there is a street down there.

30 Q. You know it is down there but you don't know which side of the canal it is on? A. That is right.

Q. But you are sure about that and all these others, feet, dimensions, distances, and everything else, aren't you? A. Yes, sir.

Q. This happened two years ago? A. Yes.

40 Q. Did you go over this case with Mr. Stover every day for five days to help you remember these other dimensions and distances? A. I got a pretty good memory.

*Manning A. Dehnz—Cross.*

Q. You didn't need to go over it with him, did you? A. I did, yes.

Q. It helped you a little, didn't it? A. Partly.

Q. Helped you remember how this thing happened? A. Well, I got a good memory. I know how it happened.

Q. You said you were working, that it was ten o'clock at night. What were you doing? A. I was just replacing something in the car. 10

Q. Was the owner of the car there? A. He was.

Q. Do you know who he was? A. I knew him then. I don't know where he lives. He moved away.

Q. Do you know his name? A. I don't know his name either.

Q. Did you know where he lived at the time? A. No. I did not know exactly. He just never came around any more. I imagine he went away. I never saw him any more after that. 20

Q. Did you tell Mr. Stover about that man? A. I did.

Q. Do you know whether he was ever located? A. No, I don't.

Q. You have never seen him from that night to this, is that right? A. Yes, sir.

Q. But before that he came around regularly? A. Couple of times, two or three times. 30

Q. Came around to your gas station to have his car serviced, is that right? A. Yes, sir.

Q. He never came back after that? A. Yes.

Q. What were you doing when you heard this thump? A. I was just going to turn around like that.

Q. You were stooped over? A. Yes, sir.

Q. You heard a thump behind, is that right? A. Yes, sir.

Q. You turned around? A. Yes, sir. 40

*Manning A. Dehnz—Cross.*

Q. And when you turned around where did you see this defendant's car? A. Right at the crosswalk.

Q. Which crosswalk, the southerly crosswalk or the northerly crosswalk? A. On the southerly crosswalk.

10 Q. Is that right? A. The southerly crosswalk, right where the "X" is over there.

Q. He had crossed the street, 56th Street, when you saw him? A. I didn't see Mr. Worsley at all until after he was laying in front of the wheel.

Q. I am talking about the car. A. Yes, sir.

Q. When you heard the thump you were stooped over with your back to it, is that right? A. That is right.

20 Q. When you heard the thump you raised up and turned around? A. That is right.

Q. At that time the defendant's car had crossed 56th Street and was on the southerly crosswalk? A. That is right.

Q. Then you say the car continued until it came to a stop, as you say, about seventy feet down the street? A. That is right.

Q. Is that right? A. That is right.

30 Q. Mr. Worsley was hanging over the bumper? A. No. He was not. He was lying by the front wheel.

Q. Over the center? A. No, just laying by the front wheel in the street.

Q. The car didn't go over him, did it? A. I don't know.

Q. Well, when you saw him he was in front of the car, wasn't he? A. He was lying by the front wheel on the ground.

Q. In front of the front wheel? A. Right against the wheel.

40 Q. In front of it? A. Right in front of it, sure.

*Manning A. Dehnz—Cross.*

Q. So that if he was in front of the wheel why do you say you don't know whether the wheel went over him or not? A. I didn't see the wheel go over the top of him.

Q. Don't you know it couldn't have gone over him if he was in front of it? A. I don't know that.

Q. Is that what you said, "You don't know that?" A. That is what I said. 10

Q. Now, then, if you never saw this car until after it had already hit Mr. Worsley how do you know how fast it was going? A. I am a pretty good judge of speed.

Q. You could say how fast a car was going with your back to it, could you? A. No. I turned around. He was still doing that.

Q. When you turned around he was still going forty miles an hour? A. Yes, sir. 20

Q. He traveled seventy feet? A. Yes, sir.

Q. In traveling seventy feet you could determine how fast he was going? A. That instant when I turned around very fast he was going and he slowed up.

Q. Do you know how fast a car is going that is traveling seventy feet a second? A. No, I don't.

Q. Don't you know that a car has to be going fifty miles an hour to go seventy feet a second? A. I ain't figured out nothing like that. I don't know. 30

Q. How long was it from the time you first saw this car until it came to a stop? How long did that take? A. I don't know exactly what it was, how many seconds.

Q. How many seconds do you think it took? A. I don't know. Everything happened so quick it was over. 40

*Manning A. Dehnz—Cross.*

Q. Yes, I know, but you are an intelligent man. You have given us the approximation of distances. In fact, you have been very exact about it. Can't you give us any idea how many seconds it took from the time you first saw the car until it came to a stop? A. I would not be able to say.

10 Q. Was it a second or two? A. It might have been a moment, a second. I don't know exactly how quick it was. It happened so quick it was over right away. It might have been one second; it might have been two seconds; it might have been a second and a half, a second and a quarter.

Q. It was between one and two seconds? A. It might have been.

20 Q. So in the time that you say that you saw the thing that happened in a moment, it might have been less than a second, you could estimate the speed the car was going in miles per hour, could you? A. The instant I turned around you could see right away.

Q. In that instant you could tell how fast the car was going? A. Yes, sir.

Q. How many miles an hour? A. Around forty miles an hour.

30 Q. If you had only seen this car traveling for fifty feet, could you tell how fast it was going? A. Sure I could.

Q. If you only saw it travel a distance of twenty-five feet, could you tell how fast it was going? A. Sure.

Q. If it was going ten feet past you could you tell how fast it was going? A. Sure.

40 Q. Now, you said that you saw a truck alongside of this Chrysler. By the way—withdraw that question for a moment. You say this was a roadster and the seat was only built for two, is that right? A. That is right.

*Manning A. Dehnz—Cross.*

Q. Don't you know as a matter of fact that those seats are built wide enough for three people to sit in them? A. If you get right out on the road and a state tropper catches riding more than two you get a ticket.

Q. I know that, but I am asking you aren't they built large enough for three people to sit in them?

A. Not exactly. Some cars are big. Some are small.

10

Q. Did you ever see three people sitting in them? A. Sure.

Q. Hasn't this car a very wide seat? A. Not exactly, no.

Q. Did you sit in it? A. No, but I saw the car.

Q. Did you look in it? A. Sure, I did.

Q. Did you ever see one that was built wide enough for three people to sit in the front seat?

A. I see them wide enough, sure.

20

Q. Were they any wider than this one? A. Sure.

Q. How much wider? A. About six or seven inches.

Q. How wide is this car? A. I don't know. I didn't measure the car.

Q. You don't know how wide? A. I don't know. I could not measure his car in about five minutes.

Q. What kind of a truck was this that you saw?  
A. I don't know the name of the truck, because he kept on going.

30

Q. What kind of a looking truck was it? A. Well, it was sort of delivery truck.

Q. Big truck? A. Not very big, about a ton and a half.

Q. What kind of a body did it have? A. It had a closed body on it.

Q. What color? A. I don't know.

40

*Manning A. Dehnz—Cross.*

Q. You say that truck was going about thirty-five miles an hour? A. Yes, sir.

Q. Where was the truck when you saw that? Was that past the crosswalk too? A. They were just about the same distance like that, right near each other.

10 Q. At the southerly crosswalk? A. That is right.

Q. Now, up to the time you saw Mr. Worsley on the front of that automobile you didn't see him at all, did you? A. No, I didn't.

Q. You have no idea where he came from? A. I don't know where he came from, no, sir.

20 Q. This traffic light that you say is down at 55th Street, do you know whether or not it is customary for people to run up to the traffic light to stop or do they stop at the nearest corner? A. Some people stop at the nearest corner and some of them don't.

Q. What is the regulation down there? Do you know? A. I don't know for sure.

The Court: Well, don't guess at it.

Q. What is the practice? A. There is no practice. Most of them go right on through.

30 Q. This light is extended on a hanging arm, isn't it, from the sidewalk out over to the middle of the street? A. It is right in the middle of the street.

Q. It comes out from an arm from the sidewalk, from a pole on the sidewalk doesn't it? A. I wouldn't say for sure. It is right in the middle of the street.

Q. How does it get out in the middle of the street? A. It is up there by wires or something.

40 Q. There is no stanchion in the middle of the street? A. No.

*Manning A. Dehnz—Cross.*

Q. It is suspended from the top, isn't it? A. That is right.

Q. Whatever it is there, wires or an arm, it is suspended from the top and hangs out over the middle of the street, isn't that so? A. That is right.

Q. Did you notice a bus around there? A. No, sir. 10

Q. You didn't see a bus there? A. No, sir.

Q. There is a bus line at 55th Street, isn't there? A. That is right.

Q. The westbound Broadway bus travels on 55th Street, doesn't it? A. 55th is a one-way street.

Q. 55th Street is a one-way street westbound? A. That is right.

Q. Cars coming from Broadway in Bayonne to the Boulevard crossing Avenue C, is that right? 20

A. That is right.

Q. You say you did not notice a bus around there? A. No, I did not.

Q. Well, those Broadway busses run very frequently, don't they? A. I don't know exactly how long they run. I never saw one. I don't know.

Q. All of this thing that you have described here took a little time, didn't it? A. What is that? 30

Q. Going out and picking up Mr. Worsley and putting him in the car? A. Took about five or six minutes in all.

Q. During all of this time wasn't there any bus coming around there? A. I did not take notice to a bus.

Q. You did not notice it? A. No, sir.

Q. Were there any cars around there? A. The 40

*Manning A. Dehnz—Cross.*

only one was a truck. He was waiting for the light to turn green. He was up at 55th Street.

Q. No other car? A. That is all.

Q. No other people around there? A. Only the two fellows that was in the car, myself, and the fellow that was fixing his car. He ran over with me. He just stood there. He didn't do anything.

10 Q. Where did he go after the accident? A. He went home, I suppose. I don't know. He just left the station and went out, that is all.

Q. You never saw the bus around there? A. No, I didn't.

Q. Don't you know as a matter of fact that the stopping of Brtan with his car blocked the bus? A. How could his car block the bus when he was nowhere near 55th Street?

20 Q. Did it or didn't it? A. There was no bus there so he couldn't block him. There was no way of blocking the bus.

Q. You say he did not block the bus? A. There was no bus there.

Q. Maybe you have forgotten about it. Is that possible? A. He was too far away to block any bus. There was no bus around there to see.

30 Q. Don't you know as a matter of fact he had to get his car out of the way of the bus so the bus could cross the street? A. He was nowhere near 55th Street to block the bus and he had a red light against him, so it doesn't make any difference.

Q. How long did that red light stay on? A. Two minutes.

Q. Two minutes for the red light? A. Somewhere around there.

Q. How long did the green light stay on? A. About the same thing, I judge.

40 Q. That is your observation? A. I don't go

*Manning A. Dehnz—Cross.*

out and time them. How am I to find out? Go out there and time it with a watch?

Q. Avenue C is a main thoroughfare, is it not?

A. It is.

Q. Do you mean to tell this jury that the red light and green light stays on the same time? A. It seems about the same to me. I don't know exactly. I didn't go out and time them.

10

*Redirect-examination by Mr. Stover:*

Q. Counsel has asked whether you talked to me about the case. Of course you have talked to me about the case, haven't you? A. Yes, sir.

Q. Did you tell me the same thing that you are telling the court here?

Mr. Melniker: I object to that.

The Court: Sustain the objection. We don't care about that.

20

Q. Are you telling the truth here to counsel?

Mr. Melniker: I object to that.

The Court: Yes. That is what he has to do,

Mr. Stover: That is our case, if the court please. We rest.

Mr. Melniker: May I, before counsel rests his case, ask counsel's and your honor's permission to recall this lady.

30

The Court: All right.

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CATHERINE WORSLEY, was recalled and testified through an interpreter as follows:

*Direct-examination by Mr. Melniker:*

Q. Mrs. Worsley, you testified that you used to go down to visit your husband at his shop in

40

*Catherine Worsley—Recalled—Direct.  
Motion for Non-Suit.*

Bayonne and sometimes you came home with him. is that right? A. Yes.

Q. When you went home with him how did you go? A. We then went to 30th Street to the Boulevard and then took the Boulevard bus home.

10 Q. You went up 30th Street from Prospect Avenue to the Boulevard in Bayonne and then you took the Boulevard bus to Jersey City, is that right? A. Yes.

Q. Now, that is the reverse way of the way you usually went there? A. That is the way I was going, but I don't know how he was going.

Q. When you went home with him that is the way you went? A. Yes.

Mr. Stover: We rest.

20

—————

Mr. Melniker: I move for a nonsuit, if your Honor please, on the ground no evidence of negligence on the part of this defendant sufficient to charge him with liability in this case has been shown, and on the further ground that there is evidence of contributory negligence on the part of the decedent.

30

The Court: I will deny the motion.

Mr. Melniker: Exception.

—————

JOSEPH BRTAN, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

*Direct-examination by Mr. Melniker:*

40 Q. Mr. Brtan, you are one of the defendants in this case? A. Yes.

*Joseph Britan—Direct.*

Q. You were driving a Chrysler coupe or roadster, whatever it was, on the night of this accident? A. Yes, sir.

Q. What kind of a car was this? A. Chrysler roadster.

Q. What kind of a seat did it have? A. Why, has two seats in the front.

Q. What do you mean by that? A. The seats are built in such a way that they are adjustable.

10

Q. How much room was there? For how many passengers is this seat? A. I just mentioned they are adjustable. They could be adjusted for two passengers; they could be adjusted for three passengers or more. It was a special made car, as you know, I happened to be in the body and fender business.

Q. How was it adjusted the night of this accident? How much room, for how many people? A. Four people.

20

Q. You had four people in the car at the time of this accident? A. Yes, sir.

Q. What time did this accident happen? A. About a quarter after nine.

Q. What was the condition of the weather? A. It was raining that night.

Q. You were driving? A. Yes, sir.

Q. Who owned the car? A. My father.

30

Q. Were you on any of your father's business the night that this accident happened? A. No, sir.

Q. On what mission were you, business or pleasure? A. Pleasure.

Q. On your own pleasure? A. Yes, sir.

Q. Who was in your car with you? A. A friend; that is, a man and two young ladies.

Q. What was your friend's name, the man? A. Mr. John Sabo.

40

*Joseph Britan—Direct.*

Q. Now, just previous to this accident what street had you been driving on? A. Previous to the accident we were on 57th Street.

Q. You had come down the Boulevard? A. Yes, sir.

Q. You crossed over from the Boulevard to Avenue C and 57th Street? A. Yes, sir.

10 Q. Is or is that not the last street that you can cross over? A. With an automobile it is, in Bayonne.

Q. In Bayonne it is the last street you can cross over from the Boulevard to Avenue C? A. Yes, sir.

Q. So that you came down the Boulevard from Jersey City and you turned east; that would be to your left on 57th Street, is that right? A. That is right.

20 Q. Then you came east on 57th Street to Avenue C, is that right? A. Right.

Q. When you got to 57th Street you turned right? A. Turned right.

Q. That would be south? A. That is right.

Q. When you got to Avenue C and 57th Street and made the turn, did you observe a traffic light? A. Yes, sir.

Q. Where did you see the traffic light? A. 55th Street.

30 Q. What color was it at that time, green or red? A. It was red when I saw it.

Q. What did you do then? A. Why, I seen the light was red, started to slow up with my automobile, but as the car was rolling along I could see the light was turning to green, I naturally stepped on the gas to pick up speed.

40 Q. Where were you when you stopped rolling and started to pick up speed when the light changed? A. From the light?

*Joseph Brtan—Direct.*

Q. Yes. Where were you with respect to the light? A. About twenty-eight feet to be exact.

Q. What street were you at? A. I was on Avenue C.

Q. Near what street? Near 56th or 55th? A. 56th.

Q. When the light changed where were you? A. When the light changed I was between 55th and 56th. 10

Q. You had passed 56th? A. Yes, sir.

Q. And you were somewhere between 56th and 55th? A. Yes, sir.

Q. Now, can you tell us how close to 55th you were when the light changed? A. About twenty-eight feet away from the corner and the light.

Q. Was there any other motor vehicle around there? A. There was a truck at the corner waiting for the light to turn. 20

Q. At which corner? A. Why—

Q. Which street, Mr. Brtan? A. 56th Street—55th Street, where the light is.

Q. Where was the truck? 55th Street or 56th Street? A. 55th Street.

Q. You are sure of that? A. That is where the light is.

Q. That is where the truck was parked? A. Yes, sir. 30

Q. Now, will you come down here and indicate to this jury where you were and just how this accident happened? Do you understand the diagram? A. These are supposed to be the car tracks? These are side streets?

Q. That is 56th Street, here is the gas station, here is 55th Street. Here is the light. Show us on that sketch your course as you took it and tell us what happened. A. I came down 57th Street, made a right turn along Avenue C, was 40

*Joseph Britan—Direct.*

in around here somewheres with my automobile when I observed the light red. I continued up but before I got to the light it already turned green. That is between 56th and 55th.

Q. And the truck was where? Will you indicate on there where that truck was? A. Right at this corner here. 55th Street.

10 Q. Was it standing there all the time that you were approaching? A. Yes, sir.

Q. Had you actually come to a stop? A. No.

Q. You say that you were twenty-eight feet from the corner when the light changed? A. Yes, sir.

Q. Then what did you do? A. I stepped on the gas to continue.

20 Q. Yes, and then what happened? A. Why, this truck that was parked at the curb, he also started to move and this man, Mr. Worsley had run out in front of this automobile or truck in the path of my car.

Q. What did you do? A. I tried to avoid hitting him and swerved to the right, hit him with my left side of the automobile.

Q. How far did you go after you hit him? A. About five or six feet.

Q. Were your brakes in good condition? A. Yes, sir, they were very good.

30 Q. How fast would you say you were traveling at the time you struck him? A. About twenty-five miles or less.

Q. How many feet would you say you traveled from the time that you say you started to pick up speed until you struck Mr. Worsley? A. I don't quite get that.

40 Q. You said you were slowing down to come to a stop at the red light at 55th Street? A. Yes, sir.

*Joseph Brtan—Direct.*

Q. And then before you got to the corner of 55th Street, when you were, as you said, about twenty-eight feet from the corner, the light changed? A. Yes, sir.

Q. You started to pick up speed? A. That is right.

Q. From that point when you started to pick up speed until you struck this man, how many feet would you say you traveled? A. I traveled about eight feet. 10

Q. Where did you come to a stop after the accident? A. Why, after the accident I stopped directly under the traffic light.

Q. Am I pointing to this place, you mean? A. Yes, sir.

Q. That is perfectly in the middle of 55th Street? A. Yes, sir.

Q. That is where you brought your car to a stop? A. Yes, where I brought it to a stop. 20

Q. Where was Mr. Worsley laying at that time? A. In front of my automobile.

Q. You are sure you came to a stop under this traffic light? A. Yes, sir.

Q. No question about that in your mind? A. No, sir.

Q. What happened at that point, if you recall, with reference to a jitney bus? A. Why, when I seen I had hit the man me and my friend got out and we walked over to look at him and I remarked to my friend that he was hurt badly and we would take him to the hospital and we started to pick him up and put him in the automobile but in the meantime a bus was coming and I had him blocked with my automobile. He had the green light in his favor but I believe the bus driver didn't know what happened, otherwise he would not have blowed his horn, he would have come out 30 40

*Joseph Brtan—Cross.*

to my automobile and helped us, but he did not get out because he did not know what happened, so we put the man in the automobile and we continued on to Bayonne hospital.

Q. What did the bus do? A. He was blowing his horn for us to get out of his way.

10 Q. You were right in his path? A. Yes, sir.

Q. Did you get out of his way? A. I did, after I got the man in the car.

Q. Then the bus proceeded on? A. Yes, sir.

Q. And you took the man to the hospital? A. That is right.

Mr. Melniker: Cross-examine.

*Cross-examination by Mr. Stover:*

20 Q. How old are you, Mr. Brtan? A. Twenty-three.

Q. Now, you say at that time there were four in the front seat? A. Yes, sir.

Q. And there were two girls and two boys? A. That is right.

Q. Where did you pick up those girls? A. We met them in Bayonne.

Q. Where was that? A. That was on the Boulevard.

30 Q. Was that at a dance? A. No, sir.

Q. Did you know those girls before you picked them up? A. Yes, sir, I had known them.

Q. How long had you known them? A. About two days.

Q. Had you ever taken them out before? A. No, sir.

Q. This was sort of a pick-up acquaintance, was it not? A. Not exactly pick-up acquaintance.

40 Q. How far away from the scene of the acci-

*Joseph Britan—Cross.*

dent did you meet those two girls? A. About a mile and a half away.

Q. What did you say to them?

Mr. Melniker: I object to that. We are not trying the relations between these gentlemen and these girls.

The Court: No. It is not a juvenile court, 10  
either.

Q. You say you had only known these two girls two days before, is that right? A. Yes, sir.

Q. And they came into the car, did they not? A. That is right.

Q. You invited them in? A. Yes, sir.

Q. Where did you intend to take them? A. I was going back to 21st Street to get my overcoat that I had left at a cleaners and with that I was going to bring the girls back and leave them off on the Boulevard because they were out for a walk. 20

Q. Did your father know you were going out to take your overcoat? A. Yes. He knew I was out for my overcoat.

Q. And he gave his permission for you to go, didn't he? A. I always have his permission to use the automobile.

Q. And that automobile is used for the family, 30  
is it not? A. No, sir.

Q. You have brothers and sisters, have you not? A. A sister. She is too young to drive.

Q. But you take her out, don't you? A. No, sir.

Q. You take your father out sometimes? A. No, sir.

Q. Haven't you ever driven your father? A. No, sir.

Q. You have permission, though, to take the 40

*Joseph Britan—Cross.*

car out, from your father, have you not? A. Yes, sir.

Q. Standing permission? A. Yes, sir.

Q. And he knew you were going for the coat?

A. Yes, sir.

Q. You told him that, didn't you? A. Yes, sir.

Q. What did he say? A. Why, it was all right,

10 I could use the automobile.

Q. For that purpose? A. Yes, sir.

Q. Is the license in your father's name? A. The owner's license is.

Q. And who went to the Department, the License Department, the Motor Vehicle Department, to take out the license? A. The owner's license?

Q. Yes. A. My father did.

Q. You helped him to do it, did you not? A. Yes.

20 The Court: What do you mean, "helped him to do it?" How could you help him?

A. Well, the way I helped him, I went with him, because you know my father doesn't speak very good English.

The Court: Is that what you meant by it?

The Witness: Yes, sir.

30 Q. Now, when you took on these girls were they put in the front seat? A. They were riding in the rumble seat before it was raining.

Q. And there were two in the rumble seat? A. That is right.

Q. Were the two girls in the rumble seat or one girl and one boy? A. One boy and one girl.

Q. Where were you? A. I was in front driving.

40 Q. Was there any girl next to you? A. There was.

*Joseph Britan—Cross.*

Q. Do you know where you had your hands on?

A. I always had my hands on the steering wheel.

Q. Did you have both hands on the steering wheel? A. Both hands.

Q. You had them on the steering wheel? A. Yes, sir.

Q. Did any girl have her hand on you? A. No, sir. 10

Q. Did you have a hand on the girl? A. No, sir.

Q. Or your arm around the girl? A. No, sir.

Q. Or at any time while you were traveling have your arm around the girl? A. No, sir.

Q. Did you tell your father when you would be back? A. No, sir.

Q. Now, during the time you traveled, from the time you met the girls just before the accident, was any of the girls sitting on your lap? A. No, sir. 20

Q. What was the purpose of putting you and one girl in front and the other girl and the other man in back in the rumble seat? A. What was the purpose?

Q. Yes. A. Why, it seems the proper thing, two couples go out, a girl is in the young man's company and the man is in the young girl's company. 30

Q. Where had you arrived at when the people in the rumble seat moved to the front seat? A. It was on the Boulevard.

Q. Near what street? A. It was right at the center entrance of Bayonne Park on the Boulevard.

Q. It started raining, did it not? A. Yes, sir.

Q. Did you tell the girl and the man in back to come to the front? A. It was the young girl that 40

*Joseph Britan—Cross.*

suggested getting in the front because she had a good coat on and didn't want to get it wet.

Q. So they all moved to the front? A. Yes, sir.

Q. And there were four sitting in the front with you at the wheel, is that right? A. Yes, sir.

10 Q. Is it a fact that after the accident you told somebody not to tell that there were four in the front seat? A. No, sir.

Q. You never said that to anyone? A. No, sir.

Q. Where was Mr. Worsley when you first saw him? A. When I first saw him he was in front of my automobile.

Q. How far away was that? A. About two feet.

20 Q. You were driving on the car track, were you not? A. No, sir.

Q. Where were you driving just before this collision occurred with Mr. Worsley? A. Why, the center of my car was riding over the right outside car track, in other words, straddling the car track.

Q. Straddling the car track. Where was your right wheels? A. My right wheel was over the right car track going towards Bayonne.

30 Q. Well, then, you were in the middle of the road, were you not? A. No, sir.

Q. On what side were you from the center line of the road? A. I was on the right hand side from the center of the road.

Q. How far from the center of the road were you on the right-hand side? A. About six feet.

Q. How fast were you going when you saw Mr. Worsley? A. About twelve miles an hour.

40 Q. Isn't it a fact that you said before that you were going twenty to twenty-five miles an hour? A. Before I saw Mr. Worsley.

*Joseph Britan—Cross.*

Q. Oh, before you saw Mr. Worsley you were going about twenty-five miles an hour, were you not? A. Yes, sir.

Q. And it was a slippery day, rainy day that day, wasn't it? A. Yes, sir.

Q. Do you know the regulations as to speed in that district there? A. From my knowledge I believe you are allowed twenty-five on Avenue C. 10

Q. Isn't it a fact that you are allowed only twenty-five miles an hour? A. If you remember that was two years ago, the accident was. The twenty miles an hour has only come on lately.

Q. You are not sure whether twenty miles an hour was the speed limit at that time? A. I am sure it was twenty-five miles at that time.

Q. Now, traveling as you did, how soon—if you put on your brakes how far would you travel before you came to a full stop? A. On a wet night like that? 20

Q. Yes. A. I should stop in eighteen feet.

Q. You saw Mr. Worsley when he was two feet away? A. Yes, sir.

Q. Well, were the lights shining on that day? A. Traffic light?

Q. Yes. A. Traffic lights were working.

Q. They were working? A. Yes.

Q. It was light enough for you to see, was it? A. The traffic light, yes. 30

*By the Court:*

Q. Well, do I understand you that you were going abreast with this truck? A. No, sir. I was not going abreast with the truck. The truck was already stopped.

Q. You pulled up to it? A. I was coming up to it.

*Joseph Britan—Cross.*

Q. Then, you let up a little bit because the light changed? A. Yes, sir.

Q. Now, this man that eventually came in front of your car when you first saw him, was he running or walking across the street? A. It seemed—you may call it a run. I believe it was a run.

10 Q. You mean he was hurrying? A. Yes, sir, hurrying.

Q. Had the truck started up at that time? A. Why, he just missed being hit by the truck.

Q. The truck had started too? A. Yes, sir.

*By Mr. Stover:*

Q. Is it a fact that the truck was stopped at 55th Street waiting for the traffic light to change? A. He was waiting for that light to change.

20 Q. The man in the truck? A. Yes, sir.

*By the Court:*

Q. You say this accident occurred at 55th Street and not at 56th Street, anyhow, as I understand it? The man was crossing at the intersection of 55th Street and not at 56th? A. The light is at 55th Street.

Q. I don't care anything about that. A. That is where he was crossing.

30 Q. At 55th Street? A. Yes, sir.

Q. And the accident was not at 56th? A. No, sir.

*By Mr. Stover:*

Q. Well, now, if the truck was stopping at 55th Street at that time, the red lights were there, weren't they, when the truck was stopping? A. Yes, sir.

40 Q. You saw the man crossing at 55th Street, is that right? A. That is right.

*Joseph Britan—Cross.*

Q. How far was the man away when you saw him crossing? A. Two feet.

Q. And the red light was still on while he was crossing, wasn't it? A. No. I had the green light.

Q. I thought you said that the truck was stopping there at 55th Street and the red lights were on? A. Yes. 10

Q. Then you say the man crossed, is that right? A. That is right.

Q. Well, now, when you reached the—

The Court: Wait a minute. Let us clear this up. You say the man crossed. Do you mean that you saw him before he went in front of the truck or only after he came out there in front of the truck?

The Witness: I didn't see him when he was passing in front of it. I seen him after he had already passed the truck. 20

The Court: You see, counsel leaves that question in your answer as though you had seen him leave the sidewalk.

The Witness: No. I didn't see him when he left the sidewalk.

The Court: You are sure about that?

The Witness: Yes, sir. 30

Q. But you are sure the truck was standing still when he was crossing over? A. It was not standing still. It was moving.

Q. I thought you said the truck was standing still at 55th Street waiting for the red light to change?

The Court: But you inject a man crossing in addition to that. He has not said that at no time. 40

*Joseph Britan—Cross.*

Q. What direction was the man traveling? Was he traveling from the easterly curb, from east to west, or from west to east? A. Well, I am not familiar with north, east, and south, and all that stuff, but going towards Bayonne, he was passing from the right hand side of the street to the left hand side of the street.

10 Q. Well, then, he was to your right, was he not? A. Yes, sir.

Q. Do you know a pedestrian has the right, all other things being equal, the pedestrian has the right of way?

The Court: That is not the rule. The pedestrian has not yet become a truck or automobile.

20 Q. You know the rules of the road in regard to cars, don't you? A. In regard to automobiles, I do.

Q. And he was on your right coming from your right?

The Court: Whether he was on his right or behind him or in front of him or to the left of him would make no difference.

Mr. Stover: I am trying to find out.

The Court: He says he was to the right.

30 Q. He was moving from west to east, isn't that right? A. From the right to the left.

Q. He was on your right? A. That is right.

Q. You only saw him two feet away, is that right? A. That is right.

Q. Did you put on the brakes? A. Yes, sir.

Q. After you put on the brakes how far did you travel? A. I traveled about twelve feet underneath the traffic light.

40 Q. Did you drag him with you? A. Did I drag him with me?

*Joseph Britan—Cross.*

Q. Yes. A. Yes.

Q. How far did you drag him with you? A. About twelve feet.

Q. Now, do you know how wide Avenue C is at that point of the accident? A. From right to left on Avenue C?

Q. From curb to curb, do you know how wide it is? A. Now, going to Bayonne, do you mean the width of Avenue C or the width of 55th Street? 10

Q. I will ask you to make a circle as to where you say the accident happened on the blackboard, then I will answer that. Where do you say the accident happened? Make a circle. A. (The witness indicates.) The light is here at 55th Street. The accident happened here.

Q. How near to the curb was it from where the accident happened? A. How near from this curb? 20

Q. Yes, the nearest curb, how many feet? A. From this curb, where I hit the man, was about eight feet.

Q. You are sure about that, are you? A. Yes.

Q. From where? A. From this curb to where my automobile struck the man.

Q. Is eight feet? A. Yes, sir.

Q. You are sure about that? A. Yes.

Q. Where was the truck? Was the truck to your left or to your right? A. It was to my right. 30

Q. How wide is the truck? A. I didn't measure the truck.

Q. How near the truck was the curb, the nearest curb? Do you know? A. He was right up against the curb.

Q. He was standing, was he? A. Yes, sir.

Mr. Melniker: I object to that as misleading. Counsel ought to indicate when 40

*Joseph Britan—Cross.*

he means when he says the truck was standing, because sometimes it was standing and sometimes not.

The Court: It merely calls for a yes or no answer.

Mr. Stover: It is already answered.

The Court: When was he standing?

10 The Witness: It was standing when the light was red.

The Court: When did it then next move?

The Witness: When the light turned green.

Q. Did you hit the man before the light turned green? A. I hit him while the light was green.

Q. Now, how far was this point of impact or collision from the furthest point, do you know?

A. I don't know how wide Avenue C is.

20 Q. Answer the question. Do you know how wide the space is from rail to rail in the easterly car track? How wide is this space, do you know?

A. Five feet.

Q. Do you know how wide 55th Street was from curb to curb? A. No, sir.

Q. Do you know how wide 56th St. is from curb to curb? A. No, sir.

30 Q. Show us where this station is. A. That was between 56th and 57th Street.

Q. As a matter of fact, isn't it on the corner of 56th Street and Avenue C? A. It is on the corner.

Q. Well, it is not between 56th and 57th? A. It must be between, for 56th Street is here and 57th Street is there. It must be between these streets.

40 Q. How far is the gas station from the point of impact, as you call it, as you say it was? Do you know? A. The gas station from 55th Street?

*Joseph Britan—Cross.*

Q. Yes. A. It would be a block and a half away.

Q. You don't know how much that is in feet, do you? A. No.

Q. Is there a tree there between 55th and 56th Street? A. I don't know.

Q. I show you a mark "X" and ask you to refresh your memory and ask you whether there is a tree there? Do you know? A. I don't know. 10

Q. Isn't it a fact that you hit the man right opposite the tree at this point? A. No, sir.

Q. You don't know that there is a tree? A. No, sir.

Q. All right. Will you please take the stand again. Now, after the accident happened what the girls do? A. After the accident happened they got out of the automobile. 20

Q. And did they run away? A. They didn't run away.

Q. What did they do? A. We took the gentleman to the hospital that was hurt at that time.

Q. What did the girls do? A. They stood on the avenue.

Q. They didn't go away? A. They must have went away when we went to the hospital. They are not there now.

Q. Did you have a wiper on the windshield? A. Yes, sir. 30

Q. Was it working that day? A. Yes, sir.

Q. Was it working at the time of this accident? A. It was.

Q. Could you see clearly in front of you then? A. Yes, sir.

Q. You only saw this man when he was two feet away? A. Yes, sir.

*Joseph Brtan—Redirect.**Redirect-examination by Mr. Melniker:*

Q. Mr. Brtan, do you know the names of these girls and their addresses? A. No.

Q. How close was the right side of your car to the left side of the truck as you came up to it?

A. About, it was, two feet.

10 Q. Now, this truck was an ordinary truck of ordinary width? A. Big delivery truck.

Q. It was close up to the curb, was it? A. That is right.

Q. And your car was two feet out from it, away from it? A. That is right.

Q. And you were going along? A. Yes.

Q. Now, you said something about traveling at twenty-five miles per hour at one time. Now, when was it that you were traveling twenty-five miles an hour? Where were you at that time?

20 A. When I was doing twenty-five miles an hour I was between 56th and 57th Street.

Q. And when you had come down to where the truck was or near the truck, what was your speed then? A. Near the truck I was down to twelve miles an hour.

Q. What was your speed just before you started to pick up speed again? A. Before I started to pick up? It must have been about seven miles.

30 Q. Then when you started to pick up speed, up to the time you struck this man, how fast were you going? A. About twelve miles.

Q. That is the speed you were going at the time that you hit him? A. Yes, sir.

Q. How many feet did you travel after you hit him? A. About twelve feet.

Q. Where did that bring you in reference to the traffic light over head? A. I was underneath the traffic light.

40

*Joseph Brtan—Recross.*

Q. At that time? A. Yes, sir.

Q. When you came to a stop? A. Yes, sir.

*Recross-examination by Mr. Stover:*

Q. Have you talked to your counsel about this case? A. Yes.

Q. How wide was the space in front? A. In the automobile? 10

Q. Yes. A. How wide was it?

Q. Yes. A. Why, I mentioned it was adjustable. You could make it to any width you wanted.

Q. Well, at that time how wide was it? A. It was adjusted to fit four comfortably.

Q. You had them all in front there? A. Yes, sir.

20

JOHN SABO, called as a witness on behalf of the defendant, being sworn, was examined and testified as follows:

*Direct-examination by Mr. Melniker:*

Q. Mr. Sabo, where do you live? A. 240 Culver Avenue, Jersey City.

Q. What is your occupation? A. Mechanical work.

Q. You are a friend of Mr. Brtan's? A. I am. 30

Q. You were with him on the night of this accident? A. I was.

Q. Sitting in the front seat? A. That is right.

Q. Do you understand that diagram here on this blackboard? A. I believe I do.

Q. Will you step down here, please? This is Avenue C, north and south, these are the car tracks, this is 56th Street; this is 55th Street. Do you understand it now? Will you explain to 40

*John Sabo—Direct.*

the court and jury, show them on this map, how you came into Avenue C and what happened from then on? A. We came along the Boulevard and we turned left down to 57th Street, all the way down to Avenue C, turning on Avenue C to 56th Street, seen a light; it was red, see, so Joe Brtan slowed down, coming along to a big truck at 55th  
10 Street where the light is standing still. Just before we reached there the light changed green. It started, this truck, and Joe stepepd on it, too, and this man jumped right out in front of this truck right in Joe Brtan's car. The truck driver just avoided hitting him.

Q. Then what happened? A. Then this man Joe tried to avoid hitting him, but hit him and dragged him about twelve feet right under the  
20 light.

Q. Make a mark about where you came to a stop. Make a little circle where you came to a stop? A. Right at the light here. About there at the light.

Q. Did you go over on the left side of the street? A. No.

Q. Don't make a mark where you were not. I want you to make it where you were. A. (Witness indicates.)

30 Q. Would it indicate that you were under the light? A. Right near the light, yes.

Q. How was it with respect— A. About a foot away from the light.

Q. You mean overhead? A. Overhead, yes.

Q. How long did you stay there at that point in the middle of the intersection under this light?

A. We stood there quite a few minutes.

40 Q. What happened while you were standing there? A. There was some bus blowing his horn

*John Sabo—Direct.*

for us. We couldn't get him out of there until we picked the man up. We picked the man up and went right to the hospital with him.

Q. Were you in the bus' way? A. We were in the bus' way, yes.

Q. 56th Street is the bus line street going west to the Boulevard? A. Yes, sir.

10

The Court: 55th or 56th?

The Witness: 55th.

Mr. Melniker: Did I say 56th?

The Court: This accident occurred at 55th Street, you say, not at 56th?

The Witness: That is right. Not at 56th.

*Cross-examination by Mr. Stover:*

Q. Where did you enter the car, Mr. Sabo? A. 20  
Where did I enter the car?

Q. Yes. A. Up by the park on the Boulevard. I entered the car, the four of us in the front.

Q. What is that? A. I entered the car up on the Boulevard when it was raining.

Q. Did you have an appointment with Mr. Britan? A. No. I didn't have no appointment.

Q. It was just an accident that you met him? A. No. It wasn't no accident. He was passing. He asked me if I wanted to ride. 30

Q. Were the girls in the car at that time or did they come in after? A. They came in after.

Q. You didn't know these girls, did you? A. I didn't know them, no.

Q. How far had the car travelled before you met these girls? A. About a mile, I guess.

Q. It was about nine o'clock in the evening, was it? A. About nine when we picked the girls up, yes. 40

*John Sabo—Cross.*

Q. And on what side of the street were the girls? A. On the right side of the Boulevard.

Q. And who stopped the car first? A. Who stopped the car? The driver stopped it.

Q. Did the girls beckon to you to stop or did you stop? A. Well, he happened to know the girls, see.

10 Q. He happened to know the girls for two days before, did he? A. I don't know. He happened to know them. That is all I know.

Q. What did he ask the girls to do?

Mr. Melniker: I object to that as immaterial.

The Court: What difference does it make?

20 Q. Well, he invited the girls in the car, did he not? A. That is right.

Q. Did they go in the front part of the car immediately? A. They didn't no.

Q. One sat with him and one sat with you, is that right? A. That is right.

Q. Did you sit in the rumble seat before you met these girls or did you sit in the front? A. I was in the front seat before we met the girls.

30 Q. Then, when the girls got in you went in the rumble seat with one girl? A. In the rumble seat, that is right.

Q. And he was in the front with the other girl? A. That is right.

Q. Did he have his arms around the girl at any time while he was driving? A. Not that I know. I had not seen him with his arms around the girl.

Q. You could not always see in front, could you? A. I could. I had the back open.

40 Q. How far had you traveled before you made

*John Sabo—Cross.*

a change of position? A. It must have been about a mile or so.

Q. Had it been raining when you changed your position? A. That is when we changed, yes, when it started raining.

Q. And the roadway got very slippery, did it? A. It was slippery.

Q. You were going east from 57th Street, isn't that right, you turned east? A. Coming down from the Boulevard, down to Avenue C.

Q. Is that west or east, do you know? A. I couldn't say.

Q. You don't know whether you were traveling east or west then, do you? A. That is right.

Q. Then when you turned around, around 57th Street, you went south, did you, or north? A. I couldn't say. We were going towards Bayonne.

Q. As a matter of fact, you don't know where east and west is, or north and south? A. No.

Q. You didn't observe very carefully then, did you? A. I know just how the accident happened. I wouldn't know north and east.

Q. You don't know how wide 57th Street is, do you? A. No, I don't.

Q. You don't know how wide Avenue C is, do you? A. No, sir.

Q. You don't know the width between the two rails of the track there, do you? A. No, sir.

Q. And you don't know whether you were traveling along the middle of Avenue C or to the left or to the right, do you, from the middle? A. Middle of what? The car tracks? He was about two feet away from that truck on the side of it. About the distance—that is about eight or nine foot.

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*John Sabo—Cross.*

Q. Eight or nine foot from the curb? A. Yes, sir.

Q. From which curb? Easterly or westerly?

A. I couldn't say. On the right-hand side.

Q. Where were you when you first saw the pedestrian, Mr. Worsley? A. Where was I?

10 Q. Yes. A. I was sitting in the car.

Q. How far away were you from him? A. A couple of feet away from him when he jumped from in front of that truck.

Q. Did you see him on the sidewalk? A. I have not seen him.

Q. You only saw him when he was two feet away? A. When he jumped from in front of that truck.

Q. You didn't see him cross the street, did you?

20 A. No.

Q. The truck at that time was standing still, wasn't it? A. No. The truck just started up. The light changed and he just started up and we started to go.

Q. Did you, when you traveled from 57th Street down to 55th Street ever stop on your way? A. No. We didn't stop. Just stopped when we hit the man, that is all.

30 Q. Did you slow up at any time when you traveled from 57th Street to 55th Street? A. We did slow up, yes.

Q. Before you slowed up how fast were you traveling? A. About twenty miles an hour.

Q. And when you slowed up how fast were you traveling? A. When we slowed up?

40 Q. Yes. A. Yes. The slowest we went must have been about eight mile. He shifted into gear again and he stepped on it. We went about twelve, thirteen miles when he hit the man.

*John Sabo—Cross.*

Q. Did you hear any warning signal before he hit the man? A. Warning signal? No.

Q. Toot of the horn? A. There was no chance to blow the horn.

Q. Did you hear any toot of the horn? A. I didn't no.

Q. Heard no signal at all before he hit the man? A. No. 10

Q. Do you know whether he applied his brakes or not? A. He did.

Q. How far away was the man when he applied the brakes? A. How far away from the car?

Q. Yes. A. He must have been a foot or two. Slowed right up right away as soon as he seen the man there.

Q. After he put those brakes on how far did the car travel, the car in which you were? A. About fourteen feet, I guess, from the corner to the traffic light. 20

Q. Do you know or do you guess? A. I didn't go up there to measure anything. I know it is about fourteen feet from the corner to the traffic light, to the center, to the traffic light.

Q. And when your car hit the man then what did the girls do? A. I got out of the car and told them to stay there. When we came back they were gone. 30

Q. They were gone? A. Certainly.

Q. How long were you away before you went back? A. We were away quite a while in the hospital then we got taken up to the precinct police station. We were there until twelve o'clock.

Q. After that was through you went back again? A. Went back again, yes.

Q. You were looking for the girls? A. No. We didn't exactly look for the girls. We just 40

*John Sabo—Cross.*

passed there. We left the car up the station house.

Q. Isn't it a fact you passed there in order to see if the girls were still waiting? A. No. We didn't pass there just for the girls.

Q. I thought you said after you got back the girls had gone or left? A. Yes. They were gone.  
10 We walked back there. We had to come to Jersey City.

Q. Wasn't it your purpose in walking back to see those girls? A. It was not, no.

Q. But you told the girls to stay there, to wait until you got back? A. We told them. We did not know what time we were coming back. They might have waited a half an hour or an hour before they were gone. It was twelve o'clock at night.  
20

Q. You told the girls to wait until you came back, then you came back and those girls were gone, isn't that right? A. We told them to wait. If we would have got out of the hospital by ten or the police station, we would have met the girls there. That is why they wasn't going to wait until twelve o'clock or one in the morning.

Q. Still you passed there to look for them? A. We passed there to get to Jersey City.

Q. Do you know where you intended to take the girls? A. I don't know where we intended to take the girls. I wasn't the driver.  
30

Mr. Melniker: I want to offer this photograph in evidence marked D-1 for identification.

(The photograph above referred to was received and marked D-1 in evidence.)

Mr. Melniker: That is the defendant's case.  
40

*Motion for Non-Suit.*

Mr. Stover: That is our case.

Mr. Melniker: I wish to move at this time for a non-suit with respect to the case against the father Gabriel on the ground there is no evidence in this case there was any agency between the operator of the car and this defendant. On the contrary the evidence is uncontradicted now that this other defendant was engaged on his own business, in fact engaged in a pleasure ride, and in no sense the agent of his father. 10

The Court: The motion will be denied in view of the complaint and the letter marked P-1. It is a jury question as to the meaning or intention of the parties with respect to any alleged admission that may be contained therein. 20

Mr. Melniker: Your Honor will allow me an exception.

Mr. Melniker: I would also like at this time to move for a direction of a verdict with respect to both defendants on the ground that there is no evidence of negligence on the part of the operator, the defendant operator of this car. 30

The Court: Of course, that is a jury question which I have not the province to pass upon, but will have to leave it to them, too.

I deny that motion too.

Mr. Melniker: Exception.

And, on the further ground that the uncontradicted evidence in this case is the de- 40

*Motion for Non-Suit.*

cedent was guilty of contributory negligence which caused this accident.

10 The Court: The jury might find so but I can't. I have not the power so to do. Conflicting questions of inferences or facts should be passed to them. Deny the motion on the basis of *Fakos v. Byers*, 112 N. J. L.; and section 5, article 5, of the Traffic Act, which rule pertains to the right-of-way.

Mr. Melniker: Allow me an exception. (Summation to the jury by counsel.)

20

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**Exhibit P-1.**

HYMAN SEGAL  
Attorney at Law  
900 Broad Street  
NEWARK, N. J.  
Telephone Market 2-5840

April 17th, 1933.

Edward Stover, Esq., 10  
1 Newark St.,  
Hoboken, N. J.

Re: 4-AL-5694 - Warsley vs. Britan.

Dear Sir:

I have your Interrogatories in the above mat-  
ter, and note that the information that you re-  
quest pertains to ownership and operation of the  
vehicle involved in the accident herein. 20

If satisfactory to you, you may take this let-  
ter as an admission of ownership and operation,  
and thereby obviate the necessity of securing In-  
terrogatories.

I trust that this will be satisfactory to you.

Very truly yours,

HYMAN SEGAL.

HS\*LVZ

30

40

*Exhibit P-1.*

## NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

10 CATHERINE WARSLEY, as admin-  
istratrix *ad prosequendum* of  
the ESTATE OF PAUL WARS-  
LEY, deceased,

Plaintiff,

vs.

JOSEPH BRTAN and GABRIEL  
BRTAN,  
Defendants.

Action at Law.

20

To HYMAN SEGAL,  
Attorney at Law,  
900 Broad Street,  
Newark, N. J.

Sir:

30 Please Take Notice that at the trial of the  
above cause, I shall move to amend the intro-  
ductory paragraph, and the first paragraph and  
second paragraph of the first count of the com-  
plaint to read as follows:

“Plaintiff, Catherine Warsley, as Administra-  
trix *ad prosequendum* of the Estate of Paul  
Warsley, deceased, (and deceased, in his life-  
time), residing in the City of Jersey City, Coun-  
ty of Hudson and State of New Jersey, says that:

## FIRST COUNT.

40 1. On or about November 25th, 1932, plain-

*Exhibit P-1.*

tiff's intestate, Paul Warsley, was lawfully crossing Avenue C, in the City of Bayonne, County of Hudson and State of New Jersey, at or near the point where 56th Street of said City, intersects Avenue C, Bayonne."

2. On the aforesaid date, the defendant, Joseph Brtan, was the driver of a certain automobile which he was operating and driving near, at or on the intersection of 56th Street and Avenue C, in Bayonne, as aforesaid."

Respectfully,

EDWARD STOVER,  
Attorney of Plaintiff.

Dated: March 17th, 1933.

10

20

30

40

*Exhibit P-1.*

## NEW JERSEY SUPREME COURT.

## HUDSON COUNTY.

10	CATHERINE WARSLEY, as admin- istratrix <i>ad prosequendum</i> of the ESTATE OF PAUL WARS- LEY, deceased, <div style="text-align: right; padding-right: 10px;">Plaintiff,</div>	}	Action at Law.
	vs.		
20	JOSEPH BRTAN and GABRIEL BRTAN, <div style="text-align: right; padding-right: 10px;">Defendants.</div>		

To the defendants or their attorney,  
 HYMAN SEGAL, Esq.,  
 900 Broad Street,  
 Newark, N. J.

30: Please Take Notice that plaintiff demands of  
 the defendants answers, under oath, to the follow-  
 ing interrogatories within ten days after service  
 hereof upon you.

1. Who was the owner of the automobile which struck plaintiff's intestate, as alleged in the complaint?
2. At the time of said accident, who drove the automobile?

*Exhibit P-1.*

3. How old was the driver at the time of the accident, and how old is he now?

4. Was said driver, at the time of the accident, engaged in the business of the owner of the car?

5. Did the driver, at the time of the accident set forth in the complaint have the permission of the owner of the car to drive said car? 10

EDWARD STOVER,  
Attorney of Plaintiff.

20

30

40

Chapter 1

The old man driver at the time of the accident and how old he is now.

Was said driver at the time of the accident engaged in the business of the owner of the car?

Did the driver at the time of the accident in the complaint have the same car?

MIAMI COUNTY

Attorney at Law

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108MAY.T.1934

## New Jersey Court of Errors and Appeals

CATHERINE WARSLEY, as adminis-  
tratrix *ad prosequendum* of  
the Estate of Paul Warsley,  
deceased,

*Plaintiff-Respondent,*

*v.*

GABRIEL BR TAN,

*Defendant-Appellant.*

Action at Law.

On Appeal from  
New Jersey  
Supreme Court.

### BRIEF FOR DEFENDANT-APPELLANT.

#### Statement of Facts.

This is an appeal from a judgment of the Supreme Court entered upon a verdict rendered at the Hudson Circuit in favor of the plaintiff-respondent, Catherine Warsley, Administratrix *ad prosequendum* of the estate of Paul Warsley, deceased, against the defendant-appellant, Gabriel Brtan, on March 16, 1934, for the sum of \$3,000.00.

The suit was brought against Gabriel Brtan and Joseph Brtan under the Death Act for damages for the death of Paul Warsley alleged to have been caused by the negligent operation of an automobile owned by the defendant-appellant, Gabriel Brtan, and operated by the defendant, Joseph Brtan, who does not join in this appeal for the reason that the jury brought in a verdict against the defendant, Gabriel Brtan, the owner of the

automobile, and failed to bring in any verdict as against the defendant, Joseph Brtan, his son, who was operating the automobile at the time of the accident. Gabriel Brtan, the owner, was not in the automobile at the time of the accident.

The sole question on this appeal is raised by the motion for a non-suit (State of Case, p. 101) on the ground that there was no proof of agency. This motion was denied and an exception taken and this ruling presents the only question for determination on this appeal.

The plaintiff sought to establish the agency by introducing interrogatories, Exhibit P-1 (State of Case, p. 106), as follows:

1. Who was the owner of the automobile which struck plaintiff's intestate as alleged in the complaint?
2. At the time of said accident, who drove the automobile?
3. How old was the driver at the time of the accident and how old is he now?
4. Was said driver at the time of the accident engaged in the business of the owner of the car?
5. Did the driver, at the time of the accident set forth in the complaint, have the permission of the owner of the car to drive said car?

and a letter, Exhibit P-1 (State of Case, p. 103), from the then attorney of the defendant to the plaintiff's attorney, as follows:

"Dear Sir:

I have your interrogatories in the above matter and note that the information that you request pertains to ownership and operation of the vehicle involved in the accident here.

If satisfactory to you, you may take this letter as an admission of ownership and operation, and thereby obviate the necessity of securing interrogatories.

I trust that this will be satisfactory to you."

These exhibits are referred to in the colloquy between counsel on page 18 of the State of the Case as follows:

Mr. Stover: I might say at the outset counsel has unintentionally misinformed the jury and the Court that Gabriel was not the owner and the driver.

Mr. Melniker: I say he was the owner.

Mr. Stover: I have got the written admission of the attorney of record. I submitted interrogatories to him. Here is the answer I got, that he was driving for his father on the business of his father.

Mr. Melniker: We do admit ownership, but I have nothing here to indicate to me—in fact, my information is the boy was driving his car for his own purpose, for his own pleasure.

Mr. Stover: I now offer in evidence the written interrogatories and the written stipulation by counsel for the other side, the attorney of record.

The Court: Is there any objection to it?

Mr. Melniker: No objection to it.

The papers above referred to were received and marked in evidence P-1 and P-2.

Mr. Melniker: We admit the ownership of Gabriel; we admit the operation by Joseph.

The testimony on this point was as follows:

Joseph Brtan (p. 75):

Q. You were driving? A. Yes, sir.

Q. Who owned the car? A. My father.

Q. Were you on any of your father's business the night that this accident happened?

A. No, sir.

Q. On what mission were you, business or pleasure? A. Pleasure.

Q. On your own pleasure? A. Yes, sir.

*Cross examination* (p. 80):

Q. How old are you, Mr. Brtan? A. 23.

On page 81:

Q. Where did you intend to take them? A. I was going back to 21st Street to get my overcoat that I had left at a cleaners and with that I was going to bring the girls back and leave them off on the Boulevard because they were out for a walk.

Q. Did your father know you were going out to take your overcoat? A. Yes. He knew I was out for my overcoat.

Q. And he gave his permission for you to go, didn't he? A. I always have his permission to use the automobile.

Q. And that automobile is used for the family, is it not? A. No, sir.

Q. You have brothers and sisters, have you not? A. A sister. She is too young to drive.

Q. But you take her out, don't you? A. No, sir.

Q. You take your father out sometimes? A. No, sir.

Q. Haven't you ever driven your father? A. No, sir.

Q. You have permission, though, to take the car out, from your father, have you not? A. Yes, sir.

Q. Standing permission? A. Yes, sir.

On page 82:

Q. And he knew you were going for the coat? A. Yes, sir.

Q. You told him that, didn't you? A. Yes, sir.

Q. What did he say? A. Why, it was all right, I could use the automobile.

Q. For that purpose? A. Yes, sir.

Q. Is the license in your father's name? A. The owner's license is.

Q. And who went to the Department, the License Department, the Motor Vehicle Department, to take out the license? A. The owner's license?

Q. Yes. A. My father did.

Q. And you helped him to do it, did you not? A. Yes.

The Court: What do you mean, "helped him to do it"? How could you help him?

A. Well, the way I helped him, I went with him, because you know my father doesn't speak very good English.

The Court: Is that what you meant by it?

A. Yes, sir.

This is all the testimony there is in the case on the question of agency. At the conclusion of the case, counsel for the defendant-appellant, Gabriel Brtan, moved for a non-suit as to him, on the ground that there was no proof of agency between the operator of the car and the defendant-appellant, the owner, and that the evidence was uncontradicted that the defendant, Joseph Brtan, was engaged on his own business at the time of the accident.

The motion was denied in the following language (State of Case, p. 101):

The Court: The motion will be denied in view of the complaint and the letter marked P-1. It is a jury question as to the meaning or intention of the parties with respect to any alleged admission that may be contained therein.

Although the father was not in the car, and although there was no other proof of agency, except as hereinabove set forth, which showed no agency existed, and although the suit was against

both father and son, and the case against both of them was submitted to the jury, the jury returned with a verdict against the father and brought in no verdict whatsoever as to the son.

### Argument.

It is the contention of the defendant-appellant, Gabriel Brtan, that there was no proof of any kind whatsoever that his son, Joseph Brtan, was his agent or servant at the time of this accident. The testimony of the son, above quoted, explicitly denies it. This testimony is uncontradicted and establishes the relationship between father and son with respect to the possession and operation of this car at the time of the accident as merely that of bailor and bailee, so that the owner would not be chargeable with any negligence on the part of the operator. *Doran v. Thomsen*, 76 N. J. L. 762; *Spelde v. Galtieri*, 102 N. J. L. 203.

No inference of agency may be drawn from the fact that the automobile driver was the son of the owner. *Cerchio v. Mullens*, 138 Atl. 227 (Del.); *Wilson v. Mason*, 105 N. J. L. 540.

The presumption of agency arising from ownership may be overcome by uncontradicted proof to the contrary, and if so overcome, then a motion for a direction of a verdict for the defendant owner will be granted. *Okin v. Essex Sales Co.*, 103 N. J. L. 217, and cases cited.

Where a son had a key for a car and was free to use it whenever he pleased, and at the time of the accident was driving the car solely for his own pleasure, he was not the agent or servant of his father, the owner, and a direction of a verdict in favor of the latter was proper. *Ceslak v. Krause*, 108 N. J. L. 350.

The Trial Court, however, in denying the motion for a non-suit on the ground that there was no proof of agency, said that in view of the complaint and the letter P-1, the question of agency became a jury question. It is the appellant's contention that there is nothing in the letter P-1 containing any admission of agency or making it a jury question as to whether or not it does contain an admission of agency. The letter merely is an admission of ownership and operation, that is, operation by the defendant, Joseph Brtan, as set forth in paragraph 2 of the first count of the complaint (State of Case, p. 2) and ownership of the automobile by the defendant, Gabriel Brtan, as set forth in paragraph 2 of the third count of the complaint (State of Case, p. 5). All allegations of agency in the complaint are denied in the answer. The letter does nothing more than admit ownership by the father Gabriel and operation by the son Joseph. It clearly admits that and nothing more. In any event, there was no question here to be submitted to the determination of a jury. If the letter is an admission at all, it is an admission in the nature of a pleading and as such, required construction by the Court and not by the jury. To permit this verdict to stand, predicated as it must be upon the essential existence of the relationship of master and servant, is to do so in the face of the facts, which are as testified to by the son, and would also require a distortion of this letter to make it mean something which is contrary to the facts, even assuming that the letter might be construed as an admission of agency. How can such a construction be permitted to stand in the face of the explicit testimony that no such relationship existed? To do so would be to place the responsibility for this accident on the shoulders

of the appellant in disregard of the testimony that the operator was not his agent or servant, simply because this letter might be construed to contain an admission of agency contrary to the fact. In other words, with the fact being indisputably established that there was no agency, this Court is asked to sustain a verdict which can only be justified and predicated upon the existence of a fact known not to exist.

Assuming the fact to be as testified to by Joseph Brtan, which is the only testimony on the point, that the relationship between the owner and operator was not that of master and servant, or principal and agent, but that of bailor and bailee, which is indisputably the fact, the only legal or equitable doctrine which the plaintiff can invoke to sustain him is that of estoppel based upon surprise. It might be argued that he, relying upon what he took to be an admission of agency, came to court unprepared to prove it by competent testimony. The answer to that is that he had plenty of opportunity during the course of the trial to present proof on this point, if there was any, as this defense was raised at the very beginning of the trial in the opening to the jury (State of Case, p. 18), and even if that were not a sufficient answer, even if there was not sufficient time afforded him, the plaintiff could have pleaded surprise and obtained a continuance, if he thought it necessary, in order to obtain the desired proof, but certainly it was no answer to this objection for the Trial Court to submit the question of agency to the jury in the face of uncontradicted testimony that the relationship of master and servant did not exist. Even if the letter was an ambiguous admission of agency it could not overcome the direct and explicit testimony to the contrary.

When the facts are not in dispute, the question as to the authority of an alleged agent to act for the principal is one for the court to determine. *Ryle v. Manchester Bldg. & Loan Assn.*, 74 N. J. L. 840; *Blecher v. Manchester Bldg. & Loan Assn.*, 74 N. J. L. 833.

Where, in the trial of an action for negligence, there are no disputed facts, there is nothing of an issuable character for the jury to decide, and it devolves upon the court to declare the judgment which the law imposes. *Morrill v. Morrill*, 104 N. J. L. 557.

Even an admission is explainable in the absence of an estoppel to deny it. *Central Main Power Co. v. Rollins*, 126 Me. 229; 138 Atl. 170.

In the case of *Gibbons v. Potter*, 30 N. J. E. 204, affirmed in 31 N. J. E. 374, a party to a suit was permitted to disprove his own written admission of a payment.

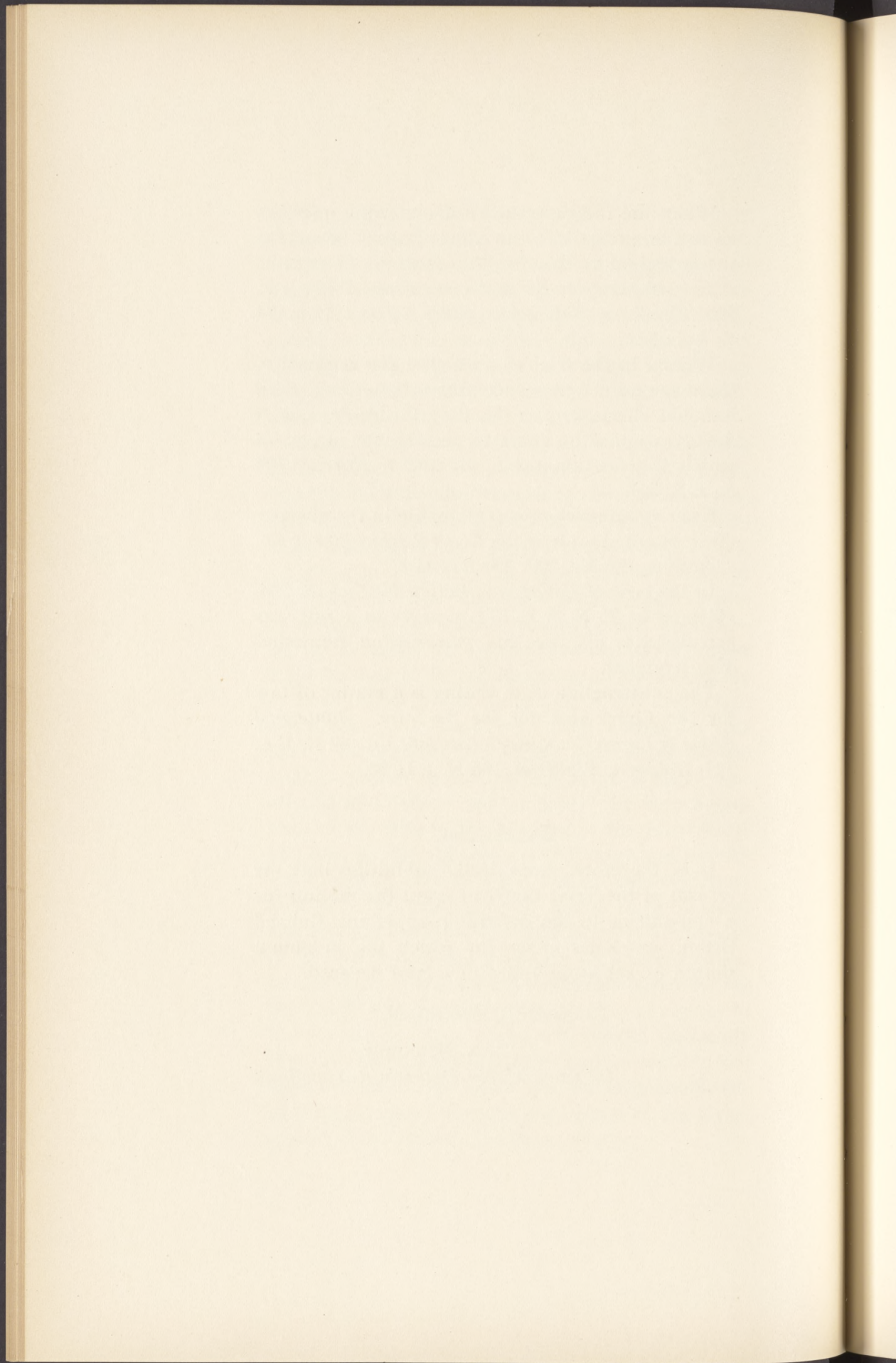
The construction of a writing is a matter of law for the Court and not for the jury. *Boulevard Globe & Lamp Co. v. Kern Gaslight Co.*, 67 N. J. L. 279; *Geiger v. Waldron*, 100 N. J. L. 93.

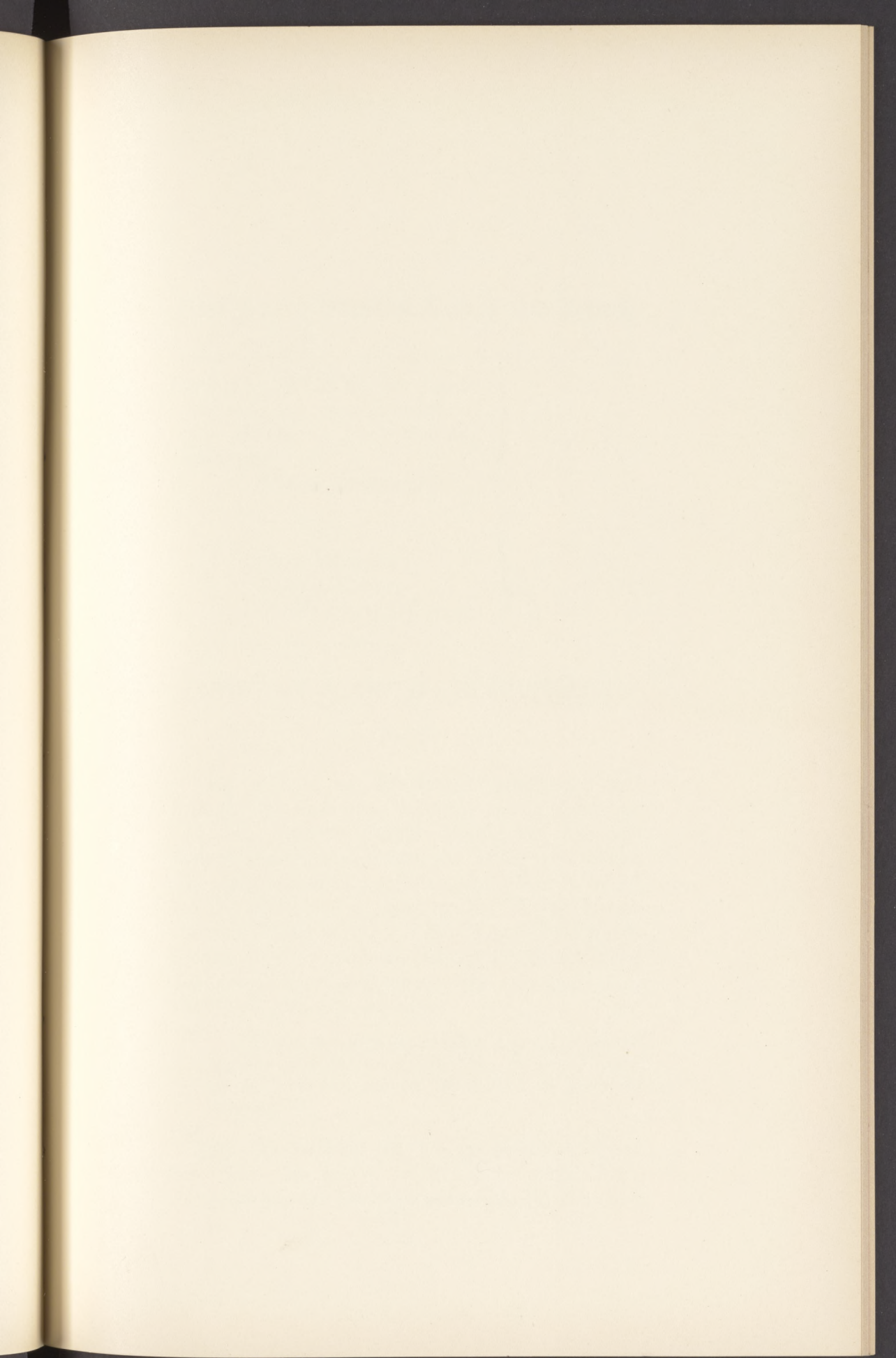
### Conclusion.

It is, therefore, respectfully submitted that the refusal of the Trial Court to grant the motion for a non-suit as to the defendant-appellant, Gabriel Brtan, was legal error, for which the judgment should be set aside and a new trial ordered.

Respectfully submitted,

A. A. MELNIKER,  
*Of Counsel for Defendant-Appellant.*





APPEAL PRINTING CO., 22 THAMES ST., NEW YORK CITY

[ 7825 ]

## New Jersey Court of Errors and Appeals

CATHERINE WARSLEY, as Admin-  
istratrix *ad prosequendum* of  
the Estate of Paul Warsley,  
deceased,

*Plaintiff-Respondent,*

*v.*

GABRIEL BR TAN,

*Defendant-Appellant.*

Action at Law.

On Appeal from  
New Jersey  
Supreme Court.

### REPLY BRIEF.

Under Point I of respondent's brief, respondent contends that the appellant should have moved for a non-suit at the end of the plaintiff's case. The answer to this contention can be found in the very cases cited by respondent in his brief on pages 7 and 8, *DeMott v. Knowlton*, 100 N. J. L. 296; *Tischler v. Steinholtz*, 99 N. J. L. 149; *Minnagh v. Falato*, 110 N. J. L. 266; *Willett v. Heyer*, 104 N. J. L. 392, and other cases, all of which hold that the mere proof of ownership of an automobile raises a presumption of fact that it was in the possession of the defendant owner, either personally or through the driver, as his servant.

At the conclusion of the plaintiff's case, the ownership of the car in the defendant-appellant Gabriel Brtan having been admitted, there was a presumption that the owner was in possession and control of the car. A motion to non-suit, therefore, would have been futile. In that posture of

the case, without any proof to the contrary, the defendant owner would have been conclusively presumed, on a motion for a non-suit, to have been in possession of the car at the time of the accident, and the motion would have been properly denied.

Respondent complains that the motion, based on lack of proof of agency, which was made at the conclusion of the trial, should have been a motion for a direction of a verdict, rather than a motion for a non-suit. It surely does not lie in respondent's mouth to make such a complaint. The motion for a non-suit, rather than for a direction of a verdict, was made advisedly, so that if the plaintiff had or could produce any proof of agency, he might be afforded an opportunity to do so upon a retrial of the case—an opportunity which would have been denied to him if the motion had been for a direction of a verdict and had been granted.

Under Point II, in an effort to show that there was evidence from which the jury could infer that the relationship of agency existed, respondent sets forth an incomplete and garbled quotation from the testimony. It is respectfully submitted that *all* of the testimony on the question of agency is contained in appellant's brief, and it shows not a single fact from which an inference of agency can be drawn.

Respondent cites and quotes from a number of cases which have no application whatsoever to the question presented on this appeal. Appellant has no quarrel with the cases cited, which merely hold that ownership raises a presumption of possession. In the instant case this presumption was completely overcome by the uncontradicted testimony, and where the uncontradicted testimony shows that the relationship of principal and agent, or master and servant, does not exist, there is no ques-

tion to go to the jury, but the question is merely one of law for the Court. *Morrill v. Morrill*, and other cases cited in original brief.

None of these cases bear upon the point made by the appellant in his original brief that the only thing which in any way whatsoever detracts from the force of the defendant's (Joseph Britan) uncontradicted testimony that he was operating the automobile on his own business, is the letter admitting ownership and operation, and this letter does not raise any issue for the determination of a jury.

It is true that there appear to be no authorities in New Jersey on this precise question, and very little elsewhere. Whether this letter be viewed as a *judicial* admission or as an *extra-judicial* admission, it was insufficient to raise an issue of fact for determination by the jury. If considered in the light of a *judicial* admission, which is in the nature of a pleading, and which dispenses with proof, then, of course, it presented purely a court question and admission of testimony on a fact thus admitted would have been improper. If on the other hand, it is considered in the light of an *extra-judicial* admission, it was completely overcome by the testimony.

In *Chamberlayne on Evidence*, Section 1242, it is stated:

“Judicial admissions should receive a reasonable construction. Thus it will not be assumed, without strong reason, that an admission by counsel covers the point on which the entire case turns. The rule has even been stated to be that, where the concession of counsel is ambiguous, its meaning should be determined by the party who made it.” Citing *Hoffman v. Bloomsburg*, 143 Pa. 503; 22 Atl. 823; *Wright v. Dickinson*, 67 Mich. 590; 42 N. W. 849.

Applying the principle here enunciated to the instant case, attention is called to the fact that at the very outset of the case in the opening to the jury, and in the colloquy between counsel after the opening, counsel for the defendant limited the construction of the letter to be an admission of *ownership* by the defendant-appellant *Gabriel Brtan*, and *operation* by the defendant *Joseph Brtan*, and the meaning of the letter should not have been extended beyond that.

A judicial admission relates primarily to procedure. *Chamberlayne on Evidence*, Sections 1234, *et seq.*

*Wigmore*, Section 2590, says:

“The vital feature of a judicial admission is universally conceded to be its conclusiveness upon the party making it; in other words, the prohibition of any further dispute of the fact by him and of any use of evidence to disprove or contradict it.”

In the instant case, evidence was admitted without objection upon the issue of agency.

In the case of *Wright v. Dickinson*, *supra*, the Court said:

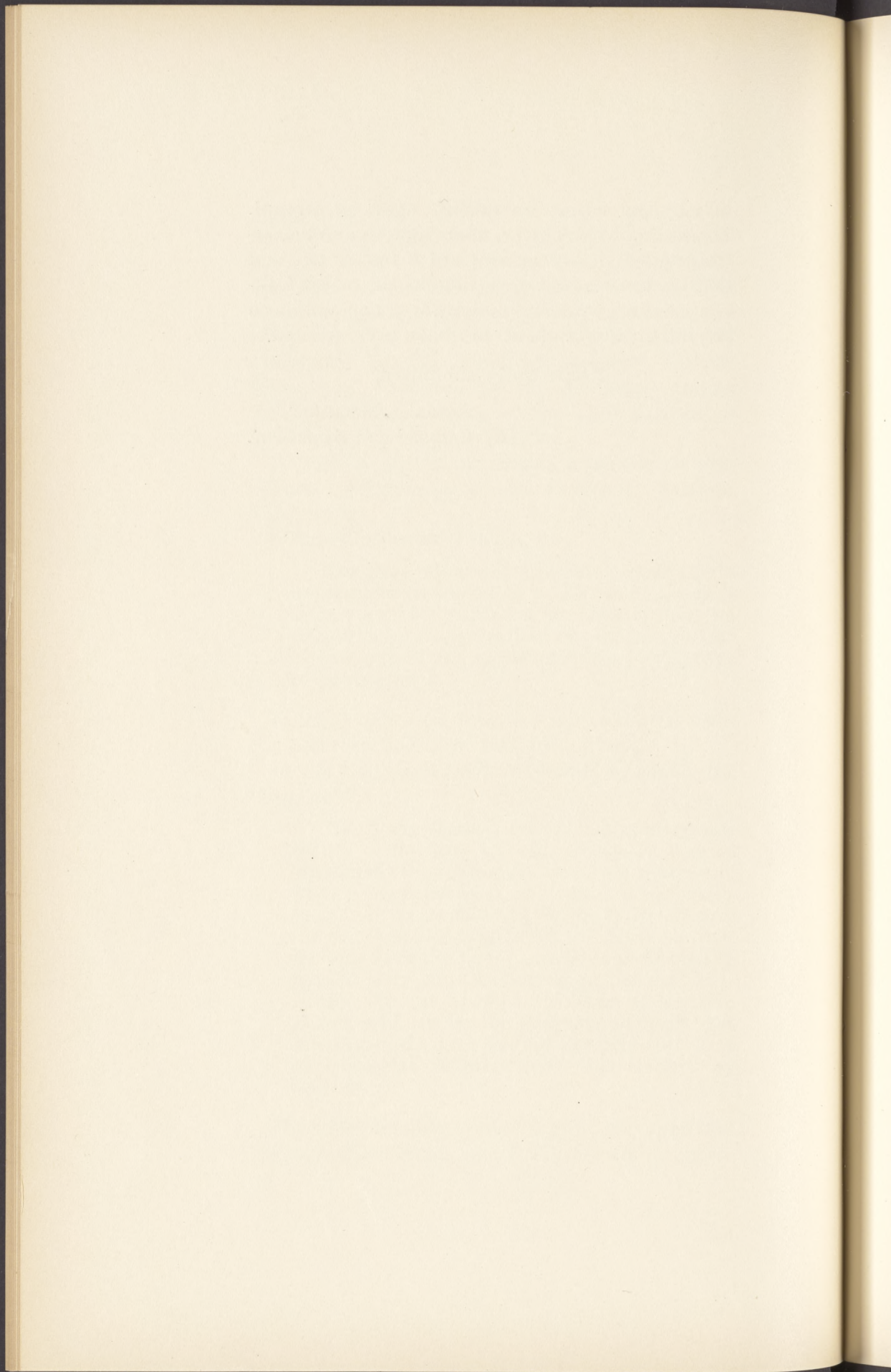
“The Court (below) erred in submitting this matter to the jury. If the admission was so ambiguous that the court could not determine what was meant by it, and found it necessary to submit its meaning to the jury, the counsel for the defendants should have been allowed the benefit of the doubt, and been permitted to put his own construction upon his own language. No one knows better than he what he meant, and, unless the language of itself was conclusive, the jury had no business with it as an admission different from that claimed by its author.”

The letter admitted ownership by the appellant and operation by his son; it did not admit opera-

tion by the son as his father's agent or servant. The testimony was clear, unambiguous and uncontradicted that the car was not a family car and that the son was not operating the car on his father's business, and the motion for a non-suit as to the father, therefore, should have been granted.

Respectfully submitted,

AARON A. MELNIKER,  
*Of Counsel for Appellant.*





APPEAL PRINTING CO., 22 THAMES ST., NEW YORK CITY

[ 7818 ]

108MAY.T.1934

## New Jersey Court of Errors and Appeals

CATHERINE WARSLEY, as Admin-  
istratrix *ad prosequendum* of  
the Estate of Paul Warsley,  
deceased,

Plaintiff-Respondent,

*vs.*

JOSEPH BR TAN and  
GABRIEL BR TAN,  
Defendants-Appellants.

### BRIEF OF PLAINTIFF-RESPONDENT.

#### Facts.

This suit is an automobile negligence suit brought by Catherine Warsley, as Administratrix, etc., against Joseph Brtan, the son and driver, and Gabriel Brtan, the father and owner. The Jury brought a verdict against Gabriel Brtan, but left undecided the case against Joseph Brtan, the son. The State of Case (page 15) appeals because of four grounds, but the appellants' brief abandons all grounds except one (see page 2 of the Brief), wherein he says:

*“The sole question on this appeal is raised by the motion for a non-suit (State of Case, p. 101) on the ground there was no proof of agency.”*

Referring to page 101 of Case on which appellant bases his hopes, we find a *non-suit*, not a *direction for a verdict*, is asked for, at the close

of the case made by both sides, for on pages 100 and 101 we have:

“Mr. Melniker: That is the defendant’s case.

Mr. Stover: That is our case.”

Then we have this:

“Mr. Melniker: I wish to move at this time for a non-suit with respect to the case against the father Gabriel on the ground there is no evidence in this case there was any agency between the operator of the car and this defendant. On the contrary the evidence is uncontradicted now that this other defendant was engaged on his own business, in fact engaged in a pleasure ride, and in no sense the agent of his father.

The Court: The motion will be denied in view of the complaint and the letter marked P-1. It is a jury question as to the meaning or intention of the parties with respect to any alleged admission that may be contained therein.

Mr. Melniker: Your Honor will allow me an exception.”

True it is, that on the same page, defendant moved for a *direction of a verdict* on different grounds, namely, negligence and contributory negligence; but these grounds are abandoned in his Brief.

## THE LAW.

### POINT I.

It is respectfully submitted, that if appellant wanted a non-suit, he should have made that motion at the end of the plaintiff’s case (page 74 of State of Case). He knew that law, and did move for a non-suit on the grounds of negligence and contributory negligence, which he has now aban-

done. He did not then claim lack of agency of the son for his father. The Court will find that the Jury had plenty of facts, such as speed, no signal, etc., to base its findings on the "negligence" matter.

It is contended that if any motion should have been made, it should have been for a direction of a verdict on the ground no agency was proved.

On page 101 of State of Case, counsel should have called the Court's attention to any mistake or as to his wishes immediately at or after the trial, and not be allowed to think up reasons long after the case is over.

## POINT II.

Assuming (but not consenting or admitting for the sake of argument) that a direction for a verdict was asked for, because no agency was proved, we find evidence from which the Jury could infer that there existed an agency.

We have here a case where an attorney, Mr. Hyman Segal appears as attorney of record, and conducts the proceedings throughout, until the trial, when all of a sudden Judge Melniker enters in the case. How, and by what right, he enters does not appear. There is no substitution filed or suggested.

Before the trial the attorney for the plaintiff submits to the attorney of the defendant the following Interrogatories shown in page 106 in State of Case:

"To the defendants or their attorney,  
Hyman Segal, Esq.,  
900 Broad Street,  
Newark, N. J.

Please Take Notice that plaintiff demands of the defendants answers, under oath, to the following interrogatories within ten days after service hereof upon you.

1. Who was the owner of the automobile which struck plaintiff's intestate, as alleged in the complaint?

2. At the time of said accident, who drove the automobile?

3. How old was the driver at the time of the accident, and how old is he now?

4. Was said driver, at the time of the accident, engaged in the business of the owner of the car?

5. Did the driver, at the time of the accident set forth in the complaint have the permission of the owner of the car to drive said car?

EDWARD STOVER,  
Attorney of Plaintiff."

The defendant answers on page 103 of State of Case as follows:

"HYMAN SEGAL  
Attorney at Law  
900 Broad Street  
Newark, N. J.  
Telephone Market 2-5840

April 17th, 1933.

Edward Stover, Esq.,  
1 Newark Street,  
Hoboken, N. J.

*Re: 4-AL-5694—Warsley vs. Brtan.*

Dear Sir:

I have your Interrogatories in the above matter, and note that the information that you request pertains to ownership and operation of the vehicle involved in the accident herein.

If satisfactory to you, you may take this letter as an admission of ownership and operation, and thereby obviate the necessity of securing Interrogatories.

I trust that this will be satisfactory to you.

Very truly yours,

HS-LVZ

HYMAN SEGAL."

If the above letter is not enough to close plaintiff's eyes, what is? Should defendants now, in view of that, be allowed to stultify themselves? Note the words: "And thereby obviate the necessity of securing answers to Interrogatories."

These interrogatories and solemn admission were made with the complaint in mind, on page 7 of State of Case, where in paragraph 5, middle, it says:

"The driver of said automobile, Joseph Brtan, was engaged in and about the said defendant's (Gabriel Brtan's) business, and was authorized to drive said automobile at said time, by said defendant, Gabriel Brtan."

Further, we have additional evidence wherefrom agency can be spelled out.

On page 18 of Case, we have:

"Mr. Stover: I might say at the outset counsel has unintentionally misinformed the jury and the Court that Gabriel was not the owner and the driver.

Mr. Melniker: I say he was the owner.

Mr. Stover: I have got the written admissions of the attorney of record. I submitted interrogatories to him. Here is the answer I got, that he was driving for his father on the business of his father.

Mr. Melniker: We do admit ownership, but I have nothing here to indicate to me—in fact, my information is the boy was driving his car for his own purpose, for his own pleasure.

Mr. Stover: I now offer in evidence the written interrogatories and the written stipulation by counsel for the other side, the attorney of record.

The Court: Is there any objection to it?

Mr. Melniker: No objection to it.

(The papers above referred to were received and marked in evidence P-1 and P-2.)

Mr. Melniker: We admit the ownership of Gabriel; we admit the operation by Joseph."

Then again, see State of Case, pages 81 and 82, wherein the examination reads:

“Q. Did your father know you were going out to take your overcoat? A. Yes. He knew I was out for my overcoat.

Q. And he gave his permission for you to go, didn't he? A. I always have his permission to use the automobile.”

“Q. You have permission, though, to take the car out, from your father, have you not? A. Yes, sir.

Q. Standing permission? A. Yes, sir.

Q. And he knew you were going for the coat? A. Yes, sir.

Q. You told him that, didn't you? A. Yes, sir.

Q. What did he say? A. Why, it was all right, I could use the automobile.

Q. For that purpose? A. Yes, sir.

Q. Is the license in your father's name? A. The owner's license is.

Q. And who went to the Department, the License Department, the Motor Vehicle Department, to take out the license? A. The owner's license?

Q. Yes. A. My father did.

Q. You helped him to do it, did you not? A. Yes.”

## THE LAW.

Some of the cases bearing on the questions are as follows:

In *Gustin v. Calandriello*, 144 Atlantic Reporter, page 312, it was held:

“Where evidence as to whether son driving father's car at time of collision with plaintiff had permission to use car, had key for car, and customarily drove parents about in car, was conflicting, case was properly submitted to jury.”

In *DeMott v. Knowlton*, 100 N. J. Law, page 296, wherein again the family relationship occurred, the Court said:

“3. Proof of the husband’s ownership of an automobile, which was being driven on the highway by his wife, raises a presumption of fact that it was being driven by her as his agent, and that she was acting within the scope of her agency. Evidence that such automobile was a family car, furnished by the husband for the recreation, health and convenience of his wife and children, that they had no paid driver, that the wife, with the acquiescence of her husband, regularly and usually took their children out for an airing, and that she had them with her at the time of the accident in which the plaintiff was injured, presents at least a jury question upon the topic of agency of the wife, and the mere fact that during the drive the wife had made a personal call upon a friend did not justify a non-suit or the direction of a verdict for the defendant owner.”

A case involving father and son appears in *Tischler v. Steinholtz*, 99 N. J. Law, page 149, where syllabus says:

“4. Proof of defendants’ ownership of an automobile driven on a public highway, raises a presumption of fact that such automobile was in the possession of the defendant, if not personally, then through his servant, the driver, and that such driver was acting within the scope of his employment. Both or either of these presumptions may be overcome by uncontradicted proof to the contrary; and if so overcome by uncontradicted proof that the automobile was not in the possession of the owner or of his servant, or was not being used by the servant within the scope of his employment, then a motion for a direction of a verdict for the defendant owner will be granted. If, however, the evidence is contradictory, or reasonably subject to contradictory interpre-

tations, the question of liability is for the jury.”

A case of mother and daughter arises in *Mimnagh v. Falato*, 110 N. J. Law, page 266, where syllabus reads:

“2. Proof of defendant’s ownership of an automobile driven on a public highway raises a presumption of fact that it was in the possession of the defendant, if not personally, then through his servant, the driver; and while either of these presumptions may be overcome by undisputed evidence to the contrary, yet where the daughter of the owner of the car, who was her mother, left her mother at a sister’s house, and then proceeded on an errand of her own, and after completing this errand, and while returning to the place where she left her mother, in order to bring her mother home, as agreed with the mother, struck and injured the plaintiff below, it was for the jury to say whether or not the relation of master and servant existed between mother and daughter at the time of the accident.”

In *Willett v. Heyer*, 104 N. J. Law, page 392, paragraph 3, it was stated:

“3. In an action by a passenger in an automobile against the owner thereof, which, while being driven by his wife, collided with another car, the proofs showed that it was a family car, and that defendant allowed his wife to drive it ‘any time she wanted it.’ This raised the presumption that the car was, at the time of the accident, being operated by the wife as the agent of her husband, and that she was acting within the scope of her agency, thus raising a question to be solved by the jury.”

Where there is no relationship, the Court holds, in 120 Atlantic Reporter, page 23, in *Crowell v. Padolsky*:

N.B.  
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“Proof of ownership of a taxi automobile driven upon a public highway raises a presumption of fact that it was in the possession of the owner or of his servant acting within the scope of the employment. If proof is offered to rebut this presumption, but this proof is met by other proof contradicting it, the whole question becomes one for the jury.”

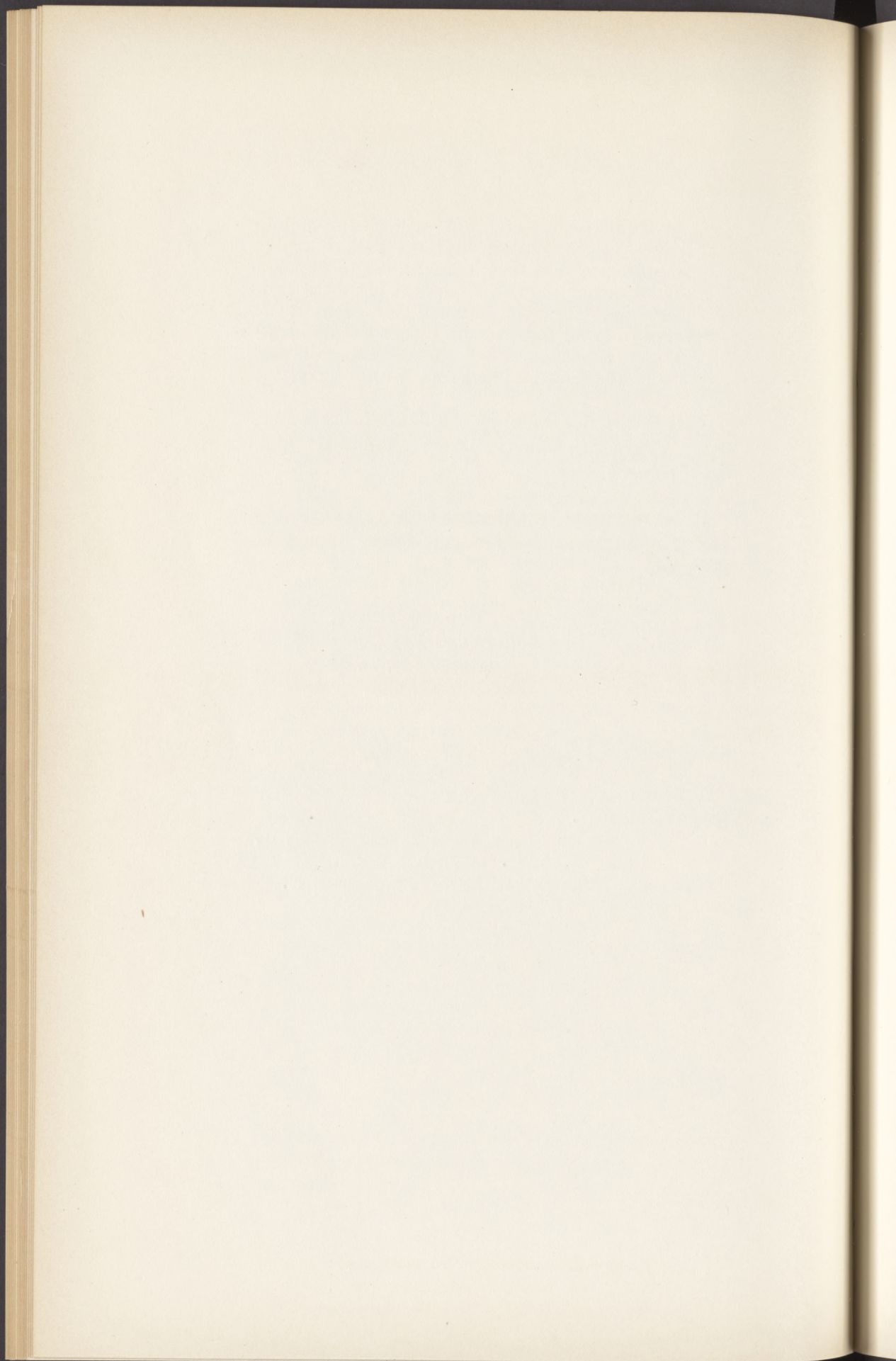
This law is reiterated in 170 Atlantic Reporter, page 237, in *Simmons v. Wiley Methodist Episcopal Church*.

It is respectfully submitted that the verdict and the judgment in the Court below should be affirmed.

EDWARD STOVER,  
Solicitor and of Counsel for  
Plaintiff-Respondent.

N.B.-It is respectfully submitted that the proper remedy of defendant (if any) was on an order to show cause why the verdict should not be set aside as contrary to the weight of evidence.

Edward Stover,  
Solr. and of counsel for  
Plaintiff-Respondent.





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