

**New Jersey Court of Errors and Appeals**

EDWARD MALINOWSKI, infant, by  
JOHN MALINOWSKI, his next friend,  
*Plaintiff-Respondent,*

*vs.*

JERSEY CITY & LYNTHURST BUS  
COMPANY, a New Jersey corporation,  
*Defendant-Appellant,*

*and*

JOSEPH BEDNARSKI,  
*Defendant.*

ACTION  
AT LAW.  
ON APPEAL  
FROM NEW  
JERSEY  
SUPREME  
COURT.

**STATE OF CASE.**

BARISON & BARISON,  
*Attorneys of Defendant-Appellant,  
Jersey City & Lyndhurst Bus  
Company.*

ELIAS G. WILLMAN,  
*Attorney for Plaintiff-Respondent.*

*Elias G. Willman.*

Pandick Press, Inc., 22 Thames St., New York, U. S. A.

*(Sinc and legal) Service of three  
copies of the within State of  
the Case is hereby acknowledged  
this 9th day of September, 1933.*



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Notice of Appeal.

(Filed May 6, 1933.)

New Jersey Supreme Court

HUDSON COUNTY.

EDWARD MALINOWSKI, infant, by  
JOHN MALINOWSKI, his next  
friend,

Plaintiff,

*vs.*

JERSEY CITY & LYNDHURST BUS  
COMPANY, a New Jersey cor-  
poration, and JOSEPH BED-  
NARSKI,

Defendants.

10

Action at Law.  
Notice of Appeal.

20

*To Elias G. Willman, Esq., Attorney for Plaintiff,  
or to Whom It May Concern:*

*Sir:*

PLEASE TAKE NOTICE that the defendant Jersey  
City & Lyndhurst Bus Company, a New Jersey  
corporation, a defendant in the above entitled  
cause, appeals to the Court of Errors and Appeals  
in the last resort in all causes in New Jersey  
from the judgment entered in this cause.

30

Respectfully yours,

BARISON & BARISON,  
Attorneys of Jersey City & Lyndhurst  
Bus Company, a New Jersey Cor-  
poration.

Dated: May 5th, 1933.

A true copy.  
FRED L. BLOODGOOD,

Clerk.

40

**Affidavit of Service.**

NEW JERSEY SUPREME COURT,  
HUDSON COUNTY.

10

EDWARD MALINOWSKI, infant, by  
JOHN MALINOWSKI, his next  
friend,

Plaintiff,

*vs.*

JERSEY CITY & LYNDHURST BUS  
COMPANY, a N. J. corp., and  
JOSEPH BEDNARSKI,  
Defendants.

Action at Law.  
Affidavit.

20

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

HAROLD KRIEGER, of full age, being duly sworn according to law, upon his oath deposes and says that on the 5th day of May, 1933, he served upon Elias G. Willman, attorney for the plaintiff in the above entitled cause of action, a copy of the notice of appeal in the above cause.

30

HAROLD KRIEGER.

Sworn and subscribed to before }  
me this 5th day of May, 1933. }

HERBERT L. RAPFOGEL  
Attorney at Law of New Jersey

40

## Grounds of Appeal.

### NEW JERSEY COURT OF ERRORS AND APPEALS.

<p>EDWARD MALINOWSKI, infant, by JOHN MALINOWSKI, his next friend,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;"><i>vs.</i></p> <p>JERSEY CITY &amp; LYNTHURST BUS COMPANY, a New Jersey corpo- ration, and JOSEPH BEDNARSKI, Defendants.</p>	}	10
	}	Action at Law. Grounds of Appeal.

*To Elias G. Willman, Esq., Attorney of Plaintiff,  
or to Whom It May Concern:* 20

*Sir:*

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

1. The Trial Court erred in the refusal to grant the motion for non-suit on the ground of the failure of the plaintiff to prove negligence as against the defendant Jersey City & Lyndhurst Bus Company, a New Jersey corporation. 30

a. The Trial Court erred in the failure to grant a non-suit on the ground that the plaintiff was guilty of contributory negligence.

2. The Trial Court erred in the failure to grant a direction of verdict in favor of the defendant Jersey City & Lyndhurst Bus Company, a New Jersey corporation, as there was no proof of negligence against the defendant 40

*Summons.*

Jersey City & Lyndhurst Bus Company, and no proof of any negligence that was the proximate cause of the accident.

a. That the plaintiff was guilty of contributory negligence from the testimony produced by the plaintiff.

10 Dated: June 1st, 1933.

Respectfully yours,

BARISON & BARISON,  
Attorneys of Defendant Jersey City  
& Lyndhurst Bus Company.

---

**Summons, Dated September 16, 1931.**

20 *The State of New Jersey to Jersey City & Lynd-*  
[SEAL] *hurst Bus Company, a New Jersey cor-*  
*poration, and Joseph Bednarski:*

30 You are summoned to answer the annexed complaint of Edward Malinowski in an action at law in the New Jersey Supreme Court. And take notice that unless you file your answer to the within complaint with the Clerk of the New Jersey Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

WITNESS, William S. Gummere, Esq., Chief Justice of our Supreme Court, at Trenton, this 16th day of September, Nineteen Hundred and Thirty-one.

FRED L. BLOODGOOD,  
Clerk.

40 ELIAS G. WILLMAN,  
Attorney for Plaintiff.

**Complaint.**

NEW JERSEY SUPREME COURT,  
HUDSON COUNTY.

<p style="text-align: center;">EDWARD MALINOWSKI, Plaintiff,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">JERSEY CITY &amp; LYNDHURST BUS COMPANY, a New Jersey corpo- ration, and JOSEPH BEDNARSKI, Defendants.</p>	}	<p style="text-align: right;">10</p> <p style="text-align: right;">Action at Law. Complaint.</p>
--	---	--

*First Count.* 20

The plaintiff, residing in the Town of Harrison, County of Hudson and State of New Jersey, complains of the defendant, Joseph Bednarski, and says that:

1. On or about the 30th day of August, 1931, the plaintiff was invited by the defendant, Joseph Bednarski, to enter his automobile and ride in same. The plaintiff accepted the invitation and entered the said automobile owned and operated by the said defendant, Joseph Bednarski. 30

2. At the said time, the said automobile so owned and operated by the said defendant, Joseph Bednarski, was being driven on Hoyt Street, at or near the intersection of the same with Schuyler Avenue, both being public highways in the Town of Kearny, County of Hudson and State of New Jersey. 40

*Complaint.*

3. At the aforementioned time and place the defendant, Jersey City & Lyndhurst Bus Company, a New Jersey corporation, was the owner and by its servant, agent and employee, in the possession, operation and control of a certain automobile bus which was being driven on Schuyler Avenue, at or near the intersection of the same with Hoyt Street, both being public highways in the Town of Kearny as aforesaid.

4. It was the duty of the defendant, Joseph Bednarski, to operate the said automobile at the aforesaid time and place in a careful and prudent manner, with the automobile under control and to avoid injuring persons who had been invited to ride in his automobile, and this duty he owed to the said plaintiff at the time and place aforesaid.

5. The defendant, Joseph Bednarski, so carelessly, recklessly and negligently operated the aforesaid automobile that he caused and permitted the same to collide with the automobile bus of the defendant company. As a result of the collision the plaintiff suffered severe injuries as he was thrown in and about the aforesaid automobile in which he was a passenger.

6. The said collision was proximately caused by the negligence of the defendant, Joseph Bednarski, in the following particulars:

(a) In operating the said automobile at the aforesaid time and place in a rapid, dangerous, reckless and unlawful rate of speed;

(b) In failing to have the said automobile under proper control;

(c) Without keeping a proper lookout;

*Complaint.*

(d) In suddenly and without warning operating the said automobile in an improper, careless and unlawful manner on a public highway, contrary to the traffic laws of the State of New Jersey;

(e) Without proper lights, brakes and other appliances required by law to properly control the said automobile; 10

(f) Without due regard for the rights of the plaintiff whom he had invited to ride in his automobile.

7. By reason of such negligence, carelessness and recklessness on the part of the defendant, Joseph Bednarski, the plaintiff was injured as he was thrown in and about the said automobile in which he was a passenger as a result of the aforesaid collision and suffered grave bodily injuries, to wit, injuries in and about his head, body, arms, legs, limbs, bones, skull, spine, nervous and muscular systems, internally and externally and sustained temporary and permanent injury and disability. All of which caused him and still cause him pain and deprived him of the normal uses of his body and its members, and hampered his normal bodily movements, and, as plaintiff is informed and verily believes will permanently cause him pain and deprive him of the normal uses of his body and its members. 20 30

8. As a result of the said negligent acts of the defendant, Joseph Bednarski, the plaintiff suffered great mental anguish and great pain and shock to his nervous system.

9. By reason of the injuries caused as aforesaid by the negligence, carelessness and reckless- 40

*Complaint.*

ness of the defendant, Joseph Bednarski, the plaintiff was confined to his bed for a long period of time and was totally disabled from following his usual occupation for a long period of time. The plaintiff is informed and verily believes that on account of the nature of his injuries he will  
 10 be seriously impaired in the future from engaging in his usual work or occupation for a long period of time and thus will be deprived of earning his livelihood and pursuing the natural course of his life.

10. By reason of the injuries caused as aforesaid by the negligence, carelessness and recklessness of the defendant, Joseph Bednarski, the plaintiff has necessarily paid or become liable to  
 20 pay and will in the future pay or become liable to pay large sums for medical and surgical attention, aids, devices and medicines and other necessary expenditures so occasioned.

WHEREFORE the plaintiff demands as damages as against the defendant, Joseph Bednarski, the sum of \$50,000.

*Second Count.*

30 The plaintiff complains of the defendant, Jersey City & Lyndhurst Bus Company, a New Jersey corporation, and says that:

1. He repeats and realleges the allegations contained in paragraphs one, two and three of the first count and makes the same a part hereof.

40 2. It was the duty of the defendant company by its servant, agent and employee, to operate the

*Complaint.*

said automobile bus at the aforesaid time and place in a careful and prudent manner with the automobile bus under control and to avoid colliding with other vehicles on the said public highway, and this duty it owed to the said plaintiff at the aforesaid time and place.

3. The defendant company by its servant, agent and employee so carelessly, recklessly and negligently operated the aforesaid automobile bus that same was caused and permitted to collide with the automobile in which the plaintiff was a passenger. As a result of the collision the plaintiff suffered severe injuries as he was thrown in and about the aforesaid automobile.

10

4. The said collision was proximately caused by the negligence of the defendant company, by its servant, agent and employee in the following particulars:

20

(a) In operating the said automobile bus at the aforesaid time and place in a rapid, dangerous, reckless and unlawful rate of speed;

(b) In failing to have the said automobile bus under proper control;

(c) Without keeping a proper look out;

30

(d) In suddenly and without warning operating the said automobile bus in an improper, careless and unlawful manner on a public highway, contrary to the traffic laws of the State of New Jersey;

(e) Without proper lights, brakes and other appliances required by law to properly control the said automobile bus;

40

*Complaint.*

(f) Without due regard for the rights of other vehicles on the said public highway.

10 5. By reason of such negligence, carelessness and recklessness on the part of the defendant company by its servant, agent and employee, the plaintiff was injured as he was thrown in and about the automobile in which he was a passenger as a result of the said collision and suffered grave bodily injuries, to wit: injuries in and about his head, body, arms, legs, limbs, bones, skull, spine, nervous and muscular systems, internally and externally and sustained temporary and permanent injury and disability. All of which caused him and still cause him pain and deprived him of the normal uses of his body and its members and hampered his normal bodily movements, and, as plaintiff is informed and verily believes, will permanently cause him pain and deprive him of the normal uses of his body and its members.

20

6. As a result of the said negligent acts of the defendant company, by its servant, agent and employee, the plaintiff suffered great mental anguish and great pain and shock to his nervous system.

30 7. By reason of the injuries caused as aforesaid by the negligence, carelessness and recklessness of the defendant company, by its servant, agent and employee, the plaintiff was confined to his bed for a long period of time and was totally disabled from following his usual occupation for a long period of time. The plaintiff is informed and verily believes that on account of the nature of his injuries he will be seriously impaired in the future from engaging in his usual work or occupation for a long period of time and thus will

40

*Complaint.*

be deprived of earning his livelihood and pursuing the natural course of his life.

8. By reason of the injuries caused as aforesaid by the negligence, recklessness and carelessness of the defendant company, by its servant, agent and employee, the plaintiff has necessarily paid or become liable to pay and will in the future pay or become liable to pay large sums for medical and surgical attention, aids, devices and medicines and other necessary expenditures so occasioned. 10

WHEREFORE the plaintiff demands as damages as against the defendant, Jersey City & Lyndhurst Bus Company, a New Jersey corporation, the sum of \$50,000.

ELIAS G. WILLMAN, 20  
Attorney for Plaintiff.

30

40

**Summons, Dated October 13, 1931.**

*The State of New Jersey to Jersey City & Lynd-*  
*hurst Bus Company, a New Jersey cor-*  
 [SEAL] *poration, and Joseph Bednarski:*

10 You are summoned to answer the annexed  
 amended complaint of Edward Malinowski by  
 John Malinowski, his next friend, and John Mali-  
 nowski, individually, in an action at law in  
 the New Jersey Supreme Court. And take no-  
 20 tice that unless you file your answer to the  
 within amended complaint with the Clerk of the  
 New Jersey Supreme Court, at Trenton, within  
 twenty days after service upon you of this writ  
 and the annexed complaint, the plaintiffs may  
 proceed in the suit and judgment may be entered  
 against you.

WITNESS, William S. Gummere, Esq., Chief Jus-  
 tice of the New Jersey Supreme Court, at Tren-  
 ton, this 13th day of October, Nineteen Hundred  
 and Thirty-one.

FRED L. BLOODGOOD,  
 Clerk.

ELIAS G. WILLMAN,  
 Attorney for Plaintiffs.

30

40



*Amended Complaint.*

Avenue, both being public highways in the Town of Kearny, County of Hudson and State of New Jersey.

10        3. At the aforementioned time and place the defendant, Jersey City & Lyndhurst Bus Company, a New Jersey corporation, was the owner and by its servant, agent and employee, in the possession, operation and control of a certain automobile bus which was being driven on Schuyler Avenue, at or near the intersection of the same with Hoyt Street, both being public highways in the Town of Kearny as aforesaid.

20        4. It was the duty of the defendant, Joseph Bednarski, to operate the said automobile at the aforesaid time and place in a careful and prudent manner with the automobile under control and to avoid injuring persons who had been invited to ride in his automobile, and this duty he owed to the said plaintiff at the time and place aforesaid.

30        5. The defendant, Joseph Bednarski, so carelessly, recklessly and negligently operated the aforesaid automobile that he caused and permitted the same to collide with the automobile bus of the defendant company. As a result of the collision the plaintiff suffered severe injuries as he was thrown in and about the aforesaid automobile in which he was a passenger.

6. The said collision was proximately caused by the negligence of the defendant, Joseph Bednarski, in the following particulars:

40        (a) In operating the said automobile at the aforesaid time and place in a rapid, dangerous, reckless and unlawful rate of speed;

*Amended Complaint.*

(b) In failing to have the said automobile under proper control;

(c) Without keeping a proper lookout;

(d) In suddenly and without warning operating the said automobile in an improper, careless and unlawful manner on a public highway, contrary to the traffic laws of the State of New Jersey; 10

(e) Without proper lights, brakes and other appliances required by law to properly control the said automobile:

(f) Without due regard for the right of the plaintiff, whom he had invited to ride in his automobile. 20

7. By reason of such negligence, carelessness and recklessness on the part of the defendant, Joseph Bednarski, the plaintiff, Edward Malinowski, was injured as he was thrown in and about the said automobile in which he was a passenger, and as a result of the aforesaid collision suffered grave bodily injuries, to wit: injuries in and about his head, body, arms, legs, limbs, bones, skull, spine, nervous and muscular systems, internally and externally, and sustained temporary and permanent injury and disability. All of which caused him and still cause him pain and deprived him of the normal uses of his body and its members, and hampered his normal bodily movements, and, as plaintiff is informed and verily believes, will permanently cause him pain and deprive him of the normal uses of his body and its members. 30

8. As a result of the said negligent acts of the defendant, Joseph Bednarski, the plaintiff, 40

*Amended Complaint.*

Edward Malinowski, suffered great mental anguish and great pain and shock to his nervous system.

WHEREFORE the plaintiffs demand as damages as against the defendant, Joseph Bednarski, the sum of \$50,000.

10

*Second Count.*

The plaintiff, John Malinowski, individually, complains of the defendant, Joseph Bednarski, and says that:

1. He repeats and realleges the allegations contained in the first count and makes the same a part hereof.

20

2. John Malinowski is the father of the said plaintiff, Edward Malinowski, who is an infant twenty years of age, and the said plaintiff, John Malinowski, expended and will expend in the future great sums of money for medical attention in endeavoring to cure the said Edward Malinowski of the said injuries. The said plaintiff, John Malinowski, has lost and will also lose in the future great sums of money which would have been earned by the said plaintiff, Edward Malinowski, and to which earnings the said plaintiff, John Malinowski, would be entitled. The said plaintiff, John Malinowski, has lost the services of the said Edward Malinowski and will so lose his services in the future.

30

WHEREFORE the plaintiff, John Malinowski, individually, complains of the defendant, Joseph Bednarski, and demands as damages the sum of \$5,000.

40

*Amended Complaint.**Third Count.*

The plaintiffs complain of the defendant, Jersey City & Lyndhurst Bus Company, a New Jersey corporation, and say that:

1. The allegations contained in paragraphs one, two and three of the first count are hereby repeated and made a part hereof.

10

2. It was the duty of the defendant company, by its servant, agent and employee, to operate the said automobile bus at the aforesaid time and place in a careful and prudent manner with the same under control and to avoid colliding with other vehicles on the said public highway, and this duty it owed to the plaintiff, Edward Malinowski, at the aforesaid time and place.

20

3. The defendant company, by its servant, agent and employee, so carelessly, recklessly and negligently operated the aforesaid automobile bus that same was caused and permitted to collide with the automobile in which the plaintiff, Edward Malinowski, was a passenger. As a result of the collision the plaintiff suffered severe injuries as he was thrown in and about the aforesaid automobile.

30

4. The said collision was proximately caused by the negligence of the defendant company, by its servant, agent and employee, in the following particulars:

(a) In operating the said automobile bus at the aforesaid time and place in a rapid, dangerous, reckless and unlawful rate of speed;

40

*Amended Complaint.*

(b) In failing to have the said automobile bus under proper control.

10 (c) In suddenly and without warning operating the said automobile bus in an improper, careless and unlawful manner on a public highway, contrary to the traffic laws of the State of New Jersey;

(d) Without keeping a proper look out;

(e) Without proper lights, brakes and other appliances required by law to properly control the said automobile bus.

(f) Without due regard for the rights of other vehicles on the said public highway.

20 5. By reason of such negligence, carelessness and recklessness on the part of the defendant company by its servant, agent and employee, the plaintiff, Edward Malinowski, was injured as he was thrown in and about the automobile in which he was a passenger as a result of the said collision, and suffered grave bodily injuries, to wit: injuries in and about his head, body, arms, legs, limbs, bones, skull, spine, nervous and muscular systems, internally and externally and sustained temporary and permanent injury and disability. All  
30 of which caused him and still cause him pain and deprived him of the normal uses of his body and its members and hampered his normal bodily movements, and, as plaintiff is informed and verily believes will permanently cause him pain and deprive him of the normal uses of his body and its members.

40 6. As a result of the said negligent acts of the defendant company by its servant, agent and employee, the plaintiff, Edward Malinowski, suffered

*Amended Complaint.*

great mental anguish and great pain and shock to his nervous system.

WHEREFORE the plaintiff, Edward Malinowski, by John Malinowski, his next friend, demands as damages as against the defendant company, the sum of \$50,000.

10

*Fourth Count.*

The plaintiff, John Malinowski, individually complains of the defendant company and says that:

1. He repeats the allegations contained in the third count and makes the same a part hereof.

2. He repeats the allegations contained in paragraph two of the second count and makes the same a part hereof.

20

WHEREFORE the plaintiff, John Malinowski, individually demands as damages as against the defendant company, the sum of \$5,000.

ELIAS G. WILLMAN,  
Attorney for Plaintiffs.

30

40

**Answer.**

NEW JERSEY SUPREME COURT,  
HUDSON COUNTY.

10

EDWARD MALINOWSKI by JOHN  
MALINOWSKI, his next friend,  
and JOHN MALINOWSKI, indi-  
vidually,

Plaintiffs,

*vs.*

Action at Law.

Answer.

20

JERSEY CITY & LYNDHURST BUS  
COMPANY, a New Jersey corpo-  
ration, and JOSEPH BEDNARSKI,  
Defendants.

The defendant, Jersey City & Lyndhurst Bus Company, a New Jersey corporation, answering the amended complaint filed by the plaintiffs, says that:

*First Count.*

30

It denies each and every allegation set forth in the First Count except paragraphs four, five and six of the First Count which it admits.

*Second Count.*

40

It denies each and every allegation set forth in the Second Count except so much as is admitted by the repetition of the allegations of the First Count and which is admitted to the answer to the First Count.

*Answer.**Third Count.*

It denies each and every allegation set forth in the Third Count.

*Fourth Count.*

10

It denies each and every allegation set forth in the Fourth Count.

*First Separate Defense to All Counts.*

The plaintiff Edward Malinowski failed to use reasonable care to avoid the injuries which he alleges to have sustained.

20

*Second Separate Defense to All Counts.*

The plaintiff Edward Malinowski is guilty of contributory negligence in that he failed to take precautions to avoid the collision with the automobile bus of the defendant Jersey City & Lyndhurst Bus Company.

30

*Third Separate Defense to All Counts.*

The defendant Joseph Bednarski was solely responsible for the collision as alleged in paragraphs four, five, and six of the First Count and it was through his negligence that the collision occurred.

40

*Answer.**Fourth Separate Defense to All Counts.*

10 The plaintiff Edward Malinowski was engaged in a joint enterprise with the defendant Joseph Bednarski and as alleged in the First Count of the Complaint, the defendant Joseph Bednarski being guilty of negligence or contributory negligence, the plaintiff Edward Malinowski has no cause of action against the defendant Jersey City & Lyndhurst Bus Company.

*Fifth Separate Defense to All Counts.*

20 The defendant Jersey City & Lyndhurst Bus Company, a New Jersey corporation, was not guilty of any negligence, and said collision as alleged in the complaint was solely due to the negligence of the defendant Joseph Bednarski.

BARISON & BARISON,  
Attorneys for Defendant Jersey  
City & Lyndhurst Bus Company.

30

40



*Reply.*

the accident, but say that the negligence of the defendant Joseph Bednarski, together with the negligence of the defendant Jersey City & Lyndhurst Bus Company, caused or contributed to the happening of the accident.

10

*Reply to Fourth Separate Defense to All Counts.*

They deny the allegations therein contained.

*Reply to Fifth Separate Defense to All Counts.*

They deny the allegations therein contained.

20

ELIAS G. WILLMAN,  
Attorney for Plaintiffs.

30

40

### Testimony.

#### NEW JERSEY SUPREME COURT.

EDWARD MALINOWSKI by JOHN MALINOWSKI as next friend, and JOHN MALINOWSKI individually	10
---	----

*vs.*

JERSEY CITY & LYNDHURST BUS COMPANY, a New Jersey Corpo- ration, and JOSEPH BEDNARSKI.	
--	--

JOSEPH BEDNARSKI	
------------------	--

*vs.*

JERSEY CITY & LYNDHURST BUS COMPANY, a New Jersey Corpo- ration, and JAMES CAPUTO.	20
--	----

Before:

Hon. THOMAS BROWN, J.,  
and a Jury.

Jersey City, N. J.,  
March 2, 1932.

Appearances: 30

ELIAS G. WILLMAN, Esq., for the Plaintiff,  
Malinowski;

SAMUEL L. STEINER, Esq., for the Plaintiff,  
Joseph Bednarski, by ALFRED E. BREN-  
NER, Esq., Counsel;

BARISON & BARISON, Esqrs., for the Defend-  
ants, Jersey City & Lyndhurst Bus Co.,  
and James Caputo, by MORRIS BARISON,  
Esq. 40

*Edward Malinowski, for Plaintiff—Direct.*

(Counsel opened to the Jury.)

Mr. Brenner: In view of the admission of ownership of the bus, I ask that a discontinuance be entered as against the driver.

The Court: That will be granted.

10 Mr. Willman: I would like to have entered upon the record as a motion that in the matter of Edward Malinowski, that the name of Bessie Malinowski be added as a party plaintiff.

The Court: You move that as an amendment?

Mr. Willman: Yes, sir.

The Court: I understand counsel for the defendants have no objection.

Mr. Barison: That is right.

20 The Court: Her claim will be the same as the father's.

Mr. Willman: Exactly.

The Court: That will be the order.

---

EDWARD MALINOWSKI SWORN for the plaintiffs:

*Direct examination by Mr. Willman:*

30 Mr. Willman: Before I examine this witness, I wish to call attention to the fact that inasmuch as ownership and operation of the bus is admitted by Judge Barison, although denied in the pleadings, I would like to have a stipulation to the effect that ownership and operation are admitted in the suit of Edward Malinowski by John Malinowski his next friend and John Malinowski and Bessie Malinowski individually, against Jersey City & Lyndhurst Bus Com-  
40 pany, a New Jersey Corporation.

*Edward Malinowski, for Plaintiff—Direct.*

Mr. Barison: We have no objection. It is just a general denial. We would at all times have admitted ownership and operation.

The Court: It will be understood then, that ownership and operation is admitted.

Q. How old are you? A. Twenty-one. 10

Q. And at the time of the accident, which occurred August 30th, 1931, how old were you? A. Twenty.

Q. Will you tell us where you were at 11 o'clock, at night time? A. On Hoyt Street and Schuyler Avenue.

Q. What were you doing there? A. Just returning from the bakery.

Q. Will you please point out on this diagram approximately where the bakery was? Please step down and show us. This is Schuyler Avenue running north and south and this is Hoyt Street. Will you please point out to us where the bake shop was on Hoyt Street? How far, about, from the intersection of the two streets, how far away from Schuyler? A. About 150 feet or 200 feet. 20

Mr. Brenner: May I suggest you put a mark on the diagram.

Mr. Willman: Mark D indicating the bake shop. 30

Q. Which way was your car facing at that time? A. It was facing this way, east.

Q. Who was in the car? A. Joe Bednarski and myself.

Q. Where were you sitting? A. I was sitting on the right hand side.

Q. In the front or back? A. In the front.

Q. What kind of car was it? A. Oakland. 40

*Edward Malinowski, for Plaintiff—Direct.*

Q. Open or closed? A. Closed.

Q. Who went in the bakery? A. I believe both of us went in.

Q. You both then got in the car again? A. Yes, sir.

10 Q. What did you do? A. We wanted to get down all the ways east but there was a dead-end, so we turned to cross up towards Schuyler Avenue.

20 Q. Just tell us briefly what happened as you came to Schuyler? A. When we were getting to Schuyler Avenue, we stopped there. When we stopped there, I turned around and I saw a bus up at Devon Terrace; it was that far away, so we started going across. We were almost past Schuyler Avenue, our front of the car was past Schuyler Avenue. I was in Hoyt Street, about here, the front of the car. That is all I remember.

Q. Do you remember the crash? A. Well, I heard it.

Q. What was the next thing you knew? A. The next thing I knew I woke up in the hospital.

Q. Will you please tell us whether you knew the section where the accident happened; are you familiar with the streets there? A. Yes, sir.

30 Q. What kind of a street is Hoyt Street, that is, is it a paved or unpaved street? A. It is paved.

Q. Do you know about how wide Hoyt Street is? A. No.

Q. Have you any idea?

The Court: Can't counsel agree upon the width of the streets, as to Hoyt and Schuyler Avenue.

Mr. Brenner: I would be glad to agree to any figure, if anybody knows.

40

Mr. Barison: Thirty-five foot streets.

*Edward Malinowski, for Plaintiff—Direct.*

The Court: Now you have the width of the streets and you have the crash.

Q. The next thing you recall was what? A. I was on the operating table.

Q. You remember that; now, when you first came to, that is, when you regained consciousness, did you have any pain? A. Yes; my head was bothering me, and my back and my arm. 10

Q. Which one? A. This right one.

Q. How long did you remain in the hospital? A. I believe it was five weeks; five or six weeks.

Q. During that time, were you confined to bed? A. I was.

Q. For how long? A. A period of about three months, I think.

Q. Well, during the time that you were in the hospital, how long were you confined to bed; the entire period or part of the period? A. I don't know. 20

Q. Do you remember; please answer, instead of shaking your head. A. I could not tell you.

Q. After you were discharged from the hospital—that was the West Hudson Hospital? A. Right.

Q. You came home? A. Yes, sir.

Q. At that time, were you cured? A. No, sir.

Q. What did you complain of at that time? A. My head. 30

Q. Will you describe to the Court and jury just what bothered you in the head; what kind of difficulty you had? A. Well, every time I put my head down much, and when I got up in the morning, my head would bother me a lot; it was like dizziness.

Q. Anything else? A. My back gave me pains too for a long time.

Q. Anything else? A. That's all. 40

*Edward Malinowski, for Plaintiff—Direct.*

Q. Now, for how long a period of time did you suffer with this dizziness and with these back aches? A. I believe about eleven months.

Q. Was that after your discharge from the hospital? A. After I was discharged from the hospital, but that still bothers me, my head.

10 Q. Were there any other injuries that you sustained in the accident and which have since cleared up; the injury to your arm, has that cleared up? A. That has cleared up.

Q. What other injuries cleared up? A. My back.

Q. For how long a period of time did you have pains in the back? A. About six months.

Q. For how long a period of time did you have any difficulty with your arm? A. It was not long; a month and a half or two months.

20 Q. Is there any complaint that you have at this time as a result of this accident? A. My head.

Q. Has that condition improved? A. No, sir.

Q. Now, during the time that you were at home, were you treated by a doctor? A. I was.

Q. Who was your doctor? A. Dr. Lange.

Q. Do you recall for how long a period he treated you? A. I could not recollect.

Q. Was it a few weeks or a few months? A. I believe it was five weeks.

30 Q. At the hospital? A. No, while I was out of the hospital, home.

Q. Now, Edward, at the time of this accident, were you working? A. I was.

Q. What kind of work were you doing? A. Clerk.

Q. Where? A. In a store.

Q. Will you tell us, please, how much you earned a week? A. Well, I earned from \$18 to \$22, according to business.

*Edward Malinowski, for Plaintiff—Direct.*

Q. When was the last time you worked since the happening of this accident; in other words, have you gone back to work? A. No, sir.

Q. This accident happened August 30th, 1931; have you tried to do any work since that time? A. I have not tried.

Q. Why not? A. Because the doctor told me 10  
if I don't feel right, not to work.

The Court: Can you work?

The Witness: I believe I can work now, if my head didn't bother me.

The Court: You have got a head; you ought to be able to tell whether you can use it or not. Does it bother you?

The Witness: Yes, sir.

The Court: You can't work with it? 20

The Witness: I can't work with it, no, sir.

Q. Now, will you please tell us how your head bothers you; what do you mean by that, will you tell us? A. Well, I have awful headaches.

Q. How often do you get these headaches? A. Well, they come on and off; it will hurt me for about half an hour. Say if it started now, in about fifteen minutes, then, it would go off and then come on again. 30

Q. Are they severe or mild headaches? A. Pretty severe.

Q. You think you could do the same work you did before the happening of this accident?

Mr. Barison: I object. I don't believe it is what he thinks.

The Court: It is what he can do. Has he tried? He hasn't tried.

*Edward Malinowski, for Plaintiff—Direct.*

Q. Have you tried? A. No, sir.

The Court: What was it, grocery clerk?

The Witness: Confectionery store.

The Court: Selling candies?

The Witness: Candies, sodas.

10 The Court: Well, have you tried to do anything at all?

The Witness: No, I didn't try.

The Court: Well, then, you can't tell whether you can work or not?

The Witness: I can't.

20 Q. Going back to the happening of the accident, will you tell us, please, how you got into the car, under what circumstances you were in the car? A. Well, we were standing in front of the store where I worked and Joe Bedarski asked if I wanted to take a ride with him to the bakery, so I walked in the car and we went up.

Q. Now, did you have any permanent marks on your face or head which the Court and jury might see? A. I have.

Mr. Willman: If the Court has no objection, I would like to have him show them.

30 The Court: Certainly not. Step down and let the jury see your injuries.

The Witness: There is this cut here.

Q. Step up closer so that the jury can see. A. And it was stitched up, in the head; I have a little mark on the side here, and a little scar on my hand.

Q. Do you remember who was in the bake shop when you went in? A. Yes, sir.

40 Q. Who was there? A. Bowber; I can't recall his first name.

*Edward Malinowski, for Plaintiff—Cross.*

Q. Is he the baker? A. The fellow that owns the bakery.

Q. He was in the store at the time you went in? A. Yes, sir.

Mr. Willman: Cross-examine.

The Court: Well, did you have any bills?

Mr. Willman: Yes; the doctors will testify as to the bills, and the parents are here to testify to that effect. 10

*Cross-examination by Mr. Brenner:*

Mr. Brenner: I don't know whether we agreed as to the way the streets run. It is stipulated that Schuyler Avenue in Kearney runs north and south, and is approximately 35 feet in width. It is crossed by Hoyt Street, at right angles, Hoyt Street running east and west and being approximately 35 feet in width. It is agreed that the pole that the car came in contact with after the occurrence of the accident is on the southwest corner. 20

Q. Are you familiar with this particular location, Mr. Malinowski? A. Yes, sir.

Q. You have lived around there for some time? A. I don't live around there. We had a club around there once. 30

Q. Now, the street north of Hoyt Street is Devon Terrace, isn't it? A. Yes, sir.

Q. Can you give us the approximate distance between Devon Terrace and Hoyt Street? A. I could not, not now.

Q. You haven't any idea?

The Court: Can counsel agree upon that?

Mr. Barison: About 250 feet.

Mr. Brenner: I will agree as to that. 40

*Edward Malinowski, for Plaintiff—Cross.*

Q. Now, after you had left the bake shop, made your turn and started west on Hoyt Street, you say that the car driven by Bednarski stopped at Schuyler Avenue? A. Yes, sir.

10 Q. Now, what I want to inquire about from you is the position of the car at the time that it stopped. Where was the front of the car with reference to the easterly curb of Hoyt Street? A. The car was on the right hand side of the street.

Q. I am referring now to the curb of Schuyler Avenue. How close was the front of the car to the curb at the time that your car stopped? A. I believe the front was just even with Schuyler Avenue.

Q. When you refer to the front, do you refer to the front wheels? A. The front wheels.

20 Q. Or to the bumper in front of the car? A. The front wheels I think.

Q. Your car was over on the right hand side of the street, was it? A. Yes, sir.

Q. How close to the right hand curb was it? A. Very close.

Q. When you made that stop, did you, yourself, see the bus that was coming south along Schuyler Avenue? A. Yes, sir.

30 Q. Where was this bus at the time when you started up from your stopped position? A. It was on that side of Devon Terrace.

Q. You say 'that side'; do you mean the side towards Hoyt Street or the other side of Devon Terrace, the northerly side? A. It was on Schuyler Avenue; it was before it hit Devon Terrace, on Schuyler Avenue.

Q. In other words, it was then somewhat north of Devon Terrace? A. Yes, sir.

40 Q. Could you give us an idea about how far north? A. Not very far it was.

*Edward Malinowski, for Plaintiff—Cross.*

Q. Close to the northerly side of Devon Terrace? A. Yes, sir.

Q. Is Devon Terrace about the same width as Hoyt Street? A. I don't believe it is.

Q. A little narrower? A. A little narrower.

Q. Have you any idea about how wide that is? A. No.

10

Q. It is somewhat narrower than Hoyt Street? A. Yes, sir.

Q. Your car then continued across Hoyt Street, didn't it? A. Across Schuyler Avenue.

Q. Across Schuyler Avenue, along Hoyt? A. Along Hoyt.

Q. You said something about the car getting into the other side of Hoyt Street? A. Yes, sir.

Q. How much of the car got into the other side of Hoyt Street, which is the westerly side, when the crash occurred? A. The whole motor was over.

20

Q. How long a car was this, do you know; what type of car was it? A. Sedan, I think it was.

Q. What make? A. Oakland.

Q. That is a small car, isn't it? A. Yes, sir.

Q. And the whole motor was inside of the westerly side of Hoyt Street before the crash occurred? A. Yes, sir.

Q. Did I understand you to say that you remember nothing after that? A. Yes; I don't remember anything.

30

Q. Did you give us the distance between Schuyler Avenue and the bake shop where you first stopped? A. I believe it is 150 feet to 200; I am not sure.

Q. Now, as you were proceeding across Schuyler Avenue, can you give us any approximation as to the rate of speed of the car in which you were riding was going? A. It was going very slow.

40

*Edward Malinowski, for Plaintiff—Cross.*

Q. Have you driven cars yourself? A. No, sir.

Q. Have you ridden in them frequently? A. Yes, sir.

Q. Have you any idea, from riding in cars, as to the rate of speed which it was going; if you can't say, say so? A. No, I could not.

10 Q. But you say that this car was going slow? A. Yes, sir.

Q. And was it still going slow at the time that it was struck? A. I don't believe it was.

Q. That is your best recollection? A. Yes, sir.

Q. Do you know anything about the gear of cars? A. No.

Q. You don't know whether you were in first, second or third? A. No.

20 *Cross-examination by Mr. Barison:*

Q. Mr. Malinowski, you say that the automobile in which you were riding with Mr. Bednarski stopped at the corner of Hoyt Street and Schuyler Avenue? A. Yes, sir.

Q. It is a "stop" street? A. I don't know. There was no signs there.

Q. Well, at any rate, Mr. Bednarski did stop? A. He did stop.

30 Q. Was it a complete stop? A. It was a dead stop.

Q. Did he shift his gears, do you know? A. Why, I could not tell you that. I don't drive a car.

Q. But it was a dead stop; where were you sitting, with Mr. Bednarski? A. I was sitting in the front.

Q. Next to him? A. Next to him.

Q. You two were friends? A. We are friends.

40 Q. How long have you known him? A. Well, I could not recall that.

*Edward Malinowski, for Plaintiff—Cross.*

Q. A number of years? A. Yes, sir.

Q. And the two of you were going for a ride?

A. Yes, sir.

Q. Where were you going? A. To the bakery.

Q. And as you stopped at Hoyt Street, did you look up Schuyler Avenue? A. When we stopped at the corner of Hoyt and Schuyler.

10

Q. You stopped right here; did you look up Schuyler Avenue? A. Yes, sir.

Q. Did you see this bus coming? A. Yes, sir.

Q. How long were you stopped? A. Well, I could not tell you how long; it was a dead stop, though.

Q. Was the bus coming fast? A. I believe it was.

Q. At that time you were sitting alongside of Mr. Bednarski, is that right? A. Yes, sir.

20

Q. Did you help him in telling him when to go and when to stop? A. I didn't say a word.

Q. Now, you saw this bus coming down fast? A. Yes, I believe.

Q. Did you say anything to him about waiting until the bus passed? A. I didn't say anything.

Q. Of course, you didn't suggest to him to wait where he was stopped until the bus had stopped, did you? A. I didn't say a word to him when we stopped until we got hit.

30

Q. Now, as I understand it, the bus hit the automobile; is that right? A. Yes, sir.

Q. You say that? A. I didn't see it.

Q. Will you tell the Court and jury, please, what you saw. Why did you say that the bus hit the automobile, if you didn't see it?

Mr. Brenner: I don't think he said that. He said he heard the crash.

The Witness: I heard the crash.

40

*Edward Malinowski, for Plaintiff—Cross.*

Q. Didn't you say that after you stopped, and then started crossing, the bus came down and smashed into the automobile? A. I didn't say it.

Q. What did you say? A. I says that while we were coming from the bakery, the front of the motor, the motor was all the ways in Hoyt Street.

10 Q. The motor was into Hoyt Street? A. And I heard a crash.

Q. You heard the crash. Do you know whether the automobile hit the bus or the bus hit the automobile? A. I don't know.

Q. Now, you say that the front of the automobile was in Hoyt Street, is that right? A. Yes, sir.

Q. And the bus was coming straight down Schuyler Avenue? A. Yes, sir.

20 Q. How much of the car was in Hoyt Street? A. The motor.

Q. How many feet? A. I could not tell you exactly.

Q. But you are sure now that the car was actually in the street, is that right; the car was actually in Hoyt Street? A. Well, it was on Schuyler; some was on Schuyler Avenue, some was in Hoyt.

Q. Now, can you show us here on the picture where the car was, how much of it was into Hoyt Street, and how much was on Schuyler Avenue? A. I believe I can.

30 Q. Will you try? A. About that much.

Q. So that this car was, you say, about that much into Schuyler Avenue—or, into Hoyt Street? A. Into Hoyt Street.

Q. And up against the curb? A. It was not up against the curb.

Q. It wasn't far from the curb? A. It wasn't far.

40 Q. How far was it? A. About that much; I don't know how much that is.

*Edward Malinowski, for Plaintiff—Re-cross.*

Q. So, then, the front of the automobile was into Hoyt Street and about that much from the curb? A. Yes, sir.

Q. Will you tell me and the gentlemen of the jury how this big bus could have gotten in the space around that corner, to take the front of the bumper off?

10

Mr. Brenner: I object; there is certainly no evidence about the front bumper.

The Court: Sustained.

Q. What part of the car was damaged, the car you were in? A. I don't remember. I didn't see it.

Q. You don't remember what part was injured or damaged? A. No.

Q. Was the car hit in the front or back, do you know? A. I don't know; I just heard the crash.

20

Q. Did you see Mr. Bednarski after the accident? A. I saw him in the hospital.

Q. Now, this candy store that you talk of, where you worked before the accident, it is a pool room, isn't it? A. It is billiards.

Q. It is a plain, ordinary pool and billiard room and not an ice cream parlor? A. Just candy.

Q. It is a pool room? A. Billiards.

30

*Re-cross-examination by Mr. Brenner:*

Q. Is the intersection at Hoyt Street and Schuyler Avenue pretty well lit? A. Well, there is a light there.

Q. How many lights, do you know? A. Well, I recall one.

Q. What type light is that? A. It is a big one.

Q. Are light? A. Yes, sir.

Q. Where does that extend from? A. It is on that pole.

40

*Edward Malinowski, for Plaintiff—Re-cross.*

Q. The pole that has been marked on the diagram on the southwest corner? A. Yes, sir.

Q. Does that hang close to the pole or extend out a little bit? A. Extends out a little bit.

Q. About how far, do you know? A. I could not tell you.

10 Q. Right in the intersection of Hoyt Street and Schuyler Avenue? A. It is close to it.

Q. Are there any lights that you know of between Hoyt Street and Devon Terrace? A. No, there is just one at Devon Terrace, I believe.

Q. The same type of light? A. I believe it is.

*Re-cross-examination by Mr. Barison:*

20 Q. Now, you stopped for a second and then continued on, is that right? A. I don't know how long we stopped.

Q. No horn was blown, was there? A. Well, I could not recall that.

Q. The car didn't have any lights? A. It did have lights.

Q. But you don't recall your blowing any horn? A. I didn't say yes; I don't know whether we blow a horn.

*Re-cross-examination by Mr. Brenner:*

30 Q. Do you know whether the bus blew any horn; did you hear any? A. Well, I didn't hear any.

*Thomas F. Barry, for Plaintiff—Direct.*

THOMAS F. BARRY, sworn for the plaintiffs.

*Direct examination by Mr. Willman:*

Q. Detective Barry, you are connected with the Kearney Police Department? A. Yes, sir.

Q. In what capacity? A. Detective.

Q. What does your work consist of? A. General police work. 10

Q. Is it your business to investigate accidents, automobile accidents? A. Investigations in general.

Q. Would you tell the Court and jury, please, what your connection was with this case? A. If you have no objection, I will read this right out.

Q. What is that? A. It is my report.

Q. What is that a report of? A. The investigation. 20

Q. What do you personally know; when did you first come upon the scene of the accident? A. About 10:50 p. m.

Q. You came to the scene at Hoyt and Schuyler Avenue? A. I did.

Q. What did you see at that time? A. Oakland sedan and a Lyndhurst Journal Square bus involved in an accident.

Q. Now, Detective Barry, will you please step down and indicate to the Court and Jury the positions of the automobiles as you saw them when you arrived at the scene? A. There was an Oakland sedan down here, up against a tree; the Lyndhurst Journal Square bus about there (indicating). 30

Q. Will you describe the position of the Oakland sedan at that time; what direction was it facing? A. It was facing south on Schuyler Avenue.

*Thomas F. Barry, for Plaintiff—Direct.*

Q. Will you please indicate on the diagram? A. Yes, about in there, somewhere.

Q. Was it on the lot or on the street, or partly on the lot and partly on the street? A. Partly; it was up against the gutter.

10 Q. How much of the car was on the lot? A. Well, one side was up against the tree on the lot and the car itself was more to the gutter.

Q. How far away from the street was the tree which you just mentioned; will you please indicate on the diagram? A. Well, about ten feet in from the sidewalk.

Q. Ten feet in from which sidewalk? A. From the westerly sidewalk of Schuyler Avenue.

Q. How close to the tree was the Oakland automobile? A. About four feet.

20 Q. Facing south on Schuyler Avenue. Will you tell us what the car looked like when you saw it? A. Why, it was totally demolished.

Q. Which part of the car especially so?

Mr. Barison: I have photographs.

A. I have my police photographs. The whole right side.

30 Q. Detective Barry, will you please tell us by whom these photographs were taken? A. By Police photographer Bell.

Q. The officer is here in Court? A. He is.

Q. Will you refer to the picture which indicates the damage done to the Oakland sedan? A. There is one taken at the scene right there; there is another one taken after the car had been towed to the garage; this is the better picture. They state on the back, each one.

40 Q. Who made the reference on the back? A. The photographer when the pictures were made and developed.

*Thomas F. Barry, for Plaintiff—Direct.*

Q. Now, will you please tell us, Detective Barry, whether you observed the Lyndhurst bus for any period of time; did you see that? A. Yes, I did.

Q. Did you examine those cars? A. I did.

Q. That is part of your job? A. It is.

Q. Are you a mechanic? A. Yes, sir.

Q. You understand the nature of repairs which have to be made to automobiles? A. I do. 10

Q. You know the value thereof? A. I do.

Q. Could that Lyndhurst bus be driven after the accident? A. It was.

Q. What noticeable damage was there on that car? A. Bumper and the right front headlight.

Q. Front bumper? A. Front bumper; right front headlight and the right front mudguard.

Q. That would be the side towards the westerly portion of Hoyt Street; is that right? A. That is right. 20

Q. Was there anything wrong with the left bumper and left side, or the left wheel or left front fender of this bus? A. No.

Q. What kind of damage was there to the right front fender; what was the nature of that damage? A. What you would call a brush mark.

Q. A sort of scrape? A. Yes, sir.

Q. Did it involve at all the bending of the right front fender? A. No. 30

Q. And this front bumper; where was that damaged? A. It was partly on the ground.

Q. Which side on the ground; do you know? A. That I can't answer.

Q. How long did you stay at the scene of the accident? A. About forty-five minutes.

Q. During that time, what did you do? A. We had photographs taken of the accident and tried to locate witnesses. 40

*Thomas F. Barry, for Plaintiff—Direct.*

Q. Did you supervise the taking of the photographs? A. I did.

Q. Now, referring to the Bednarski car, the Oakland sedan, had you seen that car before it was moved after the happening of the accident? A. I did.

10 Q. What was the position of the car there as you described? A. As in the pictures.

Q. On this corner? A. That is right.

Q. Did you notice the condition of the headlights of the car? A. I did.

Q. What was the condition? A. They were not lit, and you were unable to test the brakes, or do anything with the car; the condition of it was that the transmission and everything was jammed up, right tight.

20 Q. Did you notice the condition of the glass in the lights themselves, the front lights? A. No, I can't answer that; I can't recall.

Q. You say the reason why you could not test the brakes or lights was due to the fact that the car was demolished? A. Yes, sir.

Q. Are you acquainted with that section? A. I am.

Q. Were the streets at the time you arrived on the scene well lighted? A. They were.

30 Q. What kind of lights were there there? A. It is a county road; they were in the "stagger" system, one are light on each side.

Q. Does that illuminate the street well? A. It does the intersection, yes, sir.

Q. Is that a flat intersection, or is there any decline or incline? A. West of Schuyler Avenue starts an upward incline.

Q. Is this the spot that you refer to? A. That is it.

40 Q. Is there an incline or decline on Schuyler? A. No, it is level.

*Thomas F. Barry, for Plaintiff—Direct.*

Q. Is there any decline or incline from the easterly portion of Hoyt Street up to Schuyler Avenue? A. No.

Q. In other words, the portion indicating the north and south side of Schuyler Avenue and the east side of Hoyt Street is flat? A. That is the idea.

10

Q. Are there any unusual obstructions on any of the crossings? A. There are not.

Q. Is the view good or bad? A. Good.

Q. What was the condition of the weather that night, if you recall? A. Clear.

Q. And the condition of the street? A. Dry.

Q. Did you stay at the scene of the accident until the vehicles were taken away? A. I did.

Q. How was this passenger car removed? A. The Oakland you have reference to?

20

Q. Yes, the passenger car that got wrecked. A. That was towed away.

Q. How was the bus removed? A. It was driven away.

Mr. Willman: Is there any objection to the use of these photographs?

Mr. Barison: None, except I would like to ask whether these photographs were taken immediately after the accident, and also after the crash into the pole?

30

The Witness: That is right.

Mr. Barison: So that the pictures show the result both of the contact with the car and the contact with the pole?

The Witness: Do you mind letting me look at them? These were not taken at the scene; these two were taken at the scene.

Q. Those that were taken at the scene and those that were taken later were taken of course after

40

*T. F. Barry, for Plaintiff—Re-direct—Re-cross.*

the contact between the car and the bus and also the contact of the car with the pole? A. Yes, sir.

Q. So that these photographs will show also the injuries or damages sustained by contact with the pole? A. It will.

10 Mr. Barison: I have no objection.

(Accepted and marked as Plaintiff's Exhibits P-1, P-2, P-3, P-4, P-5 and P-6 respectively of this date.)

The Court: The Kearney police force take photographs of accidents all the time?

The Witness: We do.

The Court: Why is that done?

20 The Witness: Police regulations; that is all I can tell; where anyone is injured, pictures were taken.

*Re-direct examination by Mr. Willman:*

Q. Is there any other fact that you can relate to us in reference to the scene of the accident that might be of any assistance to us? A. That is all I can think of at present.

*Re-cross examination by Mr. Brenner:*

30 Q. You have described to us the lighting conditions of the street at Schuyler Avenue? Would you tell us whether the conditions were the same at Devon Terrace? A. They were. That is an extended arc light from the street, I should judge about six feet on an arm out.

Q. That extends out towards the center of the intersection? A. That is right.

40 Q. And that is true both as to Hoyt Street and as to Devon Terrace? A. Yes, sir.

*Thomas F. Barry, for Plaintiff—Re-cross.*

Q. I show you the photograph, P-1, which has been marked in evidence and ask you whether prior to the time that photograph was taken, whether or not the other car had been removed or whether that was the position at the time of the accident? A. This is the actual photograph.

Q. How long after the accident occurred did you arrive there? A. Well, as soon as the call was received at Headquarters, I immediately went out. 10

Q. Do you know how long that was? A. I should judge I was there about five minutes after, a five minutes run from Headquarters.

Q. You say that was the position of both cars when you arrived there? A. That is right.

Q. Neither car had been moved backwards or forwards? A. No.

20

*Re-cross-examination by Mr. Barison:*

Q. Mr. Barry, did you test the brakes of the bus after the accident? A. I had the driver test the brakes.

Q. What did you find? A. They were in working order.

Q. Did you test the lights on the bus? A. I did.

Q. What did you find? A. In working order.

Q. The lights on the automobile, were they lit or were they out? A. They were out. 30

Q. Did you test the lights on the automobile? A. We were unable to do, owing to the condition of the car.

Q. There was a brush mark, you say, on the fender of the bus? A. Yes, sir.

Q. Just describe to the jury the type of brush mark that was? A. Well, caused by the impact.

Q. Was it a long streak, as if there was a turning away; just describe it as best you can. A. Well, that I cannot recall. 40

*Thomas F. Barry, for Plaintiff—Re-cross.*

Q. But the sole extent of damage was this mark and the front bumper? A. The bumper was completely on the ground.

Q. Which side? A. That I can't remember either. They had removed the bumper before they could drive the car.

10 Q. How far from that point where the car was was the pole? A. About 12 feet.

Q. This car had gone on after impact to the pole and been smashed up on the pole? A. Well, it must have. I didn't see it.

Q. Well, the car was just smashed up against the pole when you saw it? A. That is right.

*Re-cross-examination by Mr. Brenner:*

20 Q. You said you were unable to test the lights on the Oakland car. Would you explain more in detail the reason for that? A. The injury to the car, as far as the parts; the dashboard and so forth were in such condition that you could not even test by putting it in gear, to find out whether it was in high gear or low gear. Everything was all jammed up tight in there. There was no way of working the switch or starter or anything else on the car.

30 Q. Were the wires involved in the smash-up?  
A. Yes, the motor was shoved right back.

*Henry J. Bell, for Plaintiff—Direct.*

Officer HENRY J. BELL sworn for the plaintiff:

*Direct examination by Mr. Willman:*

Q. Officer Bell, are you connected with the Kearney police department? A. Yes, sir.

Q. In what capacity are you connected with the department? A. Fingerprint expert and photographer. 10

Q. In connection with your work, is it your duty to investigate an accident and to take pictures? A. Take pictures of an accident.

Q. Did you have occasion to take pictures of the accident which happened on August 30th, 1931, at the intersection of Hoyt Street and Schuyler Avenue in Kearney? A. Yes, sir.

Q. Will you please tell the Court and Jury when you first came down to the scene of the accident? A. About 11:25 p. m. 20

Q. That was about 25 minutes after the happening of the accident? A. About that.

Q. When you came there, what did you find? A. Found the bus in the center of the street and the Oakland sedan smashed up against the pole.

Q. Can you tell us whether you were there before Detective Barry? A. No, sir; I was there after Detective Barry.

Q. When you came on the scene, will you please show us on this diagram the position of the bus and the automobile? 30

Mr. Barison: Haven't you the photographs of this. I think they are clear enough.

Mr. Willman: I don't think it shows the position of the cars in the intersection.

Q. Will you please step down, Officer, and please indicate on the diagram to the Court and Jury 40

*Charles C. Mockus, for Plaintiff—Direct.*

the position of the vehicles when you arrived upon the scene of the accident? A. When I arrived, I found the bus about a full length out into the road, and the Oakland was smashed against the telegraph pole. The head was smashed right inside of the car, smashed on the side of the driver and inside as he sat inside on the driver's seat. It was against that telegraph pole on the corner.

10

Q. Now, at that time, officer, will you please tell us whether there were any passengers in the automobile, the passenger car? A. No, sir.

Q. No people in there? A. No, sir.

Q. You took several photographs which we are now using? A. Yes, sir.

Q. They were taken by you? A. Yes, sir.

20

Q. What was the condition of the passenger car as you noticed it? A. The right-hand side, the side from the driver's seat was a complete wreck.

Q. Did you notice the condition of the bus? A. Well, yes; the front bumper was off.

Q. Any other mark that you noticed on the bus? A. No.

(No cross-examination.)

30

CHARLES C. MOCKUS, called as a witness on behalf of the plaintiffs, being sworn, was examined and testified as follows:

*Direct examination by Mr. Willman:*

Q. Where do you live? A. 227 Hoyt Street, Kearny.

Q. Is that in the vicinity of Hoyt and Schuyler Avenue? A. Yes, sir.

40

Q. Do you know that section? A. Yes, sir.

*Charles C. Mockus, for Plaintiff—Direct.*

Q. Do you remember the night of August 30, 1931? A. I do.

Q. Will you tell the Court and jury briefly where you were about a quarter of eleven or eleven o'clock that night? A. I was on Schuyler Avenue, the right-hand side of Schuyler Avenue, about two hundred or two hundred and fifty feet before the accident. 10

Q. Is this the side you mean (indicating)? A. Yes, sir.

Q. Indicating the easterly side of Schuyler Avenue? A. Yes, sir.

Q. About two hundred and fifty feet from the corner or from the scene of the accident? A. From the corner.

Q. What were you doing that night? A. Just having a chat there with the fellows. 20

Q. Will you tell us what you were doing? A. I was just there talking over things with the fellows.

Q. Which way were you facing? A. I was facing the building.

Q. Which building? A. The club.

Q. Where is the club? A. Just where I was sitting at, just about two hundred and fifty feet away.

Q. On this side of the street (indicating the easterly side of Schuyler Avenue)? A. Yes, sir. 30

Q. Do you remember what kind of a night it was? A. Yes, sir.

Q. What kind of a night was it? A. Clear night.

Q. Do you remember what the condition of the street was at that time? A. Dry.

Q. Now will you please step down to the board and indicate to the Court and jury the position of the passenger car and the bus when you first 40

*Charles C. Mockus, for Plaintiff—Direct.*

saw them? A. When I seen the car? I seen the car just coming out of Hoyt Street, headed into Schuyler. I don't know whether it was stopping or not. I just glanced over, the car was coming out. The next thing I knew, I see the crash, right about here and the bus, it turned the car completely, swung it right up against the pole.

10

Q. Will you tell us when you first saw the bus before the actual collision took place? A. It was about Devon Terrace.

Q. How far is Devon Terrace from the corner?

Mr. Barison: We stipulated on that. About two hundred and fifty feet.

The Witness: About two hundred and fifty feet.

20

Q. Did you notice whether the Bednarski car, that is the passenger car, which was coming out of Hoyt Street, had any lights? A. Yes, sir.

Q. Did you notice——

The Court: All the pointing that this witness has done won't do any good. We have a record here but it won't be on the record.

Mr. Willman: That is true, your Honor.

The Court: When you first saw the Bednarski car, you say it was coming into Schuyler Avenue?

30

The Witness: Yes, sir.

The Court: Where was the bus at that time?

The Witness: Just about up at Devon Terrace, maybe a couple of feet the other side of Devon Terrace.

The Court: Then how far did the bus travel before the collision occurred?

40

The Witness: About two hundred and fifty or two hundred and seventy-five feet.

*Charles C. Mockus, for Plaintiff—Direct.*

The Court: How far did the passenger car travel?

The Witness: About thirty feet.

The Court: Where did the collision occur?

The Witness: What did you mean?

The Court: At what point in the street did it occur? 10

The Witness: It was a little way off the center.

The Court: Which way off the center, east or west?

The Witness: West.

The Court: That is west of the center of Schuyler Avenue?

The Witness: Yes, sir.

The Court: How about the center of Hoyt Street, was it north or south of that? 20

The Witness: North.

The Court: Was it nearer the corner?

The Witness: It might have been a couple of feet away from the north corner.

The Court: The northwest corner?

The Witness: Northwest corner.

The Court: What part of the cars came in collision?

The Witness: What do you mean, Judge? 30

The Court: What part of the automobiles came into collision?

The Witness: The right rear of the car by the right front of the bus.

The Court: You have pointed out a tree on the diagram. Where is that tree located? Have counsel agreed that is on the southwest corner?

Mr. Barison: Yes, your Honor.

Mr. Willman: Yes, your Honor. 40

*Charles C. Mockus, for Plaintiff—Direct.*

Q. Can you tell us whether the bus stopped when it reached the intersection of the northwesterly corner of Hoyt and Schuyler Avenue? A. Where it stopped?

Q. Did it stop? A. Well, after it hit, yes, sir.

10 Q. Before that time did the bus stop? A. I didn't see it, no.

Q. Do you know whether the bus was going fast or slow? A. It was going at a good rate of speed.

Q. Do you drive a car? A. Yes, sir.

Q. Are you able to estimate the speed? A. I think I am.

Q. How fast was it going?

(Objected to; argued and objection withdrawn.)

20 The Court: It goes to the credibility of the testimony. He has given you a distance already. He has the bus going eight times as fast as the other car. That is to say, the bus covering two hundred and fifty odd feet while the passenger automobile was going thirty; is that right?

The Witness: That is right.

The Court: So that is over eight times as fast.

30 Q. Did you hear the collision? A. I heard the bang, the crash.

Q. What is the next thing you saw? A. The next thing I saw, I seen one of the fellows coming flying through the air.

Q. Where did that fellow land? A. He landed in between the trees. There is three trees right along the west side of Schuyler Avenue.

40 Q. You refer to the southwest corner, where the trees are? A. Where the pole is, on the other

*Charles C. Mockus, for Plaintiff—Cross.*

side of the pole there. There is three trees to your left, right in between two of them.

Q. Do you know who that was? A. That was Ed; I forget his other name.

Q. Malinowski? A. Malinowski.

Q. Do you know how far a distance he was from the point of collision when you saw him between the trees? A. I would say about twenty-five feet. 10

Q. Do you recall whether the intersection of the two streets was lighted up? A. It was.

Q. Did you see the bus after the accident? A. I did.

Q. Will you please tell us whether you noticed any damage to the front left mudguard of the bus? A. I didn't.

Mr. Barison: I object to asking this witness where he noticed the damage. Let the witness say where he noticed the damage. 20

The Court: Did you see the damage?

The Witness: The only damage I seen was the bumper that is all; the bumper and the front light, right light.

Q. What was the condition of the passenger car when you saw it? A. It was completely wrecked.

Q. What was its position? A. The car was facing or was up against the pole, facing east. 30

Q. Was the front of the passenger car damaged at all? A. It was not very much, it was more rear, and at one side where it was up against the pole.

*Cross-examination by Mr. Brenner:*

Q. Did you go over to the passenger car? A. I did.

Q. Did you see Mr. Bednarski? A. Bednarski, yes, sir. 40

*Charles C. Mockus, for Plaintiff—Cross.*

Q. You did? A. Yes, sir.

Q. Did you help him out of the car? A. I did.

Q. Where was he in the car when you came there? A. Right up behind the wheel.

Q. One man was out of the car and one still in the car? A. In the car, yes, sir.

10

*Cross-examination by Mr. Barison:*

Q. Mr. Mockus, where do you live? A. 227 Hoyt Street, Kearny.

Q. Where does Malinowski live? A. I don't know.

Q. Where does Bednarski live? A. I don't know.

Q. You don't know either one of them? A. I know them to see, that is all.

20

Q. You knew them before the accident, didn't you? A. No, sir.

Q. You knew their names? A. I didn't know their names. Just when I read the papers I knew their names.

Q. How is it your name is not in the police blotter? Do you know?

Mr. Willman: I object.

The Court: Sustained.

30

Q. Were you there at the time? A. As I said before, I was about two hundred and fifty feet away.

Q. But after the accident you came to the scene, didn't you? A. Yes, sir.

Q. Didn't you see the police officials? A. I seen them there, yes, sir.

Q. You didn't give your name in as a witness, did you? A. No.

40

Q. You never gave your name as a witness until when? A. It was right after the accident.

*Charles C. Mockus, for Plaintiff—Cross.*

Q. Then who did you give it to? A. I just forgot his name, the fellow from the lawyer, Sawyer.

Q. For who? A. I don't get you.

Q. The lawyer for whom? Who did you first tell about this accident? A. It was about both of them.

The Court: Is the man in court that you told? 10

A. Yes, Sawyer.

Mr. Steiner: I think he means me; my name is Steiner.

The Court: Is it Mr. Steiner?

Mr. Brenner: Mr. Steiner is the attorney of record.

Q. How did you get in touch with him? A. He came down looking for me. 20

Q. Who came down looking for you? A. I don't know, Bednarski's brother or the other fellow's, Malinowski's brother.

Q. How did they know to go look for you? A. I don't know. They came down there to see if they can find anybody.

Q. Where did they come, to the club? A. Yes, sir.

Q. To get witnesses? A. Well, the whole bunch of fellows was there. 30

Q. In other words they just came to the club on a blind?

Mr. Brenner: I object to that.

The Court: How does he know whether they came blind?

Q. What I want to get at, Mr. Mockus, is when is the first time that you told anybody that you had 40

*Charles C. Mockus, for Plaintiff—Cross.*

seen this accident? A. I think it was two days after.

Q. Who did you tell it to? A. Mr. Steiner.

Q. How did you come to tell it to him? A. I saw him, some fellows brought him down and he came down to the house and they told me that somebody was looking for me. I came home and started a conversation with him.

Q. And that is when you told him that you had seen the accident? A. Yes, sir.

Q. Had you told anyone before you had seen the accident? A. I did not.

Q. How did you know if they knew to come to your home?

Mr. Brenner: I object to that.

Mr. Barison: All right.

Q. You didn't tell a soul you had seen this accident? A. I didn't tell anybody until they came down.

Q. Although you told nobody, how do you think these people came to your home? A. They didn't come to my home. They went down and asked a few fellows if anybody had seen the accident and some of these fellows said they knew a fellow that seen it.

Q. After the accident, did you go over and help; did you do anything except look and go away? A. No, I helped there.

Q. And no one got your name? A. Well, I didn't give it to anybody.

Q. Where is this club you belong to? A. 134 Schuyler Avenue.

Q. Do you mind telling where that is, is that half way up there or down this way (indicating)? A. It is south.

*Charles C. Mockus, for Plaintiff—Cross.*

Q. Which side of the street? A. On the right hand side.

Q. On this side here (indicating)? A. Yes, sir.

Q. Is that the east side of Schuyler Avenue or the south of Hoyt? How far down the street is the club? A. About one hundred and fifty feet.

Q. Was that where the bus was when you first saw it? A. Where was the bus? Well, about twenty-five feet this side of Devon Terrace. 10

Q. That means about two hundred and seventy-five feet up? A. Yes, sir.

Q. Of course you kept your eye on the bus all the time? A. No, I just took a glance at it and that is all.

Q. Took a glance at it? A. I looked at it. I didn't think of any accident at all.

Q. Did you also take a glance at the car coming along Hoyt Street? A. I did not. 20

Q. How far from the corner was the car when you first saw it? A. The only thing I seen of the car was the hood.

Q. You saw the hood of the car? A. Yes, sir.

Q. That was the same moment, at the one glance, you saw the hood of the car on Hoyt Street and the bus twenty-five feet beyond Devon Terrace? A. Well, I seen the hood of the car first and then I looked straight ahead and the bus was coming along. 30

Q. Twenty-five feet above Devon Terrace? A. And I says to the fellows, "How is the bus down this way."

Q. Just answer the question and let's see if we can understand each other. At the time you saw the hood of the car coming out of Hoyt Street, you also saw the bus twenty-five feet above Devon Terrace, which is about two hundred and seventy-five feet away? A. Yes, right. 40

*Charles C. Mockus, for Plaintiff—Cross.*

Q. When the collision occurred, just give me the point of contact on the street. Would you come up here and show us where the two vehicles came together? A. The car was about here, about three-quarters of the way across the street, probably a little less.

10 Q. A little less than three-quarters? A. Yes, sir.

Q. So that the car had traveled three-quarters of the way across Schuyler Avenue? A. Yes, sir.

Q. You know Schuyler is approximately thirty-five feet wide? A. Yes, sir.

Q. And three-quarters of the way would be about how much, twenty-seven feet? A. I thought about twenty-five feet.

20 Q. You say the car had traveled about twenty-five feet now, is that right? A. Yes, sir.

Q. From here to the point of contact and yet this bus traveled two hundred and seventy-five feet? A. Right.

Q. Do you know how fast the car was going, the automobile of Bednarski? A. No, must have been going about ten to fifteen miles an hour, either one of the two.

30 Q. About ten or fifteen; so that the bus was going between ninety and one hundred and forty-five miles an hour? (No answer.)

*Cross-examination by Mr. Brenner:*

Q. The men that came down with Mr. Steiner or told you that Mr. Steiner wanted to see you, were they members of this club that you refer to? A. No, they were not.

Q. Were they boys that you knew or young men that you knew? A. Yes, I knew them.

40 Q. On the day of this accident you were in front of the club that has been referred to? A.

*Charles C. Mockus, for Plaintiff—Re-cross.*

No, I was a little ways away from it. I wasn't exactly by the club.

Q. You live right in the vicinity of where this accident occurred? A. I live right across from the bakery where they were.

Q. You mentioned about making references or talking to somebody about this bus. Were you with someone at the time? A. During the accident? 10

Q. Before the accident, right before. A. Before the accident?

Q. When you noticed the bus. A. There were some other fellows there.

Q. You were with some fellows there? A. There was some fellows there.

Q. Was there anything unusual about the bus being on Schuyler Avenue that made you refer to it? A. What do you mean? 20

Q. What made you say you wondered what the bus was doing; what was wonderful about that? A. Because very seldom they come through there. I didn't see any through there for quite a time and it is strange to see one coming along there.

Q. Is that the regular route of this bus? A. No, it is not.

Q. They don't come through that street at all? A. No, sir. 30

*Re-cross-examination by Mr. Barison:*

Q. Do you remember Mr. Englehart, an officer of the Jersey City-Lyndhurst Bus Line at the scene of the accident talking to people? A. Yes, sir.

Q. And talking to you and asking you whether you saw this accident? A. I did not.

*John Malinowski, for Plaintiff—Direct.*

Q. Do you remember telling him that you did not; that you were sitting on a bread box and didn't see anything? A. I didn't talk to him.

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

(Witness excused.)

10

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

*Direct examination by Mr. Willman:*

Q. You are one of the plaintiffs in this suit?

A. Yes, sir.

20

Q. You are the father of Edward? A. Yes, sir.

Q. The boy who was injured? A. Yes, sir.

Q. Now, at the time of the accident or a little before the happening of the accident, was Edward working? A. Yes, sir.

Q. Do you know for whom he worked? A. He was working in a store.

Q. How much did he earn a week? A. He makes from eighteen dollars up.

Q. Up to what? A. To about twenty or twenty-two, according to how the business is.

30

Q. What did Edward do with the money? A. He gave it to the mother; he leave it home, gave it home.

Q. Do you know how much money was given to Edward each week? A. Well, according to how much he needed; he used to get two dollars or more.

Q. You kept the balance of the money? A. Yes, sir.

40

*John Malinowski, for Plaintiff—Direct.*

Q. For how long a period of time was Edward working before the happening of this accident?

A. At that place?

Q. In any place? A. He used to work when he was off on vacations from school. He used to work in the grocery store, for about two and a half years. Then he worked in the other store. 10

Q. Now, before the happening of this accident, what was the condition of Edward's health? A. He was well; he was in good health.

Q. Was he ever involved in any automobile accident before this one? A. No, sir.

Mr. Barison: I object to that. I don't think this witness is a proper witness to that question.

The Court: But it is answered. What was the motion? 20

Mr. Barison: I move to strike out the answer.

The Court: It will be stricken.

Q. Of your own knowledge, was Edward ever sick or confined to his bed at home previous to the happening of this accident? A. He was always in good condition.

Q. Now, after the happening of this accident, did Edward go back to work? A. No, not yet. 30

Q. Has he done any work at all since the happening of this accident? A. No.

Q. Can you tell us what the condition of his health is now? A. Well, he looks sick. He looks sick. He has got a claim that he has a headache often.

Q. He tells that to you? A. Tells that to the mother.

Q. Does he make any other complaint to you about his health? 40

*John Malinowski, for Plaintiff—Cross.*

The Court: Well, that is not evidential.

(Argued and question withdrawn.)

Q. Did you have any expenses on account of the accident? A. Hospital and doctors' bills.

10           The Court: You have got all those in?  
Mr. Willman: Yes, I have those.  
The Court: Is there anything else?  
Mr. Willman: That is all.

*Cross-examination by Mr. Barison:*

Q. Did you pay these bills? A. No.

Q. Did you pay any of them yet? A. No.

Q. How much was your boy getting a week? A. Eighteen dollars and more.

20           Q. As a matter of fact he was not working in a candy store at all, was he? A. Well, it is candy.

Q. He was working in a pool room, in a crap parlor, where they are shooting crap? A. I never was in the store.

Mr. Willman: I object to that.

Mr. Barison: It is for the purpose of testing his veracity.

The Court: What does he work at?

30           The Witness: He was a clerk. I never go in the store, but from the outside on the street I see it is a candy store. I never go inside.

(Witness excused.)

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Mr. Willman: That is the plaintiff Malinowski's case.

*Motion for a Non-suit.**Joseph Bednarski, for Plaintiff—Direct.*

Mr. Brenner: I desire to make a motion.

The Court: The jury may be excused until tomorrow morning at ten o'clock.

(The jury retired.)

Mr. Brenner: I move for a non-suit insofar as the defendant, Bednarski is concerned upon the ground that there is no negligence shown insofar as the operation of his car is concerned.

10

The Court (after argument): I will permit counsel to reopen his case for the purpose of putting on Bednarski and any other witnesses in the morning and I will reserve decision upon the motion until that testimony comes in.

20

(Adjourned until March 3, 1933, at 10 a. m.)

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March 3, 1933, 10 A. M.

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

30

*Direct examination by Mr. Willman:*

Q. Mr. Bednarski, you were the operator of the Oakland sedan involved in the accident on August 13, 1931? A. Yes, sir.

Q. Will you tell us, please, where you were just before the collision took place? A. Well, I was at the baker's shop on Hoyt Street.

Q. Where is the bake shop? A. Located on the right hand side going down Hoyt Street.

40

*Joseph Bednarski, for Plaintiff—Direct.*

Q. How far away is that from Schuyler Avenue? A. I judge about one hundred and fifty feet.

Q. After you were through with your business there, what did you do? A. Well, I turned around and started to go up Hoyt Street.

10 Q. That is in a westerly direction up Hoyt Street? A. Yes, going west on Hoyt Street.

Q. Tell us just what happened as you proceeded riding up Hoyt Street. A. When I reached the corner of Schuyler Avenue and Hoyt Street, on the east corner, I stopped, looked up and down. At the corner of Devon Terrace I had seen the bus; so I put my car in first gear and started to cross. As I reached three-quarters of the way past Schuyler Avenue, two big lights shined right at my car and the front of the bus struck my rear end on the right hand side and that is all I can remember.

20

Q. Do you remember what time of the night that was? A. I would judge it to be about eleven o'clock at night, I think.

Q. Can you tell us whether you heard any warning? A. No warning whatsoever.

Q. Did the bus come to a stop at Hoyt Street and Schuyler Avenue before the collision took place? A. No, sir.

30 Q. Did you notice the bus as it came along Schuyler Avenue? Did you notice the speed of the bus as it came along Schuyler Avenue? A. Why, I could not notice the speed.

Q. Well, without mentioning—

Mr. Barison: I think, if your Honor please, the witness has answered that. Counsel should not try to put words in his mouth.

The Court: Proceed.

*Joseph Bednarski, for Plaintiff—Cross.*

Q. Could you tell us whether the bus was going fast or slow? A. The bus was going pretty fast.

Q. Do you remember what portion of your car was struck? A. Right rear end.

Q. You had lights on your car? A. Yes, sir.

Q. Were they on? A. Yes, sir.

Q. Was there any other vehicle on Schuyler Avenue? Was there any other automobile on Schuyler Avenue at the time, coming towards Hoyt Street? A. No, sir. 10

Q. Was there any other vehicle on Hoyt Street coming towards Schuyler at the time? A. No, sir.

Q. In what gear was your car, if you remember, as you crossed Schuyler Avenue? A. First gear.

Q. At the time the car was struck, do you remember in what gear your car was? A. First gear. 20

Q. In driving your car in first gear at that time, can you approximate the speed which you attained? A. I judge about five miles an hour.

Q. Was any portion of your car beyond the line of Schuyler Avenue when it was struck, beyond the westerly line of Schuyler Avenue? A. My front end of the car was, I would say, on the cross-walk.

The Court: That would be the west cross-walk of Hoyt Street and Schuyler Avenue? 30

The Witness: Yes, Judge.

Q. And are you sure you don't remember anything after that impact? A. No, sir, I don't remember nothing.

Q. Edward Malinowski was sitting alongside of you, is that right? A. Yes, sir.

*Cross-examination by Mr. Barison:*

Q. Mr. Bednarski, as I understand it, you didn't see this bus before you were struck except that 40

*Joseph Bednarski, for Plaintiff—Cross.*

shortly before the accident you saw the headlights; is that right? A. I saw the bus at Devon Terrace first.

Q. Were you stopped here at the time? A. Yes.

Q. Completely? A. Dead stop.

10 Q. Was the bus coming fast or slow? A. The bus was coming pretty fast.

Q. You saw it? A. I saw it at Devon Terrace.

Q. If you were stopped here on Hoyt Street and you saw the bus coming pretty fast down from Devon Terrace, why didn't you wait until the bus passed—Devon Terrace is not a long block, is it?

A. I don't understand you.

Q. You had come to a full stop? A. Yes, sir.

20 Q. You saw this bus coming pretty fast down Schuyler Avenue towards the intersection of Hoyt Street where you were; isn't that so? A. Saw the bus at Devon Terrace.

Q. When you saw the bus you were standing still? A. Yes, I was at a dead stop.

Q. Now, it takes time to start, doesn't it, to shift gears? A. I put my car in first gear and started across.

30 Q. I am now asking you why, if you were at a dead stop here at Hoyt Street and you saw a big bus coming down at a pretty fast rate of speed, only a short block away, knowing that you would have to travel thirty feet or thirty-five feet and starting from nothing, and this bus coming pretty fast, why didn't you remain where you were until the bus had passed, so that there would not have been an accident? You understand what I mean, I am asking why didn't you stay there? A. The bus was a block away when I started off.

40 Q. And you were absolutely at a dead stop and the bus was coming pretty fast? A. I don't know if the bus was coming fast or not at that time.

*Joseph Bednarski, for Plaintiff—Cross.*

Q. So you don't know whether the bus was coming fast or not?

Mr. Brenner: At that time, he said.

The Witness: At that time.

Q. When did you first find out the bus was coming fast? A. When the two lights shined right on my car. 10

Q. How far away from your car was that? A. I judge about from twenty to twenty-five feet.

Q. So that you didn't know whether the bus was coming fast or slow until that time, did you? A. No, not until that time.

Q. And then you saw the bus coming fast when it was twenty feet away? A. It was coming fast.

Q. What did you do? A. What could I do?

Q. What did you do? A. I kept my car going at the speed it was going. 20

Q. Why didn't you stop? A. Stop? I would have been killed outright.

Q. You would have been killed outright; that is the reason you did not stop? A. Yes, sir.

Q. So that, instead of trying to stop, or instead of stopping, you continued right across to meet this bus head on, is that right? A. No, sir. I was three-quarters of the way over when I saw the bus coming down. 30

Q. You were three-quarters of the way over? A. Yes, sir.

Q. How many feet were you from the intersection of Hoyt Street and Schuyler, that is the northwest corner, how many feet were you from that corner coming this way?

The Court: When the collision occurred?

Mr. Barison: Yes.

A. When the collision occurred? 40

*Joseph Bednarski, for Plaintiff—Cross.*

Q. Yes. A. The nose of my car was touching the crosswalk.

Q. How many feet away from the crosswalk were you when you first saw the bus' headlights twenty feet away? A. Say that question over again, please.

10 Q. How many feet were you from the crosswalk when you first saw the bus' headlights twenty feet away from you? A. That is when I saw it.

Q. You saw him twenty feet away before the contact? A. Well, that is my judgment. I did not get out and measure it.

Q. All right, then, when you first saw it, there had been no contact, is that right? A. Right.

20 Q. And he was twenty feet, approximately, away from you, is that right? A. Well, I will say that much, I ain't sure.

Q. In fairness to all of us, how far would you say you were away from this corner at that time; were you ten feet or eight feet? A. When the accident occurred?

Q. When you saw the bus bearing down at a pretty fast rate of speed? A. I seen the bus only twice. I seen it at Devon Terrace and I seen it when he crashed into me.

30 Q. You didn't see it before he crashed into you? A. How I happened to see the bus was the glare of his lights shining right into my car. I just gave a side glance and that was the end of it.

Q. I am asking you now, how far, about, was the bus away from you at the time? If I can make myself clear. The bus was coming down this way, Schuyler Avenue, northbound, you were crossing Hoyt Street from east to west? A. Yes, sir.

Q. You saw this bus up at Devon Terrace? A. Yes, sir.

40 Q. First? A. Yes, sir.

*Joseph Bednarski, for Plaintiff—Cross.*

Q. You just paid no attention to it at all? A. Because I have got plenty of time to pass.

Q. You paid no attention to it at all, isn't that so? A. That is so.

Q. You took a chance, is that right? A. No chance about it.

Q. You thought you were going to get over before he reached Hoyt Street, is that right? A. Yes, sir. 10

Q. So that you paid no attention to the bus until you saw the bus' headlights, you said, about twenty feet away from you; so that the bus' headlights and you were at an angle because you were driving this way; is that right? A. Right.

Q. In this direction, and the bus is coming in this direction, is that right? A. Yes, sir.

Q. Now at the time that you saw these bus headlights glaring at you, how many feet was that bus away from your automobile? A. I judge from maybe fifteen or twenty feet. 20

Q. You were going five miles an hour? A. Yes, sir.

Q. In first gear? A. Yes, sir.

Q. What kind of a car were you driving? A. Oakland sedan.

Q. An Oakland sedan going five miles an hour in first gear and you can actually and practically at that speed stop on a dime, can't you? A. I can. 30

Q. Why didn't you do it? A. There was nothing in front of me to stop.

Q. Why didn't you do it so that the bus could have gone past you down Schuyler Avenue? A. I was three-quarters of the way past already.

Q. Still, it left this bus more than enough room to go through, didn't it, assuming that you were three-quarters of the way across; that would leave at least nine or ten feet. Why didn't you wait and let the bus go through? 40

*Joseph Bednarski, for Plaintiff—Cross.*

Mr. Brenner: I object to that.

The Court: Sustained.

Mr. Barison: I withdraw it and will reframe it.

10 Q. You were three-quarters of the way across, is that right? A. Yes, sir.

Q. You could have stopped on a dime. Why didn't you? A. There was something in front of me.

Q. There was something coming that was going to be in front of you? A. No, sir.

Q. Something coming right at you at an angle. You were coming this way at each other? A. No, sir.

20 Q. Well, why didn't you stop? A. There was nothing in front of me to stop for.

Q. Now, Mr. Bednarski, isn't it a fact that you came east and along Hoyt Street and didn't stop at a stop street? A. I made a dead stop.

Q. And isn't it a fact that you shot out of Hoyt Street? A. No, sir.

Q. At a terrific rate of speed? A. No, sir.

30 Q. And isn't it a fact that this bus was coming down Schuyler Avenue and that you hit the left front mudguard, careened around and then mashed into the pole? A. I don't remember nothing about the pole.

Q. You don't remember nothing about the pole? A. No, sir.

Q. Where were you coming from? A. Coming from the baker shop.

Q. Where is the baker shop? A. It is on the right hand side going down Hoyt Street.

Q. Where were you going to? A. What do you mean, where I am going to?

40 Q. Where were you bound for? A. To the bakershop.

*Joseph Bednarski, for Plaintiff—Cross.*

Q. You said you were coming from it? A. When?

Q. When the accident happened. A. Yes, coming from it.

Q. Where were you going? A. I was going down to the club house.

Q. And Mr. Malinowski, he was with you? A. 10  
Yes, sir.

Q. An old friend of yours, or a friend of yours?  
A. Yes, sir.

Q. Belonging to the same club? A. Yes, sir.

Q. The same club that Mr. Mockus belongs to?  
A. No.

Q. You know Mr. Mockus, the man who testified? A. I don't know him.

Q. Doesn't he belong to the club? A. No, sir.

Q. Don't you know? A. I said no, sir. 20

Q. He didn't belong to the club? A. No.

Q. You do and Malinowski does, is that right?

Mr. Brenner: What is that?

Mr. Barison: Belongs to the same club.

Is that right?

Mr. Brenner: The same club as what?

The Witness: Yes, we both stay in the same club.

Q. Is that where Malinowski was working? A. 30  
Yes, sir.

Q. It is a pool room, isn't it? A. It is a candy store; they got a pool table and seats.

Q. It is not run by an individual; it is run by a club, is that right? A. No, it is run by an individual.

Q. Is it a regular club? A. Well, we call it a club.

Q. No one goes in there to buy anything? Don't they have just club members and they sit around? 40

*Joseph Bednarski, for Plaintiff—Cross.*

Mr. Brenner: I object to that as incompetent, irrelevant and immaterial.

The Court: What has that got to do with this accident?

Mr. Barison: I think it has as respecting veracity.

10 The Court: You have shown interest, if there is any interest between both parties.

Q. Did you make a statement to the police about this accident? A. I did.

Q. Did you say in that statement: "I stopped at the corner of Hoyt and Schuyler Avenue at the stop-street"? A. I don't remember if I was asked that question.

20 Q. Did you make any statement to the effect that you did stop? A. What is that?

Q. Did you say anything in your statement about stopping at the stop-street, in the statement that you gave to the police? Did you say that you had stopped on the corner? A. If I was asked, I guess I told them, yes.

Q. Well now, whether you were asked or not, in making your statement as to how this thing happened, didn't you say that "I stopped there?" A. I did if I was asked.

30 Q. And if you were not asked you did not? A. I could not say it if I was not asked the question. I don't remember.

The Court: This club house is on Schuyler Avenue?

The Witness: No, sir, on Third Street.

The Court: There has been mention made here of a club house on Schuyler Avenue.

Mr. Brenner: It is a different club house.

40 The Court: You want to get that on the record.

*Joseph Bednarski, for Plaintiff—Re-direct.*

Mr. Barison: I was wanting to get the police statement. I think Judge Brenner has a copy of it if he will let me use it. The statement of his client to the police.

(Produced by counsel.)

Q. Joseph Bednarski, on August 31, 1931, after the accident, you made this statement: 10

“About 10:55 p. m. Edward Malinowski and I had just left the baker shop on Hoyt Street east of Schuyler Avenue. We started for home in my Oakland sedan, license H-69040. As we reached the intersection of Schuyler Avenue and Hoyt Street, a Jersey City-Lindhurst bus struck my car on the right side near the rear door. The next thing I knew I was at the West Hudson Hospital. My driver’s license is number 1148385, New Jersey.” Do you remember making this statement? 20

A. Yes, sir.

Q. To the police? A. Yes, sir.

Q. Now I ask you, when the police asked you to make this statement as to how it happened, why didn’t you tell them that you stopped? A. What is that?

Q. Why didn’t you tell the police in the statement made by you, without questioning, a voluntary statement of what happened, why didn’t you call to their attention that you had stopped at the stop street? A. I was not asked the question. 30

*Re-direct examination by Mr. Willman:*

Q. Mr. Bednarski, you were hurt on August 30, 1931, is that right? A. Yes, sir.

Q. This statement was given on August 31, 1931, is that right? A. Yes, sir.

Q. A day later? A. I don’t know when the statement was given to the police. 40

*Joseph Bednarski, for Plaintiff—Re-cross.*

Q. Where were you at the time the statement was given? A. I was in bed. I think it was at night time they came up and they woke me up.

Q. Where were you, at home or in the other place? A. I was in the hospital.

10 Q. Do you remember particularly what was asked you about the accident; do you remember all of the details? A. No, sir.

Q. What you say in this statement is true; whatever is set forth in this statement is true, isn't it? A. Well, I don't remember what is all there.

Q. Take a look at this statement, this is a copy of your statement. A. About that intersection, I don't know about that.

20 Q. Do you remember whether anybody asked you about stopping your car, how fast you were going or whether you started— A. No, I don't remember.

*Re-cross-examination by Mr. Brenner:*

Q. To avoid confusion; in talking about a club you and Malinowski do belong to the same club? A. We do.

Q. Is that the same club that the witness Mockus mentioned while he was on the witness stand yesterday? A. No, sir.

30 Q. An entirely different club? A. It is a different club. I didn't even know that one.

Q. Did you know Mockus before the time of this accident? A. No, sir.

(Witness excused.)

*James Caputo, for Plaintiff—Direct.*

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

*Direct examination by Mr. Willman:*

Q. You are the driver of the Lyndhurst-Jersey City bus involved in the accident? A. Yes, sir. 10

Q. Will you tell us briefly what happened? A. I was driving south along Schuyler Avenue and down at Devon Avenue I had to make a complete stop behind a Public Service bus. The bus originally runs on Davis Avenue, but due to the fact that there were repairs being made on Davis Avenue it was running along Schuyler Avenue, right on Hoyt Street and traveling west then to Davis Avenue. I made a stop at Devon Terrace behind a Public Service bus. The Public Service bus started and then I started south behind the bus. He gets to Hoyt Street and giving a right hand turn, the Public Service bus going west, and of a sudden, then, out of Hoyt Street traveling west, a car comes shooting out at a terrific rate. I jammed on my brakes, coming to a complete stop as his car struck the left side of my bumper, throwing it at least seventy-five to eighty feet southwest of where my bus had stopped. Then the car did not stop after he struck the left front of my bumper. He made a complete left turn and rammed himself up against the pole. 20 30

Q. What other part of the bus was struck? A. Just the left front of the bumper.

Q. Do you remember about how fast you were proceeding along Schuyler just preceding the happening of the accident? A. About eighteen miles an hour.

Q. At the time did you have any passengers in the bus? A. I did. 40

*James Caputo, for Plaintiff—Cross.*

Q. What was your bus doing on Schuyler Avenue?

The Court: He has just told you there was a detour.

Mr. Willman: I thought that applied to the Public Service bus.

10 The Court: All right; proceed.

The Witness: Due to the fact that the Belleville Pike was jammed with traffic, the Hudson County police gave us permission, or in other words that there was a detour from off the Belleville Pike to Schuyler Avenue through to Harrison Avenue, then from Harrison Avenue on to Journal Square.

20 *Cross-examination by Mr. Brenner:*

Q. The route that you ordinarily took was not Schuyler Avenue, was it? A. No, sir.

Q. Had you been over Schuyler Avenue at any time prior to this particular night with your bus? A. Yes, sir.

Q. How long before that? A. Well, we had been using it during the winter months, when the Belleville Pike, which is hilly, they shoved us over on there.

30 Q. So that you did know Schuyler Avenue. You were acquainted with Schuyler Avenue? A. Yes, sir.

Q. And you say that the Public Service bus stopped up there at Devon Terrace; on which side of Devon Terrace? A. On the near right hand corner. That would make it the northwest corner.

Q. Where was your bus when the Public Service bus came to a stop? A. Behind the Public Service bus.

40

*James Caputo, for Plaintiff—Cross.*

Q. Do you know why the Public Service bus stopped there? A. To take on passengers.

Q. Were you taking on any passengers or discharging any passengers at that time? A. No, not one.

Q. So that there was no occasion for you to stop? A. Certainly was; there was cars traveling north on Schuyler Avenue. 10

Q. How many cars? A. There was a string of cars coming up the street.

Q. A string of cars? A. Well, there was more than one.

Q. So that Schuyler Avenue at this particular time was very busy with traffic? A. At that particular time there was a few cars on the road.

Q. After the Public Service bus started up again, did you follow right after the Public Service bus? A. I was behind the Public Service bus. 20

Q. You say that made a turn into Hoyt Street? A. Yes, sir.

Q. Did it stop before making the turn? A. No, sir.

Q. Did you stop? A. No, sir.

Q. Was the bus still turning at the time this car driven by Bednarski was coming out of Hoyt Street? A. The bus had made the turn.

Q. You were following right after it? A. I was not right on top of him. 30

Q. How close to it were you? A. When he started to apply his brakes he was at least fifty feet from the intersection and he threw out his right signal arm.

Q. How close were you behind the Public Service bus? A. That is when I started to drop back, when I was fifty feet from the intersection.

Q. Up to the time you were fifty feet from the intersection, how far were you in back of the Public Service bus? A. About ten or twelve feet. 40

*James Caputo, for Plaintiff—Cross.*

Q. Then when he put his sign up, you were still traveling along too? A. Yes, sir.

Q. And only about ten or twelve feet behind him? A. Yes, sir.

Q. Then he started to make this turn? A. Yes, sir.

10 Q. Did he make the turn very slowly? A. He went around a pretty good clip.

Q. What do you mean a pretty good clip? A. About twenty miles an hour.

Q. Do you mean that in this distance from Devon Terrace to Hoyt Street that this bus was going or kept up a speed of twenty miles an hour?

A. The type of bus that the Public Service uses are the busses that you don't shift gears, when you are making any turn like that; it is a gas-  
20 electric car.

Q. One of these big yellow busses you ordinarily see around Jersey City; the same type? A. Well, they use that on the 54 line I believe, the Dumont line.

Q. Pretty big busses? A. Yes, sir.

Q. And that had to make a turn in a very narrow street, a street only thirty-five feet in width, into a narrow street thirty-five feet wide? A. If the Court would allow me—

30 Mr. Barison: Just answer the question.

The Witness: If the Court will allow this, I would say the diagram up there is not true.

Q. It is not true? A. No, Hoyt on the north-  
west corner, in order for a car to come out of  
Hoyt Street from the east side, he must run at an  
angle because Hoyt Street on the west side, on the  
northwest side is further north than it is on the  
40 opposite side of the street. In other words you  
have two lines of angle.

*James Caputo, for Plaintiff—Cross.*

Q. You mean that there is a jog there, the two sides of the street don't run into each other? A. That is what I mean.

Q. Which is the more north; Judge Barison drew this diagram. A. This one goes in in there.

Q. How much, what is the distance of the westerly curb line, the curb line on the westerly side of the street, Hoyt Street, on the curb on the east- 10  
erly side of Hoyt Street? I am now referring to the northerly line. A. In reference to Schuyler Avenue?

Q. Yes. A. Schuyler Avenue has no curb line on this side.

Q. Well, what would be the curb line? A. Well, it has no curb line. You can run up on the sidewalk on this one particular side.

Q. Have you run up on it? A. There is no side 20  
—you know what I mean, as you have in other places.

Q. Is there much of a jog in that road? Can you tell me how much? A. About three feet.

The Court: That is the northwest corner is three feet what?

The Witness: Is further north.

The Court: That is the northeast corner?

The Witness: Yes, right.

The Court: Does that pertain to the 30  
southwest and southeast; they are likewise the same?

The Witness: Out of proportion.

Q. So that the difference you make, would be only three feet difference at best? A. Yes, sir.

Q. That is not the question asked you. What I wanted to know was whether the Public Service bus, coming from this street thirty-five feet in width into a street thirty-five feet in width, 40

*James Caputo, for Plaintiff—Cross.*

whether it was traveling at the rate of twenty miles an hour? A. Yes, sir.

Q. And were you traveling twenty miles an hour behind that, behind that bus? A. Yes, sir.

10 Q. And you kept right on going at twenty miles an hour following the bus? A. No, sir, not when he put out his right signal arm. He put his right signal arm out and applied his brakes, showed me that he was going to make a turn, to pull to the left and right as he made his swing—

Q. What did you do then, reduce your speed to what? A. Between fifteen and eighteen miles an hour.

20 Q. Was it then you saw this car driven by Bednarski? A. It was just a matter of seconds, as I got a quarter of the way across the intersection.

Q. Did you see the car of Bednarski at the time you were fifty feet from Hoyt Street? A. No.

Q. How close did you get to Hoyt Street? A. I was a quarter of the way across the intersection when this car shot out. I didn't know whether it was a car or what it was at the time.

30 Q. Where was the front of your bus with reference to the northerly side of Hoyt Street at the time you saw that Bednarski car shoot out? A. In reference to that diagram or in reference to the way that I was?

Q. There is only the difference of three feet, you say? A. It makes it a whole lot.

Q. Let me ask you this; three feet won't make a difference how close the front of your bus was to the southerly side of Hoyt Street at the time you saw the Bednarski car coming out of Hoyt Street? A. Can I get up there and point it out?

40 Q. It is only a matter of feet; I am asking you. You don't have to show it on there. A. Every bit of twelve feet.

*James Caputo, for Plaintiff—Cross.*

Q. In other words your car had passed the northerly side of Hoyt Street, had gone beyond the center line of Hoyt Street and the rear was only twelve feet from the southerly side of Hoyt Street?

Mr. Barison: That is not what he said, though. 10

The Witness: I mean twelve feet from this corner up here.

Q. I asked you the southerly corner. You want to change that?

Mr. Barison: He doesn't want to change it. You said the northerly corner.

The Witness: Yes, that is the idea.

Q. You had traveled past the northerly corner of Hoyt Street and had gone a distance of about twelve feet in to Hoyt Street when you first saw the Bednarski car in Hoyt Street? A. Bednarski; I was traveling down south along Schuyler Avenue. 20

Q. All right, we will go over it again.

Mr. Barison: Why not let the witness say?

Mr. Brenner: I would like to have an answer. 30

Q. I am asking you whether you went twelve feet back to the curb of Hoyt Street—you did go twelve feet beyond the curb at Hoyt Street before you saw Bednarski, is that correct? A. Not the way you are explaining it.

Q. Isn't that what it was? A. I was a quarter of the way past the crossing. 40

*James Caputo, for Plaintiff—Cross.*

The Court: He said a quarter of the way or twelve feet past it, that is what you said a moment ago.

The Witness: A quarter or twelve feet is about the same thing.

Mr. Brenner: A quarter of thirty-five?

10

Q. Regardless of that. A. Hoyt Street on the west side is a fifty foot road.

Q. So that you had gone about twelve feet past the northerly side of Hoyt Street when you first saw the Bednarski car? A. Yes, right.

Q. Where was the Bednarski car at that time? A. It came out like a flash.

20

Q. Where did you first see it, whether it came out like a flash or some other way; where was the Bednarski car when you first saw it? A. That is just what I am trying to tell you. It was coming out like a flash. I saw it a second—

Q. Where was it when you first saw it? A. On top of me.

Q. The front of the Bednarski car was coming right for the side of your car? A. It was not coming for the side of my car.

Q. What was it coming for? A. Right for the front of my car.

30

Q. Was he over the right hand side of Hoyt Street? A. No, sir.

Q. Where was he? A. More towards the left side of Hoyt Street.

Q. And the front of his car was coming right for the front of your car? A. Yes, sir.

Q. Did the front of his car hit you? A. No, sir.

Q. The front part of the car missed you? A. Yes, sir.

40

Q. What part of his car hit you? A. Right rear mudguard.

*James Caputo, for Plaintiff—Cross.*

Q. The front of his car went entirely in front of you? A. No, sir.

Q. Where did he go? A. He swung left.

Q. He was not going up Hoyt Street at all when you came together; he was turning into Schuyler Avenue? A. He could not stop his car, he swerved to the left to avoid it.

10

Q. I am not asking you whether he could stop or could not stop. I am asking you the direction in which he was going at the time that you first saw him. Was he turning into Schuyler Avenue or was he going straight along Hoyt Street? A. Straight across.

Q. And no part of the front part of his car touched any part of the front part of your car? A. No, sir.

Q. Then it went entirely past you? A. The front part, yes, sir.

20

Q. It was only the rear part of his car that hooked onto your left front bumper? A. That is right.

Q. When you got to Hoyt Street, did you look east along Hoyt Street? A. Yes, sir.

Q. Did you see the Bednarski car at that time? A. No, sir.

Q. Do you know how fast Bednarski was going when he passed you? A. He shot out of that street about thirty-five miles an hour.

30

Q. Thirty-five miles an hour from the side street, Hoyt Street, into this main street, Schuyler Avenue? A. Yes, sir.

Q. And you never saw him until he was practically striking into you with the rear part of his car? A. I was trying to explain to you, it was just a matter of seconds. It was just like a flash, he came right out of Hoyt Street and into the front of the bus.

40

*James Caputo, for Plaintiff—Cross.*

Q. But can you tell me what part of the road he was in at the time you first saw him there, the first time? A. He was already out in front of me.

Q. That is the first time you saw him? A. Right. It was just a black object that came out in front of me.

10 Q. This is a lighted intersection? A. Now it has an arc light.

Q. Did it at that time? A. At that time I didn't see an arc light.

Q. Was the intersection dark that night? A. It was pretty dark. They had one of these small overhead lights.

Q. There was not a big arc light such as Lieutenant Barry said? A. There is a big arc light on there now.

20 Q. Wasn't there a big arc light such as you described there at the time this accident occurred? A. I didn't see any big arc light. I saw one of these small bulbs that showed over the top of the Boulevard.

Q. You say the intersection was dark? A. It was not fully lit up.

Q. Do you know who the operator was of the Public Service bus? A. I do not, because he did not stop.

30 Q. Did you get the number of the bus? A. No, sir.

Q. Did you try to ascertain what bus was passing there at that time of night? A. No, sir.

Q. You said to your counsel that there was a Public Service bus which preceded you? A. I believe in that statement that I made to the police—

Q. Did you tell Judge Barison that? A. No.

40 Q. Did you tell anybody connected with him? A. No, sir, not until just now.

*James Caputo, for Plaintiff—Re-cross.*

Q. Now, when you come right to the trial you told him? A. No, I never saw Judge Barison up until Wednesday.

Q. If it was not Judge Barison, did you tell somebody connected with his office; did you tell anybody that, yes or no? A. No, sir.

Q. I don't want to know who you mentioned it to. Did you ever mention to anybody up to the time you took this witness stand that this Public Service bus was ahead of you; just answer yes or no? A. No, sir. 10

*Re-cross examination by Mr. Barison:*

Q. Mr. Caputo, you say the Public Service bus was ahead of you? A. Yes, sir.

Q. It had nothing to do with this accident, did it? A. No, sir. 20

Q. You had four-wheel brakes, air brakes? A. Yes, sir.

Q. They stop practically within a few feet? A. As a matter of fact, at the rate of speed I was traveling, I could stop on a dime.

Q. Did you? A. I applied the brakes. I was hurt and I threw one of the passengers up against the windshield.

Q. You did stop immediately? A. I stopped right there. 30

Q. You had passengers on the bus at the time, didn't you? A. Yes, sir.

Q. These passengers are in court? A. Yes, sir.

Q. Did this automobile of Bednarski have a light? A. No light at all.

Q. Now you were driving on the main street? A. South on Schuyler Avenue.

Q. You were on the right hand side of this intersection? A. That is right. 40

*James Caputo, for Plaintiff—Cross.*

Q. Did Bednarski, coming out on your left, sound any horn? A. No, sir.

*Cross-examination by Mr. Brenner:*

Q. Did you sound any? A. Yes, sir.

Q. You sounded a horn? A. Yes, sir.

10 Q. Where? A. When I was behind the Public Service bus; just as he made the turn I sounded the horn.

Q. You? A. I make a practice of sounding a horn.

Q. Did you signal? A. Not for that one, due to the fact that the Public Service bus made the right hand turn.

20 Q. Every time a car makes a right hand turn in front of you, do you sound a horn? A. That one particular instance I did.

Q. But you have done it before? A. Yes, sir.

Q. For what purpose? A. In case of anybody pulling out of that particular street, we will say Hoyt Street, and I am making the turn from Schuyler Avenue, I can't see what is on the other side of the bus.

Q. So that if a car came out— A. Any big object in front of me, I blow the horn.

30 Q. You would blow for Bednarski because you didn't see him? A. No.

Q. You didn't see any other car, as a matter of fact? A. No, sir.

Q. Was there any other car coming down or coming north on Schuyler Avenue at the time? A. No.

Q. Or any other car coming east or west on Hoyt Street at the time? A. No, sir.

(Witness excused.)

*James H. McConnell, for Plaintiff—Direct.*

JAMES H. McCONNELL, called as a witness on behalf of the plaintiff, being sworn, was examined and testified as follows:

*Direct examination by Mr. Willman:*

Q. You are an engineer in the county engineer's office? A. I am connected with the county engineer's office. 10

Q. You have a map there before you, designating the street, Hoyt Street and Schuyler Avenue?

A. Yes, sir.

Q. Near that intersection? A. The intersecting streets.

Q. Will you please refer to that map and tell us how wide Hoyt Street is and how wide Schuyler Avenue is at the intersection? A. The official width of Hoyt Street is fifty feet at the intersection of Schuyler Avenue; likewise the intersection of Schuyler Avenue is also fifty feet. 20

Q. Will you please tell us the distance between Hoyt Street and Devon Terrace as plotted by you? A. The distance approximately is about one hundred and eighty-two feet from Devon to Hoyt; that is taken to scale; it is very close.

Q. Now, referring to the map, will you tell us, please, whether there is any difference in the width of the curb at Hoyt Street at the intersection of Schuyler Avenue? A. Taking the lines of the street intercepting it, the center line intersection, there is about a difference of three feet in a step of the lines extending across, but that would be hardly discernible to the eye. 30

The Court: Whether it is or not, it is three feet, you say?

The Witness: Yes, sir.

The Court: Where does that step up, on the westerly side? 40

*Motion for a Non-Suit.**Albert N. Androllis, for Plaintiff—Direct.*

The Witness: Yes, sir.

(Witness excused.)

Mr. Willman: That is the plaintiff's case.

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Mr. Barison: At this time I move for a non-suit as against the Jersey City-Lyndhurst Bus Company on the ground that no negligence has been shown and that the plaintiff was guilty of contributory negligence.

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The Court (after argument): I think there is sufficient of a dispute in the case notwithstanding Mr. Caputo's testimony for a jury to decide.

I think under the circumstances I am obliged to deny this motion.

Mr. Barison: May I have an exception?

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ALBERT N. ANDROLLIS, called as a witness on behalf of the plaintiff Bednarski, being sworn, was examined and testified as follows:

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*Direct examination by Mr. Brenner:*

Q. How old are you, Albert? A. Sixteen.

Q. Do you recall the accident at Schuyler Avenue and Hoyt Street? A. Yes, sir.

Q. Where were you at the time this accident occurred? A. On the south corner going down.

Q. Which corner, of what street? A. Tappan Street, coming around.

40 Q. And Tappan Street is south of Hoyt Street, is it not? A. Yes, sir.

*Albert N. Androllis, for Plaintiff—Direct.*

Q. What were you doing at the time this accident happened? A. I was walking down to the bakery.

Q. To the bakery? Where was the bakery that you were walking to? A. Hoyt Street.

Q. What street were you on at the time that the accident happened? A. Schuyler Avenue. 10

Q. In what direction were you walking, toward Hoyt Street or away from Hoyt Street? A. Away from Hoyt Street.

Q. How close to Hoyt Street were you at the time the accident occurred? A. About 150 feet.

Q. Did you see the car of Mr. Bednarski? A. No.

Q. Before the accident? A. No, I didn't see it until it came out to the corner.

Q. When you refer to the corner, which corner do you mean? A. Hoyt Street. 20

Q. And what other street? A. Schuyler Avenue.

Q. Now when he came to the corner, did you see what he did? A. No. I didn't take notice of him. I just seen the car there and then I watched the bus coming, too.

Q. Where was the bus?

The Court: When you saw this car of Bednarski, was he moving or not?

The Witness: He was moving a little slow, taking her out of gear. 30

Q. At that time, did you see the bus of the Jersey City-Lyndhurst Bus Company? A. Yes, sir.

Q. Where was that bus at the time? A. Just about the middle of Devon Terrace.

Q. Was there anything particular that made you notice that bus? A. The bus never was coming through there. 40

*Albert N. Androllis, for Plaintiff—Cross.*

Q. Did you see the Bednarski car continue across Hoyt Street? A. He stopped; then he started to go again.

Q. Now, when he stopped and when he started to go, did you notice whether or not his lights were lit? A. Yes, sir.

10 Q. What is the next thing you noticed? A. Well, I heard the crash.

Q. And the next thing you noticed, you saw two cars, then you didn't notice anything after that until the crash occurred? A. No.

Q. Was there any Public Service bus in front of the Lyndhurst? A. No, sir.

Q. Any Public Service bus anywheres around that intersection? A. No, sir.

20 Q. Did you hear any horn blown by either the Bednarski car or by the bus? A. No, sir.

*Cross-examination by Mr. Barison:*

Q. You were walking towards the bakery? A. Yes, sir.

Q. The bakery is where? A. Right hand side of Hoyt Street.

Q. And you were walking from where? A. From the corner of Tappan Street.

30 Q. Were you walking along Hoyt Street? A. No, I was walking along Schuyler Avenue.

Q. Now, about where were you at the time? A. About twenty-five feet away from the corner.

Q. Twenty-five feet away from Hoyt Street? A. No, from Tappan Street corner.

Q. That is a street down here, is that right? A. Yes, sir.

Q. And you first saw the bus where? A. In the middle of Devon Terrace.

40 Q. When did you first see the automobile? A. Till the bus was coming, then he pulled out of Hoyt Street, the car pulled out of Hoyt Street.

*Albert N. Androllis, for Plaintiff—Cross.*

Q. Was the bus coming down fast? A. He was coming pretty fast.

Q. And the automobile was just crawling along, wasn't it? A. Yes, sir.

Q. And the automobile, the way it was crawling, he could have stopped it before he got in the middle of the street?

10

Mr. Brenner: I object to that; that certainly calls for a conclusion.

The Court: Yes, that is asking for an expression of opinion.

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

Q. Did you stop to look at this thing or did you keep on walking? A. Kept walking.

Q. Did you know there was going to be an accident? A. No, sir.

20

Q. You did see the bus coming down? A. Yes, sir.

Q. And it was coming so fast as to attract your attention? A. Well, the bus never came through there before.

Q. Never came there before? A. Not that I seen.

Q. And how long have you lived there? A. About seven years.

Q. Didn't you know that the buses came through there because there was a detour, that they came over Schuyler, and that Public Service buses used Schuyler, didn't you know that? A. I didn't know, no, sir.

30

Q. It wasn't the first time you saw the bus there? A. That very bus it is, the first time, I imagine.

Q. And because of the bus being there, not having been there before, that attracted your attention? A. I wanted to see what kind of bus it was.

40

*Albert N. Androllis, for Plaintiff—Cross.*

Q. Do you know Malinkowski? A. Mockus.

Q. Do you know Mockus? A. Yes, sir.

Q. Do you know Bednarski? A. No.

Q. Do you belong to that club on Hoyt Street?

A. No, sir.

10 Q. How do you know Mockus? A. Through hanging around with him.

Q. You hang around with him? A. Sure.

Q. Did you talk to him about this accident after the accident? A. No, sir.

Q. Did you say as much to Mr. Mockus?

Mr. Brenner: I object to that.

The Court: Sustained.

20 Q. Were you with Mockus at the time? A. No, sir.

Q. When did you first see Mockus after the accident? A. I didn't see Mockus till next night.

Q. You didn't see Mockus at the accident? A. No, the night after that I seen him.

Q. I am asking about the night of the accident. After the accident, you stood around, didn't you, son? A. No.

Q. What did you do, you went over to the accident? A. Just ran over there, that is all.

30 Q. You saw everybody that was there? A. No, I didn't see everybody.

Q. You knew Mockus; he is a friend of yours? A. Yes, sir.

Q. You didn't see Mockus there? A. Well, he was around there. He was on the corner by Tappan Street.

Q. I thought you said you didn't see him? A. I didn't see him do anything, that is all.

Q. I am not asking you what he was doing. Was Mockus there on the night of the accident?

40 A. Yes, I seen **him**.

*Albert N. Androllis, for Plaintiff—Re-direct.*

*Joseph Bednarski, Recalled—Direct.*

Q. After the accident? A. After the accident.

Q. Do you know where he was? A. On the corner over there, the next corner to Tappan Street.

Q. In back of you? A. Yes, sir.

Q. Did you see him? A. Sure I seen him.

Q. So that you saw him in back of you when the bus came out of Schuyler Avenue and the car came out of Hoyt Street, is that right? A. Yes, sir. 10

*Re-direct examination by Mr. Brenner:*

Q. Did you see them all at the same time or did you see Mockus first? A. I saw Mockus first.

Q. And the bus was on Schuyler Avenue? A. Yes, sir. 20

(Witness excused.)

Mr. Brenner: That is our case.

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JOSEPH BEDNARSKI, recalled.

*Direct examination by Mr. Brenner:*

Q. Mr. Bednarski, before this accident had you ever been hurt? A. No, sir. 30

Q. Had you ever been in any other accident? A. No, sir.

Q. Prior to the time of the accident? A. Just a minute. I was in an accident but was never hurt. I would not call that an accident, just a mud-guard scrape.

Q. How long before this accident? A. I judge about two years.

Q. But you were not hurt in that accident? A. Right. 40

*Joseph Bednarski, Recalled—Direct.*

Q. Was there anything the matter with you on the night or before the night this accident occurred? A. No, sir.

Q. Had you been working before the night of this accident? A. Before the accident, no, sir.

10 Q. Out of employment at the time? A. I was out of employment at the time.

Q. When had you worked before the time of the accident? A. Well, I used to do work during the week, help my brother out.

Q. I mean regularly working, working for anyone before the time of the accident? A. I was working for the National Cash Register.

Q. What were you doing for the National Cash Register Company? A. Assembling.

20 Q. Did you lose your job with them? A. They closed down.

Q. Where was their plant in which you were employed? A. On Elizabeth Avenue.

Q. Where? A. Newark.

Q. And they closed that plant and you lost your position? A. Yes, sir.

Q. After losing your position in the National Cash Register Company, have you done any work for anyone? A. I also helped my brother repairing cars.

30 Q. Does he have a place of business? A. Yes, he repairs in the garage, in his own garage.

Q. Were you paid anything by him for doing that type of work? A. Yes, sir.

Q. How much? A. He used to give me according to how many jobs he would finish.

Q. How much on an average would you receive from him? A. Fifteen or twenty dollars a week.

40 Q. How long had you been doing that work for your brother? A. I was doing it right along, helping him right along.

*Joseph Bednarski, Recalled—Direct.*

Q. For a week or a month or a year or how long? A. Well, I worked for him about three months on and off a couple of days a week.

Q. After this accident you went to the hospital? A. Yes, sir.

Q. And you were first under the care of Dr. Lyons for about a week? A. Yes, sir. 10

Q. And then under the care of Dr. Toye? A. Yes, sir.

Q. Are you still under Dr. Toye's care? A. Yes, sir.

Q. Why are you still going to Dr. Toye? A. Because I am not able to get around.

Q. What is the matter? A. I got pains all through my back.

Q. Now then, any other place? A. The lower portion of the back. 20

Q. Have you any other troubles besides the pains in the back? A. Got this trouble with this arm.

Q. That is the right arm; anything else besides that? A. My head bothers me.

Q. Where? A. Through down in here (indicating).

Q. From the forehead down towards the back of the head. In what way does that bother you? A. Sharp pulls like, it blurs my eyes. 30

Q. Does that occur frequently or not? A. The last couple of weeks it has been coming on every day.

Q. Before that time had it been so frequent or not? A. Well, I complained to the doctor about my head since I was brought into the hospital.

Q. You were examined last night by Dr. Arlitz? A. Yes, sir.

Q. Did you for a time wear a brace? A. I wore a brace for a little over a year I think. 40

*Joseph Bednarski, Recalled—Cross.*

Q. How long ago did you stop wearing the brace? A. I judge about three months.

Q. Raise your voice, will you? How much did that brace cost you? A. Thirty-five dollars.

Q. This car that you were driving this night, that was an Oakland car? A. Oakland sedan.

10 Q. What year? A. 1926.

Q. Had you owned it since 1926? A. Yes, sir.

*Cross-examination by Mr. Barison:*

Q. Mr. Bednarski, how long did you wear that brace? A. A little over a year.

Q. What were you doing before the accident; you were working for your brother? A. Helping him repair cars.

20 Q. Getting fifteen or twenty a week? A. Yes, sir.

Q. And before that? A. Worked for the National Cash Register.

Q. What job? A. Assembling cash registers.

Q. When did you work for them? A. To May 30, 1931.

Q. As a matter of fact, since May 30, 1931, you practically were out of work—I mean, it is no crime, a good many men are out of work. You were not working? A. May, 1930.

30 Q. From that day on you were not working? A. I was not working, just helping him out.

Q. Whenever you did a little work your brother gave you a few dollars, is that right? A. Yes, sir.

Q. The same as any brother would do. You had an accident shortly before this accident? A. I would not call it an accident.

Q. Well, please just describe it to the jury; you were driving a car, weren't you? A. Yes, sir.

40 Q. How many days before this accident? A. About two years before, I think.

*Motion for a Non-Suit.*

Q. About two years before? A. I just can't recall when it was. I was riding along Broad Street in and around the telephone building and there was a Public Service bus in back of me wanted to swing out and he just scraped my fender, rear fender.

Q. Did they pay you any money for it? A. 10  
They gave me fifteen dollars.

Q. How long have you been driving? A. Nine years.

(Witness excused.)

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Mr. Brenner: That is our case.

Mr. Barison: I move for a nonsuit as  
against Bednarski in the case of Bednarski 20  
*vs.* The Jersey City-Lyndhurst Bus Com-  
pany. I feel from the evidence adduced by  
the plaintiff in this case that it really shows  
that we were coming to Jersey City and  
that from the evidence of the plaintiff there  
is no negligence on the part of our driver  
and that we are entitled to a nonsuit. I feel  
that upon the evidence so far adduced it  
does not show a cause of action on the part  
of Bednarski against The Jersey City- 30  
Lyndhurst Bus Company, and I ask a non-  
suit.

The Court: I will deny your motion for  
the same reason that I have heretofore.

Mr. Barison: May I have an exception?

*Mrs. Hannah Nass, for Defendant—Direct.*

## DEFENSE.

MRS. HANNAH NASS, called as a witness on behalf of the defendant Bus Company, being sworn, was examined and testified as follows:

10 *Direct examination by Mr. Barison:*

Q. Mrs. Nass, on the day of this accident were you and your husband on this bus? A. We were.

Q. The Jersey City-Lyndhurst bus? A. Yes, sir.

Q. Just talk up so the Court and jury can hear you and just tell us in your own words what happened. A. I had the seat right behind the driver, next to the window, and was looking out, and all of a sudden I saw this car dash out on the left  
20 side of the street, and the driver must have put his brakes on, because I was bumped against that partition behind him, and then I heard a crash, and there we stood.

Q. Was the bus going slow or fast? A. I don't know anything about it. It was just normal. I could see the neighborhood very clearly.

Q. The bus was going at a normal speed and you could see the neighborhood very clearly. Was the bus across the intersection when this car came out of the side street? A. I think it was  
30 just coming on it; it was only as if the car and the bus, just as though it would come here on my side here.

Q. Did the automobile sound any warning or give you any warning that it was coming? A. I didn't see anything. Just shot out.

Q. Was it coming fast? A. Yes, I had the impression that it went across before us——

Mr. Brenner: I ask that that be stricken.

*Mrs. Hannah Nass, for Defendant—Cross.*

Q. Did you see the car coming out of the side street? A. Yes, sir.

Q. Was it coming fast or slow? A. Rather fast than slow.

*Cross-examination by Mr. Brenner:*

Q. You were in the seat back of the driver? 10  
You were sitting on that side seat? A. There is a regular seat for two persons. I was sitting next to the window. At my right sat my husband.

Q. Were you talking to your husband? A. No, I was not; I was looking out.

Q. How far in back of the driver were you? A. I had the first seat after the driver. Here is the driver and there is the glass and there is right our seat.

Q. There is a partition between your seat and 20  
the driver's seat and a glass in it? A. Yes, sir. Partition was wood, not glass.

Q. There is a shade back of the driver so as to keep the lights away from the front of the car?  
A. What do you mean?

Q. A shade that you put down over the window so as to keep the light from the driving seat? A. I don't know whether it is in that place like that.

Q. Where did you get on the bus? A. They 30  
call it dead end street in Lyndhurst.

Q. At dead end street in Lyndhurst? A. Yes, sir.

Q. Do you know where the bus was at the time that you first noticed the car of Bednarski? A. No, we were going this way. I was looking out, and looking, and there was the car dashing out here.

Q. The first time you saw the car was when it was practically in front of the bus, wasn't it? A. 40

*Mrs. Hannah Nass, for Defendant—Cross.*

Not always, coming towards us. I could not see the front. I only could see the side.

Q. You didn't see the front of the car? A. Yes, I saw the car.

Q. The side. You said something about seeing the side. A. I was on the side of the bus. I was not looking into the front of the bus, excuse me.

Q. And the first thing you saw the first time you saw the car, the car and the bus were practically coming together? A. They were just coming this way. I had a feeling that they didn't make it, that is all.

Q. I don't care about your feeling. The only thing I want to know is whether you saw the car when it first came out of Hoyt Street; you didn't see the car? A. I saw it only then, when it came.

Q. Only when it got right towards the front of the bus or the right hand front of the bus; is that when you saw it? A. I didn't see the front of the bus. I saw from the side the car coming near us.

Q. I am not talking about the bus. I am asking about the other car. The Bednarski car; the first time you saw that car it was out in Schuyler Avenue, wasn't it? A. Just coming into it.

Q. Just coming into Schuyler Avenue? A. Coming into Schuyler Avenue.

Q. Where was the bus at that time? A. Just coming toward Hoyt Street.

Q. It had not at that time reached Hoyt Street? A. The front of the bus might have been just near there.

Q. Just near Hoyt Street, and that is the first time that you noticed the car? A. Yes, sir.

Q. And at that time the car and the bus were coming together, weren't they? A. Yes, sir.

Q. And the next thing was a crash, right with your seeing that, there was a crash, wasn't there?

*Mrs. Hannah Nass, for Defendant—Re-direct—  
Re-cross.*

A. No, I bumped my head. I won't forget that. There was a crash and we stood still.

Q. The driver threw on his brakes and you went forward and hit your head? A. Yes, sir.

Q. And then you heard the crash? A. Not right with that. It was, well, I can't recall, a glance or so, I knew I had bumped myself and then I heard the crash. 10

*Re-direct examination by Mr. Barison:*

Q. In other words, the driver had put on the brakes and the car had stopped and you had bumped your head?

Mr. Brenner: No, she didn't say that.

A. I don't know the mechanical things. I just tell you what I experienced. 20

Q. The man had put on his brakes? A. That I am sure of.

Q. And you had bumped your head; you are sure of that? A. Yes, sir.

Q. Had the bus stopped? A. Yes, we were standing still but I could not tell you whether it was before the crash, but it was a little after I bumped my head we stood still and I heard the crash.

Q. Your husband is working? A. Yes, sir. 30

Q. That is the reason he could not be in court?  
A. He could not. He took off one day already.

*Re-cross examination by Mr. Barison:*

Q. Where is he working, Madam? A. Metropolitan Life Insurance Company.

Q. Was he subpoenaed to come here today? A. Yes, he was subpoenaed to be here yesterday and that stood for today but I came instead of him. 40

(Witness excused.)

*Edward F. Kuebler, for Defendant—Direct.*

EDWARD F. KUEBLER, called as a witness on behalf of the defendant bus company, being sworn, was examined and testified as follows:

*Direct examination by Mr. Barison:*

10 Q. Where do you live? A. 3135—86th Street, Jackson Heights, Long Island.

Q. Were you in this bus on the day of this accident? A. I was.

Q. Well, tell the Court and jury in your own words just what happened. A. Well, to my estimation, the way I seen the accident—

Mr. Brenner: I object to that.

20 Q. To straighten it out—you had gotten to the scene of the accident? A. Yes.

Q. Then what did you see and hear? A. Well, what I saw of the accident, I was sitting in the front seat by the window on the left hand side of the bus and was looking straight out of the window ahead and we were going along. There was a bus in front of us. We slowed up and then continued. I paid no more attention to that, but what was going on on the road, in the side, looked out of the side of the window and we came to the crossing which you see up there. The bus driver that was driving our bus, he rested his foot off the accelerator causing the bus to slow up and put his foot on the brake. At that minute, then this car came out of the side street at the rate of thirty to thirty-five miles an hour. He then put his foot on the brake when he saw that car coming out, which I did myself; I jammed my foot down to the board on the floor trying to stop it, and then we smacked.

30 Q. And then what happened? A. He applied his brakes. The bus came to a stop and he re-

40

*Edward F. Kuebler, for Defendant—Cross.*

leased right away because people came flying towards the front of the windshield and then applied them back on again. We stopped. Then he started up and pulled to the right to avoid blocking traffic. I was the first one out of the bus—excuse me—when that car came out, it caught the front bumper of ours on the left hand side and threw it in the air. When we stopped, we got out and I picked the bumper off the man that was lying on the sidewalk. We then picked the man up and I took a handkerchief and I put it on his head. Then a car coming down—let us see, I am not familiar with Jersey, I don't know the name, but we were going north or were coming south—whatever the car was coming, a car coming up there stopped and then there was another man, a chauffeur and myself and we put that one man in the car.

Q. Mr. Kuebler, this car coming out of Hoyt Street, the automobile that Mr. Bednarski was driving, was it coming slow or fast?

The Court: He has stated.

Q. Did you hear any horn sound? A. No, and he had no lights on the car.

*Cross-examination by Mr. Brenner:*

Q. What part of the car caught into the bus?  
A. I would say about the middle of the car, as he made a sort of left hand swing and touched, away from the bus.

Q. So that the only part of the bus that was struck was the bumper on the left hand side? A. That is right.

Q. That is the only part of the bus that was struck at all? A. That is right.

*Edward F. Kuebler, for Defendant—Cross.*

Q. And do you know how the light on the right hand side became smashed? A. Yes, presently.

Q. How? A. When the car swerved to the left and his rear swung around, you understand, as it swung.

10 Q. I don't. A. As it swung around, he must have hit the headlight.

Q. Did you see it hit the headlight? A. No.

Q. You saw the car, the middle of the car that passed at an angle strike into the bumper? A. That is right.

Q. And the Ford, there was such force that it threw the bumper into the air? A. That is right.

Q. And when the car did that, it veered over against the pole? A. That is the idea.

20 Q. And you say that, going in the position I hold this envelope and paper, that this car came over and hit the right hand light? A. That is the only way the light could have been hit.

Q. That is the only way you can say? A. That is the only way I can.

Q. So that you have no other explanation of how the light on the right hand side became smashed, have you? A. No, I have no other way.

Q. Did you see the driver take his foot off the accelerator? A. What do you mean, did I see it?

30 Q. Yes. A. No, but I can feel it.

Q. Did you see it? A. I can feel it.

Q. I didn't ask you that. I asked you if you saw it? A. No. I heard her, the air; there are hydraulic brakes or air brakes, I believe they are, on the bus, and when the foot is put on the brakes, you can feel them.

Q. Did you notice where the car was at the time that he put his foot on the brake for the first time? A. It came shooting just out of the side.

40

*Edward F. Kuebler, for Defendant—Cross.*

Q. Did you notice where the bus was at the time the brake was put on the first time? A. About the same distance that the car was.

Q. Where, along Schuyler Avenue, were you? A. We were about to the corner.

Q. That is the first time the driver applied his brakes? A. That is when he put his brakes on slightly. 10

Q. He had put his brakes on prior to that on account of this bus ahead of him? A. That is the idea.

Q. Where did he put his brakes on at that time? A. I would say about—I could not give you a definite answer because I was looking on the right hand side. I could not say exactly where he put them on.

Q. Were you looking on the left hand side? A. 20 I was watching on the left hand side.

Q. Couldn't you tell from looking out through the left hand side where you were? A. According to that I would say about twenty or twenty-five feet.

Q. Did you see it? A. What do you mean, did I see it?

Q. Did you see where you were when the brakes were put on the first time? A. Where I was sitting I could see an average of about twenty-five feet from the corner. 30

Q. Where had you come from? A. Lyndhurst.

Q. Where were you going? A. New York.

Q. Were you alone or with someone else? A. Alone.

Q. Did you give your name to any of the policemen at the scene of the accident? A. Yes, I was the first.

Q. Did you give your name? A. To the gentleman sitting right over there. 40

*Fred Smith, for Defendant—Direct.*

Q. Did you know his name? A. No, never seen him before.

Q. A police officer? A. I don't know.

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10 FRED SMITH, called as a witness on behalf of the defendant Bus Company, being sworn, was examined and testified as follows:

*Direct examination by Mr. Barison:*

Q. Where do you live, Mr. Smith? A. 214 Lake Avenue, Lyndhurst, New Jersey.

Q. You are employed by whom? A. Western Union Telegraph.

20 Q. Were you on this bus on August 30th, 1931, at the time of this accident? A. I was.

Q. Where were you seated? A. Sitting in the second seat behind the driver on the left hand side next to the window.

Q. How fast in your opinion was the bus going? A. Well, I should judge between fifteen and eighteen miles an hour.

30 Q. Now, tell us in your own words, what happened? A. Well, it happened so quickly. He had slowed up. I noticed he blew his horn on account of this other bus.

40 Q. That was about a block before? A. No, this was after—I think he left the Public Service bus, left off a passenger, if I am not mistaken, and he started up. As a rule, passengers duck behind the bus and he tooted his horn so people would not step behind. He pulled up to the corner and the motor, you might say, was past the intersection and there was a streak shot out of the side street, no lights on the car that I could see and the car hit the front end of this bus, a collision over there and turned around and went over into the pole.

*Fred Smith, for Defendant—Cross.*

Q. Smashed right into the pole? A. Yes, sir.

Q. And practically smashed up? A. Yes.

Q. You say a streak out of the street? A. Yes.  
I could hardly make out what it was. It came out so fast.

Q. Was the bus stopped at that time? A. The bus stopped.

10

*Cross-examination by Mr. Brenner:*

Q. Was it very dark at that intersection? A. It was on that side, left hand side. It was very dull that night.

Q. Still you had no difficulty at all, sitting in the second seat of the bus, in a lighted bus, looking out into the dark and seeing this car? A. Absolutely not.

Q. Where was this car when you first saw it?  
A. Just streaking out of the street.

20

Q. Where in Hoyt Street or in Schuyler Avenue was it when you saw it? A. It was in Schuyler Avenue, you could see the motor of it there, just past the intersection, streaking out.

Q. You say it was in Schuyler Avenue when you first saw it? A. The motor of it.

Q. How far into Schuyler Avenue was it at that time? A. How far?

Q. Into Schuyler Avenue was it when you first saw it? A. Just the motor was streaking out of the side street.

30

Q. Do you know the width of Schuyler Avenue?  
A. No.

Q. Do you know it is fifty feet in width? A. No.

Q. Was your bus over to the right hand side of Schuyler Avenue? A. Right.

Q. What part of Hoyt Street or what side of Hoyt Street was the car coming out of, right hand side or left hand side? A. Left hand side, just about the middle of the street.

40

*Fred Smith, for Defendant—Cross.*

Q. And when you first saw it, only the motor was in Schuyler Avenue? A. Right.

Q. Where was the front of the bus at that time?

A. I should judge that the motor at least was over the curb line.

10 Q. Was the front of this car coming right towards the side of the bus? A. No, towards the front of it.

Q. Towards the front of it? A. Yes, sir.

Q. The front of your bus had already entered Hoyt Street? A. But it stopped, the bus was stopped.

20 Q. The bus was stopped; you mean by that that the bus had come to a stop before this car coming into Schuyler Avenue got there? A. The driver must have seen the car coming. He applied the brakes and he stopped.

Q. Did you say now that the bus had come to a complete stop when this car was coming into it? A. Ran into it.

Q. Or crashed into it? A. Right.

Q. Did you notice what part of the car crashed into the bus? A. Why, I would say it was about the middle, and careened off his bumper.

Q. You mean the whole front of this car passed? A. No.

30 Q. The side of the bus? A. No, I said diagonally with the back door, the back.

Q. So that the motor and the front part of his automobile completely passed the front part of the bus? A. No. When he came out of that side street it was an angle. He careened and missed the bus.

40 Q. Would you step down here and using one of these papers as the bus and this as the automobile, show us the position of the two cars as you saw them coming out together. A. This is the bus,

*Ragnar Johnson, for Defendant—Direct.*

standing up here, and this the car coming at an angle like this across the street and he shot out. That is how he came.

Q. Just show us, if you will, what part of the two cars came together. A. About through there.

Q. Just lay the papers as you say they came together. A. Like that. 10

Q. And this envelope is the bus and this piece of paper is the automobile? A. Yes, sir.

Q. Show us the course the automobile took prior to that time? A. I could not say very well. There is a partition between the driver and the passengers and you can't see into the street.

Q. You say it careened off and hit on the other side? A. That is when I got out of the bus it was up against the pole.

Q. And the bus was at an absolute standstill? 20  
A. When it was hit.

Q. At the time when this car went into it? A. Right.

(Witness excused.)

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RAGNAR JOHNSON, called as a witness on behalf of the defendant Bus Company, being sworn, was examined and testified as follows: 30

*Direct examination by Mr. Barison:*

Q. Where do you live? A. At the present time I live right here in Jersey City.

Q. Where did you live at the time of the accident? A. 150 Bergen Avenue, North Arlington.

Q. Were you in this bus? A. I was.

Q. Do you know the driver of the bus? A. I have met him on several occasions going on and off the bus. 40

*Ragnar Johnson, for Defendant—Cross.*

Q. Right after the accident, did you help him in getting names? A. Yes, sir.

Q. From people in the bus? A. Yes, sir.

Q. Did this witness give you his name? A. Yes, he did.

10 Q. Where were you sitting, Mr. Johnson? A. In the front seat, on the right hand side of the bus.

Q. Will you tell the Court and jury what you saw? A. Well, as we were near the corner of Hoyt Street I happened to glance to my left. The bus was full at the time, but there was nobody standing in front to interfere with my vision. My vision was clear. I saw this car coming out of Hoyt Street at a fairly good rate of speed, and we were past the corner, and the driver applied his brakes. This fellow naturally saw that it was  
20 impossible to avoid hitting the bus, so he swung his wheel, subconsciously, swung his wheel in a left hand manner, and he catches on to the bumper of the bus, and, of course, as I say, the bus was stopped. I got out, and when I got out the car was up against that pole on the southwest corner.

*Cross-examination by Mr. Brenner:*

30 Q. How long have you known the driver of this bus? A. I didn't know his name. I merely said "Hello" to him when the occasion came that I got on his bus.

Q. And when was it that you started taking names for him? A. We had gotten out of the bus. I went over and looked at this man that was lying between the two trees. And because I didn't care very much to see blood, I didn't assist him because they already had two or three men assisting him, but I was curious, I wanted to know what happened to the man who was driving the car.  
40 We went over to where the car was, and myself

*Ragnar Johnson, for Defendant—Cross.*

and someone else assisted him out, and then the driver came and asked me if I would kindly see if I can get some names of witnesses to the accident. I said I would be glad to.

Q. Was the driver doing anything at the time?

A. I don't know.

Q. Helping anybody at the time? A. He may have been assisting the men. 10

Q. I don't care what he may have been doing. Did you see him doing anything? A. I don't know. I don't remember that.

Q. As far as you could observe, there was nothing to prevent him from going and taking these names himself, was there? A. Well, I think if I was driving the bus I would certainly see that the people injured were taken care of before I went around. 20

Q. But you didn't see him doing anything towards taking care of the injured, did you? A. No, I didn't see him do anything.

Q. So that as far as you could observe, there was nothing to prevent him from getting these names that you were getting for him, was there? A. Well, yes, certainly, naturally he would assist those injured.

Q. So he did assist them? A. Certainly he was there. I don't know whether he said he was lifting him into this other car or what he was doing, but he certainly was not near me until after. Then he came over and asked me if I would get names. 30

Q. At the time that he asked you to get names, was there anything else that he was doing that would prevent him from getting them himself?

Mr. Barison: I object to that on the ground that this man has already said he didn't know but he might have been helping somebody. 40

*Ragnar Johnson, for Defendant—Cross.*

The Court: It is proper probing.

A. I don't know.

Q. Were there members of the police department there at the time? A. No.

10 Q. What did you do with the names that you took? A. I turned them over to the driver of the bus.

Q. Did you turn them over to the police officers?

A. No, sir.

Q. Didn't it occur to you that they might be interested in getting those names? A. Possibly.

Q. Why didn't you turn them over? A. Because there was no police officer there at the time.

Q. Did they come later? A. I don't know. I guess they did.

20 Q. Did you remain there? A. No, sir.

Q. Where did you go? A. A bus came down so the passengers that were in this bus got in the bus and went to Journal Square.

Q. How long did you stay around there? A. To sufficient time to think that it was proper for me to leave the scene of the accident.

Q. I didn't ask you if it was sufficient time. I asked you how long you stayed there? A. Well, about twenty minutes.

30 Q. You mean to say there was no police officer on the scene of this accident for twenty minutes after it occurred? A. Why, I would say that the accident happened about five minutes to eleven. I left there, I judge, about a quarter after eleven.

Q. Don't you know that the police officers got there within five minutes after this accident occurred? A. They did? They maybe did, I don't know.

40 Q. Did you see them? A. Now that you mention it. I believe one officer was trying to push me

*Ragnar Johnson, for Defendant—Cross.*

over on the side. Probably this officer was the officer that had a patrol there. He said that he was going over there and I said that I was helping, and he said all right, go ahead.

Q. Well, then there was a police officer on the scene, wasn't there? A. Well, the first time I noticed him——

10

Q. And the failure to turn over the names to the police department was not because there was not an officer on the scene, was it? A. Well, I didn't find him when I turned them over. I didn't see no police officer.

Q. They didn't leave there before they had cleaned up the wreckage and everything? A. I don't know.

Q. Did you look around for a police officer? A. When?

20

Q. After you had the names? A. No.

Q. Did you see any there after you had the names? A. No, just that one.

Q. Why didn't you turn the list over to him? A. I did not.

Q. Your whole interest was in assisting the bus driver to get names? A. My whole what?

Mr. Barison: I object to that.

The Court: Sustained.

30

Q. Do you know how many names you took? A. Yes, sir.

Q. How many? A. I took four.

Q. That is all you took? A. With myself.

Q. How many people were in this bus? A. I guess they had full capacity; I didn't notice.

Q. How many is that? A. I don't know. I don't know how many was in the bus actually but it was full at the time.

40

*Ray Du Haime, for Defendant—Direct.*

Q. Approximately how many people were in this bus at the time the accident occurred? A. Possibly twenty-eight or thirty.

Q. Have you talked to any of these men since the time you took their names? A. What men?

10 Q. Whose names you took? A. Not until yesterday morning.

Q. You talked to them at that time? A. Yes, sir.

Q. Whom do you work for? A. I am not working at present.

Q. Whom did you last work for? A. General Cable Company.

(Witness excused.)

20

RAY DU HAIME, called as a witness on behalf of the defendant Bus Company, being sworn, was examined and testified as follows:

*Direct examination by Mr. Barison:*

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

Q. Did you see this bus immediately after the accident? A. The following day.

30 Q. What was its condition; where was it damaged? A. The entire damage was done to the left side.

Q. What did it consist of? A. I have a list here that I made out.

Q. Will you produce that? A. I supervised this work myself.

Q. What was it? A. Do you want me to state the damage that was done? There was a new bumper and this—

40

*Ray Du Haime, for Defendant—Cross.*

Mr. Brenner: May I look at what the witness is reading from? May I see that paper please?

The Witness: Positively (handing counsel).

Q. All right, tell us. A. One left front steering knuckle, one front fender bracket. There was a new motor base installed on this chassis due to the goose neck having been bent after the bumper had been broke off. This motor base had to be installed and underpinned on this job, and that got 152 hours. The full amount was \$604. 10

Q. Is that a reasonable bill? A. It positively is, sir.

Q. You say the damage was practically all of the left side? A. It was all due to the collision on the left side. 20

*Cross-examination by Mr. Brenner:*

Q. You say that the motor base was damaged? A. Positively.

Q. What do you mean by the motor base? A. The motor base is the lower part of the motor itself.

Q. And to damage the motor base you have got to run into— A. No, sir, you needn't do that. 30

Q. How do you damage it? A. There is the goose-neck on it and that is fastened to the chassis.

Q. Is the goose-neck connected with that in any way? A. Positively. The bumper is fastened to the goose-neck and the chassis.

Q. And from pulling out the bumper you would damage the base of the motor? A. Positively.

Q. Will the car run on its own power with the motor base broken? A. Yes, sir. 40

*Ray Du Haime, for Defendant—Cross.*

Q. No difficulty at all? A. Yes, it would have difficulty.

Q. It could drive off under its own power? A. It could, yes, sir.

10 Q. Have you put down everything that was damaged on this bus? A. Everything that was necessary and was done to this job, that was done through this accident.

Q. I asked you whether you did all the work of repairing the broken parts on this bus? A. Just what is that again?

(Question repeated as follows: "I asked you whether you did all the work of repairing the broken parts on this bus?")

20 A. I did.

Q. Was there anything broken on the right hand side? A. On the right hand side, no, sir.

Q. Not a thing? A. Not a thing.

Q. Positive of that? A. There was a bent head-light, but I can straighten this matter out, because——

Q. I didn't ask you that. A. I know, but that is what you are getting at.

30 Q. I will now ask you whether you repaired any light on the right hand side? A. I didn't have to.

Q. Was it broken? A. It was not broken. It is bent back. It is a universal joint that holds that lamp and due to the concussion caused these lights to bend back.

Q. There was nothing broken on the light? A. The light was not broke.

(Witness excused.)

*Casmis Schillon, for Defendant—Direct—Cross.*

OFFICER CASMIS SCHILLON, called as a witness on behalf of the defendant Bus Company, being sworn, was examined and testified as follows.

*Direct examination by Mr. Barison:*

Q. What is your full name, Detective? A. Casmis Schillon. 10

Q. You are a detective connected with the Kearney Police Department? A. Patrolman assigned to the Detective Bureau.

Q. And you were there at the time of the accident? A. Yes, sir.

Q. You have statements made by Mr. Malinowski and Mr. Bednarski? A. I have one of the statements.

Q. Which one? A. I believe the detective took one from Mr. Malinowski. I think he took both. The only statement we took was the one from the driver. 20

Q. That is Bednarski? A. No, that is Caputo.

Q. Did you take any statement or did anyone take a statement from Malinowski? A. I did not.

Q. Now, when you got there, did you see this boy Mockus around, the one who testified yesterday. Did you see him? A. I know the man you mean, but I don't see him in court here.

Q The little boy that testified here. A. I can't say that I did see him. 30

*Cross-examination by Mr. Brenner:*

Q. Officer, you say you didn't see them? A. I mean to say that it is possible they could have been there and I didn't see them.

Q. What were you doing? A. I was attending to the injured.

*Casmis Schillon, for Defendant—Cross.*

Q. So that you were busy on your business, not looking for witnesses? A. Absolutely. I was taking care of the injured.

Q. Where were you, Officer, at the time the crash occurred? A. I was standing on the south-east corner of Tappan and Schuyler.

10 Q. Looking towards the scene of the accident?  
A. I could not say.

Q. Do you recall hearing or seeing anything immediately before the accident occurred? A. Before it occurred I didn't see anything.

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

Q. That is the first thing you heard? A. That is the first thing I heard.

20 Q. Did you hear any horn blown by any car at that particular time? A. Not from where I was.

Q. Did you see any, either one of the cars involved in the accident prior to the time of the accident? A. No, sir.

Q. Were you looking in that direction at all? A. I can't say just now whether I was or not, but I was leaning against the electric pole where there was a police box at the corner of Tappan and Schuyler; I should say that is about 150 feet from the place of the accident.

30 Q. Were you in uniform, Officer? A. No, I had just finished duty. I came down to the corner, in fact I live on that corner. I had stopped to speak to some of the boys.

Q. You took charge of the accident immediately? A. I did.

40 Q. How long after you took charge did Lieutenant Barry arrive? A. I should judge—well, I could not say whether Mr. Barry arrived while I was assisting the injured to the hospital, but when I came back Barry was there.

*Casmis Schillon, for Defendant—Re-direct.*

Q. How did you take the injured to the hospital? A. We took them in a private car, a Chevrolet sedan.

Q. You put them in a car that went right off to the hospital? A. Yes, right.

Q. Do you know how soon you arrived back there? A. I should judge about fifteen or twenty minutes. 10

Q. And was Lieutenant Barry there? A. Yes, he was.

Q. Any other police officers? A. I can't say, but I know Officer Thoms—I believe he came, but I can't say for sure.

Q. Did you make any observation of the bus for the purpose of determining whether there was any damage to the bus? A. The only damage I seen to the bus was the bumper was off. That is the only thing I have seen. 20

Q. Did you notice the light on the right hand side? A. I did not.

*Re-direct examination by Mr. Barison:*

Q. You saw that the bus bumper was torn off? A. Yes, sir.

Q. You could not tell whether it was out of alignment? A. There was Barry took care of that. 30

Q. The light on the Bednarski car was not lit? A. There was no lights on the car.

Q. And when you went over, you turned it on, didn't you? A. Yes, sir.

Q. And did it light? A. It did not light.

Q. But it was turned off at the time you first saw it after the accident? A. That I can't say. I don't know whether it was on or off, but when I examined the car it was demolished. Of course you could not tell whether it was or not. 40

*Casmis Schillon, for Defendant—Re-cross—  
Re-direct.*

*Thomas F. Barry, Recalled—Direct—Cross.*

*Re-cross-examination by Mr. Brenner:*

Q. The lights could not be lit at the time you tried them? A. No, they could not.

10 *Re-direct examination by Mr. Barison:*

Q. But the switch was working. You did turn the switch? A. The switch was working, yes, sir.

Mr. Barison: That is the defense, subject to motion.

20

THOMAS F. BARRY, recalled.

*Direct examination by Mr. Brenner:*

Q. Did you examine this bus shortly after this accident? A. I did. The driver examined it as to the brakes.

Q. Did you look at the bus for the purpose of determining whether there was any damage outside of what you described yesterday? A. No.

30 Q. There was no other damage besides what you yesterday described to us?

(No answer.)

Q. Was there an arc light at this intersection at the time this accident occurred? A. Yes, on the southwest corner.

*Cross-examination by Mr. Barison:*

40 Q. Did Bednarski make any statement to you immediately after the accident? A. He did, next day.

*Thomas F. Barry, Recalled—Re-direct.*

Q. Where did you get that statement? A. I got him at the West Hudson Hospital.

Q. Did you ask him the different questions? A. I did not. I asked him for a voluntary statement.

Q. Did he mention anything or did you ask him as to how it happened? A. I did.

Q. Did he mention in that statement at that time that he had stopped at Hoyt Street? A. I have his statement here. 10

Mr. Brenner: It has already been read.

The Court: Yes, there is no use repeating it.

Q. Is there anything in that statement or anything he said to you that he stopped at the stop-street? A. No, he says: "About 10:55 p. m. Edward Malinowski and I had just left the baker shop on Hoyt Street east of Schuyler Avenue. We started for home in my Oakland sedan, license H-69040. As we reached the intersection of Schuyler Avenue and Hoyt Street, a Jersey City-Lyndhurst bus struck my car on the right side near the rear door. The next thing I knew I was at West Hudson Hospital. My driver's license is number 1148385, New Jersey." 20

Q. He did not tell you anything about the bus' speed? A. No. 30

Q. Did he tell you anything at all that was not in there? A. That is his conversation with me in writing.

*Re-direct examination by Mr. Brenner:*

Q. Was there anything asked as to whether a stop was made? A. I asked him to describe the whole accident in detail.

Q. And that is his description? A. That is his description. 40

*Thomas F. Barry, Recalled—Re-cross—Cross.*

*Joseph Bednarski, Recalled—Direct.*

Q. At that time he was in bed? A. He was.

Q. How many hours was it after the accident had occurred? A. Well, as near as I can state, it is dated the thirty-first. At that time I was on the afternoon shift, reporting at one p. m. and evidently that must have been after visiting hours at the hospital, I would say between three in the afternoon and nine next day.

Q. The day after the accident? A. Yes, sir.

*Re-cross-examination by Mr. Barison:*

Q. And Hoyt Street had a stop-street sign on?

A. Well that is a county road. There is no stop-street sign there.

Q. You don't know whether it has or not?

*Cross-examination by Mr. Brenner:*

Q. You say it is not a stop street? A. I would not be sure. That is a county road. If it is, it would have to be designated by the Freeholders.

Q. You don't know of any sign? A. We don't have any sign of a stop-street.

(Witness excused.)

30

JOSEPH BEDNARSKI, recalled.

Mr. Brenner: Was there any Public Service bus ahead of the Lyndhurst-Jersey City bus?

The Witness: No, sir.

40

*Edward Malinowski, Recalled—Direct.*

*Albert N. Androlis, Recalled—Direct.*

*Motion for a Directed Verdict.*

EDWARD MALINOWSKI, recalled.

Mr. Brenner: Was there any Public Service bus ahead of the Lyndhurst-Jersey City bus?

10

The Witness: No, sir.

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ALBERT N. ANDROLIS, recalled.

Mr. Brenner: Was there any Public Service bus ahead of the Lyndhurst-Jersey City bus?

The Witness: No, sir.

20

(All sides rest.)

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Mr. Barison: I move for a directed verdict in the case of *Bednarski vs. The Jersey City-Lyndhurst Bus Company* upon the ground that we were not guilty of any negligence that was the proximate and sole cause of the accident but that he himself was guilty of negligence that contributed to the accident.

30

The Court: I will deny your motion and you may have an exception.

Mr. Barison: I ask an exception.

(Testimony closed.)

(Recess to two o'clock p. m.)

40

**Court's Charge to Jury.**

March 3, 1933.

(AFTER RECESS, 2 P. M.)

10 (Counsel summed up to the jury.)

The Court: Mr. Brenner, is there any proof of the count mentioned in your complaint as to property damage?

Mr. Brenner: We waive it.

The Court then charged the jury as follows:

20 Gentlemen of the jury, considerable time has been taken in the trial of this case. You have been patient and the Court has endeavored to be patient with the parties and counsel.

The summation has been quite extensive and each counsel has addressed you and gone over the facts. So that it appears to the Court that after these extended summations and this extended period of trial that by this time you must be fully acquainted with the contentions of the parties as well as the inferences they draw from the testimony.

30 You have been requested to decide this case without passion, prejudice or sympathy. It is needless for the Court to say that it joins in that request and in fact so charges you. You have also been requested to decide this case upon the evidence and according to the oath that you have taken. It is hardly necessary for the Court to repeat that request but it is so charged you. It remains for you gentlemen to decide this case according to your oath and of course according to the truthful evidence.

40 You are finishing a week's duty of jury service and time and again you have heard the Court

*Court's Charge to Jury.*

charge you the rules that are to guide you in the determination of a case of this character. One of these rules is to the effect that the party who makes a charge, in order to be favored with a verdict at your hands, must prove that charge to you by the greater weight of the evidence.

Please do not speculate, men, about who is guilty or liable for the accident and the injuries or damages to be allowed, if any, because under your oath and according to the rule of action that the Court has just stated to you, you are not to speculate. You are to decide the case according to the greater weight of the evidence and that removes speculation. If you can conceive it, if the testimony is equally balanced either for or against a proposition, you will leave that proposition right where you found it and your decision will be "no cause for action."

That is to say, if that were a decisive point in the case, for example, if Malinowski has not proven to you that he was injured by the negligence of either one of these defendants, why your decision will be for the defendant.

On the other hand, if you feel that the evidence is fully balanced, that is to say, that Malinowski has not borne the burden of proof, you will leave the parties where you found them and your decision will be "no cause for action."

The Court has said that after the extended summation to you and the time within which the case has been tried, a very extensive field that has been explored in this case in the way of testimony; nevertheless, it might not be amiss to call to your attention as to some of the parties in this case and their situation.

You have heard time and again during the summation about the plaintiff Malinowski, the boy

*Court's Charge to Jury.*

who is suing. Well, he is suing and he charges that on the day in question, that is to say, August 30, 1931, he alleges that through the negligence of both operators of both machines, that is the operator of the bus as well as the operator of the Bednarski car that he, Malinowski, was injured, and he claims that the operation in both cases was negligent and that it approximately caused the injuries he sustained.

Now if he is to be awarded a verdict, and the Court is not indicating one way or another, that is to say, whether he should or should not receive a verdict against one or both the defendants; if he is entitled to a verdict he should be justly compensated, no more or no less, for the pain and suffering that he has endured both past and present and such as is proven by the testimony he will be reasonably expected to endure in the future. He is to be compensated for the injuries he sustained both temporary and permanent in character. If he is entitled to a judgment, he should be compensated for the reasonable expenditures and losses in limitation of earnings or working capacity, just as you may determine.

His father and mother are suing. The father is suing for his expenditures and expenses incurred in an endeavor to cure his son. That amount is awarded to the father, and, of course, if a verdict is awarded to the son, the father is entitled to a verdict. The father should be allowed such reasonable sum as will compensate him for the losses that I have just mentioned, that is to say, for the expenses incurred or moneys expended in endeavoring to cure his son.

The mother is joined as a party plaintiff. If the son is entitled to a verdict she also is entitled to a verdict, and you should award her an amount

*Court's Charge to Jury.*

that should also be included in the husband's verdict, that is, there should be no division, you understand. In any event, the amount would only be for the loss of the services until this boy obtains his majority. The father is responsible for the expenditures, you see, that is, for the losses in the way of medical expenses, and it seems to the Court that if a verdict is to be allowed him, that his verdict might exceed the wife's by that much. Let me make that clear to you again. Of course you cannot allow two verdicts for the husband or father, but if you do allow a verdict for the father and mother, the verdict to the father, if you so decide on the testimony, will exceed that of the wife or mother of this boy by the amount of expenses that the father was reasonably called upon to pay or the expenses that he did have—I have forgotten the testimony—in an endeavor to cure his boy. The theory of the law is that the husband and wife, or the father and mother, are equally entitled to recover for the loss of the services. But the father, as the Court views the law, is responsible, he being the head of the household, for the expenditures. 10

Now, if a judgment is to be found in favor of this plaintiff, it may be against both defendants, that is, the Bus Company as well as Bednarski, if you believe that it was the negligence of both of these drivers that approximately caused the injury sustained by the boy plaintiff. That is all a question for you to decide. In any event, you should not speculate about it. That is to say, you should determine, according to the greater weight of the evidence, and if you conclude from the evidence that both of these drivers by the greater weight of the evidence caused this boy's injuries, you may hold both of them. 20

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*Court's Charge to Jury.*

Or, if you find that one was responsible and not the other, you find against one and release the other. It all depends upon how you determine, by the greater weight of the evidence, who is liable.

10 This boy, as the Court remembers it, was a passenger in the car of Bednarski and as the Court remembers the testimony and so charges you, Bednarski's negligence is not imputable to the plaintiff. That is, Malinowski was riding with him and Malinowski had no control over the automobile in which he was riding.

Now, that is one suit, the suit of Malinowski and his parents against the two defendants.

20 Concerning the suit pending in which Bednarski is the plaintiff, where he is suing the Bus Company, Bednarski in his claim sets up a claim for personal injuries and also damages to his automobile. His counsel, however, has withdrawn or has discontinued the action as to the damages to his automobile so that what Bednarski is attempting to recover from the Bus Company and also the Bus Company's driver, is damages for his personal injuries. You see, Malinowski only is suing the two operators of the automobiles or rather the Bus Company and the Bednarski automobile, but Bednarski, he brings a suit against the  
30 Bus Company and against the man who was driving the car, or Caputo.

Mr. Brenner: That was withdrawn yesterday, I think the Court forgets that.

The Court: Counsel reminds me that that has been withdrawn and that simplifies the case if the driver is out. So that, then, it is Bednarski against the Bus Company. He claims that the Bus Company and its servant were negligent in the  
40 operation of their automobile and he sustains personal injuries for which he seeks to recover.

*Court's Charge to Jury.*

Now, in order for him to recover, the same rule again applies in the consideration of the evidence. That is to say, he must convince you by the greater weight of the evidence that it was the Bus Company's operator that caused his damage, that is, his negligence caused the injuries that he sustained and he has got to prove that by the greater weight of the evidence in order for you to give him a verdict. If you come to the conclusion in this case by the greater weight of the evidence that Bednarski contributed to his own injuries, why then he cannot recover. 10

The burden of proof that Bednarski was negligent or contributed to his own injury, as far as the suit against the Bus Company is concerned, rests upon the Bus Company. They have alleged that he was contributorily negligent and it is upon them to prove it as the Court has heretofore said; whenever a charge is made it must be proven. 20

Now, if you find in the Malinowski case that both operators or owners of the automobiles or vehicles were responsible, you may find a judgment for him against both. As to Bednarski, if you find that it was the negligence alone of the Bus Company that caused his injury, then you allow Bednarski a judgment that will justly compensate him to the same degree that I have already mentioned in the other case, that is to say, compensation for the pain and suffering, past, present, and that is reasonably proven will occur in the future, as well as for the pain and suffering, both temporary and permanent in character. 30

Then, of course, as to Bednarski, if he is to be made allowance or is to receive a judgment at your hands, he should receive a judgment that will justly compensate him also for the losses that he has sustained in the loss of wages or income or 40

*Court's Charge to Jury.*

any incapacity that was caused him as well as the expenses that he incurred in endeavoring to be cured.

Does that end the Bednarski case? No. There is still, in theory of law, another action that accrues, as the Court remembers it.

10 In the suit of Bednarski against the Bus Company the Bus Company claims what is known as a counterclaim against Bednarski, that is, a cross-suit of the Bus Company against Bednarski. They say that they were not guilty of the negligence which is charged by Bednarski and they charge him as being negligent in the operation of his automobile, and because of his negligence he damaged their bus, and they want to be paid for the damages. That is not just the wording of the claim, but that is the substance of it.

20 So you see, men, there are some difficulties in this case. Here is another difficulty. You may bring in a verdict either for or against the Bus Company as far as Bednarski is concerned. Bednarski is suing the Bus Company for his personal injuries and in the same suit the Bus Company is suing Bednarski by way of counterclaim.

30 In the case of Bednarski against the Bus Company you have different forms of judgment, but of course you can only find against one of the parties. If you find in favor of Bednarski against the Bus Company and you will find in his favor and on the counterclaim your verdict will be no cause for action.

40 If you find in favor of the Bus Company you will find a verdict in favor of the Bus Company on the counterclaim and no cause for action on the suit of Bednarski. If you find in favor of Bednarski and against the Bus Company, you will so state and give the amount.

*Court's Charge to Jury.*

If you find that the Bus Company is entitled to a judgment against Bednarski in the suit of Bednarski against the Bus Company, then you will say as to Bednarski, "We find you guilty," or that is you find a judgment in favor of the Bus Company and against Bednarski and assess the damages that you think should be allowed. The testimony in the case, as the Court remembers it, is that the repair bill was \$604. That, of course, is not the true measure of damages. It is an item that you may consider and you may allow that if you think that is a reasonable amount to be allowed. When the Court says it is not the true measure of damages, you can well see that where you have an automobile that might be worth fifty dollars and you go out and have an accident, or a collision with someone, and you take the automobile and have it repaired; it might cost you \$200 to repair it, but you should not allow that \$200 as the amount of the repairs because the loss is the difference in value of the automobile as it was immediately before the accident and immediately after the accident. So you see, if your automobile was totally damaged in the illustrated case, you would only be entitled to \$50, and that would be the limit of the recovery. So, too, in this case, although the item of repairs is stated to be \$604. Gentlemen, you take that into consideration and allow for that loss if you think that that amount is due. The Court is not indicating, however, that you are obliged to find a verdict one way or another in favor of any of the parties.

Now I have to a considerable extent explained the circumstances of this case in a general way, sufficiently for you to understand and become familiar with the verdicts that you might determine.

*Court's Charge to Jury.*

I have been requested by the plaintiff to charge you as follows:

10 "It is the law in this state that where a person personally in the exercise of that degree of care which common prudence requires under all the attending circumstances, is injured through the concurrent negligence of a third party and that of someone with whom plaintiff is riding as a guest or companion, whether as an invitee, or as a mere licensee, between whom and the plaintiff the relation of master and servant, or principal and agent, or mutual responsibility in a common enterprise does not in fact, exist, the plaintiff being, at the time, in no position to exercise authority or control over the driver, the negligence of such driver is not imputable to the injured person, but 20 the latter, the plaintiff Edward Malinowski in this case, is entitled to recover against the third person through whose wrong his injuries were sustained."

The Court charges you that except the last part about the plaintiff Edward Malinowski being entitled to recover against a third person through whose wrong his injuries were sustained. The Court feels that it has already charged you fully on that and this request is tantamount to a 30 directed verdict against that third party.

2. "If, after considering the evidence of both plaintiff and defendants in this case, you come to the conclusion that the accident in this case was caused by the negligence of both drivers, that is, that the negligence of each driver contributed to the happening of the accident, then you must still bring in a verdict for the plaintiff Edward Malinowski against the defendant, Jersey City & 40

*Court's Charge to Jury.*

Lyndhurst Bus Company, as well as against defendant, Bednarski.”

The Court has heretofore charged you fully about that, gentlemen, as to the position that Malinowski holds and has charged you that request substantially as requested and I shall not charge you that request any further.

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There is a law in this state that might be of importance to you in a consideration of this case and that is the section known as Section 12 of the Traffic Act which reads as follows, as to right of way:

“12-A. Vehicles approaching an intersection. The driver of a vehicle approaching an intersection shall yield the right of way to a vehicle which has entered the intersection. When two vehicles enter an intersection at the same time the driver of the vehicle on the left shall yield the right of way to the driver on the right.

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(B) Vehicles entering or crossing a through street. The driver of any vehicle who has stopped as required by law at the entrance to a through street shall yield to other vehicles within the intersection or approaching so closely on the through street as to constitute an immediate hazard, the said driver having so yielded may proceed and other vehicles approaching the intersection on the through street shall yield to the vehicle so proceeding into or across the through street.

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(C) Vehicles turning left at an intersection. The driver of a vehicle within an intersection intending to turn to the right shall yield to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but such driver having so yielded and having given a sig-

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*Court's Charge to Jury.*

nal when and as required by law may make such left turn and other vehicles approaching the intersection from said opposite direction shall yield to the driver making the left turn.”

10 Violation of that particular provision of the Traffic Act, gentlemen, is not negligence of itself. It is an item that you may consider, however, in the case, in arriving at whether or not the violator of the Traffic Act was guilty of negligence. The mere fact that a person who comes to a street has a right of way does not allow him to ride or give him the right to go heedlessly head-  
20 long into that cross street if by the exercise of reasonable care, as an ordinarily prudent man, he could avoid a collision. In other words, even though you have the right of way, whether it is for one street or anything else, what you are called upon to do finally, and it seems to the Court that that is the real test, is the exercise of care and caution of a reasonably prudent man, and that is the test that you should apply to the drivers of both vehicles. They were both obliged on the  
30 night in question to use that degree of care and caution that an ordinarily prudent man would use.

I have been requested to charge you as to the requirements of the Traffic Act, but I think that I have already covered them. I think I have fully covered the subject as contained in the requests and the request will not be further charged.

Are there any exceptions to the Court's charge?

Gentlemen, there being none, you may retire.

*Plaintiff's Request to Charge.*

Mr. Willman: I ask a general exception to the charge and with particular reference to that part which refers to the degrees of negligence and to that part which refers to the damages to be awarded to the father and mother in the Malinowski case.

The Court: What is wrong about that? What is your idea? 10

(Exception withdrawn.)

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 PLAINTIFF'S REQUEST TO CHARGE.

3. If the negligence of the defendant bus company in any way contributed to the happening of this accident, then plaintiff Edward Malinowski is entitled to a verdict against the Jersey City & Lyndhurst Bus Company. 20

4. In computing the amount of damages for Edward Malinowski you may take into consideration not only the past pain and suffering of the plaintiff and of the expenses already incurred due to the injuries sustained in this accident, but also the present disability and the prospects of future pain, suffering and temporary or permanent physical disability as testified to by the doctors for plaintiff, Edward Malinowski. 30

*Defendant's Request to Charge.*

## DEFENDANT'S REQUEST TO CHARGE.

The Motor Vehicle Act provides that every driver of a vehicle when entering or crossing any intersection, shall grant the right of way at all times to any vehicle approaching from his right.


10 If you find from the evidence of this case that the vehicle of the defendant Jersey City & Lyndhurst Bus was to the right of the vehicle of Joseph Bednarski, then, under the Act, it would be the duty of the defendant Joseph Bednarski to grant the right of way to the Jersey City & Lyndhurst Bus, but the mere violation of the Motor Vehicle Act would not mean negligence.

20 You may consider this fact in determining whether Joseph Bednarski was negligent, and if you find from the evidence in this case that this accident was proximately caused due to the fact that the defendant Joseph Bednarski failed to grant the right of way to the Jersey City & Lyndhurst Bus, then your verdict will be in favor of the Jersey City & Lyndhurst Bus, and the defendant Joseph Bednarski could not recover against the Jersey City & Lyndhurst Bus, nor could the plaintiff Edward Malinowski or his parents recover from the Jersey City & Lyndhurst Bus, and if you find the facts to be that this accident was caused  
30 by the fact that Joseph Bednarski failed to grant the right of way to the bus, and that the bus driver was not guilty of any negligence, you will bring in a verdict in favor of the Jersey City & Lyndhurst Bus against Joseph Bednarski for the damages to the bus.



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**Exhibit P-2.**

(*Opposite* )



141


**Exhibit P-3.**

(*Opposite* )



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
**Exhibit P-4.**

(*Opposite* )




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**Exhibit P-5.**

(*Opposite* )



**Exhibit P-6.**

(*Opposite* )



**Postea.**

(Filed November 20, 1931.)

This case was tried before Honorable Thomas Brown, to whom the same was referred for trial, with a jury at the Hudson County Circuit on March 3rd, 1933.

10 During the trial of the cause, Bessie Malinowski, mother of Edward Malinowski, was added as a party plaintiff by the Court with the consent of attorneys for the defendants.

20 The jury rendered a verdict against the defendant, Jersey City & Lyndhurst Bus Company, a New Jersey corporation, and in favor of the plaintiffs in the following amounts: Five Thousand (\$5,000) Dollars for Edward Malinowski by John Malinowski his next friend, and Seventeen Hundred (\$1700) Dollars for John Malinowski, individually, and One Thousand (\$1,000) Dollars for Bessie Malinowski, mother, individually.

A verdict of no cause for action was rendered in favor of the defendant, Joseph Bednarski, and against plaintiff Edward Malinowski.

30 Whereupon it is adjudged that the plaintiff Edward Malinowski by John Malinowski his next friend do recover of the said defendant Jersey City & Lyndhurst Bus Company, a New Jersey corporation the sum of Five Thousand Dollars damages and that the plaintiff John Malinowski, individually, do recover of the said defendant Jersey City & Lyndhurst Bus Company, a New Jersey corporation, the sum of Seventeen hundred dollars damages; and that the plaintiff Bessie Malinowski do recover of the said defendant Jersey City & Lyndhurst Bus Company, a New Jersey corporation, the sum of One

\$5,000.00	E. M.	
1,700.00	J. M.	
1,000.00	B. M.	
<hr/>		
\$7,700.00		
81.33		
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\$7,781.33		

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*Judgment on Postea.*

Thousand Dollars damages together with their costs which have been taxed at the sum of Eighty-one dollars and thirty-three cents, making in the whole the sum of Seven thousand seven hundred eighty-one dollars and thirty-three cents.

Judgment signed and entered March 9, 1933.

THOMAS W. TRENCHARD,  
Acting Chief Justice.

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**Judgment on Postea.**

NEW JERSEY SUPREME COURT.

EDWARD MALINOWSKI by JOHN  
MALINOWSKI his next friend  
and JOHN MALINOWSKI individ-  
ually and BESSIE MALINOWSKI,  
Plaintiffs,

*vs.*

JERSEY CITY & LYNDHURST BUS  
COMPANY, a New Jersey corpo-  
ration,  
Defendant.

Action at Law.  
On Postea.

20

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\$5,000.00 E. M.  
1,700.00 J. M.  
1,000.00 B. M.

\$7,700.00  
81.33

\$7,781.33

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R. to S. C. as to  
John and Bessie  
Malinowski, Ind.

*Judgment on Postea.*

It is ordered that judgment be and hereby is entered against the defendant and in favor of Edward Malinowski, by John Malinowski, his next friend, plaintiff, for the sum of five thousand dollars, and in favor of John Malinowski, individually, plaintiff, for the sum of one thousand seven hundred dollars, and in favor of Bessie Malinowski, plaintiff, for the sum of one thousand dollars; besides costs to be taxed nisi.

Entered March 9, 1933.

On motion of  
ELIAS G. WILLMAN, Atty.

A true copy

FRED L. BLOODGOOD,  
Clerk.

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**New Jersey Court of Errors and Appeals**

EDWARD MALINOWSKI, infant, by  
JOHN MALINOWSKI, his next  
friend,  
Plaintiff-Respondent,

*vs.*

JERSEY CITY & LYNDHURST BUS  
COMPANY, a New Jersey cor-  
poration,  
Defendant-Appellant,

*and*

JOSEPH BEDNARSKI,  
Defendant.

Action at Law.

On Appeal  
From  
New Jersey  
Supreme  
Court.

**BRIEF OF DEFENDANT-APPELLANT.**

(1)

**Statement of the Case.**

This case is before the Court upon appeal from the judgment of the Supreme Court, Hudson Circuit, tried and heard before Judge Thomas H. Brown and a Jury, wherein the plaintiff recovered a judgment of \$5,000.00. This action was instituted for the recovery of damages for injuries sustained by Edward Malinowski, infant, by John Malinowski, his next friend, on the 30th day of August, 1931, while riding in an automobile owned by Joseph Bednarski, about 10:55 P. M., said vehicle being operated in a westerly direction

along Hoyt Street, which collided with an automobile bus owned by the Jersey City & Lyndhurst Bus Company and operated by James Caputo in a southerly direction on Schuyler Avenue in the Town of Kearny, County of Hudson and State of New Jersey.

When the bus of the appellant had reached Hoyt Street, which runs east and west crossing Schuyler Avenue, and had proceeded at a moderate rate of speed about a quarter of the distance of the intersection, the automobile of Bednarski, in which automobile Edward Malinowski was riding, came out of Hoyt Street at a terrific rate of speed, without lights and without giving any warning, and darted into the path of his bus. The bus driver immediately applied his brakes and stopped his vehicle. The Bednarski car pulled to the left, striking the front bumper of the bus, knocking the same from the bus, and proceeded across the street, striking a tree on the sidewalk on the northwesterly corner of Hoyt Street and Schuyler Avenue, and his vehicle, when finally stopped, was facing in an easterly direction.

On the trial of the case, the foregoing facts appeared from the testimony. A motion for nonsuit was made by the defendant at the close of the plaintiff's case.

It is from the judgment final entered on the verdict of the Jury that the present appeal is taken. The grounds of appeal urged are:

1. That a nonsuit should have been granted for the defendant at the close of the plaintiff's case.

## (2)

**Brief of the Argument.****POINT I.**

**The Trial Court should have granted the motion for nonsuit because there was no evidence of any negligence on the part of the defendant which was the proximate cause of the accident.**

A motion was made for a nonsuit in behalf of the defendant at the close of the plaintiff's case and an exception was duly noted to the refusal of the Court to grant said motion (S. C., p. 90, ll. 11-23). This exception is reserved for argument on this appeal by ground of appeal No. 1 (S. C., p. 3, ll. 26-35).

**(a)****The Facts.**

The first witness on behalf of the plaintiff was Edward Malinowski (S. C., p. 26, ll. 26-27). He was seated to the right of Bednarski, the owner and operator of the vehicle (S. C., p. 27, ll. 37-38). Bednarski's vehicle came to a stop on Schuyler Avenue (S. C., p. 28, ll. 14-15). That is all this witness knows of the accident (S. C., p. 28, ll. 20-21).

The next witness THOMAS F. BARRY, Detective of the Kearny Police (S. C., p. 41, ll. 6-9). The open sedan, which is Bednarski's vehicle, was up against a tree facing south on Schuyler Avenue (S. C., p. 41, ll. 32-40). The car was partially on a lot and a portion was in the gutter (S. C.,

p. 42, ll. 9-11). The tree that the Bednarski automobile struck was ten feet from the westerly sidewalk of Schuyler Avenue (S. C., p. 42, ll. 16-17). The right side of Bednarski's vehicle was totally demolished (S. C., p. 42, ll. 20-22). The front bumper of the bus was on the ground (S. C., p. 43, ll. 31-32). The lights of Bednarski's vehicle were not lit (S. C., p. 44, ll. 15-16). Photographs marked into evidence (S. C., p. 46, ll. 12-14; S. C., pp. 139, 141, 143, 145, 147, 149). The lights and brakes of the automobile bus of the defendant-appellant after the accident were found in working order (S. C., p. 47, ll. 22-29). The car of Bednarski had smashed up against the pole (S. C., p. 48, ll. 15-16).

The next witness called for the plaintiff was HENRY J. BELL, Officer of the County Police Department (S. C., p. 49, ll. 7-8). He arrived at the scene of the accident about twenty-five minutes after the happening of the same (S. C., p. 49, ll. 23-24). The front bumper was off the bus and he noticed no other marks on the bus (S. C., p. 50, ll. 22-25).

CHARLES C. MOCKUS called by the plaintiff (S. C., p. 50, ll. 30-32). He was standing about two hundred or two hundred and fifty feet away from the scene of the accident on the easterly side of Schuyler Avenue (S. C., p. 51, ll. 8-15), facing a building (S. C., p. 51, ll. 24-25). He observed the Bednarski car coming out of Hoyt Street into Schuyler Avenue, and the next thing he heard was the crash. Bednarski's car turned around completely and swung up against the pole (S. C., p. 52, ll. 4-10). He observed the bus before the accident and the same was about two hundred and fifty feet away from him (S. C., p. 52, ll. 18-20). The collision occurred a little west of the center of the street (S. C., p. 53, ll. 10-19). The vehicle of the defendant-appellant was traveling eight times as

fast as the vehicle of Bednarski (S. C., p. 54, ll. 20-29). The vehicle of Bednarski was a little less than three-quarters of the way across Schuyler Avenue (S. C., p. 60, ll. 7-11). The vehicle of Bednarski was traveling between ten and fifteen miles per hour (S. C., p. 60, ll. 24-26).

JOSEPH BEDNARSKI called on behalf of the plaintiff (S. C., p. 65, ll. 27-29). Joseph Bednarski was the operator of an open sedan in the accident which occurred on October 30th, 1931. He was parked on Hoyt Street (S. C., p. 65, ll. 32-40). The vehicle was parked about one hundred and fifty feet from Schuyler Avenue, and turned his vehicle to proceed in a westerly direction on Hoyt Street (S. C., p. 66, ll. 4-10). When he reached the corner of Schuyler Avenue and Hoyt Street on the east corner, he stopped and looked up and down Schuyler Avenue (S. C., p. 66, ll. 11-14). He observed the bus of the defendant at Devon Terrace and started to cross Schuyler Avenue. When he reached three-quarters of the way across Schuyler Avenue he observed the lights of the bus. His car was struck, and that is all he remembers (S. C., p. 66, ll. 15-21). He did not know the speed of the bus (S. C., p. 66, ll. 30-35). He further testified that he knew the bus was traveling fast (S. C., p. 67, ll. 4-6). He was operating his vehicle about five miles per hour (S. C., p. 67, ll. 21-24). He observed the vehicle of the defendant on Devon Terrace, which is a short block away from Schuyler Avenue (S. C., p. 68, ll. 11-17); and knowing that he would have to travel thirty to thirty-five feet, started to cross the intersection, although he saw the vehicle of the defendant traveling at a fast rate of speed (S. C., p. 68, ll. 27-37), and again observed the vehicle of the defendant twenty to twenty-five feet away from him traveling at a fast rate of speed (S. C., p. 69, ll. 12-18),

and continued at the same rate of speed across the street (S. C., p. 69, ll. 20-21). He could have stopped his vehicle instantaneously upon seeing the bus of the defendant (S. C., p. 71, ll. 29-31). This witness made a statement to the police (S. C., p. 74, ll. 12-32).

JAMES CAPUTO, driver of the appellant's automobile bus (S. C., p. 77, ll. 9-10). His description of the accident was as follows (S. C., p. 77, ll. 12-40):

“Q. Will you tell us briefly what happened?

A. I was driving south along Schuyler Avenue, and down at Devon Avenue I had to make a complete stop behind a Public Service bus. The bus originally runs on Davis Avenue, but due to the fact that there were repairs being made on Davis Avenue it was running along Schuyler Avenue, right on Hoyt Street and traveling west then to Davis Avenue. I made a stop at Devon Terrace behind a Public Service bus. The Public Service bus started and then I started south behind the bus. He gets to Hoyt Street and giving a right hand turn, the Public Service bus going west, and of a sudden, then, out of Hoyt Street traveling west, a car comes shooting out at a terrific rate. I jammed on my brakes, coming to a complete stop as his car struck the left side of my bumper, throwing it at least seventy-five to eighty feet southwest of where my bus had stopped. Then the car did not stop after he struck the left front of my bumper. He made a complete left turn and rammed himself up against the pole.

Q. What other part of the bus was struck?

A. Just the left front of the bumper.

Q. Do you remember about how fast you were proceeding along Schuyler just preceding the happening of the accident? A. About eighteen miles an hour.

Q. At the time did you have any passengers in the bus? A. I did.”

His vehicle was about one-quarter of the way across the intersection when the Bednarski car shot into the intersection of Schuyler Avenue (S. C., p. 82, ll. 23-26). The Bednarski car was on top of the bus of the appellant and was coming right for the front of the bus (S. C., p. 84, ll. 28-29), and the Bednarski car was on the left side of Hoyt Street (S. C., p. 84, ll. 32-37). The right rear mudguard struck the bus (S. C., p. 84, ll. 39-40). Bednarski swung to the left, as he could not stop his vehicle (S. C., p. 85, ll. 7-10). The rear part of the Bednarski car hooked on to the left front bumper of the bus (S. C., p. 85, ll. 22-24). The Bednarski car had no lights on at the time of the accident (S. C., p. 87, ll. 34-35). Bednarski failed to sound any horn (S. C., p. 88, ll. 8-9).

JOHN H. McCONNELL, an engineer in the Engineer's Office (S. C., p. 89, ll. 9-11). Hoyt Street is fifty feet wide at the intersection of Schuyler Avenue and Schuyler Avenue is fifty feet wide (S. C., p. 89, ll. 17-22).

The above constitutes all of the testimony relevant to the question of negligence in the case of Malinowski.

One other witness was called in this case by Bednarski. We respectfully contend that the testimony of this witness is not part of the Malinowski case, but for the purpose of anticipating the contention of the respondent, we will cite the testimony of this witness.

ALBERT N. ANDROLLIS was on the corner of Tapan Street, which is one block south of Hoyt Street (S. C., p. 90, ll. 39-40). He was walking away from Hoyt Street (S. C., p. 91, ll. 11-13). He first observed the bus when it was in the middle of Devon Terrace (S. C., p. 91, ll. 36-37). He first observed the automobile of Bednarski when

the same pulled out of Hoyt Street (S. C., p. 92, ll. 38-40).

The above constitutes all of the testimony in both the Bednarski case and the Malinowski case.

(b)

**The Law.**

From the above facts, there being no testimony of any negligence, the Court was compelled as a matter of law to grant the motion for nonsuit.

There being no negligence, the duty became that of the Court to nonsuit the plaintiff. *Steinberg vs. Bogatin Dyers & Cleaners*, 105 N. J. Law 294.

To cite further authorities on this question is needless, as the rule of law is elementary, and it was the duty of the Trial Court to have granted a nonsuit in favor of the defendant when thereunto moved at the close of the plaintiff's case.

**Conclusion.**

We respectfully move that the Court should have granted the motion for the nonsuit, and therefore the judgment should be reversed and sent back for a new trial.

Respectfully submitted,

BARISON & BARISON,  
Attorneys for Defendant-Appellant.

MORRIS E. BARISON,  
Of Counsel.

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46 OCT. 1933

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

EDWARD MALINOWSKI, infant, by  
JOHN MALINOWSKI, his next  
friend,

*Plaintiff-Respondent,*

*vs.*

JERSEY CITY & LYNDHURST BUS  
COMPANY, a New Jersey cor-  
poration,

*Defendant-Appellant,*

*and*

JOSEPH BEDNARSKI,

*Defendant.*

*Action  
at Law.*

*On Appeal  
from  
New Jersey  
Supreme  
Court.*

### ANSWERING BRIEF OF PLAINTIFF-RESPONDENT.

Plaintiff-respondent cannot adopt the defend-  
ant-appellant's Statement of the Case because it  
contains positive conclusions not warranted by  
the testimony. Plaintiff-respondent therefore  
offers the following Statement of the Case:

(1)

#### Statement of the Case.

This case is before the Court upon appeal from  
the judgment of the Supreme Court, Hudson  
Circuit. The case was tried before Judge  
Thomas H. Brown and a jury. This action was  
instituted for the recovery of damages for in-  
juries sustained by Edward Malinowski on  
August 30, 1931 about 10:55 P. M. while riding  
in an automobile owned and operated by Joseph

Bednarski which came in collision with an automobile bus owned by the Jersey City & Lyndhurst Bus Company and operated by James Caputo.

The collision occurred at the intersection of Schuyler avenue and Hoyt street in the Town of Kearny, County of Hudson and State of New Jersey. Bednarski was proceeding west on Hoyt street, the bus was going south on Schuyler avenue. Two conflicting versions of the accident were presented to the Court and jury. One view was that when Bednarski, in whose car Malinowski was riding, came to the aforementioned intersection, he came to a complete stop, looked to the right, saw the bus about 182 feet to the north, and proceeded to cross Schuyler avenue, which is 50 feet wide at this intersection, at a slow rate of speed and when three-quarters of the way across, with the front of his car past the intersection, the bus coming at a very fast rate of speed, crashed into the right side, center and rear of Bednarski's car before Bednarski could do anything to avoid the impact, and threw his car against a tree on the southwest corner of the intersection, causing Malinowski to be hurled some fifty feet out of the car and to sustain severe injuries. The bus bumper and right front light and fender showed damage resulting from the impact. The other version of the accident was to the effect that Bednarski came out of Hoyt street at a fast rate of speed, ran into the path of the bus, which was going at a moderate rate of speed, whose driver immediately applied his brake and stopped the bus. The Bednarski car, according to this view, pulled to the left, struck the bus front bumper, and proceeded across the street, striking a tree on the sidewalk on the southwesterly corner of Hoyt street and Schuyler avenue.

At the close of the plaintiff's case, defendant made a motion for non-suit which the trial court denied.

The defendant-appellant now appeals from the judgment final entered on the verdict of the jury on the ground that the motion for non-suit should have been granted for the defendant at the close of plaintiff's case.

(2)

**BRIEF OF THE ARGUMENT.**

**POINT I.**

The Trial Court exercised its proper discretion in denying the motion for non-suit because in its opinion there was sufficient in dispute in the case for a jury to decide.

The Trial Court's ground for denying the motion for non-suit was that there was sufficient of a dispute in the case to present a question for the jury to decide. (S. C., p. 90, ll. 17-22.)

(a)

**The Facts.**

Testimony of plaintiff Edward Malinowski, called by the plaintiff (S. C., p. 26, l. 26) stated the following facts bearing upon the negligence of the defendant-appellant. He was seated to the right of Bednarski in the latter's car. (S. C., p. 27, ll. 37-38.) After leaving the bake shop Bednarski's car started west on Hoyt street and came to a stop at Schuyler avenue (S. C., p. 34, ll. 1-4). The bus, at the time that Bednarski stated he started up from his stopped position, was at Devon Terrace. (S. C., p. 34, ll. 28-31.)

The Bednarski car had practically crossed the street when it was hit. (S. C., p. 35, ll. 17-22 and S. C., p. 38, ll. 19-26.) The whole motor of the Bednarski car was inside of the westerly side of Hoyt street before the crash occurred. (S. C., p. 35, ll. 27-29.) The Bednarski car was going very slow as it proceeded to cross Schuyler avenue. (S. C., p. 35, ll. 37-40 and S. C., p. 36, ll. 10-11.) The bus was coming very fast. (S. C., p. 37, ll. 17-18.) The bus hit the automobile. (S. C., p. 37, ll. 31-32.)

Detective Thomas F. Barry, the next witness for the plaintiff (S. C., p. 41, ll. 1-2) testified that the bumper and the right front headlight and right front mudguard of the bus had been damaged. (S. C., p. 43, ll. 15-29 and S. C., p. 47, ll. 37-41.) Photographs marked into evidence (S. C., p. 46, ll. 12-14; S. C., pp. 139-149).

Charles C. Mockus called for the plaintiff (S. C., p. 50, ll. 30-32) testified that the right rear of the car had been hit by the right of the bus (S. C., p. 53, ll. 34-35) and that the bus was going at a good rate of speed. (S. C., p. 54, ll. 11-12.) The bumper of the bus was damaged and also the front right light (S. C., p. 55, ll. 24-26). The Bednarski car was going about ten to fifteen miles an hour as it crossed Schuyler avenue (S. C., p. 60, ll. 24-27).

Joseph Bednarski called by the plaintiff (S. C., p. 65, ll. 28-30) testified that when he reached the intersection of Schuyler avenue and Hoyt street, he stopped, looked up and down, saw the bus at the corner of Devon Terrace, proceeded to put his car in first gear and start to cross Schuyler avenue and that as he reached three-fourths of the way across, the front of the bus struck his rear right side (S. C., p. 66, ll. 11-21; S. C., p. 67,

ll. 5-6; S. C., p. 67, ll. 16-28); and that the bus was going pretty fast (S. C., p. 68, ll. 9-10); that he was driving his car while crossing Schuyler avenue at a rate of five miles an hour (S. C., p. 67, ll. 21-23); that the bus was a block away when he started to cross Schuyler avenue (S. C., p. 68, ll. 36-37); that at the time the collision occurred, the nose of his car was touching the far cross-walk of Schuyler avenue (S. C., p. 69, l. 40; S. C., p. 70, ll. 4-5). He saw the bus only twice, once at Devon Terrace and again when it crashed into him (S. C., p. 70, ll. 25-32). He took no chance in crossing as he thought he had enough time to reach the other side (S. C., p. 71, ll. 8-12).

James Caputo, driver of appellant's bus, was called for the plaintiff (S. C., p. 77, ll. 9-10). He testified that a Public Service bus riding in front of him had caused him to proceed slowly and when approaching Hoyt street, the Bednarski car suddenly shot out of Hoyt street at a terrific rate of speed striking the left side of his bumper and making a complete turn and ramming itself against a pole. He was proceeding about eighteen miles an hour (S. C., p. 77, ll. 9-39).

John H. McConnell, called as a witness on behalf of the plaintiff (S. C., p. 89, ll. 2-4) said he was an engineer in the county engineer's office for Hudson County (S. C., p. 89, ll. 9-11); that the width of Hoyt street is fifty feet and Schuyler avenue is also fifty feet at the intersection of these two streets and that the distance from Devon Terrace to Hoyt street is approximately 182 feet (S. C., p. 89, ll. 17-27). (The ratio between 182 and 50, it will be noted, is less than four to one.)

The above testimony relevant to the question of negligence (without considering the testimony of Albert N. Androlis, produced as a witness on behalf of defendant Bednarski) was case of plaintiff Malinowski on the question of liability.

(b)

**The Law.**

The apparent conflict in the above testimony was sufficient for the Trial Court to say whether negligence on the part of the defendant-appellant could be legitimately inferred and to present a question for the jury. It is submitted that the case cited in the brief of the defendant-appellant (*Steinberg v. Bogatin Dyers & Cleaners*, 105 N. J. Law 294) in no way supports the defendant-appellant's legal contention in this case, but on the contrary may be adduced to uphold the contention of the plaintiff-respondent that the Trial Court properly denied the defendant-appellant's motion for non-suit. The cases cited in *Steinberg v. Bogatin Dyers & Cleaners (supra)* further support plaintiff-respondent's position.

**Conclusion.**

We respectfully move that the Trial Court properly denied the motion for non-suit and therefore the judgment should be affirmed.

Respectfully submitted,

ELIAS G. WILLMAN,  
Attorney for Plaintiff-Respondent.



The above testimony relevant to the question of negligence (without considering the testimony of Albert N. Anzures, produced as a witness on behalf of defendant Bednarski) was case of plaintiff-respondent on the question of liability.

(b)

#### The Law.

The apparent conflict in the above testimony was sufficient for the Trial Court to say whether negligence on the part of the defendant-appellant could be legitimately inferred and to present a question for the jury. It is submitted that the case cited in the brief of the defendant-appellant (*Steinberg v. Bogatin Dyers & Cleaners*, 105 N. J. Law 234) in no way supports the defendant-appellant's legal contention in this case, but on the contrary may be adduced to uphold the contention of the plaintiff-respondent that the Trial Court properly denied the defendant-appellant's motion for non-suit. The cases cited in *Steinberg v. Bogatin Dyers & Cleaners (supra)* further support plaintiff-respondent's position.

#### Conclusion.

We respectfully move that the Trial Court properly denied the motion for non-suit and therefore the judgment should be affirmed.

Respectfully submitted,

ELLAS G. WILLMAN,  
Attorney for Plaintiff-Respondent.