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New Jersey Court of Errors and Appeals

ESSEX COUNTY CIRCUIT COURT

JULIUS GROMER, Admr.,
Plaintiff,

vs.

JOSEPH GEORGE and ANTONIO
GEORGE,
Defendants.

Action at Law

20

Notice of Appeal

(Filed, October 31, 1916)

*To Kalisch & Kalisch, Esquires, Attorneys for the
Defendants:*

Sirs:

Please take Notice, that the plaintiff hereby ap- 30
peals to the Court of Errors and Appeals from
the whole of the judgment entered in the above
entitled cause.

Dated, October 27, 1916.

WM. GREENFIELD,
Attorney for Plaintiff,
Appellant.

New Jersey State Library

Complaint

By Harvey W. Keough, Under Sheriff seal.
Sheriffs Fees, \$4.80.

Served the within Summons and Complaint
June 10, 1915, personally upon Antonio George
the within named defendant at his place of busi-
ness #30 Ferry Street, Newark, New Jersey, and 10
personally upon Joseph George the within named
defendant at his place of business #30 Ferry
Street, Newark, New Jersey.

RALPH B. SCHMIDT,
Sheriff.

John J. Hyland,
Special Deputy.

Complaint

20

(Filed, June 14, 1915)

ESSEX COUNTY CIRCUIT COURT

JULIUS GROMER, Administrator
of the Estate of Samuel
Gromer, deceased,

Plaintiff,

30

vs.

Action at law.

JOSEPH GEORGE and ANTONIO
GEORGE,

Defendants.

The plaintiff residing in the City of Newark,
in the County of Essex and State of New Jersey, 40

Complaint

as Adminsitrator of the Estate of Samuel Gromer, deceased, complains:

1. That on or about the 30th day of May, 1915, the said defendants were the owners, proprietors or lessees of a certain automobile which was propelled and run by gasoline and motor power, along a certain public street or highway, to wit: on New York Avenue, in the City of Newark, in the County of Essex and State of New Jersey.

2. That on or about the said 30th day of May, 1915, the said Samuel Gromer, deceased, was then and there lawfully on the said public street or highway, to wit; on New York Avenue, in the City of Newark, in the County of Essex and State of New Jersey, and the said defendants, their agents, servants or employees did then and there operate and run the said automobile along the said public street or highway, at a high rate of speed and in a careless, reckless and negligent manner and did then and there, with great force and violence run into and against the said Samuel Gromer, and did then and there strike and injure the said Samuel Gromer, so that he died immediately thereafter as a result of the said injuries.

3. That the said Samuel Gromer did then and there die from the injuries sustained as aforesaid, and left surviving him, his father, the plaintiff herein, Celia Gromer, his mother and Rachel Gromer, Dora Gromer, Yetta Gromer and Isadore Gromer, respectively, sisters and brothers, and next of kin and heirs-at-law of the said Samuel Gromer, deceased.

4. By reason of the injuries sustained by the

Complaint

said Samuel Gromer, as aforesaid, through the carelessness and negligence on the part of the said defendants, their agents, servants or employees, which resulted in the death of the said Samuel Gromer, the plaintiff herein, as Administrator of the Estate of the said Samuel Gromer, deceased, saith that he hath sustained damages in the sum of \$10000 and therefore brings this suit, &c. 10

5. And the said plaintiff brings into Court Letters of Administration granted to him of the Estate of the said Samuel Gromer, deceased, whereby it appears to the Court that the said plaintiff, as Administrator of the Estate of Samuel Gromer, deceased, hath sustained damages in the sum of \$10,000. Whereby and by force of the Statute in such case made and provided, an action hath accrued to the plaintiff, As Administrator of the goods, chattels and effects of the said Samuel Gromer, deceased, for the benefit of the said plaintiff, who is the father, and for the benefit of the mother, sisters and brothers as next of kin and heirs-at-law of the said Samuel Gromer, deceased, to demand of the said defendants, the sum aforesaid, in manner and form, as above demanded, and therefore he brings this suit. 20 30

SECOND COUNT

And the plaintiff individually complains:

1. That on or about the said 30th day of May, 1915, the said defendants, Joseph George and Antonio George, were the owners, proprietors or lessees of a certain automobile which was propelled 40

Complaint

led and run by gasoline and motor power, along a certain public street or highway, to wit: New York Avenue, in the City of Newark, in the County of Essex and State of New Jersey.

2. And while this plaintiff's infant son, Samuel
10 Gromer, who was an infant under the age of twenty-one years, to wit: of the age of fourteen years, was on the said public street or public highway, to wit; New York Avenue, in the City of Newark, in the County of Essex and State of New Jersey, on the day and year aforesaid, the said defendants, their agents, servants or employees were running and operating the said automobile in a reckless, careless and negligent manner and at a high rate of speed, and did with
20 great force and violence, run into and against the said infant son of this plaintiff, and did strike and greatly injure him, so that he died immediately thereafter, as a result of the said injuries.

3. That this plaintiff, as father of the said Samuel Gromer, was entitled to the wages and services of his son, Samuel Gromer, but by reason of the carelessness and negligence on the part of the said defendants, their agents, servants or employees, in running and operating their said
30 automobile, whereby the infant son of this plaintiff, Samuel Gromer, was greatly injured and died as a result of the said injuries, the said plaintiff lost the income, wages and services of the said Samuel Gromer and will in the future lose the income, wages and services of his son, Samuel Gromer, deceased, as he would otherwise
40 have received and had.

Complaint

4. And that by reason of the carelessness and negligence on the part of the said defendants, their agents, servants or employees, in running and operating the said automobile, along the said public street or highway, so that the same ran into and against the infant son of the plaintiff while he was lawfully on the said public street or highway, to wit; New York Avenue, in the said City of Newark, in the County of Essex and State of New Jersey, whereby the infant son of the plaintiff, Samuel Gromer, was greatly injured and died immediately thereafter as a result of the said injuries, the said plaintiff was obliged to and did expend divers large sums of money for the funeral expense of the burial of his infant son, Samuel Gromer, deceased. 10

By reason of the aforesaid premises, the plaintiff saith, that he has individually, sustained damages in the sum of \$10,000 and therefore brings this suit. 20

By reason of all the aforesaid premises, the plaintiff saith that he hath sustained damages in the sum of \$10,000 as Administrator of the Estate of the said Samuel Gromer, deceased, and \$10,000, individually, making the total sum of \$20,000. 30

WM. GREENFIELD,
Attorney for Plaintiff.

Answer of Joseph George*(Filed, June 21, 1915)*

ESSEX COUNTY CIRCUIT COURT

10	JULIUS GROMER, Administrator of the Estate of Samuel Gromer, deceased, <div style="text-align: right;">Plaintiff,</div>	}	Action at law.
	vs.		
	JOSEPH GEORGE and ANTONIO GEORGE, <div style="text-align: right;">Defendants.</div>		

20 The defendant, Joseph George, residing in the City of Newark, County of Essex and State of New Jersey, says:

1. He denies the truth of the matters contained in the complaint.

FIRST DEFENSE:

1. That the negligence of the said Samuel Gromer, deceased, contributed to the happening
 30 of the said alleged accident.

SECOND DEFENSE:

1. That the said Samuel Gromer, deceased, entered the pathway of a moving automobile of the defendant, Antonio George, at a time when the said auto was so near as to endanger his, the said Samuel Gromer's safety.

McDERMIT & McDERMIT,
 Att'ys of Defendants.

40

Answer of Antonio George

(*Filed, June 21, 1915*)

ESSEX COUNTY CIRCUIT COURT

<p>JULIUS GROMER, Administrator of the Estate of Samuel Gromer, deceased, Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>JOSEPH GEORGE and ANTONIO GEORGE, Defendants.</p>	10	} Action at Law
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The defendant, Antonio George, residing in the City of Newark, County of Essex and State of New Jersey, says:

1. He admits that he is the owner of a certain automobile.

DEFENSE TO THE FIRST COUNT:

1. He denies paragraph 2 of this count.

2. As to the statement in the third paragraph of this count this defendant has not any knowledge or information thereof sufficient to form a belief. 30

3. He denies paragraph 4 of this count.

4. As to the statement in the fifth paragraph of this count this defendant has not any knowledge or information thereof sufficient to form a belief. 40

Answer of Antonio George

DEFENSES TO THE SECOND COUNT:

1. He denies paragraph 2 of this count.
2. He denies paragraph 3 of this count.
3. He denies paragraph 4 of this count.

10

DEFENSES TO THE FIRST AND SECOND COUNTS:

First Defense:

1. That the negligence of the said Samuel Gromer, deceased, contributed to the happening of the said alleged accident.

Second Defense:

1. That the said Samuel Gromer, deceased, entered the pathway of this defendant's moving automobile at a time when the said auto was so near as endanger his, the said Samuel Gromer's, safety.

McDERMIT & McDERMIT,
Attorneys of Defendant.

Reply to Answer of Defendant Antonio George

(Filed, November 16, 1915)

ESSEX COUNTY CIRCUIT COURT

10

JULIUS GROMER, Administrator
of the Estate of Samuel
Gromer, deceased,

Plaintiff,

vs.

JOSEPH GEORGE and ANTONIO
GEORGE,

Defendants.

Action at Law

20

Julius Gromer, Administrator of the Estate of Samuel Gromer, deceased, the plaintiff in this suit, in reply to the Answer of the defendant, Antonio George, says:

1. He denies the allegations set forth in Paragraph 1 of the First Defense of the Answer of the said defendant, Antonio George.

2. He denies the allegations alleged in Paragraph 1 of the Second Defense of said Answer. 30

WM. GREENFIELD,
Attorney of Plaintiff.

**Reply to Answer of Defendant,
Joseph George**

(Filed, November 16, 1915)

ESSEX COUNTY CIRCUIT COURT

10

JULIUS GROMER, Administrator
of the Estate of Samuel
Gromer, deceased,

Plaintiff,

vs.

JOSEPH GEORGE and ANTONIO
GEORGE,

Defendants.

} Action at Law.

20

Julius Gromer, Administrator of the Estate of Samuel Gromer, deceased, the plaintiff in this suit, in reply to the Answer of the defendant, Joseph George says:

1. He denies the allegations set forth in Paragraph 1 of the First Defense.

2. He denies the allegations alleged in Paragraph 1 of the Second Defense.

WM. GREENFIELD,
Attorney of Plaintiff.

**Affidavit of Service of Subpoena on
Daniel Ruder**

(*Filed, March 20, 1916*)

ESSEX COUNTY CIRCUIT COURT

JULIUS GROMER, Administrator
of the Estate of Samuel
Gromer, deceased,

Plaintiff,

vs.

JOSEPH GEORGE and ANTONIO
GEORGE,

Defendants.

10

} Action at Law.

20

State of New Jersey, }
County of Essex. } ss:

Julius Gromer of full age being duly sworn according to law on his oath deposes and says, that he is the plaintiff in the above entitled cause of action; that on Wednesday, the Fifteenth day of March, Nineteen Hundred and Sixteen, deponent served a subpoena on Daniel Ruder to appear at the trial of the above cause, by leaving the same with him personally and at the same time explaining the same to him and paying fifty cents to him as his fee, and served a subpoena on Frederick A. Harrison at his residence No. 68 New York Avenue, Newark, New Jersey, by leaving the same with him personally and at the same time explaining the same to him and paying Fifty Cents to him as his fee; and deponent further

30

40

Affidavit of Service of Subpoena on Daniel Ruder

10 says that on said fifteenth day of March, Nineteen
Hundred and Sixteen, deponent served a sub-
poena on Anthony Andres at his residence, No.
72 New York Avenue, Newark, New Jersey, by
leaving the same with him personally and at the
same time explaining the same to him and paying
him Fifty Cents as his fee, and served a subpoena
on Abe Schuster at his residence No. 13 Ferry
Street, Newark; New Jersey, by leaving the same
with him personally and explaining to him the
same and at the same time paying to him Fifty
Cents as his fee, and served a subpoena on Julius
Dimicholi, at her residence Elm Street near Pros-
pect Street, Newark, New Jersey, by leaving the
20 same with her personally and at the same time
explaining the same to her and paying to her the
sum of Fifty Cents as her fee.

J. GROMER.

Sworn and subscribed to before me on this
Twentieth day of March, A. D., 1916,
at Newark New Jersey.

John O'Hagan,
Master in Chancery,
of New Jersey.

**Affidavit of Service of Subpoena on
Commissioner of Motor Vehicles**

(Filed, March 20, 1916)

ESSEX COUNTY CIRCUIT COURT

JULIUS GROMER, Administrator of the Estate of Samuel Gromer, deceased, Plaintiff,	}	10 Action at Law
vs.		
JOSEPH GEORGE, <i>et al.</i> , Defendants.	}	

State of New Jersey, } ss: 20
County of Essex.

Abraham Alboum, being duly sworn according to law on his oath deposes and says, that he is a Clerk in the law offices of William Greenfield, at 800 Broad Street, Newark, New Jersey; that on Thursday, the Sixteenth day of March, Nineteen Hundred and sixteen, deponent, at the direction of the said William Greenfield, served a subpoena *Ducas Tecum* to produce certain records, on the Commissioner of Motor Vehicles, by leaving the same with John H. Friend, the person in charge of the Motor Vehicle Department, at his office Central Avenue and Halsey Street, Newark, New Jersey, and at the same time explaining the same to him and paying One Dollar to him as his fee. 30

A. ALBOUM.

Sworn and subscribed to before me this
18th day of March, A. D., 1916,
at Newark, New Jersey.

Joseph Altman,
An Attorney at Law of New Jersey. 40

**Affidavit of Service of Subpoena on
Thomas McCellan**

(Filed, March 20, 1916)

ESSEX COUNTY CIRCUIT COURT

10	JULIUS GROMER, Administrator of the Estate of Samuel Gromer, deceased, <div style="text-align: center;">vs.</div> JOSEPH GEORGE, <i>et al.</i> , Defendants.	}	Action at Law
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20 State of New Jersey, }
 County of Essex. } ss:

30 Louis A. Fast of full age being duly sworn according to law on his oath deposes and says, that he is an Attorney of the State of New Jersey; that on Thursday the Sixteenth day of March, Nineteen Hundred and sixteen, at the request of William Greenfield, Attorney for the above named plaintiff served a subpoena *Ducas Tecum* upon Thomas McCellan, requiring him to produce the entire record of the proceedings and indictment in the suit of The State of New Jersey against Antonio George, and that he then and there paid the sum of One Dollar to the said Thomas McCellan as witnesses fee for producing the said records in the above suit at the aforesaid Court.

L. A. FAST.

Sworn and subscribed to before me on this
 18th day of March, A. D., 1916, at Newark,
 M. Casewell Heine,

40 Master in Chancery of New Jersey.

Rule to Show Cause*(Filed, March 21, 1916)*

ESSEX COUNTY CIRCUIT COURT

JULIUS GROMER, Admr., etc., Plaintiff, vs. JOSEPH GEORGE and ANTONIO GEORGE, Defendants.	}	10 Action at Law 30
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Application having been made within six days after the rendering of the verdict in the above entitled cause, it in on this twentieth day of March, 20 nineteen hundred and sixteen

ORDERED, that the plaintiff show cause before the Circuit Court, on Friday, the twenty-fourth day of March, nineteen hundred and sixteen, why the verdict in the above entitled cause should not be set aside, and a new trial granted.

The refusal of the Court to nonsuit the said plaintiff, and the refusal of the Court to charge the second, third and fifth requests of the defendant, and the refusal of the Court to allow the plaintiff's counsel to sum up to the jury, is hereby expressly reserved from said Rule. 30

On motion of

KALISCH & KALISCH,
Attorneys of Defendants.

I allow this Rule. Let it be entered.

NELSON Y. DUNGAN,
Circuit Court Judge. 40

Order*(Filed, April 7, 1916)*

ESSEX COUNTY CIRCUIT COURT

10 JULIUS GROMER, Admr., etc.,
Plaintiff,

VS.

JOSEPH GEORGE and ANTONIO
GEORGE,
Defendants.

20 Application having been made to me for a Rule to Show Cause why the Verdict in the above stated cause should not be set aside, and argument having been heard thereon, on the thirty-first day of March, nineteen hundred and Sixteen, William Greenfield appearing for the plaintiff, and Samuel Kalisch, Jr., of the firm of Kalisch & Kalisch, appearing for the defendants; and the Court, having duly considered the same, it is

30 ORDERED, that on this fifth day of April, the verdict rendered in the above stated cause be set aside, and for nothing holden, and a new trial granted.

NELSON Y. DUNGAN.

Clerk's Certificate

ESSEX COUNTY CLERK'S OFFICE

State of New Jersey, }
 County of Essex. } ss:

10 I, Joseph McDonough, Clerk of the Circuit Court, in and for the County of Essex in the State of New Jersey.

DO HEREBY CERTIFY, that the foregoing is a true and correct copy of a certain Notice of Appeal, Transcript of entire proceedings and judgment record in the case of Julius Gromer Admr. vs. Joseph George, et als., and the same is taken from and compared with original papers and record and as the same now remains on the files of

20 said office.

In Testimony Whereof, I have hereunto set my hand and affixed the official seal of said Court and County at Newark, N. J., this 22d day of November A. D., 1916.

JOSEPH McDONALD,
 Clerk.

(Seal)

Testimony

ESSEX CIRCUIT COURT

<p>JULIUS GROMER, Administrator of the Estate of Samuel Gromer, deceased,</p>	}	10
<p>vs.</p>		
<p>JOSEPH GEORGE and ANTONIO GEORGE.</p>	}	

Transcript of shorthand notes of testimony, and so forth, taken in above stated cause, upon the trial thereof, at the Court House, Newark, N. J., on Monday, September 25, 1916, before 20 Hon. Willard W. Cutler, Judge and a Jury.

William Greenfield for plaintiff.
Kalisch & Kalisch, by Samuel Kalisch, Jr., and
John A. Matthews for defendants.

Jury impanelled and sworn.

Mr. Greenfield opened for plaintiff.
Mr. Kalisch opened for defendants.

30

JULIUS GROMER, sworn for plaintiff:

Direct-examination by Mr. Greenfield:

Mr. Greenfield: I understand at this time it is admitted that Mr. Gromer is the administrator duly appointed in this county.

Mr. Kalisch: Yes, we admit that.

40

Julius Gromer—Direct

Q. Mr. Gromer, where do you live? A. I live 205 Walnut Street.

Q. How long have you been living in Pacific Street? A. Four years.

10 Q. On May 30, 1915, you had a son named Samuel Gromer? A. Yes, sir.

Q. How old was he? A. He was going on fifteen years.

Q. Where did he live? A. Same place.

Q. Did he live with you? A. Yes, sir.

Q. What was he doing? A. He was working for me.

Q. What kind of work? A. A delicatessen store, my store.

20 Q. Did he do anything else besides working in the delicatessen store? A. He was going to school.

Q. What school did he attend? A. Lafayette Street School.

Q. What class was he in? A. He was in the last grade, supposed to be graduating the next month when he got killed.

Q. The month following that he was killed? A. He was graduating next month in June.

30 Q. When was he killed? A. He was killed, Sunday afternoon, Decoration Day.

Q. What year? A. 1915.

Q. Now, Mr. Gromer, do you know Joseph George? A. Yes, sir.

Q. How long have you known him? A. I know him until last eight years. We have been neighbors for five years. I used to have a store in 14 Ferry Street and he was my tailor.

40 Q. On the 30th day of May were you anywhere near Ferry Street? A. Yes, sir.

Julius Gromer—Direct

Q. Where? A. I was going from—there was a Sunday—the same day the accident happened. I was short in smoked tongue. I got a cousin who lives in 13 Ferry Street. He keeps a delicatessen store. I was going to him, I shall buy from him a couple of tongue because on Sunday I can't get the tongue and I crossed Ferry Street and I see Mr. George stood by an automobile and I said, "Hello, Mr. George is that your machine?" He said, "Who do you think it is?" He said, "It is my machine." I said, "What make is it?" He said, "It is an Oakland make," and I went away to my cousin. 10

Q. What time did you get home on that day?

A. I was home right away, as soon as I got the tongue I went right home. 20

Q. What time of the day was that when you saw Mr. George? A. Between one and two.

Q. You saw Mr. George, what George? A. The tailor.

Q. There are two Georges. A. One George. I know him myself.

Q. Point him out. A. That is the fellow over there (indicating).

Mr. Greenfield: Pointing to Joseph George. 30

A. Joseph George.

Q. That is the one you saw in front of his place of business where he had his automobile? A. Automobile near his store.

Q. After you got home did you hear of any accident? A. I didn't hear nothing after. I went to bed. I always sleep in the afternoon.

Q. I don't care anything about what you always do. When was the first time that you heard 40

Julius Gromer—Cross

about an accident to your son? A. They wake me up.

Q. When was that? A. On Sunday, Decoration Day, the 30th of May in the afternoon between four and five.

10 Q. When you woke up did you see your son?
A. I see him in the hospital there already.

Q. What hospital? A. In St. James' Hospital.

Q. Now, Mr. Gromer, did you ever see Mr. George drive that car? A. All the time.

Q. Did you ever see him drive that after the accident? A. After the accident, the next week he was passing my store with the machine. He was occupying the machine himself.

20 Q. Who was operating it? A. Mr. George himself.

Q. When you say Mr. George, there are two Georges. A. Joseph George.

Q. The older gentleman? A. The old man, yes.

Q. Who was in the machine when you saw Mr. Joseph George operating the car and passing your place of business after the accident? A. I seen him myself.

Q. Anybody else with him? A. No.

30 Q. Did you ever after that talk to Mr. George?
We are talking about Joseph George. A. Yes, sir.

Q. When was that? A. When I was talking to him?

Q. After the accident? A. I didn't talk to him any more.

Q. Your son died on the same day, he died on the same day? A. Yes, sir.

CROSS-EXAMINATION by Mr. Kalisch:

40 Q. Your boy was thirteen years old? A. I beg
your pardon. He was going on fifteen years. The

Julius Gromer—Cross

record will show from the school how old he was.

Q. Do you remember testifying at the last trial?

A. I remember.

Q. Do you remember being asked this question:

“Q. How old was Samuel? A. Thirteen years.”?

A. I do not.

Q. You mean to say you didn't testify to it? A. I testified he was fourteen years old, he was going on fifteen. 10

Q. Even though the record shows you said he was thirteen years old? A. Fourteen years.

Q. The record is wrong? A. I don't know about the record. The school will show, the record from school will show.

Q. Have you got the date of his birth with you?

A. I ain't got it with me.

Q. Why haven't you? A. I didn't think it is necessary. 20

Q. Can't you bring the record? A. No.

Q. Why can't you? A. I ain't got it. He wasn't born here. He was born in New York.

Q. Haven't you got any record in the family bible of the date of birth? A. No, sir.

Q. Didn't you keep the record? A. I don't keep it.

Q. Just keep it in your head? A. We don't believe to keep a record. It ain't necessary to keep a record of the age of the children. I know how old he is. 30

Q. Why did you testify last time he was thirteen years old? A. He was fourteen years old, going on fifteen.

Q. Then the record is wrong? A. I didn't say about the record is wrong.

Q. What year was your boy born? A. I don't know. 40

Julius Gromer—Cross

Q. How do you know how old he was? A. Because I know it. I know what year he was old.

Q. I am asking you what year was your boy born? A. I don't know. You can figure it out. He was born in New York.

10 Q. What street in New York? A. 235 Stanton Street.

Q. You don't know what year it was? A. No.

Q. Well, you know how old he is? A. I know how old he is, certainly.

Q. If you don't know the year how do you know how old he is? A. I remember how many years ago. Fourteen years ago. What year was it, figure it out.

20 Q. Your boy went to school, didn't he? A. Yes, sir.

Q. Here in Newark? A. In Newark, yes, sir.

Q. He used to go up to 3 o'clock in the afternoon or half-past three? A. What?

Q. To school. A. The whole day to school, in the morning and afternoon.

Q. How long in the afternoon? A. Coming home 3 o'clock from school.

Q. What grade was he in? A. The last grade, eighth grade.

30 Q. Eighth grade, grammar? A. Eighth grade, the last grade.

Q. He had studies to attend to after school? A. After school he was working for me in the store.

Q. When did he prepare his studies? A. In the evening.

Q. Then he helped you after school? A. Yes, sir, in the store.

40 Q. You don't know anything about your boy's death except what was told you? A. No, I didn't see nothing.

Julius Gromer—Cross

Q. You say the 30th day was a Sunday afternoon, that you were going to get some smoked tongue? A. Yes, sir.

Q. You saw Mr. eGorge? A. Yes, sir.

Q. And had a conversation with him? A. Yes, sir.

Q. Why did you have a conversation with Mr. George? A. Because I know him. 10

Q. How long has he been living in that street? A. How long he was living over there?

Q. Yes. A. I didn't know. I had a store at Ferry Street not far from him.

Q. Did you always used to talk with Mr. George? A. All the time he used to come in the store and deal with me. He used to buy some delicatessen and he used to make a suit of clothes for me. 20

Q. Do you remember testifying at the last trial? A. Yes, sir.

Q. You said you were going out you were in a hurry? A. What?

Q. Didn't you testify at the last trial you were going out on the street and that you were in a hurry? A. That day, I testified the last time?

Q. Didn't you testify at the last trial you went out in the street and that you were in a hurry? 30

Mr. Greenfield: I object to the method of confronting the witness with the testimony.

Q. Do you remember this question, "What else did you say, if anything, with reference to this machine? A. Nothing, I was in a hurry." Do you remember that? A. I went away to my cousin's at that time for a couple of tongue.

Q. Do you remember saying, "Nothing, I went away. I was in a hurry." A. When? 40

Julius Gromer—Cross

Q. At the time of this conversation with Mr. George? A. I went to my cousin to get a couple of tongues.

10 Q. Listen. Do you remember testifying that you went away. "I was in a hurry." Do you remember saying that at the last trial? A. I beg your pardon. I don't remember that.

Mr. Greenfield: I object. I do not think it is the proper method of confronting the witness, merely picking out testimony in a certain place. It might confuse the witness.

The Court: You might read a sentence or two ahead of this.

Q. You went out that day to get some smoked tongue, did you? A. Yes, sir.

20 Q. You were in a hurry, weren't you? A. I don't remember if I was in a hurry or not.

Q. You say you were not in a hurry? A. I don't remember.

Q. You don't know whether you were or not? A. I don't remember whether I was in a hurry or not.

Q. You saw Mr. George standing in front of the shop? A. In front of his store.

30 Q. Even if you were in a hurry you had time enough to stop and talk to Mr. George?

Mr. Greenfield: I object to that.

A. I passed by.

Mr. Greenfield: I object to that. He has not testified now that he was in a hurry.

Mr. Kalisch: Does your Honor overrule the question?

40 Mr. Greenfield: My objection is that the testimony is that he did not testify he was in a hurry.

Julius Gromer—Cross

The Court: That is objectionable as it stands now.

Q. What time did you leave your store? A. I don't remember exactly but it was between one and two, I can't remember.

Q. You were going to get some smoked tongue and on your way you met Mr. George? A. I passed Mr. George's store. 10

Q. And you saw the machine standing outside? A. Yes, sir.

Q. And what did you say to Mr. George? A. I say, "Hello, Mr. George. Is that your machine?" He said, "Who do you think it is? That is my machine."

Q. Why did you ask Mr. George if that is his machine? Why did you care? A. Why not? I knew the man. 20

Q. What difference did it make to you whether it was Mr. George's machine or somebody else's machine? A. When I passed there I saw the machine and I said, "Whose machine this?" and he said, "Who do you think? It is my machine." It is just for friendship I ask that.

Q. And you asked that and went about your business? A. I went further to my cousin.

Q. When you came home you didn't hear anything about the accident until you had gone to bed? A. No, they woke me up. 30

Q. You were sleeping? A. I was sleeping in the afternoon.

Q. How long did you say you have known Mr. Joseph George? A. I know him about seven or eight years, eight years.

Q. How long have you been living in Newark? A. Over ten years. I was five years in Ferry Street, I had a store 14 Ferry Street. 40

Julius Gromer—Cross

Q. Do you know how old your boy, Sam, was when he came to Newark? A. I don't remember.

10 Q. Why don't you remember if you can testify so positively how old he was at the time he died? You don't know when he was born. You don't know how old he was when he came to Newark. Why can't you remember that? A. Because I don't remember.

Q. Why are you so positive about his age then? You don't remember when he was born? A. I remember what year he was born. Take a pencil and figure it out.

Q. You only remember the year he died? A. No, I know he was fourteen years old when he died.

20 Q. How do you fix it at fourteen years? You don't know when he was born? A. I know when he was born. I told you where he was born. He was born in New York. I can't tell the year.

Q. You don't know when he was born and you don't know how old he was when he came to Newark? A. I don't remember.

Q. Isn't it a fact he was thirteen years of age? A. He was fourteen years old.

30 Adjourned to Tuesday, September 27,
1916, at 10 o'clock, a. m.

Julius Gromer—Cross

SECOND DAY

Tuesday, September 27, 1916.

Met pursuant to adjournment.

Present, counsel as before stated.

10

Mr. Greenfield: At this time I desire to offer in evidence the answers to the interrogatories propounded by the plaintiff and answered by the defendants.

The Court: Which defendant?

Mr. Greenfield: The answers of Joseph George.

(Interrogatories and answers of Joseph George read to the jury by counsel for plaintiff and defendant.

20

Mr. Greenfield: I offer these in evidence.

Admitted in evidence and marked Exhibit P-1 and Exhibit P-2.

JULIUS GROMER resumes the stand in behalf of plaintiff:

Cross-examination continued by Mr. Kalisch: 30

Q. Now, Mr. Gromer, Schuster's delicatessen store is on Ferry Street? A. Yes, sir.

Q. Which side of the street? A. This side, on the right side.

Q. The jury don't know what you mean by this.

A. The side to the depot. It is the left side.

Mr. Greenfield: It is on the south side of the street. We will agree on that.

Q. Your store is on the south side of the street? 40

Julius Gromer—Cross

A. My store is on Pacific Street. Before I had a store, you mean.

Q. At the time of this accident where was your store? A. On Pacific Street.

Q. On what side of the street was your store?
10 A. On the right side.

Mr. Greenfield: I will agree that it is on the easterly side of Pacific Street.

Q. All you would have to do would be to leave your store and walk straight down to McWhorter Street? A. No, I was going straight to Union Street.

Q. Why did you go to Union? A. I always go that way. It was the nearest way to go to Union Street. I went down Pacific Street to Adam and
20 from Adam I went to Union Street.

Q. Isn't it nearer to go through McWhorter Street and down Ferry Street? A. I went to Union Street.

Q. And you struck Ferry Street? A. Yes, sir.

Q. You walked down Ferry Street to Schuster's store? A. No, sir, I walked down to Mr. Schuester's store, yes.

Q. George lives on this side? A. Yes, sir.

Q. What day of the week was this? A. Sunday.

Q. What did you do—near what corner is
30 George's store? A. George's store opposite the street from Union Street. I just went down—he is not on the corner, he is in the middle of the block.

Q. Opposite what street? A. Opposite Union, I guess.

Q. You say he is opposite Union Street? A. He is facing McWhorter Street. I am not sure exactly. I went down Union Street and I walked
40 down the other side of the street.

Julius Gromer—Cross

Q. You say George's store is opposite McWhorter Street? A. I don't remember exactly whether it was McWhorter or Union Street.

Q. You came out of Union Street? A. Yes.

Q. You say it is opposite Union Street? A. Yes, I know where he lives. He has a store.

Q. You are sure it is opposite Union Street? A. I think so. I don't remember exactly.

Q. How long did Mr. George live on Ferry Street? A. How long I know him.

Q. How long is that? A. Eight or nine years.

Q. You have passed his store many times? A. I always passed the store.

Q. Can't you tell the jury whether the store is opposite Union Street or McWhorter? A. I don't keep no track.

Q. You remember some things well enough, why can't you remember that. You have known these people eight years. You pass there every day. A. Yes, sir.

Q. Do you know his store well? A. Positively.

Q. And you know Mr. George well? A. Yes, sir.

Q. Can't you tell this jury whether George's store is opposite Union Street or opposite McWhorter Street? A. His store is opposite a church; that I am certain. The church is pointing to McWhorter or Union Streets, I don't remember exactly.

Q. Do you know where McWhorter Street is? A. I remember what street I passed through, Union Street.

Q. Do you know where McWhorter Street is? A. Yes, sir.

Q. Do you know where Union Street is? A. Yes, sir.

Julius Gromer—Cross

- Q. Can't you tell where Mr. George's store is?
 A. It is opposite McWhorter Street.
- Q. You came down Union Street? A. I did.
- Q. What distance is it between McWhorter Street and Union Street? Is it a long block? A.
 10 One block.
- Q. A long block or short one? A. No, sir, short block.
- Q. How short? A. I don't know. I didn't measure.
- Q. You came out of Union Street? A. Yes, sir.
- Q. And George's store is on Ferry Street opposite McWhorter Street on the other side of the street? A. Yes, sir.
- Q. How did you have this conversation with
 20 George? A. Because I just crossed the other side from Union Street and I passed Mr. George's place.
- Q. How could you pass Mr. George's place if Mr. George's place was below Union Street? A. I beg your pardon. McWhorter Street first, not Union Street.
- Q. McWhorter Street is above Union Street?
 A. Positively.
- Q. You went across the street? A. Yes, sir.
- 30 Q. Why did you cross the street. The store was on the south side of the street? A. Yes.
- Q. Why did you cross the street? A. Can't I cross the street?
- Q. I am asking you why you went across the street if the store is on the same side as you were coming, why did you cross the street? A. I always cross to the other side on account of the sun.
- Q. Why did you cross the street this particular
 40 day? A. I always crossed, I always go on the

Julius Gromer—Cross

other side, not just that day. I always go to the other side all the time.

Q. Why did you cross the street this particular day if the delicatessen shop, where you bought the smoked tongue, was on the same side that you came out of, why did you take the trouble to cross the street? A. I always go the other way all the time. 10

Q. You please answer the question. A. I did answer.

The Court: I think that is an answer.

Q. You say you crossed the street on account of the sun? A. What did I know about the sun. I didn't know anything about it.

Q. Didn't you answer you crossed the street on account of the sun? A. On account of the sun? I did not. My son wasn't on the other side at that time. 20

(Testimony read.)

A. My son you mean or the sun?

Q. I asked you the question and you said you always crossed the street on account of the sun. A. My son, I thought, where he killed him. The sun, sure, but not my son.

Q. Is that the reason you crossed the street, you say? A. Yes, sir. 30

Q. On account of the sun? A. I always go on the other side.

Q. Is that the reason you crossed the street this day on account of the sun? A. I always cross the street to the other side.

Q. Is that the reason you crossed the street that day, on account of the sun? A. I always go to the other side. When I passed Ferry Street I always go to the other side. 40

Julius Gromer—Cross

Q. Will you please answer the question. Is that the reason you crossed the street that day, on account of the sun? A. On account of the sun.

Q. Then, it wasn't because you always crossed the street, but on account of the sun? A. I always walked on the other side.

10 Q. Is that right? A. Yes, sir.

Q. Do you remember testifying at the last trial that you were in a hurry? A. I don't remember.

Q. Will you say you didn't say it? A. I don't remember.

Mr. Greenfield: I object to that. I believe your Honor ruled yesterday afternoon the question should be read.

20 The Court: The rule of law is, if you want to ask a witness whether he testified you should read that question or enough of the testimony to get a connection.

Q. Do you remember Mr. Greenfield, your counsel, asking you this question, "What else did you say, if anything, with reference to this machine?"

A. Nothing, I went away. I was in a hurry." A. I don't remember.

30 Q. Will you say you didn't say it? A. I don't remember nothing, I don't remember what I said at the last trial.

Q. Will you say you didn't say it? A. I don't remember what I say at the last trial.

Q. If you were in a hurry why did you take the trouble of crossing the street and having a conversation with Mr. George when you could have kept on your side? A. I didn't keep on talking with him. I went right away.

40 Q. Why did you take the trouble of crossing the street? A. I always go on the other side of the street.

Celia Gromer—Direct

Q. Even if you are in a hurry? A. I always go to the other side of the street.

Q. Even if you are in a hurry? A. Always.

CELIA GROMER, sworn in behalf of plaintiff: 10

Direct-examination by Mr. Greenfield:

Q. Mrs. Gromer, where do you live? A. 205 Walnut Street.

Q. And your husband conducts a place of business where? A. 30 Pacific.

Q. And you are the wife of Julius Gromer? A. Yes, sir.

Q. And you are the mother of the lad, Samuel Gromer? A. Yes, sir. 20

Q. On the 30th day of May your boy died? A. Yes, in the night.

Q. Do you know Mr. Joseph George? A. Yes, sir.

Q. Did you ever live in the neighborhood where he lives? A. Five years.

Q. When was your boy's funeral? A. Monday afternoon.

Q. That was the day following he died? A. No, that was the next day, Monday. Monday he got buried and Sunday he got killed. 30

Q. After the funeral did you ever see Joseph George in your house? A. Yes, sir.

Q. How long after? A. A few days he came over and told me—

Q. A few days after. Where did you see him? A. My house. 40

Celia Gromer—Direct

Q. Who was with him? A. His wife, Mr. George and his wife.

Q. Did he say anything to you on that day? A. Yes, sir, he said—

10 Q. Where did that conversation take place, where did that talk take place? A. In my house.

Q. What did Mr. Joseph George say to you, if anything, on that day? A. He told me that he sent out this boy—he came in, but he didn't mean to kill my boy with his machine, he only sent his boy to the garage to fix the machine and take a few people, passengers, and I don't remember no more.

20 Q. Do you know all this conversation? While you were talking to him and he said that did anything happen to you? A. I went off, I don't remember no more.

Q. Who was there at your house on that day? A. It was my brother-in-law and my neighbor come downstairs.

Q. Is that the only time you talked to Joseph George after your boy was killed? A. Yes, sir.

Q. Now, Mrs. Gromer, did you ever see Joseph George in an automobile? A. He passed twice after my boy was killed.

30 Q. Who passed twice? A. Mr. George, in front of my store.

Q. When you say Mr. George kindly say what one? A. Mr. George, the old gentleman, and I told my husband.

Q. No, wait a minute. Don't say anything what you have told your husband. A. All right.

Q. How many times did you see Joseph George pass your store? A. Twice.

40 Q. Was it before or after the accident? A. After the accident.

Celia Gromer—Cross

Q. How did he pass on foot or— A. In the afternoon, my side he passed.

Q. Wait a minute. You say he passed. Did he walk? A. No, with the machine.

Q. With the automobile? A. With the automobile, he passed twice my store.

10

CROSS-EXAMINATION by Mr. Matthews:

Q. Did you testify at the last trial? A. I was too sick to come.

Q. Did you testify? A. I didn't testify. I didn't come because I was sick.

Q. That is all. You didn't testify. What time of day did Mr. George come into your home on Monday? A. Not on Monday.

Q. The day after the funeral? A. A few days after the funeral. 20

Q. What time of the day? A. In the afternoon. I can't tell you the time. He came in the afternoon with his wife.

Q. Was it 1 o'clock or 3 o'clock? A. I can't tell you exactly the time.

Q. Do you know whether it was before sundown or after sundown? Was it before dark or after dark? A. It wasn't dark yet.

Q. What room in the house did you converse? A. In my front room. 30

Q. And there were present whom besides yourself? A. Yes, sir, my brother-in-law.

Q. What is your brother-in-law's name? A. Nathan Gromer.

Q. Where does he live? A. He came from New York.

Q. Where does he live in New York? A. I don't know. I always go with my girl. I don't know the streets around New York. 40

Celia Gromer—Cross

Q. You lived in New York before you came to Newark? A. I lived on the east side.

Q. Does Mr. Nathan Gromer live on the east side? A. They live uptown on the west side.

10 Q. What street? A. I don't know, Thirty-sixth Street, I think.

Q. What number? A. I don't know the number, I can't tell you.

Q. Is he married or single? A. Single.

Q. Who else besides Mr. Nathan Gromer, whose address you don't know and who is your brother-in-law, who else? A. My neighbor.

Q. What is his name? A. Her name is Mrs. Hawkins.

Q. Mrs. Hawkins is dead since? A. Yes, sir.

20 Q. When did she die? A. It must be about four weeks. She died from pneumonia four weeks, three weeks.

Q. Where did Mrs. Hawkins live? A. On the first floor.

Q. Where did you? A. 205 Union Street.

Q. Did she leave a family behind her, husband and children? A. Sure, she left children.

30 Q. How long had Mr. Gromer, Mr. Nathan Gromer and Mrs. Hawkins been in the house when Mr. George and his wife came in? A. My brother-in-law was there almost for a whole week by me.

Q. With Mrs. Hawkins? A. She was around me all the time. She saved my husband from taking poison.

Q. I didn't want that information, but I am glad she did that, but it is not a part of this trial. She had children downstairs? A. Sure, she had children.

40 Q. What did Mr. George say, the first thing he

Celia Gromer—Cross

said when he came in? A. He said, "He is awfully sorry that his machine killed your boy."

Q. What did you say? A. So I said, "Go out, murderer."

Q. What? A. I told him, "Go out, murderer." He says, he is not murderer, he just sent his boy for the machine to fix in the garage to take a few friends over to his house, and that is all I remember. 10

Q. You fainted right away? A. I fainted away.

Q. How soon did you come to? A. I don't know. When I got up my neighbor helped me and she said, "He is out."

Q. Do you know approximately or nearly how long you were in that faint? A. I can't tell you. How shall I know how long I was fainting? 20

Q. Where was Mr. Gromer at this time? A. Mr. Gromer was in the room.

Q. He was present, too? A. He wasn't in the room, but I was fainting. I can't tell you which room he was.

Q. He was in the house? A. He was home.

Q. When Mr. and Mrs. George came in? A. Yes, sir.

Q. You don't know in what room of the house Mr. Gromer was? A. I can't tell you. I was unconscious. 30

Q. When you fainted did he come in? A. While I was fainting.

Q. When you revived— A. He was alongside of me.

Q. He didn't come in and interrupt through the conversation? A. I can't tell you.

Q. He didn't come in and interrupt the conversation between you and Mr. George? A. He didn't interrupt. 40

Celia Gromer—Cross

Q. Didn't come in at all? A. No.

Q. But you are sure he was in the room? A. Sure.

Q. How many rooms have you? A. At that time I had five and a bath.

10 Q. Which room were you? A. In the front room.

Q. That is the front room of the house, what you would call the parlor? A. Parlor.

Q. You don't know in what room Mr. Gromer was? A. No.

Q. You don't know what time of the afternoon it was? A. I can't tell you but I know it was in the afternoon.

20 Q. What makes you remember it was in the afternoon? A. Because it was in the afternoon.

Q. Can't you fix how? A. Oh, please, I got a trouble, headache. I told you twice; on that same question you ask me. He ruined my life, Mr. George.

Q. That is very true. It is a very sad case. How do you fix that it was the afternoon? A. Because he came up in the afternoon with his wife. That is all I can tell you.

30 Q. Were you attended by a physician during all the time that the last trial was going on? Did you have the doctor all the time at the last trial? A. Yes, sir, I had Dr. Pollander.

Mr. Matthews: Your counsel corrects you and he says it is Dr. Polaner.

Q. Where does he live? A. He lives on Elm Street.

By Mr. Greenfield: Q. You said that Mr. Gromer was there. What Gromer do you mean?

40 A. My brother-in-law.

Celia Gromer—Cross

Q. You don't mean your husband, do you? A. No.

By Mr. Matthews: Q. Where was Mr. Gromer, your husband? A. When I got fainting?

Q. Was he in the house when George came in? A. I can't tell you because I was all upset. 10

Q. Was he in the house or not? A. I think you ask my brother-in-law. He was in the house with me.

Q. But in another room? A. He wasn't in the same room.

Q. You don't know what room he was in? A. Maybe he was in. I didn't see him. I can't tell you. I was too much excited when I seen Mr. George come. After he killed my boy shall I lick him in the face and be decent? 20

Q. Your attitude is not courteous at all. A. I was decent enough to say only that he took my life and he ruined my life.

Q. Nathan Gromer was not in the room with you when George came in, is that true? A. My brother-in-law was, my husband wasn't.

Q. Was Nathan Gromer? A. Nathan Gromer was in the room.

Q. But the husband was in the house? A. In the house. 30

Q. But not in the room? A. I can't remember. He wasn't in the room, I don't think.

Q. So the correction which counsel has tried to make in the testimony isn't so?

Mr. Greenfield: I object to the form of the question.

Q. Are you quite confident that your husband was in the house? A. He was in the house. My brother-in-law was in the same room. 40

Daniel Ruder—Direct

DANIEL RUDER, sworn in behalf of plaintiff:

Direct-examination by Mr. Greenfield:

Q. Mr. Ruder, what is your business? A. Warehouseman and trucking.

10 Q. Where do you live? A. 113 New York Avenue.

Q. Do you know Mr. Gromer? A. Yes, sir.

Q. On the 30th day of May, 1915, in the afternoon where were you? A. I was on the front stoop of 113.

Q. Did you see any accident? A. No, sir.

Q. Did you see anything of the accident? A. I saw a machine pass the house.

20 Q. When you saw a machine pass the house after that was there any accident?

Mr. Kalisch: I object to that. That is a leading question.

The Court: I will allow that question to stand.

Q. Did you observe any accident after the machine passed you? A. Yes, sir.

Q. You saw the machine pass you? A. Yes, sir.

Q. Did you go to the scene of the accident? A. Yes, sir.

30 Q. Did you observe—was that the same machine that passed you that was in that accident? A. Yes, sir.

Q. When you saw the machine pass you did you observe how fast it was going? A. It was going fast. I didn't observe how fast it was going.

40 Q. Now, you came to the scene. Just tell us what you saw there. A. The machine passed the house. I looked up the street and there was some boy playing ball and I see the machine stop so I

Daniel Ruder—Cross

jumped in my machine and drove up there to see what the trouble was.

Q. What did you find was the trouble? A. They told me the boy was killed.

Q. No, don't say what somebody told you. Just tell us what you yourself observed. A. I can't. 10
The boy was away before I got there.

Q. Do you know in what machine he went away? A. No, sir.

Q. Did you observe on what side of the street the machine passed you? A. When the machine passed me it was in the middle of the road.

Q. You didn't see where the accident was, on what side of the street? Did you see any appearance there of an accident? A. When the machine came to a standstill it was on the left side of the road; that is, I was looking two blocks at a time or a block and a half. 20

Q. When you arrived there did you see anything on the street to indicate that there was an accident? A. Didn't take notice.

Q. Do you know whose machine that was passed you of your own knowledge? A. I didn't at the time.

Q. Did you take the number of the machine? A. I didn't myself. Somebody else handed it to me. 30

CROSS-EXAMINATION by Mr. Kalisch:

Q. You say there was some boys playing on the street? A. Yes, sir.

Q. What were they playing, ball, baseball? A. Yes, sir.

Q. They were playing in the middle of the street? A. Yes, sir. 40

Anthony Andrews—Direct

Q. Did you see this Gromer boy playing with them? A. I was two blocks away. I would not know the Gromer boy if I saw him. They was a block and a half away. They are long blocks on New York Avenue.

10 Q. After the machine passed you you didn't pay any more attention? A. I looked up the street.

Q. What did you look up the street for? A. I was following up the machine.

Q. Was there anything peculiar about the machine? A. It was going at a fair rate of speed.

Q. You didn't see the accident? A. No, sir.

Q. How many boys were playing in the street? A. There might have been a dozen.

20 Q. After the accident you got there, did you? A. I jumped in my machine and drove up there, yes, sir.

By Mr. Greenfield: Q. You went to the hospital after that with Mrs. Gromer? A. Yes, sir, some time afterwards.

Q. You took her there? A. Yes, sir.

Q. Did you see the boy? A. No, sir.

30 ANTHONY ANDREWS sworn in behalf of plaintiff:

Direct-examination by Mr. Greenfield:

Q. Anthony, where do you live? A. 153 Union Street.

Q. Anthony, how old are you? A. Fourteen.

Q. Do you know Sammy Gromer? A. Yes, sir.

40 Q. How long have you known him? A. Well, about two years.

Anthony Andrews—Direct

Q. What school do you go to? A. Carteret street school.

Q. On the 30th day of May, 1915, in the afternoon what did you do? A. We were playing ball in the street.

Q. When you say "we were playing ball," who was playing? A. Us boys. 10

Q. What boys? A. The boys around there.

Q. Was Sammy playing baseball? A. No, sir.

Q. Did you see Sammy there? A. After we stopped playing ball I saw him coming down the street.

Q. You stopped playing ball and saw him come down what street? A. New York Avenue.

Q. What did he do? A. Well, we said that we were going to give him a game. 20

Q. Did you begin to play ball? A. No, sir.

Q. There was an accident, was there? A. Yes, sir.

Q. Who was hurt? A. Samuel Gromer.

Q. By what? A. By an automobile.

Q. Did you see the automobile come before Sammy was struck? A. Yes, sir.

Q. From what direction did he come? A. He was coming from east, going west.

Q. Of what street? A. New York avenue. 30

Q. Did you observe how fast he was coming? A. He was going fast.

Q. At the time Sammy—did you see Sammy being struck? A. Yes, sir.

Q. Where was Sam standing or where was he when he was struck? A. He was standing on the left hand side of the street about between 2 feet away from the curb.

Q. Was he standing there? A. Yes, sir. 40

Anthony Andrews—Direct

Q. Who was with him? A. The boys that were around there.

Q. Were you there alongside of him? A. I was out in the middle of the street.

Q. You were out in the middle of the street? A.

10 Yes, sir.

Q. On what side of the street did the automobile come? A. When I saw it it was out in the middle of the street.

Q. What did he do? A. He turned away to his left, turned away in to the left.

Q. Was that on the same side where Sam was standing? A. Yes, sir.

Q. When Sam was standing did he do anything there besides talking? A. We were talking, that is all.

20 Q. You were not talking to him, were you? A. No, sir.

Q. Who was talking to him? A. My cousin.

Q. What is his name? A. Alex.

Q. What is his last name? A. Komecheck.

Q. Where is Alex, your cousin, now? A. Detroit, Michigan.

Q. What happened after Sammy was struck?
A. Then I saw a man come out of the house and
30 took him up and put him in the automobile and I
guess they went—

Q. No, not what you guess. They went off?
A. They went off.

Q. With Sammy in the automobile? A. Yes,
sir.

Q. What automobile was it that took Sam
away, was it the same one that struck him? A.
Yes, sir.

40 Q. When the automobile struck Sammy where

Anthony Andrews—Cross

did it turn after it struck him? A. It turned to the right, to the middle of the street.

Q. Turned again to the middle of the street?

A. Yes, sir.

Q. Is Sammy alive now? A. No, sir.

Q. Were you to his funeral? A. No, sir.

10

Mr. Kalisch: I move to strike that out. He says, "Is Sam alive." That is merely a conclusion.

The Court: You don't dispute it?

Mr. Kalisch: I don't dispute it, but I think it is incompetent for this witness to testify.

The Court: It has been answered.

Q. Did you ever see Sam after that accident?

A. No, sir.

20

Mr. Kalisch: We admit that he is dead.

Q. Are you in any way related to Gromer? A.

No, sir.

Q. Are you attending school now? A. Yes, sir.

CROSS-EXAMINATION by Mr. Kalisch:

Q. How old are you? A. Fourteen.

Q. Do you know how old Sammy was? A. I guess he was fourteen years old then.

Q. Pretty small boy, wasn't he? A. Yes, sir.

30

Q. Been a friend of his for a long time? A. Yes, sir.

Q. That day how many boys were playing ball in the street? A. About six or seven of us.

Q. Were not there more? A. No, sir.

Q. Six or seven? A. Yes, sir.

Q. Were the boys younger than you playing with you or older? A. Younger.

Q. That is in New York avenue? A. Yes, sir.

40

Anthony Andrews—Cross

Q. That is asphalt pavement? A. Yes, sir.

Q. Good pavement. New York avenue is a pretty wide street? A. Yes, sir.

Q. Good many automobiles go down that street, don't they? A. Yes, sir.

10 Q. What time of day were you playing ball?
A. Between four and five o'clock.

Q. Was it warm? A. It was pretty warm, yes, sir.

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

Q. You were in the middle of the block? A. Yes, sir.

Q. Between what cross streets? A. Between Pacific and McWhorter.

20 Q. Near which cross street were you, near Pacific street or McWhorter street? A. Pacific.

Q. You were near Pacific street, is that right? A. Yes, sir.

Q. Sam was trying to cross the street there and before he could get across the automobile hit him? A. No, sir.

Q. Wasn't that it? A. No, sir.

Q. How did the automobile hit him? A. He was coming down on the left hand side of the street.

30 Q. Was he coming down the left hand side of the street to go to the sidewalk? A. Yes, sir.

Q. And before he got across the automobile hit him? A. No, no, sir.

Q. He was coming down on the left hand side of the street? A. Yes, sir. Then we was talking to him for awhile.

40 Q. But he was walking down on the left hand side of the street, wasn't he? A. Yes, sir.

Anthony Andrews—Cross

Q. Just as he got to the sidewalk this automobile came along and hit him and ran over him?

A. No, sir.

Q. How did it happen? A. We were talking with him then, my cousin was talking to him then.

Q. You were standing talking? A. Yes, sir. 10

Q. While you were standing talking the automobile ran into you? A. Yes, sir.

Q. You saw the automobile coming, didn't you? A. Yes, sir.

Q. You said, "Look out, Sammie," didn't you? A. Yes, sir.

Q. And you looked out? A. Yes, sir.

Q. And Sammy didn't look out? A. No, didn't have a chance.

Q. You had a chance, didn't you? A. I was 20 out in the middle of the street.

Q. Where was Sammy? A. He was standing 1 or 2 feet away from the curb.

Q. From the sidewalk? A. Yes, sir.

Q. What was he doing there? A. He was standing still.

Q. Right near the curbstone, was he? A. Yes, sir.

Q. Not at the corner? A. No.

Q. This machine was coming down on its right 30 hand side, wasn't it? A. No, sir, it was out in the middle of the street.

Q. And Sammy was standing about 2 feet from the gutter? A. Yes, sir.

Q. And this machine was coming down in the middle of the street? A. Middle of the street and turned to his left, then from the middle he turned to his left.

Q. What did he turn to the left for? 40

Anthony Andrews—Cross

Mr. Greenfield: I object to that. How can he tell the object of the machine turning to the left? It is the driver can tell us that.

The Court: Objection sustained.

10 Q. Turned to the left? A. Yes, sir.

Q. Was it going to turn in the street, was it going down Pacific street?

Mr. Greenfield: I object to that. How can he tell what was in the driver's mind?

The Court: Objection sustained.

Q. You say that you were in the middle of the street? A. Yes, sir.

Q. And Sam was near the gutter? A. Yes, sir.

20 Q. About two feet from the gutter? A. Yes, sir.

Q. The automobile without any rhyme or reason turned to the left, right into Sam?

Mr. Greenfield: I object to that. This boy cannot tell whether the automobile driver had any reasons. The driver can tell us that.

The Court: What he saw the automobile do is competent.

30 Q. Where were the other children? A. They were on the right hand side of the street.

Q. Weren't there other people on the left, opposite Sam? A. I don't know.

Q. You were there? A. Yes, I was there.

Q. Can't you tell whether some of the boys were not on the left hand side? A. My cousin was, I think, on the left hand side.

Q. He was with Sam? A. Yes, sir.

40 Q. And the other boys were on the right hand side? A. Yes, sir.

Anthony Andrews—Cross

Q. There were you boys on the left hand and the other boys were on the right hand? A. Yes, sir.

Q. And your cousin was talking to Sam? A. Yes, sir.

Q. And you were in the middle of the street? 10
A. Yes, sir.

Q. Who else was in the middle of the street with you? A. I don't exactly know.

Q. Was there anybody else in the middle of the street with you? How many, two or three of those boys? A. Yes, about that.

Q. About two or three boys in the middle of the street? A. Yes, sir.

Q. How many boys were on the right? A. I don't know. 20

Q. Four or five? A. I don't exactly know.

Q. Just approximately three or four? A. I can't tell you that, how many.

Q. Was there more than one? A. Yes, sir.

Q. More than two? A. Yes, sir.

Q. More than three? A. I don't know.

Q. Were there at least three, is that right? A. Yes, sir.

Q. How many do you say were in the center of the street? A. Myself only. 30

Q. And some other boy, you said? A. Yes, sir.

Q. How many other boys? A. One on each side of me. That was Sam Gromer's brother, Issy.

Q. And you were talking there? A. Yes, sir.

Q. And some of the other boys were on the other side of the street? A. Yes, sir.

Q. And they were talking? A. Yes, sir.

Q. You saw the machine coming? A. Yes, sir.

Q. And the boy you were talking to saw the machine coming? A. I don't know that. 40

Anthony Andrews—Cross

Q. Did he get out of the way? A. He was standing on the sidewalk. My cousin was standing on the sidewalk.

10 Q. Didn't you say you were standing in the middle of the street and there was some boy standing there with you? A. Yes, sir.

Q. Who were those boys? A. I know one boy's name, that is all.

Q. What is his name? A. Thomas Callahan.

Q. Do you know whether Samuel Gromer, the boy who was killed, knew Thomas Callahan? A. Yes, sir, I guess he did.

Q. Friend of his? A. Yes, sir.

Q. You were talking to Callahan in the middle of the street? A. Yes, sir.

20 Q. You saw this machine coming and you and that boy got out of the way? A. Yes sir.

Q. And at the same time you said, "Look out" to Sam, didn't you? A. Yes, sir.

Q. Didn't Sam move? A. No, sir.

Q. What did he do, just stand? A. Yes, sir. The automobile didn't blow the horn.

Q. He didn't blow the horn? A. No, sir.

Q. How is it you came to see the machine coming? A. I looked up that way.

30 Q. Which way was Sammy facing? A. He was facing north.

Q. Was he facing the direction the machine was coming? A. No, sir.

Q. He was looking the other way? A. Yes, sir, he was looking towards my cousin.

Q. And your cousin saw the machine? A. No, he didn't see the machine coming.

40 Q. Did you see the machine coming down? A. Yes, sir.

Julia Dimichille—Direct

Q. Was it coming very fast? A. Yes, sir.

Q. And you got out of the way? A. Yes, sir.

Q. What about the boys on your right, did they get out of the way? A. Yes, sir.

Q. You told Sammy when you hollered to Sammy, "Look out, Sammy," how far was the machine away? A. About 35 feet away, 25 or 30 feet. 10

Q. And Sammy didn't make a move? A. No, sir.

Q. He just stood? A. Yes, sir.

Q. And the machine ran into him? A. Yes, sir.

Q. Right by the gutter? A. Yes, sir.

Q. And it was how many feet away from Pacific street? A. I don't know that.

Q. Was it more than 10 feet? A. It was more than 100 feet. 20

Q. More than a hundred feet from Pacific street? A. Yes, sir.

Q. That was almost the center of the block, wasn't it? A. Yes, sir.

By the Court: Q. What time of the day was this? A. Between four and five o'clock.

JULIA DIMICHILLE sworn in behalf of plaintiff: 30

Direct-examination by Mr Greenfield:

Q. Where do you live, Mrs. Dimichille? A. I live 62 Madison avenue.

Q. Newark? A. Newark.

Q. How long have you been living at 62 Madison avenue? A. It is around four months now. 40

Julia Dimichille—Direct

Q. In May, 1915, where did you live? A. I lived on 139 Elm street.

Q. Do you know Mr. Gromer? A. Yes, sir.

Q. Did you know his son, Sammy Gromer? A. Yes, sir.

10 Q. Did you ever deal in his store? A. I always do.

Q. For how long have you been dealing in Mr. Gromer's store? A. It is about a year.

Q. Now, Mrs. Dimichille, who used to wait upon you in the store? A. Sammy Gromer.

Q. Did he ever deliver your orders to you? A. Yes, sir.

Q. On the 30th day of May, 1915, in the afternoon did you see an accident? A. Yes, sir.

20 Q. Where were you on that day when the accident occurred? A. Well, I happened to go to the grocery store for some coffee and I asked Sammy—

Q. No, you happened to go to the grocery store. What grocery store? A. Mr. Gromer.

Q. To what street did you go? A. Pacific.

Q. Did you see the accident before you were in the grocery store? A. No, sir.

Q. Was it after you purchased? A. After.

30 Q. You made the purchase? A. After awhile because I was talking to Sammy.

Q. No, not what you were telling. After you bought the articles that you wanted where did you go? A. I didn't go any more. I stopped talking with Sammy.

Q. Where did you stop talking to Sammy? A. On the corner of Pacific and McWhorter.

40 Q. Where did Sam go? A. He went to New York avenue.

Julia Dimichille—Direct

Q. Did you see him on New York avenue? A. Yes, sir.

Q. What was he doing when you saw him on New York avenue? A. He was watching playing ball.

Q. Where was he standing? A. Near the curb.

Q. How far away were you from Sammy? A. 10
Right on the corner.

Q. Could you see him? A. Yes sir.

Q. Now, did you see the automobile strike Sammy? A. Yes, sir.

Q. Before the automobile struck Sammy did you see the automobile coming? A. Yes, sir.

Q. Did you notice how fast it was going, was it slow or fast? A. It was going pretty fast.

Q. What part of the street was Sammy standing at the time he was struck? A. On the left 20
hand side.

Q. How far from the curb, the sidewalk? A. Well about four or five inches.

Q. Four or five inches from the sidewalk? A. Yes, sir.

Q. Who was standing there with him? A. The little boy that was talking, just on the chair here.

Q. When you first saw this machine coming you say pretty fast on what side of the street was the machine? A. On his left. 30

Q. After it struck Sammy what did the machine do? A. He took Sammy and put him on his machine and he went with it.

Q. After it struck Sammy did the machine stop? A. He turned the machine on the left again.

Q. Turned on the left? A. He turned the machine and put Sammy on and drove him away. 40

Julia Dimichille—Cross

Q. How far from the place where Sammy was struck did the machine first stop? A. On the Pacific, I mean McWhorter, the street I went right home.

Q. Did you see the way Sammy was struck? A. It wasn't very far, about as far—

Mr. Kalisch: I object. She says she went right home.

The Court: Counsel has a right to examine the witness.

Q. Did you see Sammy being struck by the automobile? A. Yes, sir.

Q. Did you know who was in the automobile?

A. I can't tell you.

Q. Do you know Mr. George? A. Yes, sir.

20 Q. Do you know Joseph George? A. Yes, sir.

Q. Did you ever see Joseph George in the same automobile? A. I can't tell you.

Mr. Kalisch: I object to that. It is immaterial whether she did or not.

The Court: The witness says she has not. Do you want me to strike it out?

CROSS-EXAMINATION by Mr. Matthews:

30 Q. Mrs. Dimichilli, what time of the day did you start for the store? A. It was about two o'clock.

Q. Do you remember testifying at the last trial? A. Yes, sir.

Q. I am going to read you some of the testimony you gave then and ask you which is correct, the testimony that I read to you or the fact that it was two o'clock when you went to the store. You were asked by Mr. Greenfield, the gentleman
40 who just talked to you, on the 30th of May last,

Julia Dimichille—Cross

“Did you see any accident to Samuel?” and your answer was, “Yes, sir.” Then, you were asked, “Where was that accident,” and your answer was, “It was on New York avenue. Q. At what time of the day? A. It was in the noontime, noon.” A. Yes, sir.

Q. What do you mean by noon? Maybe your term there isn't understood by yourself. What do you understand by noon, twelve o'clock? A. No, I started from home twelve o'clock, I started from home at two o'clock. 10

Q. What time did this accident occur? A. It didn't start long when I was standing on the corner. I didn't hardly go in the grocery store.

Q. Did you see it before or after you went into the grocery store? A. I seen it before. I didn't go in the grocery store. 20

Q. I thought you had told Mr. Greenfield you were on your way home when the accident happened? A. No, I was standing on the corner.

(Testimony read.)

Q. Right here in this trial you are telling Mr. Greenfield that the accident happened after you purchased and after you went into the store? A. I didn't hardly go in because I told Sammy to wait on me. 30

Q. What do you mean by saying you didn't hardly go in. You have testified in answer to Mr. Greenfield that you had bought your coffee? A. No, didn't go in.

Q. So you want to change that testimony? A. I didn't go into the grocery. I happened to go to the grocery but then I seen the boy that was killed on Saturday with his rolling skates and I went down to see him. 40

Julia Dimichille—Cross

Q. You saw the boy that was killed on Saturday? A. Yes, sir.

10 Q. What do you mean, you saw the boy that was killed on Saturday? A. There was a boy killed on Saturday before Sammy was killed under the car with the rolling skates so I went down to see him, so I told Sammy he could get my coffee ready, I would be back. He said, "Mama is in the store."

Q. So you didn't get your coffee and you were not on your way home? A. No, sir.

Q. Where were you going? A. I was going to see this boy who had been killed.

20 Q. How long after two o'clock did you see Sam hit by the automobile? A. It was about half-past two that he was killed. He was killed the same Monday I spoke to him.

Q. You don't mean the same Monday, do you? A. It wasn't very long. The way I spoke to him, I hardly go see the little boy and I see Sammy drop.

Q. You are sure it wasn't any later than 2:30? A. Yes, sir.

Q. What makes you so sure of it? A. Because I didn't look at the time.

30 Q. I can't understand that answer. What makes you sure it was not later than half-past two? A. I started home for two o'clock so I didn't remember what time it was.

Q. How do you know it was two o'clock when you left home? A. I know it.

40 Q. How do you know? Did you look at the clock? Tell me, perhaps you did. A. I didn't look at the clock but I asked an American lady downstairs. She said, "Where are you going,

Julia Dimichille—Cross

Julia?" And I said, "As far as the corner," and she said, "Hurry back, it is two o'clock."

Q. Why did the lady downstairs tell you to hurry back?

Mr. Greenfield: I object to that.

The Court: I will allow that.

Q. Why did the lady downstairs tell you to hurry back? A. Because I leave my babies there.

Q. You brought the babies downstairs? A. Yes, sir, I always leave them there.

Q. And she told you to hurry back? A. Yes, sir.

Q. And a half an hour was not later than that the accident happened? A. Yes, sir.

Q. You are willing to swear to that on your oath? A. Yes, sir.

Q. When did you first see Sammy, the little boy, that is dead? A. On New York avenue.

Q. Near where, near what street? A. Right near the curb he was standing.

Q. In the middle of the block on New York avenue? A. On his left.

Q. In the middle of the block between two streets or where, near Pacific street, near what street? A. No, it was near New York avenue he was. I don't know the name of the other street.

Q. You stopped to talk to him? A. Yes, sir.

Q. Did you have your coffee with you? A. No, sir.

Q. Now, I don't just get your point. I want you to help me. You were told by the American lady downstairs to hurry back because it was two o'clock? A. Yes, sir.

Q. You were going to the store for coffee? A. Yes, sir.

10

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40

Julia Dimichille—Cross

Q. When did you get your coffee, before you saw Sammy or after? A. I didn't get it. I told Sammy he should get it ready for me.

Q. Sam was in the store? A. He was on the corner running to New York avenue and he said, "Mama is in the store."

10 Q. Did you continue to the store? A. I didn't go in. I seen Sammy struck and I got frightened and I went home.

Q. You were not anywhere near Gromer's store? A. I didn't go in the store. I got frightened and I went right home.

Q. This boy that was killed the Saturday before by the automobile, where did he live? A. He lived on McWhorter street.

20 Q. You were going to see him? A. I was going to see him.

Q. You didn't go? A. I didn't go.

Q. Now, you said Sammy was four or five inches from the sidewalk. How long (measure from yourself to myself or any of these gentlemen) do you understand 4 or 5 inches to be? A. I don't understand the inches. The position I was I ought to go home quick.

30 Q. You told Mr. Greenfield that Sammy was standing four or five inches from the sidewalk? A. I think it was that.

Q. How many inches do you think it is from here to here? A. Where Sammy was standing?

Q. How many inches do you think it is from here to here? A. I don't know.

40 Q. So you don't know whether it was four or five inches or four or five feet? A. He was standing talking to me and he went from me as far as that gentleman with the baby.

Julia Dimichille—Cross

Q. So that is how far Sammy was? A. That is how far he went after he talked to me.

Q. How far from the curb did he go?

The Court: From the sidewalk.

A. He was standing by the curb.

Q. How near to the curb was he? You said 4 or 5 inches? A. I can't tell you how many inches was there. The way he fell, this way. I went home. I couldn't stand by him. If I was healthy I would stand by him. 10

Q. That is all right about your condition but we are not interested. How far was young Gromer from the sidewalk? A. Sam?

Q. Yes. A. I can't tell you.

Q. You don't know, as a matter of fact, whether it was four or five inches or four or five feet? A. He was standing from here to where that man is from the machine when that machine came and hit him. 20

Q. That is the distance from there to this last juryman here? A. Yes, sir.

Q. Now, which way was Sammy facing, towards the automobile or away from it? Did he have his face towards it or his back toward it? A. His back toward it.

Q. You are sure of that? A. I am sure. ; 30

Q. Let me read this testimony to you that you gave at the last trial. You were asked by Mr. Kalisch in cross-examination, "Can you point out in the room how far was Sam from the sidewalk? A. I can't tell you. Q. Can you point out in the room? A. About as far as that man back there to this man here (indicating the 12th juror). The Court then said, 'That is 17 feet,' Then you were asked by Mr. Kalisch, "He was 40

Julia Dimichille—Cross

that distance from the crosswalk?" and you answered, "Yes, sir." That testimony is similar to what you have given here now; and then you were asked, "And did he have his back to the automobile that was coming along?" and you replied, "No, he had his face to the automobile."

10 A. If he had his face he could get away.

Q. Did you testify that at the last trial? A. He had his back to the automobile.

Q. Did you testify to that at the last trial? A. I didn't say that.

Q. Then, you were asked, "Then, he was looking right straight to the automobile?" and you answered, "He was talking to the boy; that is two boys and the automobile ran him down?" A. Yes, sir.

20 Q. "Could he see the automobile when it was coming along," you were asked at the last trial and you answered, "I didn't stay there very long. I only stayed when I see Sammy is struck and in the position I was I couldn't answer it." A. Yes, sir.

30 Q. And then the Court asked you—that is the Judge at the last trial, "He had his face toward it or his back toward it?" and you answered to the Judge, "He had his face to it but I think the way he was talking to the boy he didn't take care to it. I was on the corner and I seen it and went right home. I didn't see the boys tell him, 'Look out.'" Do you remember testifying that at the last trial? A. Yes, sir.

Q. Which did he have toward the automobile, his back or his face? A. I think he had his back to him.

40 Q. You are not sure? A. Because I went home right away as soon as he fell.

Abe Schuster—Direct

By Mr. Greenfield: Q. Mrs. Dimichilli, talking about distance from the curb, when you say Sam was the distance from where you were sitting to this gentleman here, was it from the sidewalk or from the crosswalk that distance? A. He was standing near the curb.

10

Q. What do you mean, the curb? A. The sidewalk.

Q. Now, will you be kind enough and tell us, indicating somewheres here when you say near the sidewalk, how near the sidewalk was it? Take the distance here. Take something as an object. Take something as an object as the sidewalk and then tell us the distance that was, if you understand me. A. You mean how far he was near the sidewalk?

20

Q. Yes. A. So far as this man here.

Q. From where you are? A. From where I am.

Q. Juror No. 1 or Juror No. 2? A. No. 2.

Mr. Greenfield: How many feet would you say, about 3?

Mr. Kalisch: Let the jury say.

Mr. Matthews: I think the foreman is right, about 7 feet.

30

ABE SCHUSTER sworn in behalf of plaintiff:

Direct-examination by Mr. Greenfield:

Q. Mr. Schuester, where do you live? A. 13 Ferry street.

Q. What is your business? A. Delicatessen store.

Q. Where is your place of business? A. On 13 Ferry street.

40

Abe Schuster—Direct

- Q. Are you a relation to Mr. Charles Gromer?
A. Yes, sir.
- Q. What relation are you? A. Cousin.
- Q. You knew your cousin, Samuel Gromer, did you? A. Yes, sir.
- 10 Q. On the 30th day of May, 1915, was your cousin, Charles Gromer, in your store? A. He was in my place about one o'clock.
- Q. Was he in your place? A. Yes, sir.
- Q. At what time about? A. About one o'clock.
- Q. In the afternoon? A. Yes, sir.
- Q. What did he do? A. He bought of me a smoked tongue.
- Q. Now, do you know Mr. Joseph George? A. Yes, sir.
- 20 Q. How long have you known him? A. I know him four years since I live in this section.
- Q. Did Mr. Joseph George ever come into your store? A. He was one time in my place. He want to go in the back room, a plumbing shop, he wants to buy the property, and I didn't let him go in.
- Q. Do you remember when your cousin, Sam was killed? A. I didn't know the same day.
- Q. Do you remember, yes or no? A. Yes, sir.
- Q. When did you first hear about it? A. The
- 30 second day, Monday morning.
- Q. Before that did you ever see Mr. Joseph George drive an automobile?
- Mr. Kalisch: I object to that. It is incompetent, immaterial, whether he did or not.
- The Court: When?
- Mr. Kalisch: Before the accident.
- The Court: I understand it is admitted
- 40 he owned the automobile at one time.

Abe Schuster—Cross

Q. Now, did you ever see Mr. Joseph George drive an automobile after the accident?

Mr. Kalisch: I object to that question on the same ground.

The Court: No, I will allow that question.

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

Exception noted as ground of appeal.

A. Yes, sir.

Q. How long after the accident did you see him operate an automobile? A. Eight days later.

Q. Where? A. On Ferry street.

Q. After the accident did you ever talk to Mr. Joseph George, yes or no? A. Yes sir.

Q. Where was it? A. At my window. I was sitting outside the door and he passed through and said "Hello, Mr. Schuester, I feel sorry your cousin's son is killed, Sam Gromer."

Q. Give us the entire conversation. A. "My son was a little too fresh running the machine on New York avenue to get some friends."

Q. "My son was a little too fresh running the machine on New York avenue to get some friend?" A. Yes, sir.

Q. Who said that? A. Mr. Joseph George.

Q. How long after the accident was that? A. A few weeks later.

CROSS-EXAMINATION by Mr. Kalisch:

Q. Where is your delicatessen store? A. 13 Ferry street.

Q. Do you know where Union street is? A. Yes, sir.

Q. Does Union street run into Ferry street? A.

Nathan Gromer—Direct

Just crosses this way, Ferry street goes this way and Union street goes this way.

Q. Union street runs into Ferry street? A. Don't run into Ferry. Union street goes this way and Ferry street runs this way.

10 Q. Meets Ferry street? A. No, don't meet Ferry. Union street is a different block, just like Market and Plane streets.

Q. Where is McWhorter street? A. McWhorter street, the same way, too.

Q. Is that further down? A. No, just going up to Ferry street just before Union street.

Q. Now, Mr. Gromer is your cousin? A. Yes, sir.

20 Q. Do you remember what month it was that this accident happened to Mr. Gromer's boy? A. 1915, in May.

NATHAN GROMER sworn in behalf of plaintiff:

Direct-examination by Mr. Greenfield:

Q Mr. Gromer, where do you live? A. 256
30 West 37th street, New York.

Q. How long have you been living there? A. For five years.

Q. What is your business, your occupation? A. Lunchroom.

Q. You have a lunchroom? A. Yes, sir.

Q. Now, Mr. Gromer, Charles Gromer, is your brother? A. Yes, sir.

Q. You knew Sammy, your nephew? A. Yes,
40 sir.

Nathan Gromer—Direct

Q. Did you hear of his death? A. Yes, sir.

Q. When was it that you heard of his death? A. There came a telegram on Sunday night.

Q. Now, upon receipt of the telegram what did you do? A. Monday morning, early in the morning, I took the first train and I came to Mr. Gromer's house. 10

Q. What time did you come there on Monday? A. It was about eight o'clock in the morning.

Q. Where did you see Sammy? A. He was in the coffin.

Q. What time was the funeral? A. The funeral, I believe, was about twelve o'clock, something like that.

Q. What did you do after the funeral? A. I stayed in his house. 20

Q. Mr. Gromer's house? A. Mr. Gromer's house.

Q. How long did you remain there? A. For about five days I was in his house.

Q. After the funeral did you see anybody call at your brother's house? A. After the funeral?

Q. Yes. A. Well, a couple of days after the funeral I was in the kitchen. Somebody knocked on the door. I opened up the door and I seen a man and woman come in and he asked me if Mr. Gromer is in. 30

Q. No, you saw a man and woman come in? A. Yes.

Q. Do you know who they were? A. I don't know the man.

Q. Do you know him now? A. I know him now.

Q. Point him out. A. There he is (indicating).

Q. This gentleman here, indicating Joseph George? A. That is the man. 40

Nathan Gromer—Cross

Q. Who was with him, you say? A. Some woman.

Q. You don't know her name? A. I don't know her name.

10 Q. When they came in what did Mr. Joseph George say? A. He asked me if Mr. Gromer lives here. I say, "Yes, sir." Mrs. Gromer was in the front room. I brought him into the front room and he says to Mrs. Gromer, "Mrs. Gromer, I feel very sorry what my machine killed your boy." When this man came in with his wife, as soon as Mrs. Gromer see the man she says to him, "You are a murderer, you kill my boy." The man says to Mrs. Gromer, "Don't get so excited, my machine didn't mean to kill your boy."

20 Q. Yes. A. "My machine didn't mean to kill your boy. I only sent my boy to the garage with the machine to have it fixed to bring a couple of friends." As soon as the man said that Mrs. Gromer fainted. I ran back in the kitchen to bring a glass of water and the man and woman walked right.

Q. That is all that took place at that time? A. Yes.

30 CROSS-EXAMINATION by Mr. Matthews:

Q. You stayed with your brother and sister-in-law for five days? A. Five days.

Q. Who attended to your business? A. My sister.

Q. She was a sister of Mr. Gromer's, too? She didn't come to the funeral? A. No, she couldn't.

Q. What day did you go back? A. I believe it was on Friday.

40 Q. You came on Monday? A. I came on Monday.

Nathan Gromer—Cross

Q. How do you remember it was Friday that you went back? A. Because, I know it was on Friday.

Q. How do you know? A. Five days after Monday, that is Friday.

Q. Do you mean Monday is one? A. Monday, 10
Tuesday, Wednesday, Thursday, Friday.

Q. That is the way you count? A. Yes, sir.

Q. Did you count it? A. Just now. All of the time I know it.

Q. You know you didn't stay there the whole week? A I was down there for five days.

Q. You know you were not there for two days? A. I was down there five days.

Q. You know you didn't testify at the last trial? A. I couldn't come at the last trial. 20

Q. Why? A. Because, you know my sister, she was in business for herself. Now, she is out of business.

Q. Was she in business for herself then? A. When?

Q. When you went to the funeral? A. No, sir.

Q. When did she go into business for herself? A. A couple of weeks later she bought a stand on Eighth avenue.

Q. You know you didn't testify at the last trial? 30
A. I am telling you why because I couldn't come here.

Q. And you know in your own heart you were never in that house and saw Mr. and Mrs. George? A. This man came in, in Mr. Gromer's house. I see him myself.

Q. You know you never saw him? A. I saw him.

Q. What kind of a looking woman was Mrs. George? A. She is smaller than her husband. 40

Nathan Gromer—Cross

Q. What color hair has she? A. I can't tell you. I didn't notice.

Q. Did she have her hat and coat on? A. I don't remember.

10 Q. Did George have a hat on? A. No, when he came in he took off his hat because that time he wore eye glasses.

Q. He was wearing eye glasses? A. Eye glasses.

Q. Did Mrs. George have eye glasses on? A. No.

Q. Did she say anything? A. She didn't say nothing.

20 Q. Did she stand motionless and still all through this conversation? A. That is all. She didn't say nothing. This man was talking.

Q. All the time? A. Yes, sir.

Q. You were standing in the kitchen while this conversation was going on? A. In the front room.

Q. You never saw that man before in your life today and you know it? A. I saw that man in Mr. Gromer's house.

Q. If you saw him you would have been at the last trial?

30 Mr. Greenfield: I move to strike that out, commenting at this time. He has given his reasons.

The Court: Objection sustained, if you object to it.

Q. Has your sister-in-law, Mrs. Gromer, who was on the stand here today, ever been to your house in New York? A. My sister-in-law, Mrs. Gromer, a couple of times she was in New York.

40 Mostly she comes all the time to New York.

Nathan Gromer—Cross

Q. Mostly she comes all the time, what do you mean? A. She comes once a month, once in two months.

Q. She knows your address? A. Well, she knows the house. I don't know if she knows the address. I don't know if she knows the address. I know many people that don't know the address but still they know the house. 10

Q. She has been there on an average of once a month? A. Once a month and sometimes four month sometimes. I can't tell you for sure.

Q. And you have lived there for four years? A. Four years.

Q. What did Mr. George say as you opened the door, quote his words. A. He asked me if Mr. Gromer lived here. 20

Q. If Mr. Gromer lives here? A. Yes, sir.

Q. What did you reply? A. I said "Yes, sir." Mrs. Gromer was at that time in the front room.

Q. I am not asking you that. A. I said, "Yes, sir."

Q. Then, what next did he say? A. He asked me—you know the first thing—

Q. Tell me what he said. If you can't tell it, don't answer. A. He told me he wants to see Mr. Gromer. I told him Mr. Gromer is not in the house, only Mrs. Gromer is in the front room. 30

Q. Did you know Mr. Gromer was not in the house? A. I know it.

Q. Where was Mr. Gromer? A. I don't know.

Q. How did you know he wasn't in the house? A. Because I didn't see him.

Q. You heard Mrs. Gromer say he was not in the house? A. I don't know Mrs. Gromer say she understood anything. She didn't know herself. 40

Nathan Gromer—Cross

Q. Now don't apologize for her. She is the one that does know and you don't.

Mr. Greenfield: I object to that, and ask to strike out his remarks.

Q. You don't know, do you, whether Mr. Gromer was in the house or not? A. I didn't see him.

10 Q. Do you know that he wasn't there? A. No, he wasn't.

Q. Will you swear he wasn't there? A. Because I didn't see him.

Q. Will you swear he wasn't there? A. I swear that I didn't see him in the house.

Q. I repeat my question and I want you to answer it. You understand English. Will you swear that Mr. Gromer was not in the house? A. Yes,

20 sir.

Q. You are sure of that on your oath? A. Positively.

Q. You heard Mrs. Gromer testify he was in the house? A. She was so excited.

Mr. Greenfield: I object to that.

The Court: That question is competent.

Q. (Question read.) Did you hear Mrs. Gromer testify? A. When, now? Yes, sir.

Q. Did you hear her say that Mr. Gromer was

30 in the house when the Georges came in? A. I didn't see—

By the Court: Q. Did you hear her say it? A. Yes, sir.

By Mr. Matthews: Q. You walked with the Georges from the kitchen? A. To the front room.

Q. Into the front room? A. Yes, sir.

Q. Did you sit down? A. Who, Mr George? No,

40 he stood up.

Nathan Gromer—Cross

Q. Was Mrs. Gromer sitting down? A. Mrs. Gromer was sitting at that time.

Q. Who said the first word when Mrs. Gromer and the Georges met face to face? A. Mrs. Gromer at that time stood up from the chair and she said, "You are a murderer, you killed my boy." 10

Q. Mr. George said nothing? A. No.

Q. Then Mr. George said what? A. Mr. George says, "Mrs. Gromer, don't get so excited. My machine didn't mean to kill your boy. I only sent my boy to the garage," Keeney's or some place, he says, "Keeneys's garage to have the machine fixed to bring a couple of friends." As soon as the man said that Mrs. Gromer fell unconscious. I ran back to the kitchen and I took a glass of water and there 20 was some other woman there and she held her.

Q. Do you remember that conversation exactly? A. Exactly.

Q. As you were passing the water to Mrs. Gromer to revive her did Mr. Gromer come to her side? A. Mrs. Gromer I didn't see Mr. Gromer.

Q. You heard Mrs. Gromer testify and you heard her say when she came to and was given the water her husband was at her side? A. She mean 30 me.

Mr. Greenfield: I object to that. She did not say, "my husband was there." She said "Mr. Gromer was there," and then on re-direct-examination she identified him as Nathan Gromer and not her husband. This is an attempt to mislead the witness and I don't think it is fair.

Q. (Question repeated.) 40

Nathan Gromer—Cross

The Court: That question is objectionable.

Q. Did you hear Mrs. Gromer testify that when she revived her husband was at her side? A. The only thing I heard what she said that Mr. Gromer, but she mean me.

10 Q. How do you know she meant you? A. Because, she said, "Nathan Gromer."

Q. I thought you said she said, "Mr. Gromer?"
A. Mr. Gromer, a brother-in-law.

Q. Was Mr. Gromer there when she came to?
A. No.

Q. You swear to that? A. I swear to that.

Q. After that what did the Georges do? A. After that she fell unconscious and I ran into the
20 kitchen to bring a glass of water. The man walked out, didn't say nothing, not a word. They walked right out.

Q. Then, you mean to tell us that these two Georges and yourself and Mrs. Gromer were alone in that room at the time that the Georges—
A. There was another woman.

Q. What was her name? A. I don't know.

Q. What kind of a looking woman was she? A. She was a short woman, skinny.

30 Q. Was Mrs. George skinny or stout? A. Mrs. George, she is skinnier than that man.

Q. Taller than he? A. No, shorter.

Q. Stand up, George. She is skinnier than he is?
A. Yes, sir.

Q. By skinnier you mean thin? A. Yes, sir.

Q. You went out to the kitchen for this glass of water. Had Mrs. Gromer fallen on the floor before you left? A. When I came in.
40

Nathan Gromer—Cross

Q. Had she fallen on the floor in the faint before you left? A. A woman held her up.

Q. Where were you when she started to reel and fall? A. I was in the kitchen and when I come in I see the woman holding her up when I came in with the glass of water.

Q. You tell me this Mrs. Gromer, your sister-in-law, fainted. You mean she became unconscious? A. Unconscious.

Q. While you were standing there? A. As soon as I saw her faint and she say "Nathan, I feel very bad."

Q. That is some more of the conversation. First she said, "You are a murderer, you killed my boy," and then she said, "Nathan," speaking to you "I feel bad." A. After that she said, "Nathan, I feel very bad." I ran in the kitchen to bring her a glass of water. Some woman held her in her hand.

Q. So she didn't go clean out, she didn't go clean unconscious? A. She was unconscious that time for a couple of minutes.

Q. She spoke to you? A. Before she fell unconscious, she says "Nathan, I feel very bad." I ran in the door to the kitchen and when I came in with the glass of water that woman held her in her hand.

Q. Where were the Georges? A. Mr. George, he walked right out with that woman. He didn't say nothing.

Q. He rendered no assistance? A. Not at all. He walked right out.

Q. Did you open the door to see them out? A. He opened it by himself

10

20

30

40

Motion for non-suit

Q. Did you see him open the door to go out? A. He must have opened it himself.

Q. Did you see him? A. No, sir; I didn't see him because I was that time in the front room.

10 Q. Where was that woman when the Georges went out? A. In the front room, she was.

Q. Still holding? A. With Mrs. Gromer.

Q. When did you next see Mr. Gromer after that thing happened? A. After that I stayed out for four or five days.

Q. How soon after this afternoon episode did you see Mr. Gromer? A. I stayed out all day.

Q. How soon did you see Mr. Gromer? A. It was an hour later about he came out.

20 Q. So it was an hour before he returned? A. About an hour.

Q. You didn't testify at the last trial, did you? A. No, I couldn't.

Q. Because you were too busy? A. Too busy.

Plaintiff rests.

30 Mr. Kalisch: I move for a nonsuit as to both defendants on the ground that the plaintiff, the deceased, was guilty of contributory negligence. He was at a place which he knew was reserved for motor vehicles and horse-drawn wagons and not for pedestrians. The sidewalk was the place for pedestrians and the street was a place for motor vehicles and horse-drawn wagons. He was in the street where he had no right to be and the evidence is—there was
40 one witness testified he said, "Look out,

Motion for non-suit

Sammy," and he didn't make any move but just stood there and this automobile hit him. Now, the boy was fourteen years of age and he is certainly *sui juris* enough to know that the street is a dangerous place to stand when motor vehicles and horse-drawn wagons are going by and likely to go by. The fact that the father owned the machine or the relation of parent and child existed is no indication that the relation of master and servant existed at the time of the accident and I say there is no evidence in this case or no legal evidence whereby it is shown that the son was acting for the father at the time of this accident and the mere fact the father owned the machine is not enough. They must show that the son was acting in the father's behalf as master and servant in order to hold the father responsible. The Motor Vehicle Law, passed in 1915, holds that a person crossing at a place not a crosswalk does so at his own peril and his own risk. That is what the Motor Vehicle Law says. I contend that the evidence in this case brings this under that law. On both those grounds, I ask for a nonsuit.

The Court: I will hold your motion to nonsuit as to the father until after recess, but I am sure there is no ground to grant your motion for nonsuit as to the son.

Antonio George—Direct

ANTONIO GEORGE, sworn in behalf of defendants.

Direct-examination by Mr. Kalisch:

Q. Mr. George, where do you live? A. 30 Ferry
10 Street.

Q. With your father? A. Yes, sir.

Q. Did you live on 30 Ferry Street on May 30,
1915? A. Yes, sir.

Q. There was an automobile that you were driving that day. Who owned that automobile? A. I did.

Q. How long had you owned the automobile?

A. Why, on account of being sick I had the automobile to make a living with.

20 Q. How long had you owned the automobile previous to May 30, 1915? A. The end of April.

Q. Who did you buy the automobile from? A. From a man by the name of John Garfagne.

Q. How much did you pay for it? A. The sum of \$650.

Q. What kind of an automobile was it? A. Oakland.

Q. What make? A. 1913.

30 Q. You used it, you say, to make a living out of it? A. I had right along.

Q. What were you doing, taking passengers? A. I had a few undertakers, were hiring for weddings, Christy and them fellows and they would hire it.

Q. On the 30th of May, 1915, did you have that automobile out? A. Yes, sir.

Q. Where was the automobile? A. At the garage.

40 Q. Whose garage? A. Robinson's.

Antonio George—Direct

Q. Where was this garage, what street? A. Madison Street.

Q. How far away is that from Ferry Street? A. About four or five blocks.

Q. Is that where you kept the automobile all the time? A. Yes, sir.

Q. At that garage? A. Yes, sir. 10

Q. Ever since you got it? A. Since we got it.

Q. Who paid the bills for the storage at that garage? A. I did the time I owned it.

Q. Did you get the machine from that garage on the 30th day of May, 1916? A. Yes, sir.

Q. What time of the day? A. Some time after three o'clock.

Q. Did you ask your father for permission to take the machine? A. Why should I ask him? 20

Q. Just answer the question. A. No, he wasn't there.

Q. Where were you going with the machine? A. Joy-riding.

Q. Who were you going joy-riding with? A. I was on the way down, I found two boys on the way down who cleaned up on account Monday was supposed to be a holiday.

Q. Cleaned up for Monday? A. For Monday.

Q. What age boys did you find? A. They were 30 visiting there. They were together here.

Q. What age boys were they? A. One of them his name is Joe, both is named Joe.

Q. What did they say?

Mr. Greenfield: I object to what they said.

The Court: Yes, that is objectionable.

Q. Do you know these two boys' names? A. Yes, sir. 40

Antonio George—Direct

Q. What are their names? A. Joseph Dias and Joseph Ferrada.

Q. Did they go in your machine? A. Yes, sir.

Q. How did they come to get in your machine?
A. I met them as I was coming out of the house
10 on the street and they asked me where I was going. I told them I was going down to the machine.

Mr. Greenfield: I object to what they said.

The Court: Yes, what they said is not competent.

Q. How did they come to be in your machine? A. They asked me for a ride.

Q. Did you take them for a ride? A. Yes, sir.

Q. What passenger car is it? A. Five.

20 Q. Who drove the car? A. I did.

Q. Where were the two boys? A. One was sitting by me and one was in the back.

Q. One was sitting by you and one was in the back seat? A. Yes, sir.

Q. How long have you been a chauffeur? A. I don't remember the date I got a license.

Q. About how long? A. Since April.

Q. What year? A. 1915.

30 Q. Where were you going—did you have any place in mind that you were going to when you had these boys out? A. There was a little click in the wheel. I was going down to some garage.

Q. What for? A. To see what that was. I was afraid to ride it on account of that click that was in the back wheel.

Q. Didn't you know the click was in the back wheel before you took the car out? A. That is why
40 I took the car out, to get it fixed.

Antonio George—Direct

Q. Why wasn't it fixed at that garage? A. Because I used to get my work done by another one.

Q. Who did you get your work done by? A. Adam Street and Kinney.

Q. What is his name? A. Freselone is the one who does it.

Q. And you were going to take it down there to get the machine fixed? A. Yes, sir. 10

Q. How did you get to be on New York Avenue? A. I was going down to Adam Street and I found quite a few boys in the street playing and at the corner of Nicholas Street one of them threw his hat and threw a baseball at me, so to avoid any accident I hit New York Avenue and it was pretty quiet and I thought I would turn around there to avoid any accident. 20

Q. Did you get on New York Avenue? A. On New York Avenue.

Q. Which way were you going on New York Avenue? A. I was going down.

Q. What direction is that? A. Towards the west.

Q. How fast were you going? A. I wasn't going fast on account of that click that was in the back wheel.

Q. Can you give us an idea of what speed you were going at? A. About ten or twelve miles an hour, not any more than that. 30

Q. Did you see these boys playing ball on New York Avenue? A. Yes, sir.

Q. Did you do anything before you got to them? A. Why, I stopped at the corner on account of a car was there picking up passengers.

Q. Trolley car? A. Trolley car. As I started up again I was on my right and there was a wa- 40

Antonio George—Direct

gon standing about 2 feet away from the curb as I turned to the left to avoid the wagon I see these boys playing ball and I kept on blowing my horn very steady and the little boy alongside of me who was with me hollered—

10 Q. How far away were you from the boys when you commenced blowing your horn? A. About 75 or 100 feet.

Q. What kind of a horn did you have? A. Electric horn.

Q. What particular name? A. One of those loud Klaxon's.

Q. Then you kept blowing your horn? A. Blowing steady.

By the Court: Q. How far could you hear that horn? A. Why, some distance pretty loud horn, big one.

By Mr. Kalisch: Q. Just how did it happen that you came to run over this Gromer boy? Just tell the Court and jury how it happened? A. I stopped at Pacific Street on account of the car that was picking up passengers. I was going to turn up Pacific Street but I had to wait and I went straight ahead. I was on the righthand side of the street. As I got a little ways down there was a wagon standing about 2 feet away from the curb. To avoid an accident I turned a little way to the left and as I did so I seen quite a number of boys playing foot-ball kicking the ball and two of them around this end was catching and I blew my horn. As I turned to my right I seen them kicking the ball in that direction. I turned to the center of the street and I saw two boys kick this up and one
30
40 of them looking up in the air tried to catch the

Antonio George—Direct

ball. He ran from the left side of the street he ran to the right and as soon as I seen him I twist my wheel quick but the mud-guard just after touching him and knocked him over.

Q. Where was the ball after the accident? A. The ball hit me right here, in the front seat. 10

Q. Did you get the ball? A. I can't tell you. The ball was taken by the police.

Q. How did this ball get into your machine, when did it get hit by your machine? A. He was to the left and he was looking up but all of a sudden he came running towards the right and the left mud-guard hit him.

Q. How far away was he from the curb when he was hit? A. Why almost in the middle of the street where the rest of them was. 20

Q. How many boys were there about, do you know? A. As far as I seen two or three at the other end and kicking the ball and I think two or three at this end that was catching this ball.

Q. What did you do after the boy was hit? A. I stopped. There was nobody around. As I stopped and jumped off the car I seen a painter who was on a ladder. He came down and helped me pick him up. I put him on a seat and the boys with me, they scattered, and I put him in the seat and this painter had him in his arm and I drove the car. As I got on the car to drive him I seen a few people gather around and they told me where to go and they wanted me to turn around to Pacific Street, but I went straight to New York Avenue, up McWhorter Street and down to St. James Hospital. 30

Q. And then you went home with your machine?
A. I brought the boy inside in St. James Hospital 40

Antonio George—Cross

and there was a fellow there helping me take the boy from the car and the sister asked me what was the matter and I told her he was struck by an automobile. As I had the machine running outside at the corner of the St. James Hospital I figured bringing the machine down to the garage first and then going to the Third Precinct but I brought the machine to the garage and got cleaned up and was taken down by my father and a relation of mine and surrendered myself.

10

Q. Did the other boys get out of the way of your machine? A. All of them.

Q. Did you see them scatter, the boys, before the Gromer boy got hit? A. No.

20 Q. How did they get out of your way? A. They went to the left.

Q. Did they have plenty of room? A. Almost the widest street in Newark.

Q. Did the Gromer boy have plenty of room to get out of your way? A. Plenty of room.

CROSS-EXAMINATION by Mr. Greenfield:

Q. Mr. George, from whom did you buy that automobile? A. From John Garfagne.

30 Q. Did you get the owner's license when you bought the machine? A. There was a license on it.

Q. Did you get an owner's license? A. There was a license on the machine.

Q. In whose name? A. I don't know. I bought the car with the license on the machine.

Q. Don't you know? A. The license is good.

40 Q. Don't you know in whose name the owner's license was on the machine? A. No, sir.

Antonio George—Cross

Q. Did you ever see that machine before you bought it? A. Certainly.

Q. Where? A. On the streets.

Q. In whose possession? A. I seen it when Joseph George owned it.

Q. Who is Joseph George? A. My father. 10

Q. You live home? A. I live home sometimes.

Q. And your father bought this machine originally? A. The first time, yes, sir.

Q. When did he buy it? A. He bought it in the month of March.

Q. What year? A. 1915.

Q. He got a license? A. There was a license.

Q. Don't you know he got a license? A. I don't know he got it. There was a license on the car.

Q. Don't you know that he got the owner's license? A. No, I don't know it. 20

Q. You saw your father operating that machine? A. Not while I was with him; didn't have no license.

Q. Did you ever see your father run the machine? A. No, sir.

Q. Are you sure? A. Positively.

Q. How long did your father own that machine?

A. Why, not very long.

Q. About? A. About a month. 30

Q. To whom did he sell it? A. He sold it to John Garfagne.

Q. How long after your father sold it to John Garfagne did you buy it? A. About fifteen or twenty days.

Q. Are you sure? A. Positive.

Q. How long did you have it before the accident? A. About a month.

Q. The accident happened May 30th? A. 30th. 40

Antonio George—Cross

Q. And you had it a month that is right? A. About a month.

Q. Your father, how long did he own it? A. Three or four weeks.

Q. Who is Mr. Garfagne, is he here? A. I don't know.

10 Q. You don't want to tell this Court and jury that you don't know the man? A. I know the man.

Q. Is he here? A. I don't know whether he is here or not.

Q. Look around and see if he is here. A. No, sir.

Q. Did you see him in Court today? A. No, sir.

Q. He was in Court at the last trial?

Mr. Kalisch: I object. What has that got to do with this case?

20 The Court: The question is overruled.

Q. How did you pay for that machine \$650? A. How did I pay it?

Q. Yes. A. Why, I gave him \$50 deposit and the balance weekly or monthly payments.

Q. How was it weekly or monthly? A. When I had it. The quicker I paid it the quicker it was mine.

Q. How did you arrange with him? A. I arranged to give him something every week.

30 Q. What security did you give him? A. The security was I signed a paper to keep the machine in good running order until the car was mine.

Q. Nothing else? A. Nothing else.

Q. Did you keep up your payments? A. Yes, sir.

Q. Is it all paid for now? A. No, sir.

Q. How much more do you owe on that machine? A. About \$200 or more.

40

Antonio George—Cross

Q. How much money did you pay every week from the time you bought this car? A. Why, some payments of five, some of ten, some of fifteen.

Q. Regularly? A. No, sir.

Q. The first few months how much money did you pay? A. I have the full account of what I paid on the machine and how much more I owe. 10

Q. Where have you got that account? A. The first money I gave him.

Q. Where have you got your memorandum that you have paid the amounts? A. The paper, one of the lawyers had it at the last trial. I have the memorandum of the last that I gave after the trial.

Q. Where is the memorandum of the last? Let me see it if you have it. A. I have it right down here in a book at the bottom. 20

Q. This here (indicating)? A. Yes, sir.

Q. When did you get this book? A. When did I get that book?

Q. Yes. A. Quite a little time I got it.

Q. When? A. That is a book I keep of work for the Pennsylvania railroad.

Q. How long ago did you get it? A. The month of May. 30

Q. What year? A. 1916.

Q. You are working for the Pennsylvania Railroad now? A. Yes, sir.

Q. Who has got the machine now? A. The machine has been sold.

Q. To whom? A. A party on Chestnut Street.

Q. What is his name? A. I think the name of Joseph Kotchel. 40

Antonio George—Cross

Q. What is his business? A. The same thing I was doing with it.

Q. Whereabouts, on Ferry Street? A. Chestnut Street.

10 Q. Whereabouts? A. Near Tyler Street. I think the number is about 400.

Q. Are you and Mr. Kotchel any relation? A. I don't know him.

Q. Did you ever see him? A. Seen him when he came and looked at the car.

Q. When did he come and look at the car? A. He came to the house and asked me if I had a car for sale.

Q. Did you advertise it? A. In the News.

20 Q. This book you didn't have at the last trial? A. No, sir.

Q. And the paper you gave him as security at that time that you bought the machine was the only security that you gave him? A. He bought the machine in good order.

Q. It is the only security you gave him? A. The only security.

Q. The only paper that you gave him? A. The only paper.

Q. You understand my question? A. Yes, sir.

30 Q. Are you sure that is the only security that you gave him? A. When I bought the machine off him, the paper.

Q. Nothing else? A. Later on I gave him more security.

Q. You didn't tell us in the first place. What security did you give him later on? A. I filled out a chattel mortgage.

40 Q. When? A. I filled one out.

Antonio George—Cross

Q. When? A. After I gave him this other paper, signed a paper to him.

Q. When was it? A. I don't remember the date.

Q. That was after the accident, wasn't it? A. No, he had a chattel mortgage. It wasn't registered before the accident.

Q. Did you sign another one? A. After the accident, yes, sir. 10

Q. How many chattel mortgages did you sign?

A. I tore one up and he made a new one.

Q. How many did you sign? A. Two of them.

Q. When was the second one that you signed?

A. After the accident.

Q. That was in October, 1915, wasn't it? A. I don't remember the date.

Q. And this Mr. Garfagne, what is his business? A. Why, he works in the rivet works. 20

Q. When you bought the car did you change anything on the car to indicate that it belonged to you? A. Why, his signatures—

Q. Did you when you bought the car from Mr. Garfagne, did you change anything on the car to show that that automobile was your car? A. I changed the tax bill that was sent to me and told them.

Q. Changed the tax bill? A. Yes, sir. 30

Q. When? A. When I notified Nathaniel—

Q. After the accident? A. I don't know when.

Q. Don't you know you don't get the tax bill until September or October? A. I ain't a property owner, I don't know.

Mr. Kalisch: Is this the tax bill?

Witness: It is a bill of mine.

Q. When did you get this? A. I don't remember the date. 40

Antonio George—Cross

Q. Don't you know you don't get your tax bills until September or October of that year?

Mr. Kalisch: I object to that question.

He is making a question of something that can be readily proved.

10 The Court: Yes, the form is objectionable.

Q. Now, is it not a fact that after the accident this alleged transfer from your father to Garfagne and from Garfagne to you all took place after the accident? A. No, sir.

Q. And is it not a fact that it didn't take place until after October 15? A. No, in April.

Q. And is it not a fact that the time you gave him some kind of a chattel mortgage was in October, 1915? A. In April.

Q. Didn't you give him a mortgage in October, 1915? A. To be sure of his money I signed a mortgage and registered it.

Q. Who registered it? A. The lawyer who filled it out.

Q. What lawyer? A. John Faughnan.

Q. Do you remember at the last trial you testified it was Frank McDermit? A. No, sir, I did not.

30 Q. You paid some money on the automobile? A. Yes, sir.

Q. Did you get receipts? A. Receipts, no, sir, he marks them on his own papers.

Q. You have no receipts to show that you are paying money for this automobile. Have you any receipts to show that you paid for the automobile?

A. I didn't say I paid for the automobile. I am paying on account.

40 Q. When you pay anything have you any re-

Antonio George—Cross

ceipts to show that you have paid as you have here on memorandum? A. On the book.

Q. How much have you paid here? A. \$428.50.

Q. Have you any receipt to show that you have paid on the automobile \$428.50? A. Why, I trust the man.

Q. Why, have you any receipt? A. He offered me receipts and I refused them. The man is straight honest. 10

Q. And in spite of the fact that the man won't trust you and wanted a chattel mortgage to secure the payment you don't ask for any receipt? A. He didn't ask me for the chattel mortgage to secure the money. He wanted to be sure he had a mortgage on the car that I can't sell it.

Q. Did he ask you for it? A. No, I give it to him. He told me his money was in danger. 20

Q. What did you tell him? A. I told him, "I will send you a chattel mortgage."

Q. Didn't ask for any? A. He told me his money was in danger.

Q. He didn't ask you for any chattel mortgage? A. He told me the paper he had wasn't any good, he wanted something to be registered.

Q. He asked you for a chattel mortgage? A. He didn't say, "Chattel mortgage," he wanted something. 30

Q. He asked for something that could be recorded? A. Yes, sir.

Q. And in spite of that fact that he said his money was in danger wanted to be sure, you paid him money without getting a receipt, is that right, yes or no? A. Yes, that is right.

Q. Have you ever been convicted of any crime? A. No, sir. 40

Antonio George—Cross

Mr. Kalisch: I object to the question.

Q. You are sure you have never been convicted of any crime? A. No, sir.

Q. Have you ever been convicted of bastardy?

10 Mr. Kalisch: I object to the question. He asked a general question and now he is going into a bastardy question.

The Court: Bastardy is not a crime.

Q. Didn't you plead *non vult* to manslaughter?

A. Yes, sir.

Mr. Kalisch: I object to the question. His question was for the purpose of testing his credibility, whether he was ever convicted of crime and his answer is no, and now he asks, "Didn't you plead *non vult*?"

20 The Court: I am very strongly of the opinion that a plea of *non vult* is equivalent to a plea of guilty. You may withdraw that one question and I will withhold it.

Q. Now, you gave yourself up to the police? A. I walked in the Third Precinct myself.

Q. When? A. After I got sick, right after I got home.

Q. When was it? A. Why, a little short time after the accident.

30 Q. How long after? A. Very short; about an hour or a little later.

Q. Is it not a fact you were hiding at first and did not surrender yourself until a day or so after when the police were looking for you?

Mr. Kalisch: I object to that question on the ground it is immaterial and irrelevant whether he did or not.

40 The Court: I think it goes to show his conduct. It is proper.

Antonio George—Cross

Mr. Kalisch: I pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q. Is it not so that you had run away and hid yourself in your father's yard and when the police came there they couldn't find you? A. There were no police called while I was home. 10

Q. Where did you go after you left the hospital? A. At my home in the bedroom.

Q. What time was the accident? A. Two to four or a little after four.

Q. How long did you remain in that bedroom? A. An hour or so later. I can't tell you I was sick.

Q. When did you go to the police station? A. As soon as I got on my feet. 20

Q. The same night? A. The same night.

Q. And you didn't know that the police were looking for you in the yard? A. No, sir.

Q. You are sure? A. Positive.

Q. When did you get your license? A. In April.

Q. What part of April? A. I do not remember the date.

Q. Have you got it now with you? A. No sir.

Q. At that time was there any change in the garage after you bought the car? A. When I bought the car I gave order to the garage man not to have the car out unless I was there. 30

Q. Did you give your name as the owner of the car? A. I did.

Q. You are sure? A. Positively.

Q. Don't you remember testifying in the last trial there was no change in the garage? A. There was a change. 40

Antonio George—Cross

Q. And when you sold the car did that man Garfagne drive the car? A. Couldn't get no license.

Q. Did he drive the car? A. No, sir.

Q. Did he ever drive it? A. No, sir.

10 Q. Where does Mr. Garfagne live? A. On Jackson Street.

Q. What number? A. I don't know whether it is Jackson Street 103 or 104.

Q. When did you see him last? A. The last I seen him when I drove the car and gave him the full amount what I got for it.

Q. When was that? A. I guess it was in July.

Q. This year? A. This year.

Q. How much did you get when you sold the car? A. \$325.

20 Q. In cash? A. I got a deposit and I got the cash and the rest I got after a week.

Q. You got it all in cash? A. Yes, sir.

Q. Is it not a matter of fact this machine was owned by your father on the day of the accident? A. It was a month I owned that car at the time of the accident.

30 Q. And is it not a matter of fact the owner's license was never changed even though as you say it was transferred to Garfagne? A. I didn't change it because I found out you don't need to change as long as the license is on there.

Q. Did you change it from Garfagne? A. No, sir.

Q. Did Garfagne change it after he bought it from your father? A. I don't know.

40 Q. Do you know whether it was the same number that your father had when Garfagne had it? A. The same number, the same license.

Antonio George—Cross

Q. You do know it wasn't changed? A. I don't know.

Q. Did you ever drive an automobile before that day of the accident? A. Yes, sir.

Q. Whose machine did you drive? A. My own.

Q. Before you bought your own car, as you say, 10
whose machine did you drive? A. Nobody's.

Q. This is the first machine you handled? A. I handled a lot, practicing, I understand about them.

Q. Did you drive it? A. Not out in the street, no, sir.

Q. In the garage I suppose you drove? A. Running back and forth.

Q. Quite a big garage where you were driving in. Whose garage was it you were practicing to 20
operate an automobile? A. A friend of mine who had a machine, he had so many of them.

Q. Who were they? A. A lot of them, the Essex Taxicab Company.

Q. Who was it? A. They were trying to learn me so I would not be refused a license.

Q. Who was it? A. I don't know their name, they are all friends.

Q. Every taxicab driver is your friend? A. 30
When they talk to you and call you by name that means they are friends.

Q. They allowed you the privilege to zig zagging and moving the taxi in the garage?

Mr. Kalisch: I object to that question.

There is no evidence of zig zagging.

The Court: Yes, the question is objectionable.

Q. You say you were going to Madison Street when some children were playing ball? A. 40
Through Adam Street.

Antonio George—Cross

Q. And someone threw a ball in your car? A. Threw in my car, no, sir.

Q. Didn't you say that? A. No, sir, not in the car, at the car; not a ball, a hat.

10 Q. Then you went out from Adam Street to where? A. Into New York Avenue.

Q. You saw the boys playing ball there? A. Yes, sir.

Q. How far were you from them when you first saw them? A. Why, I was stopping at the corner of Pacific Street.

Q. How far were you from them when you first saw them? A. About 250, 300 feet.

Q. At that time what was your machine doing? A. Standing.

20 Q. Then when you turned out did you continue to watch the children there playing ball as you continue with your machine? A. Yes, sir, watched them right along.

Q. Then, you saw them on the street, did you? A. Yes, sir.

Q. You saw them running around? A. No, standing still.

Q. Standing still playing ball? A. Standing still, yes, sir.

30 Q. You saw them and they continued to stand still right up to the time when you came to them? A. When I was about 100 feet away from them they started scattering around passing the ball.

Q. You saw them doing that? A. Yes, sir.

Q. At that time what speed were you going? A. I was on second speed, about six or seven miles per hour.

Q. Do you mean in second gear? A. Yes.

40 Q. You were making about how many miles per hour? A. About six or seven miles an hour.

Antonio George—Cross

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

By the Court: Q. How far had you gone at that speed? A. I stopped at the corner on account of the car and I had it on first.

By Mr. Greenfield: Q. You were going, you mean, to say 200 feet on a level street on second gear? A. Yes, sir. 10

Q. Six to seven miles an hour? A. Yes, sir.

Q. You were not making any more? A. No, sir.

Q. You are sure of that? A. Positive.

Q. Don't you remember in reply to the question of Mr. Kalisch you testified that you were making ten or twelve miles an hour? Did you testify in response to Mr. Kalisch's question that when you started off you were making up to the time of the accident ten or twelve miles an hour? A. No, sir, before I came to a stop I was making that. 20

Q. Before that? A. Yes, sir.

Q. When did you change from first to second, from low to second? A. Why, for 100 feet.

Q. You were travelling on low gear? A. Yes, sir, about that.

Q. Nothing in the way? A. Nothing in the way that time.

Q. On a level street? A. Level. 30

Q. Then, you changed into second gear and travelled how far before you struck the child? A. About 50 feet.

Q. You had that car under perfect control, didn't you? A. Positively.

Q. You could have stopped that car immediately? A. Yes, sir.

Q. How far were you from the boy when you saw him running and trying to catch that ball? A. 40

Antonio George—Cross

Why, he jumped in front of my car all of a sudden. I didn't see him. He was on the left side of the street when I saw him.

Q. How far were you from him when you first saw him on the left side? A. I can't say. He was on the left side of the street.

10 Q. How far away from you? A. I was quite a little distance.

Q. Point it out in this courtroom. A. About 100 feet is all I can say.

Q. And you continued at a slow speed? A. Slow speed.

Q. How far were you from him when you saw him trying to catch the ball? A. When I struck him with the mud-guard is the time I saw him.

20 Q. You didn't see him until that time? A. All of a sudden he jumped from where he was and jumped to the right.

Q. You saw him on the side? A. Saw him on the side, him and a few others.

Q. Is it not a matter of fact that you went through that street at such a speed that you lost control of your car? A. No, sir, I never did speed.

Q. And it is not a fact that after you struck him you lost control and switched to the right? A. As
30 I seen him turn towards the car I did twist my wheel to save the boy.

Q. How far were you away from the boy when you first saw him jump towards the car? A. He jumped so suddenly, I didn't take notice of it.

Q. How far were you away from him? A. He was a little distance away from me.

Q. Point out the distance in here. A. About from here to the door.

Q. From here to this door (indicating)? A. Yes,
40 sir.

Antonio George—Cross

Q. How many feet do you think that is? A. I don't know.

Q. Well, about? A. I can't give no guess on that.

Mr. Greenfield: How many feet would you say? 10

Mr. Kalisch: Let the jury say.

Mr. Greenfield: I should say about 25 feet.

Q. That is the first time you saw the boy jump off the sidewalk as you were coming up? A. Not off the sidewalk in the street, he was in the street.

Q. Going towards your machine? A. No, sir, standing still.

Q. I asked you before to tell me how far you were from that boy before you struck him when you first saw him running towards the ball, towards your machine? A. I seen him run right into the mud-guard. He was no distance away. He run right into it. 20

Q. How far were you when he started towards you? A. He ran into the car.

Q. How far away were you from him when he started towards the car? A. The distance from the side to the mud-guard.

Q. We don't know that distance. How far was the boy when he first started to run towards your machine? A. The time I saw him standing still, he ran so suddenly at the mud-guard I didn't see him. 30

Q. You didn't see him at all? A. He ran so sudden.

Q. When was it that you sold the car? A. I sold the car in July.

Q. This year? A. This year.

Recess.

40

Thomas W. Daly—Cross

The Court: I refuse the motion to non-suit to both defendants.

Mr. Kalisch: I pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

10

THOMAS W. DALY, sworn in behalf of defendants:

Direct-examination by Mr. Kalisch:

Q. Officer Daly, what precinct are you attached to? A. Detective bureau, headquarters.

20 Q. Did you go to the place of the accident on the 30th of May, 1915? A. I did not.

Q. Was the car brought to your precinct? A. It was not.

Q. When did you see the car, if anywhere? A. Robinson's garage, Madison Street.

Q. Did you find anything in the car when you went there? A. The 30th of May, about 5 o'clock.

30 Q. What did you find in the car? A. I found a little ball in the shape of a foot-ball, canvas covered, and stuffed with excelsior, striped red, white and blue. Memorial Day.

CROSS-EXAMINATION by Mr. Greenfield:

Q. What size, about? A. About the size of an ordinary foot-ball, leather foot-ball.

Anthony George—Cross

ANTHONY GEORGE, resumes the stand:

Cross-examination (continued) by Mr. Greenfield:

Q. Mr. George, what time did you leave the house that afternoon? A. About 3 o'clock. 10

Q. Were you out in the morning with the automobile? A. No, sir.

Q. What time did you get back to the house after the accident? A. About 5 o'clock.

Q. In the afternoon? A. Afternoon.

Q. What garage did you go to to have this machine repaired? A. Adam and Kinney.

Q. How long did you stay there? A. The place was closed and we turned back.

Q. You immediately turned back? A. Yes, sir. 20

Q. Where to? A. Direct home.

Q. Then, what direction did you take to go home from Adam and Kinney Streets? A. My direction was to go down Adam Street.

Q. What direction did you take? A. Adam Street down to New York Avenue, New York Avenue supposed to go down to McWhorter.

Q. Did you go down McWhorter? A. I didn't get the chance.

Q. That is the only places you were on that day? A. Yes, sir. 30

Q. Where was your father and mother when you came home? A. My father was asleep.

Q. And your mother? A. My mother was in the store.

Q. Your father's store? A. It is the store. I don't know who owns it.

Q. That is the store operated by your father, is it not? A. He is in it. 40

Anthony George—Cross

Q. That is Thirty Ferry Street?

Mr. Kalisch: I object to this. It is immaterial.

The Court: I cannot see that it is objectionable. They are simply trying to locate the place to which he went.

10 Q. You have been living with your father right along? A. No, sir.

Q. You were living at that time with your father, weren't you? A. Yes, sir.

Q. I ask you now, did you plead *non vult* to a manslaughter indictment for the killing of this boy, Samuel Gromer?

Mr. Kalisch: I object to that question.

20 The Court: How is that competent? I understand you may ask to impeach a witness whether or not he has been convicted of a crime and then if he says no you may produce the record showing that is not true.

By Mr. Kalisch: Q. Tony, is that the tax bill they sent you? A. Yes, sir.

Q. Who is it addressed to?

30 Mr. Greenfield: I object to that. It is immaterial what public offices make out tax bills. It is a self-serving statement. How can it bind the plaintiff in this case?

The Court: Is it not an element whether he has held it out to be his property? I will allow the question.

Q. Whose address is that? A. Tony George, 30 Ferry Street.

40 Q. Do you know when you got that tax bill? A. I can't tell you exactly when I got it. It was addressed to me when I got it.

Anthony George—Cross

Q. What did you do when you got that tax bill?

A. I did not pay it.

Q. Why not? A. I didn't have the money to pay it.

Q. Is that the only reason you have for not paying the tax bill? A. Yes, sir.

Mr. Kalisch: I offer this tax bill in evidence. 10

The Court: I think you must go further than that.

By the Court: Q. Did the assessor ever come to talk to you about your tax bill? A. No, sir, nobody ever talked to me.

Q. And the first you knew was when you got your tax bill? A. Yes, sir.

The Court: That is not competent. 20

Mr. Kalisch: I offer the tax bill in evidence, which is made out to Tony George and says, "Taxes for the year 1915."

Mr. Greenfield: I object to the reading of it.

Mr. Kalisch: I want to make known to the Court what I offer in evidence.

The Court: I have ruled upon it. It is taxes for 1915.

Mr. Kalisch: Made out to Tony George. 30

The Court: Yes. I refuse your offer.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

By the Court: Q. Did you get a permit before you got your driver's license? A. Yes, sir.

Q. Where did you get your permit? A. I think a few weeks before I got the license.

Q. When you got your permit whose car did 40

William K. Thomas—Direct

you drive to learn to drive after you got your permit to drive? A. Some fellow that lives next door to us. He is in the hack business.

Q. What kind of a car were you driving, your father's car or this hackman's car? A. When I
10 went for my license I went in my father's car.

Q. You must have used your father's car when you were learning to drive? A. I did for a few times.

Q. But nobody else drove your father's car except you? A. Yes, sir.

Q. Who? A. Licensed chauffeur.

Q. Did your father have a licensed chauffeur?
A. Pretty nearly every time he went out he had
20 somebody to drive it for him. Then I got the license and I drove it myself.

Q. Every time your father wanted to use the car you hired somebody to drive it? A. Yes, sir.

Mr. Greenfield: With the permission of the Court and counsel I have here a representative from the register's office to prove a document.

30 WILLIAM K. THOMAS, sworn for the plaintiff:

Direct-examination by Mr. Greenfield:

Q. Mr. Thomas you are deputy register of this County? A. I am.

Q. Have you got a book called "Chattel Mortgage book"? A. I have.

Q. Have you got a record of a chattel mortgage made by Antonio George to John Garfagne?
40 I have. A.

Antonio George—Cross

Q. Will you be kind enough to give us the date of that chattel mortgage? A. The date is the 19th day of October, 1915.

Q. And when was it recorded? A. October 19, 1915, at 1:15 p. m.

Q. By whom was this chattel mortgage made? 10
A. Antonio George and John Garfagne.

Q. What was the consideration of that chattel mortgage? A. \$600.

Q. What was the chattel described in the schedule? A. One Oakland automobile, year 1913, model 41, five passengers.

Mr. Greenfield: I offer that in evidence.

By the Court: Q. What does the affidavit say is the consideration? A. True considerations of \$600.

Q. Does not the affidavit show what the consid- 20
eration was for? A. "Being money owed to me by Antonio George, the other party hereto."

By Mr. Greenfield: Q. Sworn to? A. 19th day of October, 1915.

Q. And the officer who took the affidavit is John F. Faughnan? A. Yes.

CROSS-EXAMINATION by Mr. Kalisch:

Q. Does it recite when the money was loaned? 30

A. No.

 ANTONIO GEORGE, re-called for further cross-examination by Mr. Greenfield:

Q. Mr. George, is this the chattel mortgage, which you heard read, that you gave to John Garfagno? A. That is the second one.

William A. Robinson—Direct

WILLIAM A. ROBINSON, sworn in behalf of defendants:

Direct-examination by Mr. Kalisch:

10 Q. Mr. Robinson, where do you live? A. 87 Madison Street.

Q. Are you in business down there? A. Yes, sir.

Q. What business are you in? A. Automobile repair business.

Q. Have you a garage? A. My father owns the garage and I take care of the place and all repair work is mine and the storage is his.

Q. But it is all in the same building? A. Yes.

20 Q. Can you tell us whether or not Antonio George stored an automobile in your place on and before the 30th of May, 1915? A. Yes, sir.

Q. Do you know what automobile it was? A. It was an Oakland touring car.

Q. Do you remember how many passengers? A. Five.

Q. Do you know how long previous to the 30th of May, 1915, it has been stored in your place?

A. It has been stored since about the middle of the previous March.

30 Q. Do you know who the owner of that car was? A. When the car was first brought in I understood it belonged to Mr.—

Mr. Greenfield: I object to what he understood.

40 Q. Who bought the car? A. Mr. Joseph George and some other man, I don't know who it was. It was left there to be stored. That is all I know about it and they took it out occasionally some-times every day.

William A. Robinson—Direct

Q. Who took it out every day? A. Some young man he had there as a chauffeur. Sometimes the son took it out with another man.

Q. Who did you understand owned the car?

Mr. Greenfield: I object to that, he understood.

10

Q. Who paid you the bill?

Mr. Greenfield: I object to that. That is immaterial. I may pay a bill for somebody else.

Q. Who paid the bill?

Mr. Greenfield: How can that be relevant?

Q. Who was the bill made out to? A. Just Mr. George.

Q. Who paid you? A. Tony.

20

Q. Some time before the accident did Mr. Tony George—you know Tony? A. Yes.

Q. This man (indicating Tony George)? A. Yes.

Q. Did he come down to your place and make some complaint about his automobile?

Mr. Greenfield: I object to that. That is mere hearsay evidence.

The Court: The question is objectionable.

30

Q. Did he have a conversation with you some time previous to May, 1915, with regard to the automobile? A. Yes.

Q. What was the conversation?

Mr. Greenfield: I object. The plaintiff was not there. The defendant cannot go to work and manufacture evidence not in the presence of the plaintiff.

The Court: What he said prior to the 40

William A. Robinson—Direct

time, if there was any question about it, it would go to show whether he treated it as his own. I will allow the question.

Counsel for plaintiff objects to this ruling of the Court.

10 Objection noted as ground of appeal.

Q. (Question read.) A. I will have to explain that somewhat.

Q. No, just tell the conversation. A. He told me not to let anybody take that car out, only himself or somebody that had a note as he had bought the car and it belonged to him.

Q. Who told you that? A. Tony George.

Q. This boy here? A. Yes.

20 Mr. Greenfield: That is subject to my exception.

The Court: Yes, you have your exception.

Q. How long was the car kept in your garage or is it there now? A. No, they kept it there until October, I believe.

30 Q. Do you know how many times Tony George paid you for storage there? A. He paid me once or twice and I guess he gave the money to my father the other times, just according to who was there.

Q. Do you remember what time the car went out the day of the accident? A. As near as I can remember—

Mr. Greenfield: If he was there. I object to it unless it is shown that this gentleman was there.

Q. Were you there the day? A. Yes, sir, I lived there.

40 Q. Can you tell the Court and jury what time

William A. Robinson—Cross

the car went out that day? A. As near as I can remember it was between three and half-past three.

Q. Do you remember who called for the car?
A. Tony came there.

CROSS-EXAMINATION by Mr. Greenfield: 10

Q. When was that conversation? A. That was in the latter part of April.

Q. How do you remember that? A. Why, because there was a man named Forsyth took the car without their permission one Saturday night and brought it back four o'clock in the morning.

Q. When you say without their permission, without whose? A. Without George's permission.

Mr. Kalisch: Which George? 20

Witness: Without Tony's permission.

Q. Did you ever see the old gentleman, Mr. Joseph George, in your place? A. Yes, sir.

Q. When? A. At different times between the time the car came in there and before the accident.

Q. And after the accident? A. He was around there a couple of times, just walked in and looked around, and he didn't take the car out for some time after. 30

Q. After that did he take out the car? A. Not until six or seven weeks after the accident.

Q. Six or seven weeks after the accident did they take out the car? A. Yes, sir.

Q. Who did? A. Tony.

Q. Was the old gentleman around there? A. No, sir.

Q. After the accident was the old gentleman 40

William A. Robinson—Cross

around there? A. I said that he had been around there a few times after the accident.

Q. And went out with the car? A. No, sir.

Q. What did he come there for, do you know? A. No, sir.

10 Q. Just looked around to see whether your garage is there, I suppose? A. To see if the car was there, that is what I think.

Q. Did he look for the car? A. Looked at it, that is all.

Q. The old gentleman, Mr. Joseph George? A. Yes.

Q. Was anybody else there to look after that car besides Antonio George and Mr. Joseph George? A. No, sir, not that I know of.

20 Q. Since the time that Mr. Joseph George brought the car in there in March up to the time they took the car out in October was anybody else in the car in your garage to take out the car, that is, besides that joy ride, as you say? A. There was a young man that came around after Tony and went out with the car up until the latter part of April and after that nobody took it out only Tony.

Q. And until when was that? A. The latter part of April, probably into the 1st of May. I am not

30 sure of the day.

Q. And after that did anybody else take the car out? A. No, sir.

Q. So, up to October, 1915, from March to October, 1915, nobody else took the car out except Mr. Tony George and Joseph George with his chauffeur? A. Joseph George never took it out with the chauffeur after the accident.

Q. But no stranger? A. Not to my knowledge.
40 The car had been out a number of times.

Michael Cupolo—Direct

Q. Were you there all the time? A. No, sir, not all the time.

Q. Were you ever away for a day? A. Away of a day. When I haven't anything to do I don't hang around the place. I go to the theatre or something.

Q. So it might possibly be that Joseph George might have come in after May and took the car out and brought it in and you not know it? A. There is a possibility. 10

By Mr. Kalisch: Q. Did the car go out that day before half past three, go out in the morning? A. No, sir.

Q. That was the first time it went out that day? A. I had been watching the car and, in fact, I had been seeing that nobody did take it. After Tony told me not to leave anyone take the car I had been watching and also the man around the place. I told him not to let them take it out unless they see me or my wife. 20

Q. Or a note from Tony? A. Yes, sir.

MICHAEL CUPOLO sworn in behalf of defendants:

30

Direct-examination by Mr. Kalisch:

Q. Mr. Cupolo, where do you live? A. No. 2 Railroad place.

Q. Do you know Tony George? A. Yes, sir.

Q. Did you try to buy an automobile from him? A. I was trying to.

Q. When was that? A. It was either in the latter part of April or towards the 1st part of May.

Q. What year? A. Last year.

40

Michael Cupolo—Direct

Q. 1915? A. 1915.

Q. What did Tony George say to you when you tried to buy it?

Mr. Greenfield: I object to that on the same ground.

10 Q. Did he have the car for sale? A. He had the car for sale.

Q. How do you know that? A. Because he told me to sell it for him.

Mr. Greenfield: I object to that. Any conversation had between the defendant and this witness as being pure hearsay evidence as far as the plaintiff is concerned is not binding upon the plaintiff and therefore incompetent.

20 By the Court: Q. When was this conversation? A. In April, between the latter part of April and the 1st of May last year. I remember that because I was going to buy a car about that time and when I went there the car was sold.

Q. You wanted to sell the car? A. He had told me to find a buyer and at the time he told me I had intention of buying and when I wanted to buy the car was sold. I remember well because after that I heard of the accident, after I wanted

30 to buy the car.

Q. Who asked you to sell the car? A. Mr. Joseph George.

The Court: The fact he offered to sell the car is competent.

By Mr. Kalisch: Q. Did Tony George ask you to sell his car?

Mr. Greenfield: One moment. He just said Joseph George.

40 Q. Who did you see when you had a buyer for

Thomas McClelland—Direct

the car, Tony or Joseph? A. Mr. George had told me to sell the car for him and when I went there to buy the car off of Mr. George the latter part of April the car was already sold.

Q. Tony told you the car was sold? A. Yes, the car was sold.

10

CROSS-EXAMINATION by Mr. Greenfield:

Q. How do you know it was in April? A. Because I was buying a car at that time, I intended to buy a car.

Q. Did you buy a car? A. Yes.

Q. Where? A. I bought one off of Hudson Foley Company.

Q. When did you buy it? A. I didn't buy it then; I bought it six or seven months after.

20

Q. You were ready to buy in April or May but you didn't buy until six or seven months after, is that it? A. Yes, sir.

THOMAS McCLELLAND sworn in behalf of defendants:

Direct-examination by Mr. Kalisch:

30

Q. Mr. McClellan, you are a clerk in the criminal court? A. Yes, sir.

Q. What book have you got there? A. The criminal record of the Court of Quarter Sessions, also indictment.

Q. Have you got the criminal record of an indictment against Antonio George?

Mr. Greenfield: I object to the question.

The question is whether he has a criminal

40

Joseph Dias—Direct

record of the indictment of Tony George—
and conviction; I mean asked both at the
same time.

The Court: I think the question should
be, does the record show a conviction?

10 Q. Does the record show a conviction of Anton-
io George? A. Yes, sir.

Q. When? A. October 13, 1915.

The Court: Can you go into the ques-
tion?

Q. Of what? A. Manslaughter.

CROSS-EXAMINATION by Mr. Greenfield:

Q. You said the record shows a conviction.
Does it show a plea of *non vult*? A. It is a con-
20 viction.

Q. What does the record show? A. It shows
he retracted a plea of not guilty and plead *non*
vult.

By Mr. Matthews: Q. Who was his counsel?

Mr. Greenfield: I object. If the coun-
sel insists upon the full record I will ask
for the indictment.

Mr. Matthews: Counsel's name does not
appear on the record. We will withdraw
30 the request.

JOSEPH DIAS sworn in behalf of defendants:

Direct-examination by Mr. Kalisch:

Q. Joseph, how old are you? A. Fifteen.

Q. Where do you live? A. 19 Ferry street.

40 Q. Whereabouts did you live on the 30th
of May, 1915? A. 19 Ferry street.

Joseph Dias—Direct

- Q. Did you meet Antonio George on that day?
A. Yes sir.
- Q. What time, about? A. About three o'clock.
- Q. Did you ask him for a ride? A. Yes, sir.
- Q. Where was he when you asked him for a ride? A. On Ferrý street.
- Q. Which way was he going? A. Towards the depot. 10
- Q. And you asked him for a ride? A. Yes, sir.
- Q. What did Tony say? A. All right.
- Q. Where did you go, do you remember? A. No, sir.
- Q. Did he have the machine with him when you asked him for a ride? A. Yes, sir.
- Q. He had the machine with him? A. Yes, sir.
- Q. Who was with you, anybody? A. No, sir. 20
- Q. You were alone? A. Yes, sir.
- Q. Did you get in the machine? A. Yes, sir.
- Q. Where did you sit? A. In front.
- Q. You sat in front with Tony? A. Yes, sir.
- Q. Where did Tony go? A. I forget where he went.
- Q. Did you see the accident? A. Yes, sir.
- Q. Where did the accident happen? A. New York Avenue.
- Q. Was anybody in the car with you beside you and Antonio George? A. Yes, sir. 30
- Q. Who? A. Joe.
- Q. Another Joe? A. Yes, sir.
- Q. Do you know his name? A. Yes, sir.
- Q. What is his name? A. I only know his first name, Joe.
- Q. Where was he sitting? A. In the back.
- Q. You went down New York Avenue, did you?
A. Yes, sir. 40

Joseph Dias—Direct

- Q. Were there any boys on the street? A. Yes, sir.
- Q. What were they doing? A. Playing ball.
- Q. Were you going fast or slow? A. Going slow.
- 10 Q. Who was driving? A. Tony.
- Q. Do you know whether or not a horn was blown? A. Yes, sir.
- Q. Who blew the horn? A. Tony.
- Q. How far away from the boys were you when Tony blew the horn? If you cannot tell just point a distance in the room. A. About where the light is over there.
- Q. That light there? A. Yes, sir.
- Q. This light (indicating)? A. Yes, sir.
- 20 Mr. Greenfield: The jury can estimate that distance, about 60 feet.
- Q. He blew the horn, did he? A. Yes, sir.
- Q. Was it a loud horn? A. Yes, sir.
- Q. Did the boys scatter? A. Yes, sir.
- Q. How did this Gromer boy, how did he get hit? Just tell the jury. A. He ran into the car, the left mud-guard in front.
- Q. What was he doing at the time he was running? A. Playing ball.
- 30 Q. At the time he ran into the left mud-guard of George's machine how fast was Tony going, fast or slow? A. Slow.
- Q. What did Tony do when he ran into the left mud-guard? A. Tony tried to steer out of the way.
- Q. Do you remember which way he steered? A. Yes, sir.
- Q. Which way? A. To the right.
- 40 Q. After the boy ran into the mud-guard what

Joseph Dias—Cross

happened? A. Tony went aways and stopped and picked the boy up.

Q. How far did he go after the boy ran into the left mud-guard, how far did Tony travel? Just point in this room? A. About where the rail is.

Q. From where you are? A. Yes, sir.

Mr. Greenfield: It is about 15 feet.

10

Q. You say he stopped then? A. Yes, sir.

Q. He ran back to get the boy? A. Yes, sir.

Q. What did he do with the boy? A. Picked him up and put him in the automobile.

Q. Did you go with him? A. No, sir.

Q. What did you do? A. Ran away.

Q. How many boys were in the street playing ball, about? A. There was more than seven.

Q. Were they scattered all over the street? A. Some were sitting down and some were in the street. 20

Q. When Tony blew the horn what did some of the boys do? A. Some of them ran out of the way and the other boy ran into the automobile.

Q. Who was the boy that ran into the automobile? A. Sam.

Q. Do you know Sam? A. Yes, sir.

Q. Had you known him long? A. Yes, sir.

Q. Had you played with him? A. No, sir.

30

CROSS-EXAMINATION by Mr. Greenfield:

Q. Joseph, you watched the boys, did you? A. Yes, sir.

Q. Why did you watch them? A. To see if they got run over.

Q. Were you afraid they would get run over? A. Yes, sir.

Q. They were a good distance away, weren't they? A. Yes, sir.

40

Joseph Dias—Cross

Q. Why were you afraid they would get run over if they were a distance away?

Mr. Kalisch: I object to the question as argumentative.

The Court: That is correct form of cross examination.

10

Q. Why were you afraid that they would get run over if they were a good distance away from the automobile, can you tell us? A. No, sir.

Q. Was it because the machine went so fast? A. No, sir.

Q. Was it because they were sitting down on a curb? A. No, sir.

Q. Those boys that were sitting on the curb, were they playing ball, too? A. No, sir.

20

Q. How many boys were playing ball? A. The boys were in the street.

Q. How many boys were in the street? A. I can't tell you.

Q. How many boys were there altogether? A. About more than seven.

Q. Why do you say more than seven? A. Because that is all I could see myself of them.

Q. How many more than seven? A. About two or three.

30

Q. There would be, then, about ten? A. Nine or ten boys.

Q. Is that right? A. Yes, sir.

Q. And they were all playing ball? A. No, sir.

Q. How many were playing ball? A. About six, I guess.

Q. What kind of a game were they playing? A. Baseball.

Q. What part of the game were they in, first
40 know. inning, second inning, third inning? A. I don't

Joseph Dias—Cross

- Q. Who was at bat, do you know? A. No, sir.
- Q. Was Sammy at the bat? A. No, sir.
- Q. Was Sammy the catcher? A. I don't know if he is catching or not. He was in back of the pitcher.
- Q. He was in back of the pitcher? A. Yes, sir. 10
- Q. Facing in what direction? A. Toward the pitcher.
- Q. With reference to the automobile? A. His back was towards the automobile.
- Q. And he was right in the middle of the street? A. Yes, sir.
- Q. And the automobile went right on? A. No, sir, he blew the horn.
- Q. Did he stop? A. No, sir. He ran right in the automobile. 20
- Q. He was with his back towards the automobile in the middle of the street? A. After he blew the horn he turned around and ran to the automobile.
- Q. What direction did he run from the middle of the street? A. Up towards the automobile.
- Q. On the right or to the left? A. To the left.
- Q. How far from the curb did Sam fall? A. About 7 or 8 feet.
- Q. Did he run away from the curb when he ran into the automobile or did he run towards the curb? A. He ran towards the curb. 30
- Q. Now, Joe, are you sure about that? A. Yes, sir.
- Q. You are sure about that? A. Yes, sir.
- Q. He ran from the middle of the street towards the curb on the left? A. Yes, sir.
- Q. That is right, isn't it? I don't want to confuse you but you understand my question? A. Yes, sir. 40

Joseph Dias—Cross

Q. So, just when you first saw Sam he was in the middle of the street with his back towards the automobile, that is right? A. Yes, sir.

Q. And when Tony blew the horn he turned and went to the left? A. He ran up this way towards the left.

10 Q. And where was Tony's automobile? A. In the middle of the street.

Q. Aren't you mistaken about that? A. No, sir.

Q. Aren't you mistaken that he was towards the curb on the left? A. He ran into the automobile and to the left.

20 Q. No, just wait a minute. Aren't you mistaken that he ran, that Sammy ran from the middle of the street to the left near to the curb, aren't you mistaken on that? A. No, sir.

Q. And the automobile was at that time in the middle of the street? A. Yes, sir.

Q. Now, I ask you once again. Did you understand my questions? A. Yes, sir.

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

30 Q. Do you wish to make any corrections correcting in your own way, looking at these twelve gentlemen here, correcting it in any way that you think is right, do you wish to correct anything? A. When the car was coming he turned his face toward the car and run toward the left and hit the left mud-guard.

By the Court: Q. Did you see the ball they were playing with? A. No, sir.

Q. Was it an ordinary baseball or can't you tell? A. I can't tell you.

40 Q. They were playing ball with a bat? A. Yes, sir.

Joseph Ferrado—Direct

Q. Did you see any ball thrown up in the air and anybody try to catch it? A. No, sir.

Q. Were you in the car at the time the accident happened? A. Yes, sir

Q. Did you see any ball in the car? A. No, sir.

By Mr. Kalisch: Q. Did you say he ran toward the left mud-guard? A. Yes, sir. 10

Q. What side of the street was it? A. It was in the middle of the street.

Q. And he ran toward the left mud-guard? A. Yes, sir.

JOSEPH FERRADO sworn in behalf of defendants: 20

Direct-examination by Mr Kalisch:

Q. Joseph, where do you live? A. 153 South Canal street.

Q. Where did you live on the 30th of May, 1915? A. The same place.

Q. Do you live home with your folks or parents? A. Yes, sir.

Q. Did you meet Tony George on the 30th of May, 1915? A. Yes, sir. 30

Q. Where? A. In front of his house, Ferry street.

Q. Did you ask Tony for a ride? A. Yes, sir.

Q. What did you say to him? A. I said, "Tony, where are you going? Give me a ride." He said he is going up to the garage to fix the auto.

Q. What did he say? A. He said, "All right, get on."

Q. He said he was going to a garage? A. Yes, sir. 40

Joseph Ferrado—Direct

Q. And then you asked him for a ride and he said, 'All right, jump in'? A. Yes, sir.

Q. Did you get in the automobile? A. Yes, sir.

Q. Where did you sit? A. Back.

Q. Who was in the front seat? A. Joe Dias.

10 Q. Who drove the car? A. Tony.

Q. Where did you go? A. Went to Market street.

Q. Did you strike New York Avenue? A. Yes, when we was coming back.

Q. Did you see this accident to Samuel Gromer? A. Yes, sir.

20 Q. Just tell the jury in your own way how the accident happened? A We seen a bunch of boys playing ball on the street and we was blowing the horn and they all scattered around and Samuel Gromer got hit with the left mud-guard.

Q. Tony, you say, blew the horn? A. Yes.

Q. How far was he from the boys when he blew the horn about? A. From here to there (indicating).

Q. That wall there? A. There (indicating).

Q. Where that electric light is? A. Yes, in the corner there.

Mr. Kalisch: About 60 feet.

30 Q. Was the horn a loud horn? A. I don't know whether it blowed hard or not. He whistled, too, the other boy.

Q. Who whistled? A. Joe Dias.

Q. How many times did he blow the horn? A. Three or four times.

Q. Was he going fast or slow? A. He was going slow.

40 Q. How did the Gromer boy, how did he come in contact with the machine? A He was stand-

Joseph Ferrado—Cross

ing in the middle and he ran in the left mud-guard.

Q. He was standing in the middle of the machine and he ran into the left mud-guard? A. Yes, sir.

Q. What was he doing at the time? A. I don't know. I seen him standing there, a bunch of boys there. 10

Q. How did he run into the left mud-guard? Did he go backwards?

Mr. Greenfield: No, let him tell.

Q. How did he run into the left mud-guard? A. Ran this way (indicating).

Q. Stand up and show the jury. A. Ran this way (indicating).

Q. Was he facing the machine when he ran into the mud-guard? A. No. 20

Q. Did he run into it with his back? A. When he was running he was running on the side.

Q. Did he have his face to the left mud-guard when he ran into it? A. Yes, sir.

Q. How far did the machine go arter Gromer struck the left mud-guard? A. From here to there (indicating).

Q. From here to that wall? A. That man there, the last man (indicating). 30

Q. From you to Juror No. 7? A. Yes.

Q. That is about 10 feet. What did Tony do? A. I don't know. I jumped off the car. I ran home, me and the other boy.

Q. You didn't wait to see what Tony did? A. No.

CROSS-EXAMINATION by Mr. Greenfield:

Q. When the machine was coming up New York 40

Joseph Ferrado—Cross

Avenue you saw a lot of boys playing baseball in the street, is that right A. Yes, sir.

Q. Who was at the bat, do you know? A. Play-
ing ball?

Q. Did they have a bat there? A. I don't know.
10 I didn't see any. I only seen boys.

Q. Were they pitching, just merely pitching?
A. I don't know, just standing there.

Q. How do you know they were playing base-
ball then? A. I seen one over there and one over
there and somebody in back and front too.

Q. Did he pitch any ball? A. I didn't see any.

Q. Did you see anybody standing there with a
bat? A. See all boys standing.

Q. See any boys standing there with a bat? A.
20 No sir.

Q. Then, the boys were not doing anything in
that street, were they? Just merely standing
there? A. They were all in one place standing
there.

Q. Did you know Sammy? A. Yes, sir.

Q. Where did you first see him? A. My cousin
had his jewelry store right next to his store.

Q. What store? A. Samuel Gromer.

Q. You used to go around there? A. I used to
30 go to my cousin every time in the yard and play.

Q. And you met him there? A. Yes, he lived
right next to my cousin.

Q. When you said that when this Tony George
blew his horn the other boys scattered and Sam-
my was hit with the mud-guard, is that riight?
A. Yes, sir.

Q. Where was Sammy at the time he was struck
with the mud-guard? A. In the middle.

40 Q. Are you sure? A. Yes, sir.

Joseph Ferrado—Cross

Q. Was he right in the middle or near some curb? A. In the middle.

Q. Right plumb in the middle, was he? A. Yes, sir.

Q. That street is a quite wide street, is it not? A. Yes, sir.

Q. And the automobile, on what side of the street was it running? A. Right side. 10

Q. On the right side? A. Yes, sir.

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

Q. And wasn't the machine on the left side of the street when Sammy was struck? A. No, sir, it was in the middle, it was going in the middle.

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

Q. Now, Joseph, I don't want you to get confused, don't get frightened. Did you hear Tony say that the machine was on the left-hand side of the street when Sammy was struck? Did you hear that? 20

Mr. Matthews: He didn't say it. I think there is no evidence before the Court that Tony said he was on the left side when he was struck.

The Court: He asked the witness if Tony said so.

Q. Did you hear him say that? A. No, sir. 30

Q. And when Sammy was struck where did the machine go, right at the time when Sammy was struck? A. I remember it stopped.

Q. Yes. A. From there to there (indicating).

Q. Did it stop right in the center of the street or on the right or left-hand side? A. A little bit on the right side.

Q. It stopped on the right-hand side? A. Yes, sir. 40

Joseph George—Direct

Q. It stopped on the same side almost in the same place where Sam was struck, a little ahead, is that right? A. On the right side. The wheels were turned to the right side when I jumped off.

Q. You say you didn't see any ball at all? A. No, sir.

10 Q. And there was no ball thrown there by anybody at that time? A. I didn't see any.

Q. You were riding, looking ahead, weren't you? A. I couldn't see all the time. Sometimes see on the side.

Q. But you are sure that nobody was hitting any ball there at that time?

Mr. Kalisch: He didn't say that. He said he didn't see any.

20 Q. Did you see the boys standing together and talking? A. Not talking. One over there, one over there, all around.

Q. You didn't see any ball flying in the air? A. No, sir.

JOSEPH GEORGE, sworn in his own behalf:

30 Direct-examination by Mr. Kalisch:

Q. Mr. George, where do you live? A. 30 Ferry Street.

Q. Were you the owner of an Oakland automobile, five passenger on the 30th of May 1915? A. No, sir.

Q. Did you ever own that car? A. No, sir.

Q. Did you ever own the car before? A. Yes, sir.

40 Q. How long before? A. A month or five weeks, something like that.

Joseph George—Direct

- Q. What did you do with the car? A. I sold it.
- Q. Whom did you sell it to? A. John Garfagne.
- Q. How much did you sell it for? A. For \$450.
- Q. Did you know that your boy was out with that car on the 30th of May 1915? A. No, sir.
- Q. When is the first that you heard of an accident? A. When the lieutenant from headquarters after five quarter to five, five o'clock, he came to me about an automobile. 10
- Q. Now, were you in Court this morning? A. Yes, sir.
- Q. Do you remember Mr. Gromer here saying that he met you on the day of the accident; you were standing in front of your door on Ferry Street and that he sked you "Whose that car is there," and you said, "Whose do you think it is? It is mine." Do you think it is this man? Did you have any such conversation with Mr. Gromer? A. No, sir. 20
- Q. Did you have any conversation with Mr. Gromer that day? A. No sir.
- Q. Did you and Mr. George go to Mr. Gromer's house after the funeral and have a conversation with Mrs. Gromer? A. No, sir.
- Q. Any conversation whatever? A. No, sir.
- Q. Were you ever in Mrs. Gromer's house? A. No, sir. 30
- Q. Did you ever make the statement to Schuster that Tony was too fresh and you were sorry the boy had been killed and you had sent him out to get two friends? A. No, sir.
- Q. Did you ever speak to Schuster? A. No, sir, I don't know Schuster.
- Q. Did you ever notify anybody that you had sold the car? A. I notified the City Hall. 40

Joseph George—Direct

Q. When did you notify them? A. Well, the first time when I received a postal-card assessing it for \$1000—I think it was in April or May.

Mr. Greenfield: I object to that. The postal-card is the best evidence.

10 Q. Have you the postal-card? A. I haven't the postal-card from the city department.

Q. Where is it? A. It is gone.

Q. It is lost? A. I sent it back to the City Hall.

Q. Do you remember what you notified the City Hall regarding selling the car?

Mr. Greenfield: I object to it. Whatever notice is sent to the City Hall is certainly incompetent, self-serving declaration and self-evidence.

20 The Court: I cannot see that it has any relevancy one way or the other.

Mr. Kalisch: To show the ownership of the car.

Q. I show you a letter and ask you what that is? A. That is when I claim the car is sold.

Q. Who is the letter addressed to? A. To Joseph George.

Q. Who did you address the letter to? A. To the City Hall.

30 Q. Tax department? A. Yes, sir.

Q. Whose handwriting is that in? A. My daughter.

Q. Did you tell your daughter to write that letter? A. I told her, yes.

Q. Do you know your daughter's handwriting? A. Oh, yes.

Q. Is that your daughter's handwriting? A. That is my daughter's handwriting.

40 Q. Read the letter.

James J. Fitzsimmons—Direct

Mr. Greenfield: It is not offered in evidence.

The Court: Do you offer the letter?

Mr. Kalisch: I offer the letter in evidence.

Mr. Greenfield: I object to that. It is a letter written by someone else sent by someone else. 10

CROSS-EXAMINATION by Mr. Greenfield:

Q. Did you sign it or did your daughter sign your name? A. My daughter signed it.

By Mr. Kalisch: Q. Did you ask your daughter to send that letter? A. Yes, sir.

Q. Do you know your daughter's handwriting? A. Yes, sir. 20

Q. Is that your daughter's handwriting? A. Yes, sir.

Mr. Kalisch: I offer it in evidence.

The Court: If you can show that letter was a letter sent to the City Hall and received by the City Hall it is competent.

(Witness withdrawn.)

30

JAMES J. FITZSIMMONS, sworn in behalf of defendant.

Direct-examination by Mr. Kalisch:

Q. Mr. Fitzsimmons, are you employed by the City Hall? A. Yes, sir.

Q. What department? A. I am secretary of the tax board.

Q. And as such secretary what are your duties? 40

James J. Fitzsimmons—Cross

A. Why, I keep the record of the meetings of the board, have the overseeing of the records of the department and such work.

Q. What about the taxing of personal property?

A. I don't do that personally but I oversee it.

10 Q. I show you this letter and ask you if you ever saw it before? A. Yes, I did.

Q. Did you bring it here today? A. Yes, sir.

Q. Do you know where you received that letter?

A. We received it at the City Hall.

Q. Do you know the department? A. The tax department.

By the Court: Q. It is marked stamped? A. Not when we received it but the letter is dated. We received it about the time.

20 Mr. Kalisch: I offer the letter in evidence.

CROSS-EXAMINATION by Mr. Greenfield:

Q. Have you any record to show when you received that letter? A. No nothing more than the date on the letter.

Q. It might have been received as late as May or June? A. Well, I don't think so.

30 Q. Why don't you think so? A. Well, the letter is dated and we usually get letters at about the time they are dated. If we didn't when we opened it we would question the date on it.

Q. When did you get that letter? A. I can't tell but I presume we got it a day after it was dated or that same day perhaps.

Q. What date is that letter? A. November 15, 1915.

40 Mr. Greenfield: I object to it. That is after the accident.

James J. Fitzsimmons—Cross

Mr. Kalisch: I offer it.

The Court: I do not think it is competent.

Counsel for defendants pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

By Mr. Kalisch: Q. When did the tax bills go out for the year 1915? A. They went out in the early part of October 1915. 10

Q. Why did they go out so late? A. The tax rate is not fixed until the early part of September. By the time the bills are written it is usually along the 1st of October and after that they are delivered and it takes a few days to deliver.

Q. So it is almost the completion of the year before the tax bill goes out? A. No, it is the early part of October. 20

Q. It is almost the completion of the year. There is November and December, two months after? A. October, November and December left. They are payable on October 20th.

Q. So it is about two months and a half before the completion of the year? A. Yes.

Q. I show you this tax bill, addressed to Tony George. Is that the tax bill that you sent out 1915? A. Yes, that is an automobile tax bill.

The Court: Do not tell us what it is. 30

Q. Addressed to whom? A. Tony George.

Q. When was that sent out? A. That was sent out in the latter part of 1915.

Mr. Greenfield: I withdraw my objection to the offer of this paper.

Paper admitted in evidence by consent of both counsels marked Exhibit D-1. Exhibit D-1 read to the jury.

Q. Can you tell us what was done after you re- 40

James J. Fitzsimmons—Cross

ceived that letter? A. Why, we notified Joseph Garfagne, made an assessment against Joseph Garfagne for the automobile and notified him to that effect.

10 Q. Can you tell whether or not Joseph Garfagne paid the tax bill?

Mr. Greenfield: I object to that.

The Court: It is immaterial.

Q. I show you a paper and ask you what that is?

A. That is the tax bill made out to John Garfagne.

Q. For what year? A. 1915.

Q. For what—

20 Mr. Greenfield: I object to that. These tax bills were sent out in October and after that this letter was received in November.

By Mr. Greenfield: Q. Up to the time that you received this letter on November 19th have you got a record to whom this automobile was taxed?

A. Yes, sir.

Q. To whom? A. To Joseph George.

30 Exhibit D-1 reads as follows: "Joseph George, the real leading tailor of the Iron-bound district, 30 Ferry Street, Newark, New Jersey. November 19, 1915. Department of Taxes, City Hall. Dear sirs: In answer to your automobile tax bill which I was to see you two weeks ago, as I sold it you said you wished me to send you in the address and date car was sold. I sold it to John Garfagne, 104 Jackson Street, on April 5, 1915, for \$400 so enclosed you will find the bill. Yours very truly, Joseph

40 George."

Joseph George—Cross

JOSEPH GEORGE, resumes the stand.

Cross-examination (Continued) by Mr. Greenfield:

Q. Now, Mr. George, do you know Mr. Schuster? A. No, sir.

10

Q. Never seen him before? A. No, sir.

Q. Never met him? A. Never.

Q. Did you ever drive the automobile after the accident? A. No, sir.

Q. Did you ever drive that automobile before the accident? A. Before the accident, yes, sir.

Q. How long before the accident did you drive that car? A. I think that is a few weeks after I buy the car.

Q. How many weeks? A. About two or three 20 weeks after I buy the car.

Q. How many weeks? A. I don't know exactly; might be two weeks, two and a half, three weeks.

Q. Where did you learn to drive? A. In the city.

Q. When? A. First week, I think, in March, first and second week in March.

Q. Bright, nice weather, nice roads and nice weather to learn to drive an automobile? A. I don't remember.

Q. When was the last time you drove that car? 30
A. The last time, all I remember for a couple of weeks when I drove.

Q. When was the last time how long before the accident? A. It is long before.

Q. How long? A. I can't remember.

Q. Two weeks? A. More than that.

Q. A month? A. Something like that.

Q. You know where Mr. Garfagne lives, don't you? A. Yes, sir.

40

Joseph George—Cross

Q. He is a friend of yours, isn't he? A. He is not a friend.

Q. You are his tailor? A. I am in business.

Q. Just answer my question. You are his tailor? A. I am a tailor, yes, sir.

10 Q. You make the clothes for him once in a while? A. I don't make any clothes.

Q. Never made a suit of clothes for him? A. Some press.

Q. You press his clothes? A. Yes.

Q. You have a drygoods and tailor store down on Ferry Street? A. Yes, sir.

Q. Your boy lives with you? A. Sometimes he lives with me.

20 Q. He lived in May, 1915, did he live with you in May, 1915? A. In the daytime.

Q. Didn't he live with you there at that time? A. Sometime.

Q. What do you mean sometime? A. Not to stay, not steady.

Q. Is he married? A. He is single.

Q. Does he live with you now? A. Sometimes.

Q. Did he sleep in your house last night? A. I don't know if he sleep in my house.

30 Q. You don't know whether your son slept last night in your house or not do you? A. No.

Q. Did he sleep in your house the night before? A. Well, I can't tell.

Q. You can't tell at all, can you? A. No.

Q. What is he doing for a living?

Mr. Kalisch: I object to this. It is not cross-examination.

40 The Court: This witness is a defendant to the suit and one of the questions is whether or not the boy was driving for

Joseph George—Cross

him. I think it is a perfectly proper form of cross-examination.

Counsel for defendants pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q. What is he doing for a living? A. I don't know. 10

Q. You don't know what your son is doing now for a living? A. I can't tell.

Q. You want this jury to believe you don't know whether or not your son slept in your house last night? A. He is all right. I don't know.

Q. Where was the first time you saw your son this morning? A. Half-past eight.

Q. Where? A. My house.

Q. In the store or in the rooms? A. In the back of the store. 20

Q. Now, where was Antonio when the lieutenant from police headquarters called at your house; if you know where was Antonio when the police called on the day of the accident? A. I don't know.

Q. Did you see him? A. Not right away.

Q. When did you see him, after the police called? A. When I came back from the station-house.

Q. Where did you find him? A. In the bedroom. 30

Q. What time did you come back from the station-house? A. I think about six o'clock.

Q. And then you found him in the bedroom? A. Yes.

Q. Asleep? A. He was laying—

Q. Was he asleep? A. Laying on the bed.

Q. Dressed? A. Well, I think so.

Q. Don't you know? A. Laying on the bed. I didn't ask him. 40

Joseph George—Cross

Q. Did you see him there? A. I see him laying on the bed.

Q. Did he get up while you were there? A. I called him.

Q. Did he get up? A. I called him.

10 Q. Did he get up? A. After I called him he got up.

Q. Was he dressed? A. Yes, dressed.

Q. Didn't you hide him from the police at the time in your bedroom?

Mr. Kalisch: I object to that.

A. No.

Q. Did you ever go to the garage to see the automobile? A. Yes, sir.

Q. You were not the owner of it? A. No, sir.

20 Q. How long after the accident did you go to see the machine? A. It might be half an hour.

Q. What time in the afternoon? A. About half-past five.

Q. Did you go after that in the garage to see the automobile? A. No, sir.

Q. Never went near the place? A. Never.

Q. And is it not a fact that you passed in the automobile about two weeks after the accident in Mr. Gromer's place of business? A. No, sir.

30 Q. And you driving the car? A. No, sir.

Q. And is it not a fact about eight or ten days after the accident you drove that car and passed Schuster's place? A. No, sir.

Q. Mr. Garfagne, John Garfagne, testified in the last trial did he not? A. Yes, sir.

Q. Have you got him here today?

Mr. Kalisch: I object to that.

40 Q. When did you see Mr. Garfagne last? A. Well, I think I saw this week.

Anthony Andrews—Direct

Q. Where? A. On Jackson Street.

Q. At his house? A. No, sir.

Q. You met him there? A. On the corner.

Q. You know where he lives today? A. I think he lives the same place.

10

MARY GEORGE sworn in behalf of defendants:

Direct-examination by Mr. Matthews:

Q. You are the wife of Mr. Joseph George? A. Yes, sir.

Q. And the mother of Tony? A. Yes, sir.

Q. Did you on the day after the funeral of the Gromer boy which is testified to as the 31st of May, did you go to Mr. Gromer's house with your husband? A. No. 20

Q. Have you ever been in Mr. Gromer's house?

A. No, I don't know where he lives.

Q. Do you know Mrs. Gromer? A. I know Mrs. Gromer. I don't know where she lives.

Q. Did you ever have any conversation with her on that day the day after the funeral, which would make it the 1st of June? A. No.

Q. Did you ever have any conversation with her since the day her boy was killed? A. No. 30

Defendants rest.

ANTHONY ANDREWS, re-called in rebuttal in behalf of plaintiff:

Direct-examination by Mr. Greenfield:

Q. Anthony, at the time of the accident or shortly previous to the accident did you have a large 40

Anthony Andrews—Cross

ball, what do you call that, rugby ball? A. No, sir.

Q. Did anybody in your crowd of boys have any such ball with a red, white and blue covering? A. No, sir.

10 Q. You are sure of that? A. Yes, sir.

Q. What kind of a ball did you have? A. Home-made ball.

Q. What was it made of? A. Made out of cord and it had gum inside of it.

Q. Did it have a red, white and blue— A. No, sir, it had tape on it.

By the Court: Q. How big was it? A. Regular size.

Q. About the size of a baseball? A. Yes, sir.

20 By Mr. Greenfield: Q. Was that ball thrown in the machine? A. No, sir. I had it in my pocket.

Q. Did you have a bat there? A. Yes, sir.

CROSS-EXAMINATION by Mr. Kalisch:

Q. How do you know there wasn't another ball there? A. Because nobody else had a ball I think, only myself.

Plaintiff rests.

30

Mr. Kalisch: I make a motion in favor of Joseph George on the ground there is no evidence whatever to connect Joseph George with this accident. As I said in my motion for a nonsuit the relationship of master and servant must be established in order to hold Joseph George in this case. The mere fact that Tony George was his son could not stand and I ask for a direction in favor of Jo-

40 seph George.

Charge

The Court: I think it is a matter to go before the jury.

Counsel for defendants prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. Kalisch: And also on the ground of contributory negligence on the part of the boy. 10

The Court: That motion is refused.

Counsel for defendants prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

 THIRD DAY

Wednesday, September 27, 1916. 20

Met pursuant to adjournment.

Present, counsel as before stated.

Counsel sum up.

The Court charges the jury as follows:

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Charge

CUTLER, J.:

Gentlemen of the Jury. The seventh section of an act found on page 1907 of the compiled statutes provides as follows:

“That whenever the death of a person shall be caused by wrongful acts, neglect, or default, and the acts, neglect, or default is such as would, if 40

Charge

10 death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who, or the corporation which, would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony."

The eighth section of the same act was amended by Chapter 287 of the Laws of 1913, and reads as follows:

20 "Every such action shall be brought by and in the names of their personal representatives of such deceased person, and the amount recovered in every such action shall be for the exclusive benefit of the widow, surviving husband, and next of kin of such deceased person, and shall be distributed to such widow, surviving husband, and next of kin, their proportion provided by law in relation to the distribution of personal property left by persons dying intestate, and in every such action, the jury may give such damages as they shall deem fair and just with reference to the pecuniary injuries resulting from such death to the wife, surviving husband, and next of kin of such deceased person; provided, that where such deceased person has left or shall leave him or her surviving a widow or husband but no children or descendant of any children and no parents, the widow or surviving husband, as the case may be, shall be entitled to the whole of the damages which she or he shall sustain, and which shall be hereinafter recovered in any such action, and the same shall be paid to her or to him; and provided,

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Charge

further, that every action shall be commenced or sued within two years after the death of such deceased person and not after."

It is alleged by the plaintiff that Samuel Gromer, a lad in his teens, the son of Julius Gromer, died on May 30, 1915, from the result of injuries received by coming in contact with an automobile owned by Joseph George and operated at the time the injury was received by Antonio George, the son of Joseph, and this action is brought by the administrator of Samuel Gromer, deceased, against the two Georges to recover damages he has sustained as the next of kin of the deceased by reason of the death of his son. 10

It is not contended, as I understand it, that the defendant, Joseph, was personally operating the car at the time of the accident or that he was in the car. The damages are asked at your hands against him because it is claimed that the operator of the car was acting as his agent, servant or employee at the time the boy was injured. It will be necessary for you, therefore, to consider in the first place whether the plaintiff has any cause of action against the operator of the car. 20

I do not understand it is disputed that Samuel Gromer received injuries on May 30, 1915, by coming in contact with an automobile operated by the defendant, Antonio George, from which he died the same day, but the fact that Samuel died from the injuries so received will not alone authorize you gentlemen to render a verdict against this defendant. Before you can find a verdict against the defendant, Antonio, you must be satisfied by a preponderance of the evidence that this defendant was guilty of negligence and that 40

Charge

his negligence was the proximate cause of the injury from which Samuel died. In order to ascertain whether any liability attached to this defendant you must consider all the evidence which has been offered on behalf of the plaintiff and on behalf of the defendants and then determine just how the boy received his injury on the day in question applying the rules of law I shall lay down governing this case, and then say whether the injuries so received by this boy were caused by the negligence of this defendant, Antonio.

The defendant was operating an automobile along New York avenue in Newark. It was a public thoroughfare and he had a right to drive this automobile along the street, but he had no right to do so in a reckless or careless manner. The law casts upon him certain duties and responsibilities while operating the car. It was his duty to exercise reasonable care to avoid injuring persons and vehicles using the avenue. It was his duty to keep his automobile under control at all times, to operate it at such a rate of speed and in such a manner as a reasonably prudent man would do operating an automobile of like character along this avenue under like circumstances and it is for you to say whether he violated on this occasion the duty that the law casts upon him.

In 1915 the legislature of this state included in Chapter 156 of the Laws of that year the following provision:

“In places where the houses are on the average not less than 100 feet apart pedestrians shall have the right of way over vehicles at any street crossing. Any person crossing a street at any

Charge

place other than a crosswalk shall do so at his own risk. Nothing in this regulation, however, shall relieve the drivers of vehicles from being constantly vigilant and exercising all reasonable care to avoiding injuring persons or property."

This section, as you will see, did not exempt Antonio from exercising all reasonable care or relieving him from the duty of operating his automobile at such a rate of speed that it was under his control. 10

If you find this defendant was not negligent and that he operated his car as a reasonably prudent man would have done under like circumstances you should find a verdict for the defendant, for, as I have said, unless this defendant was negligent and the boy's injuries were the result of his negligence the plaintiff cannot recover. If however, you find that this defendant was negligent you will next consider whether the deceased contributed to the accident by his own negligence. In other words, was he guilty of what the law terms, "contributory negligence." 20

The plaintiff was bound to prove by a preponderance of the testimony offered in this case that the defendant, Antonio, was negligent and the defendant is now bound to establish by a preponderance of the evidence that the deceased was guilty of contributory negligence. The deceased was a boy about fourteen years of age. You are to determine the exact age, and I understand there may be some question as to the exact age at the time he was killed. There was some testimony that he was thirteen and some that he was between fourteen and fifteen if I recollect it right but you are to be the sole judges of all the evidence in this case. 30 40

Charge

The law does not expect from a child the same degree of care and caution as it does from adults. The boy was required to exercise only that degree of care and caution which persons of like age, capacity and experience could reasonably be expected to naturally and ordinarily use in the same situation and under like circumstances, and in this case, even if you find the defendant, Antonio, who operated the car, was guilty of negligence, yet if you believe from the evidence that this boy failed to exercise that degree of care and caution which persons of his age, capacity and experience may reasonably be expected to use in the same situation and under like circumstances and but for the failure on his part to use such care and caution the injury to himself would not have occurred, the deceased was guilty of contributory negligence, and in that case the law is that the plaintiff cannot recover against either of the defendants.

If you find the deceased was not guilty of contributory negligence in the manner I have mentioned and that the accident was caused by the negligence of the defendant who operated the automobile you should go a step further and determine the amount the plaintiff should recover.

You will have noticed that the act under which this action is brought limits the recovery to the pecuniary damages resulting from the death to the next of kin. In this case, the boy being a minor, the father would have been entitled to his services had he lived until he was twenty-one years of age, and if the plaintiff is entitled to any verdict the damages to be awarded would be such a sum in money as would compensate the father

Charge

for reasonable expectation of pecuniary benefit from the deceased during the period of his minority and thereafter when he would become emancipated by being of full age, such pecuniary benefit as the father, as the next of kin, might reasonably be expected to have received, if any, from the deceased. 10

The deceased was a small boy, less than fifteen years of age. You should take into consideration the possibility that the boy might not live to an age when he would become a wage earner to any extent, the probability that the boy would be sent to school during part of the time of his minority and during which time he might be an expense to his father rather than an assistance. You are not restricted to consider only what might be received by the father during the boy's minority. You may also consider the probability of the boy, as the next of kin, contributing to the father's support and being of assistance after he became of age, and you should also consider the fact that the evidence shows that the boy was at the time of his death helping his father in his store. You are to consider all the probabilities and possibilities and then determine what sum would compensate the father as the next of kin for the reasonable expectation of pecuniary benefits which would have resulted by a continuation of the life of the deceased. 20 30

The amount the plaintiff will be entitled to recover, if entitled to recover anything, is a sum which will represent the present value of the pecuniary loss after considering all the elements and probabilities which may enter into it.

If you find there should be a verdict against 40

Charge

Antonio George, you will next consider whether there can be any recovery against the defendant, Joseph. He will not be liable simply because he owned the automobile at the time of the injury to the deceased, if you find that he did own it at that time. The plaintiff must go farther and establish by a preponderance of the evidence that the defendant, Antonio, when he operated this car was the servant, agent or employee of the defendant, Joseph, and that he was operating it at the time the boy received his injury as such servant, agent or employee of Joseph. If the car did not belong to this defendant, Joseph, or even if it belonged to him and was not being operated by Antonio as his servant, agent or employee at the time the boy was injured there can be no recovery against Joseph, for the only ground on which Joseph can be held is that the car was being operated by his servant, agent or employee and that, therefore, he became responsible for the acts of such servant, agent or employee and the negligence of such servant in operating that car. It makes no difference, however, whether Antonio was receiving wages or not. The question is, was he operating the car for his father and on his father's business as the servant, agent or employee of his father at the time the boy was injured. The fact that the operator of the car was the son of Joseph would not make Joseph liable unless the son was his servant, agent or employee at the time the boy received the injury, but even if the car was operated by the servant, agent or employee of Joseph there can be no recovery against Joseph if the injured boy was crossing the street at the

Charge

time the injury was received at any other place than a street crossing, for the act of 1915 from which I have read provides that any person crossing a street at any place other than the crosswalk shall do so at his own risk.

Justice Swayze, speaking for the Supreme Court, in the case of *Schreiner vs. Grinnell*, reported in 97 Atlantic, on page 781, speaking of the liability of the owner of a car says: 10

“That as against owners of vehicles not themselves driving, the pedestrian who crosses a street at a place other than a crosswalk is barred from maintaining an action for damages caused by collision.”

So, if this boy was crossing this street at any other place except a crosswalk there can be no recovery against Joseph even if Antonio was acting as the agent at the time. In other words, the operator would be liable for the boy's injury and the owner would not be liable if the accident occurred at any other place except at a crosswalk even if caused by the negligence of the operator. If the boy was injured at a crosswalk and the injury was caused by the negligence of the operator who was acting as the servant, agent or employee of the defendant, Joseph, and the deceased was not guilty of contributory negligence there can be recovery against both the defendants for the pecuniary loss by the father sustained by reason of this accident, but you must compute it in the manner which I have mentioned. 20 30

Now, gentlemen, take the case. You are to decide it according to the evidence produced before you on this trial. You should pay no more atten- 40

Charge

tion to any evidence I may have called to your attention than to the evidence I have not, and you are the judges of what has been testified to and not what the Court may have considered has been testified to. In other words, you are the
10 sole judges of the evidence. If, after applying the rules of law I have laid down to the facts established by this evidence, you find the injuries which resulted in the death of Samuel Gromer were not caused by the negligence of the defendant, Antonio, or, if you find the deceased was guilty of contributory negligence your verdict should be for the defendants.

If you find the injury to the deceased was caused by the negligence of the defendant, Antonio, and that the deceased was not guilty of
20 contributory negligence your verdict should be for the plaintiff and against the defendant, Antonio.

If you find the defendant, Antonio, liable for damages; that is, guilty of negligence and the boy not guilty of contributory negligence, then if you find the accident occurred while the deceased was attempting to cross the street and that it was not a crosswalk, there can be no verdict against the
30 defendant, Joseph, even if you believe the defendant, Antonio, was acting negligently at the time of the accident.

If you find the accident did occur at the crosswalk and the defendant, Antonio, was not the servant, agent or employee of the defendant, Joseph, at the time the injury was received the defendant, Joseph, would not be liable for damages.

40 If you find the boy was injured by reason of

Requests to Charge

the negligence of the defendant, Antonio, and was not guilty of contributory negligence, that Antonio was operating the automobile at the time as the servant, agent or employee of the defendant, Joseph, that the injured boy was not crossing the street otherwise than at a crosswalk when injured, the defendant, Joseph, would be liable for the acts of his servant done in the course of his employment and you can find a judgment against both of them. 10

The act of 1915 only refers to persons crossing a street and would not apply to a person who was standing on the street and who was not endeavoring to cross the street at the time he was injured. If Samuel had been standing on the street and was in the act of passing over the portion of the street between himself and the sidewalk when he was injured the defendant, Joseph, would not be liable even if he owned the car or Antonio was operating the car as his servant, agent or employee. 20

I have been requested to charge you certain principles of law by both the defendant and the plaintiff and I shall dispose of them at this time.

"The burden of proof is upon the plaintiff to prove that the defendant, Antonio George, was negligent in driving his automobile on New York Avenue at the time of the accident." 30

I so charge you.

"2. If the jury find that the deceased, Samuel Gromer, contributed in any degree to the happening of the accident, even though they find that Antonio George was negligent, in that case there must be a verdict for the defendant."

I so charge you. 40

Requests to Charge

10 “3. The burden of proof is upon the plaintiff to show, in order to hold the defendant, Joseph George, responsible for this accident, that at the time of the accident he was not only the owner of the automobile, but that he had sent his son, Antonio George, on an errand for him, Joseph George, and that at the time of the accident, Antonio George was acting under the orders of his father, Joseph George.”

I so charge you.

20 “4. The mere relation of parent and child does not in itself establish that the son Antonio George was on the business of the father, and in order for the jury to hold the defendant, Joseph George, they must find that at the time of the accident the son Antonio George was operating the automobile for the benefit of his father, Joseph George.”

I so charge you.

“5. If the jury believe that the father told the son, Antonio George, to get his friends, nevertheless, if at the time of the accident the son, Antonio George, was driving the automobile for his own benefit, then in that case there must be a verdict in favor of the defendant, Joseph George.”

I so charge you.

30 I refuse to charge, except as I have charged, requests 1, 2, 3, 4, 5, 6, 7, and 8 for the plaintiff, although I think the general principles have been charged except so far as the liability.

40 If, from this evidence, under the law I have given you, you consider the evidence warrants it you can find a verdict for the defendants or you can find a verdict in favor of the plaintiffs against both defendants or you can find a verdict in favor of the plaintiff against the defendant, Antonio

Requests to Charge

and in favor of the defendant, Joseph, but you cannot find a verdict in favor of the plaintiff and against the defendant, Joseph George, and in favor of the defendant, Antonio, for unless the defendant, Antonio, was negligent there can be no recovery against either of these defendants. If you find for the plaintiff there can be no larger verdict if you find against both defendants than if you find against only one of the defendants for there has been but one injury complained of and that is the death of young Samuel Gromer. 10

Consider the evidence carefully and then render such verdict as you find the evidence will warrant.

The jury retires.

20

Mr. Greenfield: I desire to take an exception to your Honor's charge wherein you charged that the legislative act of 1915, referring to the act read from the Grinnell case, applies to this case; my contention being the act did not go into effect until July 4, 1915, and this accident occurred on the 30th day of May, 1915, before the act took effect. I desire to except to that.

Exception noted as ground of appeal.

30

Mr. Greenfield: I also desire to except to your Honor's charge where your Honor said he might be an expense if he were sent to school. That is on the question of damages. I desire to except to whatever your Honor said on that subject.

Exception noted as ground of appeal.

Mr. Greenfield: I desire also to except to your Honor's charge where your Honor said he would not be liable simply because he owns a machine, and whatever your Honor said on that subject. 40

Requests to Charge

Exception noted as ground of appeal.

10 Mr. Greenfield: I also desire to except to your Honor's charge wherein your Honor said that the plaintiffs could not recover if the boy was crossing on the street other than the crosswalk at the time of the injury.

Exception noted as ground of appeal.

Mr. Greenfield: I also desire to except to that part of your Honor's charge wherein your Honor read from Justice Swayze's opinion on that particular point of the liability of the defendant, Joseph George. My contention is that the act does not apply to this accident.

Exception noted as ground of appeal.

20 Mr. Greenfield: I also desire to except to your Honor's charge wherein your Honor said that if he was standing on the street and then began to go across not at the crosswalk, the defendant, Joseph George, would not be liable.

Exception noted as ground of appeal.

Mr. Greenfield: I also desire to except to the refusal to charge each and every request of the plaintiff's requests to charge.

Exception noted as ground of appeal.

30 The Court: The Court has been informed you desire some instruction in reference to this case. I have sent for the counsel in the case and they are here.

The Foreman: Your Honor, we want to hear what you said regarding contributory negligence.

The Court: Speaking of contributory negligence, I said to you:

40 "If, however, you find that this defendant—speaking of the defendant, Antonio—was negligent, you will next consider whether the deceased

Requests to Charge

contributed to the accident by his own negligence. In other words, was he guilty of what the law terms contributory negligence?

“The plaintiff was bound to prove by the preponderance of the evidence that the defendant, Antonio, was guilty of negligence, and the defendant is now bound to establish by a preponderance of the evidence that the deceased was guilty of contributory negligence. 10

“The deceased was a boy about fourteen years of age. The law does not exact from a child the same degree of care and caution as it does from an adult. He is required to exercise only that degree of care and caution which persons of like age, capacity and experience could reasonably be expected to naturally and ordinarily use in the same situation under like circumstances, and in this case, if you find the defendant, Antonio, who operated the car, was guilty of contributory negligence, yet if you believe from the evidence that this boy failed to exercise that degree of care and caution which persons of his age, capacity and experience could reasonably be expected to use in the same situation and under like circumstances and but for the failure to use such care and caution the injury to him would not have occurred, the deceased was guilty of contributory negligence and in that case the law is the plaintiff cannot recover against either of the defendants.” 20 30

That is what I told you in reference to contributory negligence. What took place is entirely for you gentlemen to decide.

The jury again retires.

Requests to Charge

PLAINTIFF'S REQUESTS

10 1. That the boy, Samuel Gromer, had a right to be on the public street where he was at the time of the accident, and it was the duty of the defendant, Antonio George, who was operating the machine to have his automobile under such control that if he observed the danger, he could have stopped within a reasonably short distance. If he failed to do so he was negligent and the plaintiff is entitled to recover.

20 2. If the jury believes the plaintiff's witnesses Anthony Andres and Mrs. Julia Cichilli, that the said Samuel Gromer, was standing near the curb talking to another boy, he had a right to stand there and it was the duty of the defendant, Antonio George, who was managing and operating the machine, to have the machine under such control so that he could and should have stopped the car; and if he failed to do so he was negligent and the plaintiff is entitled to recover.

30 3. If the jury believes that the father, Joseph George, owned the machine on May 30, 1915, and that the son went on an errand for his father, first to go to the garage and have the machine fixed and then to go and get some friends over to his house, as was testified to by Nathan Gromer, Mrs. Gromer, the wife of the plaintiff, and Abe Schuester, the plaintiff's witness, then the father would be liable for the damages in addition to the man operating the machine, Antonio George. If it is found that the son was negligent in operating the said automobile on May 30, 1915, then the plaintiff is entitled to recover and there should be a verdict against both of the defendants, An-
40 tonio George and Joseph George.

Requests to Charge

4. It was the duty of Antonio George to have the machine under control and give the proper signals in the operating of the automobile to any person on the public street or highway so that in case of danger he could stop the machine within a reasonable time, and if he failed to do this, in this instance, when he saw the boys playing ball, and the deceased, Samuel Gromer, was on the public street near the curb, as was testified to by the plaintiff's witnesses, Anthony Andres and Mrs. Julia Cichilli, he had a right to be there and if the defendant operated the machine in such a careless and negligent manner and failed to observe it, and ran into the boy and killed him, and if the said Antonio George was on his way to perform a mission for his father, Joseph George, both of the defendants must respond in damages, and the jury should find a verdict in favor of the plaintiff against both of the defendants, Joseph George and Antonio George.

5. If the jury believes that the boy was standing on the street near the curb, it being a clear day, and if the said Antonio George would have exercised due care he must have and should have seen him, and if he did not see him and ran his machine at a high rate of speed in a careless and negligent manner, and if Antonio George was on a mission for his father, then both of the defendants Joseph George and Antonio George must respond in damages and the verdict should be in favor of the plaintiff and against both defendants.

6. The plaintiff requests the Court to charge the jury, specifically, also: That the real test in order to hold the father in this suit liable to respond to the plaintiff in damages, that an actual

Requests to Charge

10 contract should exist between the father and the son or that the son should have received pay for his services for operating the machine. If the son operated the machine for and at the request of the father to go to the garage for him and then go to get some friends on New York Avenue, and the son operated the machine in a careless and negligent manner which resulted in the injury and death of the boy, Samuel Gromer then the father, Joseph George and son, Antonio George are liable and there should be a verdict in favor of the plaintiff and against both of the defendants, Antonio George and Joseph George.

20 7. The plaintiff requests the Court to charge the jury, specifically, also: That the real test as to the third parties, strangers, who receive injury by using the highway, is whether the act is done by one for another, and it makes no difference whether it is with or without compensation. The knowledge of the person sought to be charged as master, with the acts of his servant may be either expressed or it may be implied, even though there was no request on the father's part for the son to act, but if he acquiesced in the use of the machine by the son on the day in question, then 30 the defendants, Joseph George, is liable as well as Antonio George, and if the jury believes the plaintiff's story and as testified to by the boy, Anthony Andres, was there playing ball, that Samuel Gromer was standing near the curb, he had a right to be there and if the said Antonio George operated the machine in a careless manner disregarding human life and ran the boy down, then the jury should find a verdict in favor of the plaintiff and against both defendants, Joseph George and 40 Antonio George.

Requests to Charge

8. The plaintiff requests the Court to charge the jury specifically, that if Abe Schueter spoke to Joseph George, and that Joseph George, said, that he sent his son, Antonio George to go to the garage to have the machine fixed and get some friends on New York Avenue, where the accident occurred, then the boy was in the service of his father, and the negligence of the son is the negligence of the father, and there should be a verdict in favor of the plaintiff and against both defendants, Joseph George and Antonio George. 10

DEFENDANT'S REQUESTS

1. The burden of proof is upon the plaintiff to prove that the defendant Antonio George was negligent in driving his automobile on New York Avenue at the time of the accident. 20

2. If the jury find that the deceased Samuel Gromer, contributed in any degree to the happening of the accident, even though they find that Antonio George was negligent, in that case there must be a verdict for the defendant.

3. The burden of proof is upon the plaintiff to show, in order to hold the defendant Joseph George responsible for this accident, that at the time of the accident he was not only the owner of the automobile, but that he had sent his son, Antonio George, on an errand for him Joseph George, and that at the time of the accident Antonio George was acting under the orders of his father, Joseph George. 30

4. The mere relation of parent and child does not in itself establish that the son, Antonio George was on the business of the father, they 40

Grounds of Appeal

must find that at the time of the accident the son, Antonio George, was operating the automobile for the benefit of his father, Joseph George.

10 5. If the jury believe that the father told the son, Antonio George, to get his friends, nevertheless, if at the time of the accident the son, Antonio George, was driving the automobile for his own benefit, then in that case there must be a verdict against the defendant Joseph George.

Grounds of Appeal

20 NEW JERSEY COURT OF ERRORS AND APPEALS

JULIUS GROMER, Administrator
of the Estate of Samuel
Gromer, deceased,
Plaintiff-Appellant,

vs.

30 JOSEPH GEORGE and ANTONIO
GEORGE,
Defendants-Respondents.

On Appeal.

*To Kalisch & Kalisch, Esquires, Attorneys for
the Defendants-Respondents:*

PLEASE TAKE NOTICE, that the following are the grounds of appeal which the plaintiff hereby assigns and upon which he will rely at the hearing:

1. Because the Court admitted the following il-
40 legal and hearsay evidence over the plaintiff's
objection.

Grounds of Appeal

TESTIMONY OF WITNESS, WM. A. ROBINSON

Q. Did he, Antonio George, have a conversation with you sometime previous to May, 1915, with regard to the automobile? A. Yes.

Q. What was the conversation? 10

The plaintiff objects. The plaintiff was not there. The defendant cannot go to work and manufacture evidence not in the presence of the plaintiff.

By the Court: What he said prior, to the time, if there was any question about it, it would go to show whether he treated it as his own. I will allow the question.

Counsel for plaintiff objects to this ruling of the Court. 20

2. Objection noted as ground of appeal.

Q. (Question read). A. I will have to explain that somewhat.

Q. No, just tell the conversation? A. He told me not to let anybody take that car out, only himself or somebody that had a note as he had bought the car and it belonged to him.

Q. Who told you that? A. Tony George.

Q. This boy here? A. Yes. 30

By Mr. Greenfield: That is subject to my exception.

The Court: Yes, you have your exception.

3. Because the Court erred in charging the jury by citing from the case of *Schreiner vs. Grinnell*:

"That as against owners of vehicles not themselves driving, the pedestrian who crosses a street at a place other than a 40

Grounds of Appeal

crosswalk is barred from maintaining an action for damages caused by collision."

If this boy was crossing the street at any other place except a crosswalk there can be no recovery against Joseph even if Antonio was acting
10 as the agent at the time.

In other words, the Court erred in charging the jury as follows:

In other words, the operator would be liable for the boy's injury and the owner would not be liable if the accident occurred at any other place except at a crosswalk even if caused by the negligence of the operator.

4. Because the Court refused to charge the jury with the first request, as follows:

20 That the boy, Samuel Gromer, had a right to be on the public street where he was at the time of the accident, and it was the duty of the defendant, Antonio George, who was operating the machine to have his automobile under such control, that if he observed the danger, he could have stopped within a reasonable short distance. If he failed to do so, he was negligent, and the plaintiff is entitled to recover.

30 5. Because the Court refused to charge the jury with the third request, as follows:

If the jury believes that the father, Joseph George, owned the machine, on May 30, 1915, and that the son went on an errand for his father, first to go to the garage and have the machine fixed and then to go and get some friends over to his house, as was testified to by Nathan Gromer, Mrs. Gromer, the wife of the plaintiff, and Abe Schuester,
40 the plaintiff's witness, then the father would be

Grounds of Appeal

liable for the damages in addition to the man operating the machine, Antonio George. If it is found that the son was negligent in operating the said automobile on May 30, 1915, then the plaintiff is entitled to recover and there should be a verdict against both of the defendants, Antonio George and Joseph George. 10

6. Because the Court refused to charge the jury with the fourth request of the plaintiff, as follows:

It was the duty of Antonio George to have the machine under control and give the proper signals in the operating of the automobile to any person on the public street or highway, so that in case of danger he could stop the machine within a reasonable time, and if he failed to do this, in this instance, when he saw the boys playing ball, and the deceased, Samuel Gromer, was on the public street near the curb, as was testified to by the plaintiff's witnesses, Anthony Andres and Mrs. Julia Cichilli, he had a right to be there and if the defendant operated the machine in such a careless and negligent manner and failed to observe it, and ran into the boy and killed him, and if the said Antonio George was on his way to perform a mission for his father, Joseph George, both of the defendants must respond in damages, and the jury should find a verdict in favor of the plaintiff against both of the defendants, Joseph George and Antonio George. 20 30

7. Because the Court refused to charge the jury with the sixth request of the plaintiff:

The plaintiff requests the Court to charge the jury specifically, that it is not necessary, in order 40

Grounds of Appeal

to hold the father in this suit liable to respond to the plaintiff in damages, that an actual contract should exist between the father and the son or that the son should have received pay for his services for operating the machine. If the son operated the machine for and at the request of the father, to go to the garage for him and then go to get some friends on New York Avenue, and the son operated the machine in a careless and negligent manner which resulted in the injury and death of the boy, Samuel Gromer, then the father, Joseph George and son, Antonio George are liable and there should be a verdict in favor of the plaintiff and against both of the defendants, Antonio George and Joseph George.

20 8. Because the Court erred in refusing to charge the jury with the plaintiff's seventh request:

The plaintiff requests the Court to charge the jury, specifically, also: That the real test as to the third parties, strangers, who received injury by using the highway, is whether the act is done by one for another, and it makes no difference whether it is with or without compensation. The knowledge of the person sought to be charged as master, with the acts of his servant may be either expressed or it may be implied, even, though there was no request on the father's part for the son to act, but if he acquiesced in the use of the machine by the son on the day in question, then the defendants, Joseph George is liable as well as Antonio George, and if the jury believes the plaintiff's story and as testified to by the boy Anthony Andres, was there playing ball, that Samuel Gro-

40

Grounds of Appeal

mer was standing near the curb, he had a right to be there and if the said Antonio George operated the machine in a careless manner disregarding human life and ran the boy down, then the jury should find a verdict in favor of the plaintiff and against both defendants, Joseph George and Antonio George. 10

9. Because the Court erred in refusing to charge the jury with the plaintiff's eighth request:

The plaintiff requests the Court to charge the jury specifically, that if Abe Schuster spoke to Joseph George, and that Joseph George said, that he sent his son, Antonio George to go to the garage to have the machine fixed and get some friends on New York Avenue, 20 where the accident occurred, then the boy was in the service of his father, and the negligence of the son is the negligence of the father and there should be a verdict in favor of the plaintiff and against both defendants, Joseph George and Antonio George.

WM. GREENFIELD,
Atty. of Plaintiff-Appellant.

**Affidavit of Service of Foregoing
Grounds of Appeal**

NEW JERSEY COURT OF ERRORS AND
APPEALS

10	JULIUS GROMER, Administrator of the Estate of Samuel Gromer, deceased, Plaintiff-Appellant, vs. JOSEPH GEORGE and ANTONIO GEORGE, Defendants-Respondents.	}	On Appeal.
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20 State of New Jersey, }
 County of Essex. } ss:

Irving Mink, being duly sworn according to law, on his oath deposes and says, that he is employed as clerk in the law offices of William Greenfield, Esquire, 800 Broad Street, Newark, New Jersey, attorney for the plaintiff-appellant, in the above entitled cause of action; that on the 19th day of December, 1916, deponent at the direction of the

30 said William Greenfield, served the Grounds of Appeal in the above entitled cause of action upon Samuel Kalisch, Esquire, by leaving a copy of the same with him at his office located in the Kinney Building, in the City of Newark, County of Essex and State of New Jersey; that on the same day deponent served Grounds of Appeal upon the defendants, Joseph George and Antonio George, by

40 delivering a copy thereof to the said Joseph

Notice of Application

George personally and leaving a copy with the said Joseph George for the said Antonio George, at his place of residence No. 30 Ferry Street, in the City of Newark, County of Essex and State of New Jersey, and explaining to the said Joseph George the contents thereof.

IRVING MINK.

10

Sworn and subscribed to before me on this 19th day of December, A. D., 1916.

Mortimer Lowy,
Master in Chancery,
of New Jersey.

Notice of Application

NEW JERSEY COURT OF ERRORS AND 20
APPEALS

JULIUS GROMER, Administrator
of the Estate of Samuel
Gromer, deceased,
Plaintiff-Appellant,

vs.

JOSEPH GEORGE and ANTONIO
GEORGE,
Defendants-Respondents.

Action at Law.
On Appeal.

30

*To John Matthews, Esquire, Attorney for the
above Defendants-Respondents:*

SIR:

PLEASE TAKE NOTICE, that I shall apply on Saturday, December 23, 1916, at 10 o'clock in the

40

Affidavit of William Greenfield

forenoon, or as soon thereafter as counsel can be heard thereon, to his Honor, William S. Gummere, one of the judges of the Court of Errors and Appeals, at the Essex County Court House, in the City of Newark, County of Essex and State of New Jersey, for an order extending the time in which to assign reasons for the appeal taken by the above named plaintiff-appellant, from the Essex County Circuit Court to the Court of Errors and Appeals.

WM. GREENFIELD,
Attorney for Plaintiff-Appellant.

20 **Affidavit of William Greenfield**

NEW JERSEY COURT OF ERRORS AND APPEALS

JULIUS GROMER, Administrator
of the Estate of Samuel
Gromer, deceased,
Plaintiff-Appellant,

30

vs.

JOSEPH GEORGE and ANTONIO
GEORGE,
Defendants-Respondents.

On Appeal.

State of New Jersey, }
County of Essex. } ss:

40 William Greenfield, of full age, being duly sworn according to law, on his oath deposes and says,

Affidavit of William Greenfield

that he is the attorney and counsel for the above named plaintiff-appellant; that there has been a verdict rendered on the 27th day of Sept., 1916, in the Essex County Circuit Court in favor of the defendants-respondents; that Notice of Appeal has been served within due time upon the defendants-respondents; that deponent has immediately ordered a transcript of the record in the above cause, and deponent has repeatedly requested the stenographer for same, and has received the reply, that he was very busy in Court and would get the same out as soon as possible. 10

Deponent further says, that he has received the transcript on or about the 24th day of November, 1916, and that deponent was then actually engaged in Court, preparing and reading voluminous transcripts for briefs to be used in Court; that deponent has prepared the assigned reasons shortly after receiving the transcript for the appeal in the above cause, and has attempted to serve the same and in fact sent the reasons to Samuel Kalisch, Jr., of the firm of Kalisch & Kalisch, who then appeared as attorney of record for the defendants-respondents; that the said Samuel Kalisch, returned the said reasons and declared that he is no longer attorney for the said defendants-respondents, as they have not paid his fees. 20 30

That thereupon deponent immediately caused the said reasons to be served upon the said defendants-respondents, at their place of residence, 30 Ferry Street, Newark, New Jersey, on the 19th day of December, 1916; and the said John A. Matthews, not being the attorney of record for the said defendants-respondents, did not acknowledge service of the said reasons. 40

Order Extending Time

That deponent has ordered the printing, and will be ready within the next few days to deliver the State of the Case; that the said case could not possibly be argued during the November, 1916 Term, by reason of the fact that the case was
 10 tried late and deponent could not obtain a transcript until the 24th day of November, 1916.

WM. GREENFIELD.

Sworn and subscribed to before me on this
 23d day of December, A. D., 1916.

Mortimer Lowy,
 Master in Chancery,
 of New Jersey.

20

Order Extending TimeNEW JERSEY COURT OF ERRORS AND
APPEALS

JULIUS GROMER, Administrator
 of the Estate of Samuel
 Gromer, deceased,
 Plaintiff-Appellant,

30

vs.

JOSEPH GEORGE and ANTONIO
 GEORGE,
 Defendants-Respondents.

} On Appeal.

Application having been made by William
 Greenfield, attorney for the above plaintiff-appel-
 40 lant, for an extension of time in which to assign

Order Extending Time

and serve reasons on the defendants-respondents, for appeal from the Essex County Circuit Court to the Court of Errors and Appeals, and it appearing to the Court that due notice of this motion was given to John A. Matthews, attorney for the above defendants-respondents;

And the Court having heard read the affidavit of William Greenfield and the argument of the respective counsel and after due and mature consideration, it appears that good and sufficient reasons having been shown for a further extension of time to be granted to the plaintiff-appellant;

10

And it further appearing to the Court by the affidavit of the attorney for the plaintiff-appellant, that he has assigned reasons for the appeal and caused the same to be served upon the defendants-respondents in the above cause;

20

It is, therefore, on this Twenty-third day of December, 1916;

ORDERED, that the said reasons assigned and served upon the said defendants shall be considered as having been served as of due time.

Let the above rule be entered in the minutes.

SAMUEL KALISCH,

J. S. C.



NEW JERSEY COURT OF ERRORS AND
APPEALS

JULIUS GROMER, Administrator
of the Estate of Samuel Gromer,
deceased,

Plaintiff-Appellant,

vs.

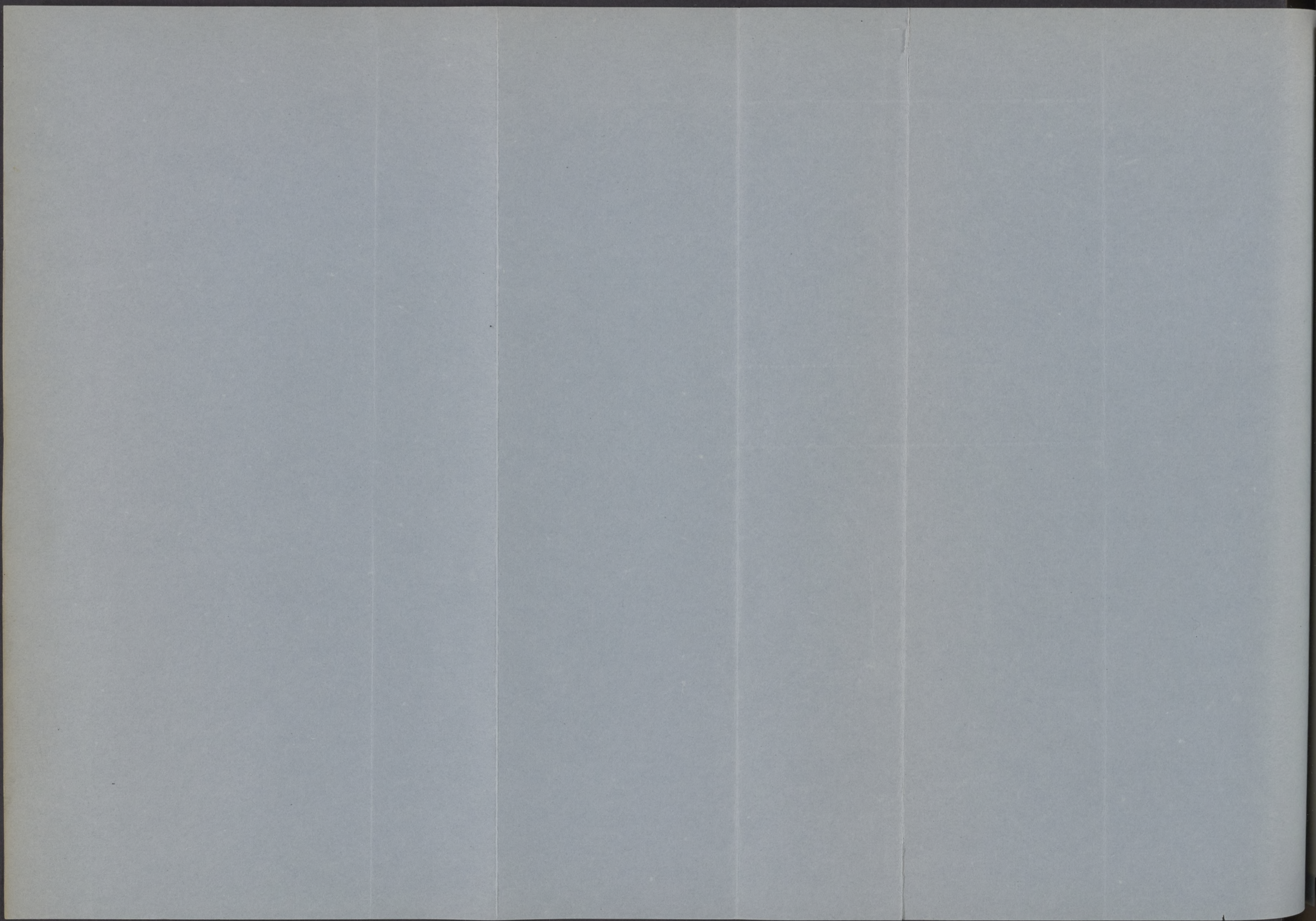
JOSEPH GEORGE and ANTONIO GEORGE,

Defendants-Appellees.

On Appeal from the Essex County
Circuit Court.

BRIEF FOR DEFENDANTS-APPELLEES.

LAW OFFICES OF
JOHN A. MATTHEWS
ESSEX BUILDING
31 CLINTON ST., NEWARK, N. J.

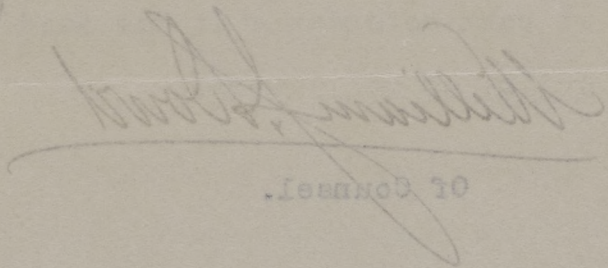


error, are not harmful, and indeed, equivalently, are not error.

The defendants respectfully submit that the judgment rendered in their favor below be sustained.

Respectfully submitted,

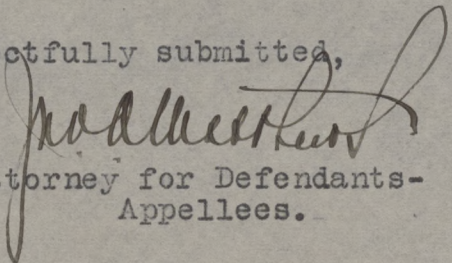
Attorney for Defendants-
Appellees.

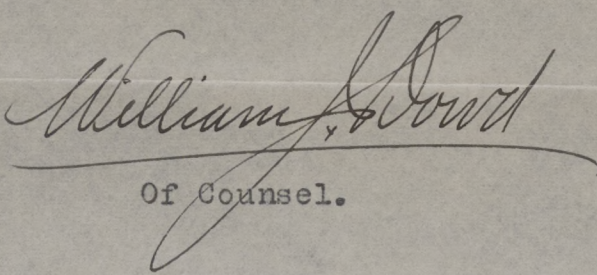

of Counsel.

error, are not harmful, and indeed, equivalently, are not error.

The defendants respectfully submit that the judgment rendered in their favor below be sustained.

Respectfully submitted,


Attorney for Defendants-
Appellees.


Of Counsel.

Point Three of Plaintiff's brief objects to the learned trial Court invoking the case of *Bohmer v. Grinnell*, 97 Atl. Rep., page 781.

The contention of the defendant in reply to this point is that even admitting this to be error, it was not harmful error or prejudicial to Plaintiff's interests for it had to do entirely with the liability of JOSEPH GEORGE as owner of the car and since the jury found in favor of both defendants it has said that ANTONIO GEORGE was not guilty of negligence.

SUMMARY.

The defendant contends that since the jury found in favor of both defendants that the question of ownership of the car is not material for objections as to error. A verdict could not have been found against JOSEPH GEORGE alone, the it could have been found against ANTONIO GEORGE alone. In finding for both defendants the jury has held that ANTONIO was blameless, and therefore as all of the points of error alleged by the plaintiff go to the matter of the ownership of the car by JOSEPH and his liability resulting from such ownership, such error even admitted as error, could not have been harmful to the interests of the plaintiff. The jury has said equivocally that ANTONIO GEORGE was not guilty of such negligence as would warrant the plaintiff to recover. Since there is no error alleged by the plaintiff as to questions affecting the liability of ANTONIO GEORGE, I respectfully submit that the points of error alleged in Plaintiff's brief even tho admitted as

POINT THREE.

Point Three of plaintiff's brief objects to the learned trial Courts invoking the case of Schreiner v. Grinnell, 97 Atl. Rep., page 781.

The contention of the defendant in reply to this point is that even admitting this to be error, it was not harmful error or prejudicial to plaintiff's interests for it had to do entirely with the liability of JOSEPH GEORGE as owner of the car and since the jury found in favor of both defendants it has said that ANTONIO GEORGE was not guilty of negligence.

SUMMARY.

The defendant contends that since the jury found in favor of both defendants that the question of ownership of the car is not material for objections as to error. A verdict could not have been found against JOSEPH GEORGE alone, tho it could have been found against ANTONIO GEORGE alone. In finding for both defendants the jury has held that ANTONIO was blameless, and therefore as all of the points of error alleged by the plaintiff go to the matter of the ownership of the car by JOSEPH and his liability resulting from such ownership, such error even admitted as error, could not have been harmful to the interests of the plaintiff. The jury has said equivalently that ANTONIO GEORGE was not guilty of such negligence as would warrant the plaintiff to recover. Since there is no error alleged by the plaintiff as to questions affecting the liability of ANTONIO GEORGE, I respectfully submit that the points of error alleged in plaintiff's brief even tho admitted as

POINT ONE

Point One of plaintiff's brief objects to the admission of the evidence of William A. Robinson, appearing as a hearsay, as outlined on pages 2, 3, 4, 5, 6 and 7 of plaintiff's brief.

The contention of the defendant in reply to this point is that, granting that the evidence is hearsay, its admission was not harmful error or prejudicial to plaintiff, for the jury by bringing in a verdict for both defendants decided that ANTONIO GEORGE was not guilty of negligence, and the ownership of the car can therefore be totally disregarded. This Robinson testimony objected to deals entirely with the ownership of the car.

POINT TWO

Point Two of plaintiff's brief objects to that part of the learned Court's charge to the jury recited on page 148 of the printed state of the case, and set forth on pages 7 and 8 of plaintiff's brief.

The contention of the defendant in reply to this point is that granting that the learned Court erred in its statement as recited on pages 7 and 8 of plaintiff's brief, nevertheless, such error was neither harmful nor prejudicial to the plaintiff's interest, for the jury by bringing in a verdict for both defendants decided that ANTONIO GEORGE was not guilty of negligence, and the fact is patent that according to the facts of the case, a verdict could not have been rendered against JOSEPH GEORGE alone. The jury in finding for both defendants have virtually negatived any objections of error in so far as they attacked JOSEPH GEORGE.

POINT ONE.

Point One of plaintiff's brief objects to the admission of the evidence of William A. Robinson, branding it as hearsay, as outlined on pages 2, 3, 4, 5, 6 and 7 of plaintiff's brief.

The contention of the defendant in reply to this point is that, granting that the evidence is hearsay, its admission was not harmful error or prejudicial to plaintiff, for the jury by bringing in a verdict for both defendants decided that ANTONIO GEORGE was not guilty of negligence, and the ownership of the car can therefore be totally disregarded. This Robinson testimony objected to deals entirely with the ownership of the car.

POINT TWO.

Point Two of plaintiff's brief objects to that part of the learned Courts charge to the jury recited on page 148 of the printed state of the case, and set forth on pages 7 and 8 of plaintiff's brief.

The contention of the defendant in reply to this point is that granting that the learned Court erred in its statement as recited on pages 7 and 8 of plaintiff's brief, nevertheless, such error was neither harmful nor prejudicial to the plaintiff's interest, for the jury by bringing in a verdict for both defendants decided that ANTONIO GEORGE was not guilty of negligence, and the fact is patent that according to the facts of the case, a verdict could not have been rendered against JOSEPH GEORGE alone. The jury in finding for both defendants have virtually negated any objections of error in so far as they affected JOSEPH GEORGE.

NEW JERSEY COURT OF ERRORS
AND APPEALS

JULIUS GROMER, Administrator
of the Estate of Samuel
Gromer, deceased,
Plaintiff-Appellant,

vs.

JOSEPH GEORGE and ANTONIO
GEORGE,
Defendants-Appellees.

Appeal from the
Essex County
Circuit Court.

CUTLER, J., sitting.

BRIEF FOR DEFENDANTS-APPELLEES.

BRIEF STATEMENT OF FACTS.

The facts in this case disclose that one
Samuel Gromer was killed by being struck by an automobile
driven by the defendant ANTONIO GEORGE. This action was
brought by JULIUS GROMER father of SAMUEL GROMER, deceased,
and Administrator of his Estate against ANTONIO GEORGE and
JOSEPH GEORGE the father of ANTONIO, against ANTONIO as
driver of the car, and against JOSEPH as owner of the car
and master of the servant or agent ANTONIO.

The jury rendered a verdict in favor of both
defendants.
The plaintiff appeals in his brief alleging
three points of error.

THE BOARD OF DIRECTORS
OF THE COMPANY

RESOLVED THAT THE
SAYED ACCOUNTS

BE AND BE KEPT
IN THE OFFICE

OF THE COMPANY

AND BE AVAILABLE

FOR THE INSPECTION
OF THE MEMBERS

NEW JERSEY COURT OF ERRORS
AND APPEALS

JULIUS GROMER, Administrator)
of The Estate of Samuel)
Gromer, Deceased,)
Plaintiff-Appellant,)
Plaintiff-Appellant,)
vs.)
vs.)
JOSEPH GEORGE and ANTONIO)
GEORGE,)
Defendants-Appellees.)

) On Appeal from the
) Essex County Circuit
) Court.

B R I E F F O R D E F E N D A N T S - A P P E L L E E S

New Jersey Court of Errors and Appeals

JULIUS GROMER, Administrator
of the Estate of Samuel
Gromer, deceased,

Plaintiff-Appellant,

vs.

JOSEPH GEORGE and ANTONIO
GEORGE,

Defendants-Appellees.

*Appeal from the
Essex County
Circuit Court.*

Cutler, J., sitting.

BRIEF FOR PLAINTIFF-APPELLANT.

BRIEF STATEMENT OF FACTS.

On May 30, 1915, Samuel Gromer, a boy fourteen years of age, who was attending in his last class of Public School, was standing on a public street, near the curb, talking to another boy, Anthony Andrews (as testified to by the said Anthony Andrews at bottom of page 47, printed state of the case), and while standing there, he was struck by the automobile operated by one of the defendants, Antonio George, with such force, that he died within a short time after he was injured. Suit was instituted by the father, Julius Gromer, as Administrator of his

Estate, to recover damages against Joseph George, as owner of the automobile, and Antonio George, as driver, the plaintiff claiming that Joseph George was the owner of the automobile, and that Antonio George was operating the same at the time of the accident, for and in behalf of his father, Joseph George.

There was a verdict in favor of the defendants, and the plaintiff appeals for a reversal, on several grounds assigned, particularly on the grounds that the Court admitted illegal and hearsay evidence and erred in the charge to the Jury.

POINT ONE.

The contention of the plaintiff is, that the Court erred in admitting illegal and hearsay evidence, particularly the evidence of William A. Robinson, on page 109-110 inclusive (printed state of the case) wherein the Court permitted him to testify, over the objection of the plaintiff, as follows:

“Q. Sometime before the accident did Mr. Tony George—you know Tony? A. Yes.

Q. This man (indicating Tony George)? A. Yes.

Q. Did he come down to your place and make some complaint about his automobile?

Mr. Greenfield: I object to that. That is mere hearsay evidence.

The Court: The question is objectionable.

Q. Did he have a conversation with you some time previous to May, 1915, with regard to the automobile? A. Yes.

Q. What was the conversation?

Mr. Greenfield: I object. The plaintiff was not there. The defendant cannot go to work and manufacture evidence not in the presence of the plaintiff.

The Court: What he said prior to the time, if there was any question about it, it would go to show whether he treated it as his own. I will allow the question.

Counsel for the plaintiff objects to this ruling of the Court. Objection noted as ground of appeal.

Q. (Question read). A. I will have to explain that somewhat.

Q. No, just tell the conversation. A. He told me not to let anybody take that car out, only himself or somebody that had a note as he had bought the car and it belonged to him.

Q. Who told you that? A. Tony George.

Q. This boy here? A. Yes.

Mr. Greenfield: That is subject to my exception."

That this testimony is hearsay evidence is so apparent, that I contend that it does not require any authorities on this particular point, but I desire to call the Court's attention to the case of *Arato vs. Sullivan*, 63 N. J. L., page 46, decided by the Learned Chief Justice, wherein he says:

"The assignment of errors relate exclusively to the admission or rejection of testimony with

a single exception. The rulings of the Trial Judge were unobjectionable. One of them was clearly erroneous. The plaintiff, Julia Sullivan, having testified that she had sent their damaged furniture to the repair shop to be recovered; that it had not been returned to them, was asked if the repairer had told her how much it would cost to put the furniture in order. And upon saying that he had done so, she was permitted, against objection, to state the amount which he had named. The purpose of this evidence was to show the extent of the loss sustained by the plaintiff by reason of the injury to their furniture. It is clearly incompetent for any such purpose, being the rarest hearsay. *A judgment which rests in any degree upon such testimony cannot be supported.*"

Then Counsel desires to ask this Learned Court how can the verdict in the case at bar rest upon such testimony as stated above, where it allows a witness to testify what one of the defendants told him, not in the presence of the plaintiff or his representative, concerning the vital pivot of the case at bar? If that should be permitted, then the door would be wide open for manufactured and perjured testimony, and the plaintiff or the defendant would be at the mercy of such testimony, with a full opportunity to manufacture same.

In *State vs. Newman*, 74 N. J. L., page 202, there was an indictment against the defendant for embezzlement of the sum of \$4.50. The defendant being a freeholder, sold some planks to a certain club. The State called a witness, Mahler, who testified that he bought these planks of the defendant.

To corroborate Mahler, the State called one, Schmitt, as a witness, who testified that he was a member of the club and its Secretary and Treasurer, and he was permitted to testify, over objection, to a conversation of the witness with Mahler with regard to payment for the plank; that Mahler had paid out for the plank \$4.85, and was credited by the club with that amount as a credit upon the dues Mahler was owing to the club.

The Court says, at page 204:

“These declarations involved transactions which took place in the absence of the defendant, and which were in no way binding upon him. The evidence was objected to by the defendant and insisted upon by the State as corroborative proof and admitted by the Court. The entire record of the trial is before us under the certificate of the trial judge, made pursuant to Section 136 of the Criminal Procedure Act, and the plaintiff in error has specified this admission of testimony objected to as one of the causes relied upon by him for reversal, in accordance with the provisions of the Act. We think the admission of this evidence was erroneous. These declarations of Mahler recited by the witness involved transactions which occurred, if at all, in the absence of the defendant, and without any authority or consent of his, so far as proofs show. The testimony objected to was hearsay in character.”

In that case, the Court reversed the judgment and ordered a trial de novo.

At this time the Court will pardon Counsel, if we advert to the cases of foreign States.

In the case of *McGough vs. Wellington*, 4 Allens. Rep. (Mass.) page 502, there was a suit brought against the Sheriff for conversion of certain goods and chattels. The plaintiff claimed property set out in his declaration, under a sale thereof to him by his sister, Ann McGough, and the question on which the defense of the action was turned, was whether that sale was fraudulent and void as against her creditors for whom the defendant attached. The defendant introduced testimony for the purpose of proving that fact, which, if proved, would have supported his action as far as to have entitled him to damages for the attachment of the pork.

The Court says in that case:

“To control that testimony, the defendant was permitted, against the plaintiff’s objection, to introduce, among other evidence, the declarations of Ann McGough, not made in the plaintiff’s presence, that the swine, of which the pork was a part, were hers, and were bought by the plaintiff with her money. Evidence of that declaration should have been excluded.”

In that case the exception was sustained, and a new trial ordered.

In *Morrill vs. Titcomb*, et als., 8 Allens. Rep. (Mass.) page 100, the tenants called a witness to whom, for the purpose of proving that said David held the premises adversely to said Timothy P., they put these questions:

“Q. Did you ever hear David Morrill make any statement as to who owned these premises? Did you ever hear David Morrill say that he claimed the premises? It did not appear nor was it suggested that the declarations of David Morrill, sought to be proved, were made upon the premises; and the Judge excluded the evidence.”

Bigelow, C. J., says:

“The evidence which was excluded was clearly incompetent.”

In the case at bar there was a question involved as to the ownership of the machine, which caused the death of the infant son of the plaintiff, which was operated by Tony George. The plaintiff contends that Joseph George was the owner of the machine and Tony George was operating the same for his father.

It is a well established principle that hearsay evidence is inadmissible, and where it is admitted, it is a reversible error and the Court will always grant a new trial, where it is proven, as in the case at bar, that the witness, Robinson, was permitted to testify as to what Tony George told him as to the ownership of this particular car, and not in the presence of the plaintiff.

POINT TWO.

The Court erred in the Charge to the Jury wherein he charged as follows (page 148, printed state of the case):

“The fact that the operator of the car was the son of Joseph would not make Joseph liable unless the son was his agent, servant or em-

ployee at the time the boy received the injury, but even if the car was operated by the servant, agent or employee of Joseph, there can be no recovery against Joseph if the injured boy was crossing the street at the time the injury was received, at any other place than a street crossing, for the Act of 1915 from which I have read, provides that any person crossing a street at any place other than the crosswalk, shall do so at his own risk."

There was absolutely no evidence adduced either on the part of the plaintiff or the defendants, that the boy was in the act of crossing the street, but on the contrary, it was testified to by Anthony Andrews (at page 47, bottom, of the printed state of the case) who testified as follows:

"Q. Did you see Sammy being struck? A. Yes, sir.

Q. Where was Sam standing or where was he when he was struck? A. He was standing on the left hand side of the street about between 2 feet away from the curb.

Q. Was he standing there? A. Yes, sir.

Q. Who was with him? A. The boys who were around there.

Q. Were you there alongside of him? A. I was out in the middle of the street."

Taking the testimony of the defendant himself, Antonio George, at page 84 of the printed state of the case, he says:

"Q. How far away were you from the boys when you commenced to blow your horn? A. About 75 or 100 feet."

Then again on the same page, (Folio 30) he testified as follows:

“As I got a little ways down there was a wagon standing about 2 feet away from the curb. To avoid an accident I turned a little way to the left and as I did so I seen quite a number of boys playing football kicking the ball and two of them around this end was catching and I blew my horn. As I turned to my right I seen them kicking the ball in that direction, I turned to the center of the street and I saw two boys kick this up and one of them looking up in the air and tried to catch the ball. He ran from the left side of the street, he ran to the right and as soon as I seen him I twist my wheel quick but the mud guard just after touching him and knocked him over.”

Nowheres in any of the testimony, does it appear that the boy was crossing from one side of the street to the other. Hence it seems to me that the case at bar is directly within the line of the case of *Kathmeyer vs. Mehl*, 60 Atl. Rep, page 40, where the Court says at page 41:

“The next ground upon which the verdict is attacked is that the plaintiff himself was negligent. The evidence shows that he was standing in the roadway conversing with a friend, who had stopped his wagon at the point where the accident happened, for the purpose of engaging in conversation with the plaintiff. *We see nothing negligent in the plaintiff's action.* Certainly he had no reason to suppose, that

merely because he was standing in the roadway, he would be run down by the recklessness of the driver of an automobile. He was lawfully there, and any person using the highway was bound to take notice of him, and to use care not to injure him, and the plaintiff had a right to assume that this would be done."

In the case at bar, the boy was playing football and was running to catch the ball, as the defendant himself testified, and that he, the defendant, saw him within 75 and 100 feet. It was certainly his duty to use care and precaution in the operation of the machine, and if he run him down, he was guilty of negligence on his own testimony.

POINT THREE.

That this case does not come within the decision of *Schreiner vs. Grinnell*, 97 Atl. Rep., page 781, nor within Chapter 156 of the Laws of 1915, is very apparent.

But assuming for the sake of argument (but not admitting, nor does there any evidence appear to that effect), that the boy was crossing the street, the case at bar would still not be in point with the case of *Schreiner vs. Grinnell*, 97 Atl. Rep., page 781, where Justice Swayze, speaking for the Supreme Court, says:

"The plaintiff's intestate was killed by reason of contact with the automobile of defendant. She was at the time crossing the street at a place other than a crosswalk. The date is not given, but we must infer from the ques-

provisions certified that it was after July 4, 1915, when Chapter 156 of the Laws of that year took effect."

If that law took effect July 4, 1915, certainly the Court, in the case at bar, erred in applying that law to this case, as the accident occurred on May 30, 1915, preceding the date when the law went into effect.

It is therefore contended by the plaintiff-appellant that the Charge to the Jury was misleading and did mislead the Jury in consideration of the evidence and as laid down by the Learned Trial Judge.

Again the Court erred in charging the Jury as follows (page 151 of the printed state of the case) :

"If Samuel had been standing on the street and was in the act of passing over the portion of the street between himself and the sidewalk, when he was injured, the defendant, Joseph, would not be liable even if he owned the car or Antonio was operating the car as his servant, agent or employee."

If the Act did not go into effect until July 4, 1915, there is no reason why the defendant, Joseph George, could be exempt from any liability if his agent was negligent.

It therefore seems to me that the Jury was entirely misled by the Charge of the Court to the Jury, on that question.

POINT FOUR.

The next question is, is the defendant, Joseph George, exempt from liability, if he sent his son to bring some friends to his house, and his son, instead of going with a direct route, went in a round-about way, and thereby injured Samuel Gromer, who died as a result of the injuries, through the negligence of his son, Antonio George? Can Joseph George escape liability on the theory that his son took a different route and not the direct route, in going to bring his father's friends to him?

It seems to me that the case of *Holler vs. Ross*, 68 N. J. L., page 324, is precisely in point with the case at bar, in which case the defendant was ordered to respond in damages.

It was the father who entrusted this dangerous vehicle into the care of his son, without any direct instructions as to what route he should take, or how and by what streets he, the son, should operate his, Joseph's George's machine, in going to get his friends and bring them to their house. Having entrusted his son with this dangerous vehicle, and as the accident resulted while the son was performing service for his father, it seems to me that the father cannot come and say that he is not liable because his son went in a round-about way to get his friends, instead of taking a direct route, as he should have done.

See also cases of

Holler vs. Ross, 68 N. J. L. page 324.

Evers vs. Krouse, 70 N. J. L. page 653.

Toledo R. R. Co. vs. Harmon, 47 Ill. page 298.

It is respectfully submitted, while counsel has assigned several other errors on this appeal, nevertheless the grounds herein relied upon are sufficient to set the verdict aside and a new trial ordered.

It is therefore respectfully submitted, that the judgment should be set aside and a new trial ordered.

Respectfully submitted,

WM. GREENFIELD,

*Attorney for and of Counsel with
Plaintiff-Appellant.*

