

INDEX

	PAGE
Notice of Appeal of Helen Bright.....	1
Grounds of Appeal of Helen Bright.....	2
Notice of Appeal of Louis Davis.....	5
Grounds of Appeal of Louis Davis.....	6
Complaint	9
Answer of Louis Davis.....	13
Answer of Helen Bright.....	14
Reply	16
Postea and Judgment	16
Charge to Jury	114
Exceptions to Charge	128
Defendant Davis' Requests to Charge....	130

TESTIMONY.

For Plaintiffs.

Richard Ridgley Kemp,	
direct examination	18
cross "	23, 36
James Jackson,	
direct examination	38
cross "	39, 42
Alexander Perry Kemp,	
direct examination	50
Louis R. Kemp,	
direct examination	53
cross "	60
re-direct "	61
re-cross "	61
Edith C. Kemp,	
direct examination	62

	PAGE
<i>For Defendants.</i>	
Helen Bright,	
direct examination	64
cross "	72, 73
Alfred E. Dorrell,	
direct examination	79
cross "	81, 82
Raymond Johnson,	
direct examination	88
cross "	90
Raymond N. Applin,	
direct examination	91
cross "	94
Louis Davis,	
direct examination	95
cross "	99, 100
William N. Johnson,	
direct examination	106
cross "	106
Harry Lerner,	
direct examination	107
cross "	109
Shirley Heskett,	
direct examination	111
cross "	112
Louis Etchman,	
direct examination	113

EXHIBITS.

	Off'd
P. 1. Map	27
D. 1. Photograph	62
D. 2. Photograph	68
D. 3 to D. 8. Photographs.....	69

NOTICE OF APPEAL OF HELEN BRIGHT.

Filed November 16, 1927.

New Jersey Supreme Court

ALEXANDER P. KEMP and LEWIS BROOKE KEMP, by their next friend, Lewis R. Kemp, and LEWIS R. KEMP, individually, <div style="text-align: right;"><i>Plaintiffs,</i></div>	<i>Action at Law.</i>	10
<i>vs.</i>		
HELEN BRIGHT and LOUIS DAVIS, <div style="text-align: right;"><i>Defendants.</i></div>	<i>Notice of Appeal.</i>	

To Charles Jones, Esq., attorney of plaintiffs. 20

TAKE NOTICE that the defendant, Helen Bright, appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause.

Dated November 10, 1927.

Respectfully yours,

COLLINS & CORBIN,
Attorneys of Defendant, Helen Bright. 30

Service acknowledged November 14, 1927.

CHARLES JONES,
Attorney of Plaintiffs.

GROUNDS OF APPEAL OF HELEN BRIGHT.

Filed December 24, 1927.

New Jersey Court of Errors and Appeals

10 ALEXANDER P. KEMP and LEWIS
 BROOKE KEMP, by their next
 friend, Lewis R. Kemp, and
 LEWIS R. KEMP, individually,
Plaintiffs,
vs.
 HELEN BRIGHT and LOUIS DAVIS,
Defendants.

*Action
 at Law.*
*Grounds of
 Appeal of
 Helen Bright.*

20 The appellant states the following grounds of appeal:

1. The trial judge erroneously charged the jury as follows:

30 "But this statute says, and this emphasizes everything that has been said upon the subject of maximum speed, 'Provided, however, that reckless driving is hereby prohibited, and for the purposes of this act and the act to which this act is an amendment, reckless driving is hereby defined to be: "the driving of a motor vehicle or motorcycle in any manner which unnecessarily interferes with the free and proper use of any highway, street, road, turnpike, park or parkway or driveway, or in any manner endangers the life or limb or the property of any person.'" So that any speed which interferes with the free and proper use of the road by other persons or in any manner

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Grounds of Appeal of Helen Bright.

which endangers the life or limb or the property of any person, is reckless, and that is forbidden by the statute."

2. The trial judge erroneously charged the jury as follows:

10 "And there is another statute to which I shall call your attention, as I have heard mentioned during the arguments, and that is the statute as to the right of way, and that is this: 'Every driver of a vehicle approaching the intersection of a street or public road shall grant the right of way at such intersection to any vehicle approaching from his right.' As was said to you in the argument, that does not mean that if an automobile was about to cross Bloomfield avenue from south to north, and another automobile was approaching that crossing going from east to west, that it was necessary for the person going north to yield the right of way to the person going west, if the automobile going west was a sufficient distance away at the speed at which it is going so that it would not reach the point of crossing at about the same time as the person going north. However, if the automobile going west would reach the point of crossing at about the same time, or, if at the speed both were going, it should appear to the automobile going north that they would reach the point of crossing at about the same time, then it was the duty of the person going north under this statute, to yield the right of way to the person going west, which would be on the right side."

40 COLLINS & CORBIN,
 Attorneys of Defendant-Appellant,
 Helen Bright.

Grounds of Appeal of Helen Bright.

Service acknowledged and consent to filing as of time. December 18, 1927.

CHARLES JONES,
Attorney of Plaintiffs.

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NOTICE OF APPEAL OF LOUIS DAVIS.

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

ALEXANDER P. KEMP and LEWIS
BROOKE KEMP, by their next
friend, Lewis R. Kemp, and
LEWIS R. KEMP, individually,
Plaintiffs,

vs.

HELEN BRIGHT and LOUIS DAVIS,
Defendants.

*Action
at Law.
Notice of
Appeal of
Louis Davis.*

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To Charles Jones, Esq., attorney for plaintiffs, or
to whom it may concern:

20

Dear Sir:

Please take notice that the defendant, Louis Davis, 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 whole of the judgment entered in this cause.

Respectfully yours,

JNO. A. MATTHEWS,
Attorney for Defendant Louis Davis.

30

Service of a copy of the within notice of appeal is hereby acknowledged this 4th day of January, 1928.

CHARLES JONES,
Attorney for Plaintiffs.

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GROUNDS OF APPEAL OF LOUIS DAVIS.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	ALEXANDER P. KEMP and LEWIS BROOKE KEMP, by their next friend, Lewis R. Kemp, and LEWIS R. KEMP, individually, <i>Plaintiffs,</i>	}	<i>Action at Law. Grounds of Appeal of Louis Davis.</i>
	<i>vs.</i>		
	HELEN BRIGHT and LOUIS DAVIS, <i>Defendants.</i>		

20 The appellant, Louis Davis, states the following grounds of appeal:

1. The trial judge erroneously charged the jury as follows:

“Defendant Helen Bright in crossing this intersection was bound under the law to pass to the right of the beacon light, if she was intending to proceed northerly on Pompton avenue and the defendant Davis had the right to assume that Helen Bright would observe the rule of passing to the right of this beacon light.’ You mean that there is a statute requiring her to do that?

30 Mr. Kane: That is the traffic rules.

The Court: Is there any statute to that effect? I don’t know whether they were to go to the left or right hand of the beacon light or whether they should go straight ahead. I will say, however, that the statute requires drivers of vehicles to keep on the

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Grounds of Appeal of Louis Davis.

right side of the road. That is the most I can say with reference to that request.”

2. The trial judge erroneously charged the jury as follows:

“ ‘When examining the testimony taken in the Police Recorder’s Court, you are to disregard any decision or disposition of the case as made by the Recorder, and determine the liability in this case at bar solely upon the evidence presented by the various witnesses who have testified in this court.’ That I decline to charge you because the record has gone in without reservation and there may be some testimony in there which has not been read which reflects upon the testimony given in this court. If that be true, you have a right to consider that, so I cannot say that you must disregard that testimony and consider only the testimony given in this court by the witnesses.”

3. The trial judge erred in refusing to charge defendant’s request No. 3:

“Defendant Helen Bright in crossing this intersection was bound under the law to pass to the right of the beacon light, if she was intending to proceed northerly on Pompton avenue, and the defendant Davis had the right to assume that Helen Bright would observe the rule of passing to the right of this beacon light.”

4. The trial judge erred in refusing to charge defendant’s request No. 5:

“When examining the testimony taken in the Police Recorder’s Court, you are to disregard any decision or disposition of the case as made by the Recorder, and determine the

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Grounds of Appeal of Louis Davis.

liability in this case at bar solely upon the evidence presented by the various witnesses who have testified in this court."

JNO. A. MATTHEWS,
Attorney for Defendant, Louis Davis.

10 Service of a copy of the within grounds of appeal is hereby acknowledged this 4th day of January, 1928.

CHARLES JONES,
Attorney for Plaintiffs.

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COMPLAINT.

Filed December 23, 1927.

NEW JERSEY SUPREME COURT.

ALEXANDER P. KEMP and LEWIS BROOKE KEMP, by their next friend, Lewis R. Kemp, and LEWIS R. KEMP, individually, <i>Plaintiffs,</i>	}	10 <i>Action at Law. Complaint.</i>
<i>vs.</i>		
HELEN BRIGHT and LOUIS DAVIS, <i>Defendants.</i>		

Helen Bright and Louis Davis, the defendants 20
in this cause were summoned to answer unto
Alexander P. Kemp and Lewis Brooke Kemp, by
their next friend, Lewis R. Kemp, and Lewis R.
Kemp, individually, plaintiffs therein, in action at
law upon the following complaint:

(Summons issued November 9, 1926.)

Alexander P. Kemp and Lewis Brooke Kemp,
suing by their next friend, Lewis R. Kemp of the 30
Town of Montclair, County of Essex and State of
New Jersey, and Lewis R. Kemp, individually,
say:

FIRST COUNT.

1. On September 14, 1926, plaintiffs, Alex-
ander P. Kemp and Lewis Brooke Kemp, were
coming home from school in a southerly direc-
tion, on the sidewalk on the west side of Pompton
avenue, Verona, a public street of the County of
Essex.

40

Complaint.

2. On said day, defendant Louis Davis was the owner and operator of a certain automobile, which he was driving in a westerly direction along Bloomfield avenue, Verona, a public street of Essex County.

10 3. That said defendant Louis Davis operated his automobile in such a careless and negligent manner that he caused the same to strike another vehicle then on the highway, owned and operated by the defendant Helen Bright, and did immediately thereafter, carelessly and negligently collide with and run over and injure the plaintiffs, Alexander P. Kemp and Lewis Brooke Kemp.

20 4. That the defendant Louis Davis was negligent in this: that he was operating his automobile at an excessive and unlawful and unreasonable rate of speed, considering the fact that it was down a steep grade and passed two dangerous intersections; that he did not so manage his automobile as to avoid striking other persons or vehicles lawfully on the highway, and more especially, upon the sidewalk reserved for pedestrians; that he sounded no warning; that he did not maintain his automobile in a proper mechanical condition so as to be able to stop when
30 danger was imminent.

40 5. That as a result of said collision, defendants Alexander P. Kemp, aged ten years, and Lewis Brooke Kemp, aged ten years, were painfully injured; said Alexander P. Kemp was knocked down by the automobile of the defendant Louis Davis, the muscles of his left leg and the ligaments thereof, torn completely off, the bone splintered; his right leg and right foot badly lacerated and severe contusions about his

Complaint.

head, arms and body. That as a result thereof, his life was in danger for many weeks. He suffered great pain, has undergone several careful surgical operations in and about attempting to be cured, and will continue to suffer pains, and the injury to him is permanent.

10 6. That the plaintiff Lewis Brooke Kemp, as a result of said collision, suffered laceration on his legs, back and right arm, and such a severe nervous shock that his physical health is affected; that he suffered great pain and will continue to suffer great pain.

20 7. That Lewis R. Kemp is the father of said plaintiffs, Alexander P. Kemp and Lewis Brooke Kemp; that he has spent very large sums of money for doctors, nurses, operations, medicines and medical appliances in and about attempting to cure said Alexander P. Kemp and Lewis Brooke Kemp, and must continue to spend large sums of money in and about attempting to cure said Alexander P. Kemp and Lewis Brooke Kemp.

SECOND COUNT.

1. They repeat paragraph 1 of the first count.

30 2. On said day, the defendant Helen Bright was the owner and operator of an automobile, which she was driving in a northerly direction along Prospect avenue, Verona, a public street of Essex County.

40 3. That said defendant Helen Bright operated her automobile in such a negligent and careless manner in crossing Bloomfield avenue that she did collide with the automobile of the defendant Louis Davis, causing it to turn and swerve on to

Complaint.

the sidewalk at the northwest corner of Bloomfield avenue and Pompton avenue, Verona, and to strike the defendant, Alexander P. Kemp and Lewis Brooke Kemp, who were lawfully walking on said sidewalk.

10 4. That the defendant Helen Bright was negligent in this: that she was not sufficiently acquainted with the operations of an automobile; that she was operating her automobile at an excessive and unlawful rate of speed, considering the locality; that she failed to give any signal of her approach; that she failed to yield the right of way to the defendant Louis Davis, as provided by the statute; that through inexperience or confusion, she drive her automobile on the wrong side of the street and applied the accelerator instead of the brake; that she did not manage her automobile in a proper manner so as to stop when danger was imminent, and did not so operate her automobile as to avoid striking other persons or vehicles lawfully on the highway.

5. They repeat paragraph 5 of the first count.

6. They repeat paragraph 6 of the first count.

30 7. They repeat paragraph 7 of the first count.

8. Plaintiff Alexander P. Kemp demands \$25,000.00 on each count.

Plaintiff Lewis Brooke Kemp demands \$3,000.00 on each count.

Plaintiff Lewis R. Kemp demands \$15,000 on each count.

CHARLES JONES,
Attorney of Plaintiffs.

ANSWER OF LOUIS DAVIS.

Filed December 3, 1926.

The defendant, Louis Davis, residing in the City of Newark, County of Essex and State of New Jersey by way of answer, says:

10

ANSWER TO FIRST COUNT.

1. Defendant denies the allegations in paragraph 1 of the first count.

2. Defendant admits paragraph 2 of the first count.

3. Defendant denies the allegations in paragraph 3 of the first count.

4. Defendant denies the allegations in paragraph 4 of the first count. 20

5. Defendant denies the allegations in paragraph 5 of the first count.

6. Defendant denies the allegations in paragraph 6 of the first count.

7. Defendant denies the allegations in paragraph 7 of the first count.

ANSWER TO SECOND COUNT. 30

The defendant, Louis Kemp, denies the allegations in the various paragraphs of the second count in so far as they relate to or charge him.

FIRST SEPARATE DEFENSE.

The carelessness and negligence of the plaintiffs was the proximate cause of the alleged accident.

Answer of Helen Bright.

SECOND SEPARATE DEFENSE.

The carelessness and negligence of the plaintiffs contributed to the happening of the alleged accident.

THIRD SEPARATE DEFENSE.

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The defendant, Louis Davis, was guilty of no negligence.

FOURTH SEPARATE DEFENSE.

The carelessness and negligence of Helen Bright was the cause of the alleged accident.

JNO. A. MATTHEWS,
Attorney for Defendant.

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ANSWER OF HELEN BRIGHT.

Filed January 5, 1927.

The defendant, Helen Bright, residing in Clifton, New Jersey, says that:

FIRST DEFENSE TO FIRST COUNT.

30

1. She has no knowledge or information sufficient to form a belief as to paragraph 1.

2. She has no knowledge or information sufficient to form a belief as to paragraph 2.

3. She admits paragraph 3.

4. She admits paragraph 4.

5. She denies paragraph 5.

40

6. She denies paragraph 6.

Answer of Helen Bright.

7. She has no knowledge or information sufficient to form a belief as to paragraph 7.

FIRST DEFENSE TO SECOND COUNT.

1. She repeats her answer to paragraph 1 of the first count.

10

2. She denies paragraph 2.

3. She denies paragraph 3.

4. She denies paragraph 4.

5. She repeats her answers to paragraphs 5, 6 and 7 of the first count.

SECOND DEFENSE TO EACH COUNT.

The alleged accident set forth in the complaint was due to contributory negligence on the part of the plaintiffs in failing to exercise reasonable care for their own safety.

20

THIRD DEFENSE TO EACH COUNT.

The alleged accident set forth in the complaint was due to contributory negligence on the part of the plaintiffs in failing to look or listen or otherwise inform themselves of the approach of the automobile with which they collided.

30

FOURTH DEFENSE TO EACH COUNT.

The alleged accident set forth in the complaint was due to the negligence of the defendant *Lewis Davis* in so operating his automobile as to lose control thereof.

COLLINS & CORBIN,
Attorneys of Defendant, Helen Bright.

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REPLY.

Filed December 14, 1926.

Plaintiffs of the Town of Montclair, County of Essex and State of New Jersey, replying to the answer of Louis Davis, says:

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1. They deny the allegations in the first, second and third separate defenses.

2. They deny the fourth defense as pleaded and say that the carelessness and negligence of Helen Bright, together with the carelessness and negligence of the defendant Louis Davis, was the cause of the accident.

CHARLES JONES,
Attorney of Plaintiffs.

20

POSTEA AND JUDGMENT.

Judgment Entered November 7, 1927.

This case was tried before Judge Nelson Y. Dungan, to whom said case was referred at the Essex Circuit, on November 1st, 2nd and 3rd, 1927.

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The jury rendered a general verdict against both defendants in favor of the plaintiff, Lewis R. Kemp, individually for Fourteen Hundred Fifty Dollars (\$1,450.00) in favor of Lewis R. Kemp as next friend of Lewis Brooke Kemp for Two Hundred Dollars (\$200.00) and in favor of Lewis R. Kemp, as next friend of Alexander P. Kemp for Six Thousand Dollars (\$6,000.00).

40

Whereupon it is adjudged that the plaintiff, Lewis R. Kemp, individually, plaintiff, do re-

Postea and Judgment.

cover of the said defendants Helen Bright and Louis Davis, the sum of Fourteen Hundred and Fifty Dollars damages, and that the plaintiff, Lewis Brooke Kemp, by his next friend, Lewis

R. Kemp, plaintiff, do recover of the

10

Damages \$1,450.00 L. R. K. Ind. said defend-

“ 200.00 L. B. K. a n t s Helen

6,000.00 A. P. K. Bright and

—————
\$7,650.00

77.46

—————
\$7,727.46

Louis Davis, the sum of two hundred dollars damages, and that the plaintiff, Alexander P.

20

Kemp, by his

next friend, Lewis R. Kemp, do recover of the said defendants Helen Bright and Louis Davis, the sum of Six Thousand Dollars damages, together with their costs which have been taxed at the sum of Seventy-seven Dollars and Forty-six cents, making in the whole the sum of Seven Thousand, Seven Hundred and Twenty-seven Dollars and Forty-six Cents.

Judgment entered November 7, 1927.

30

40

Richard Ridgley Kemp, direct.

NEW JERSEY SUPREME COURT.

ESSEX CIRCUIT.

Tuesday, November 1, 1927.

10

ALEXANDER P. KEMP and LEWIS BROOKE KEMP, by their next friend, Lewis R. Kemp, and LEWIS R. KEMP, individually, <i>vs.</i> HELEN BRIGHT and LOUIS DAVIS.	}	<i>Action at Law.</i>
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*Action
at Law.*

Before Hon. Nelson Y. Dungan, *J.*, and a jury.

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For the plaintiffs appears Charles Jones.

For the defendant Louis Davis appears John A. Matthews (by Thomas M. Kane).

For the defendant Helen Bright appear Collins & Corbin (by Edward A. Markley).

(A jury is called and sworn.)

Mr. Jones opens in behalf of plaintiffs.

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Mr. Kane opens in behalf of defendant Louis Davis.

Mr. Markley opens in behalf of defendant Helen Bright.

RICHARD RIDGLEY KEMP, sworn in behalf of plaintiffs.

Direct examination by Mr. Jones.

40

Q On September 14, 1926, where did you live?
A 49 Bloomfield avenue, Verona, New Jersey.

Richard Ridgley Kemp, direct.

Q Do you see that blue print right beside you there? A Yes.

Q Can you tell us about where it is? A It is right there at the corner, it is right in here (indicating).

Q That is where you live? A Yes; there is a little park coming up.

10

Mr. Jones: The witness points to the northeast corner of Prospect and Bloomfield avenues.

The Court: Do you live in the corner house?

The Witness: Yes.

Q You lived with your mother and father at that time? A Yes, sir.

20

Q On September 14th where had you been earlier in the day? A To school.

Q Where was your school? A In Verona.

Q Where is it with reference to this place where the accident happened to you? A Up at the corner of Pompton avenue and Claremont street, and over two blocks, then a short block, I don't know the name, and the school is right in there.

30

Q On September 14th you were returning from school when you saw this accident? A Yes, sir.

Q About what time was it? A Between three and three-thirty.

Q School had let out? A Yes, sir.

Q Who was coming home with you? A My two brothers.

Q Are they younger than you? A Yes, sir.

Q They are twins? A Yes, sir.

40

Richard Ridgley Kemp, direct.

Q What are their names? A Lewis Brooke and Alexander Perry Kemp.

Q Were you all walking together? A No, sir, there was sort of a file.

Q Where were you walking? A On the sidewalk.

10 Q On the west side of Pompton avenue? Will you tell the jury about where you were walking?

A We were walking there, I was down along here, right along there (indicating on map).

Q Is there a curb there? A Yes, there is.

Q A stone curb? A Yes, sir.

By the Court.

20 Q What kind of a curb? A I don't know the exact type; a low curb was on the street, about seven inches high, I should say.

By Mr. Jones.

Q And there was a footpath there? A Yes, sir.

Q Is there a footpath or a pavement? A There is no pavement there. They were digging a ditch at the time. Putting in a new gas main. There wasn't any pavement.

30 Q Tell us what happened. A As my brothers and I were coming down the sidewalk on Pompton avenue and I heard some brakes squeaking and I saw this Overland and he came so fast, swinging one side to the other. I looked right ahead of me and I saw the Buick car coming up Prospect avenue on the wrong side of the road, and it was going very slowly, and I wondered which one would stop because it appeared that the Buick was going to keep on going,
40 and I looked up and the Overland was almost

Richard Ridgley Kemp, direct.

over the corner and the Buick had gotten to the car track and had gotten the front wheels over the second car rails. The Overland proceeded to go right on by the beacon light, and just as he got the front part of his car the Buick hit him and skidded his car around and knocked him around the curb and the Buick had got free and rolled back into the street into a little pile of sand on the corner of Prospect and Bloomfield avenue, it rolled right back about in here (indicating), and there was a little tiny Montclair lighting pole there. 10

Q That would be the southwest corner of Prospect and Bloomfield avenue. Is there an incline there? A Yes, there is, just a little.

Q Just a little at Prospect street? A Yes, sir, just a little. 20

Q What is the type of this land running from Pompton Turnpike at this corner where you say you were up to Montclair? A There is an incline there.

Q Is it up hill? A It is not very steep.

Q About here, where your pointer would be, what is that? A That is the very top of the Montclair Hill; that is where the line is between Montclair and Bloomfield. 30

Q When you saw this collision where were your other brothers, ahead of you or behind you? A They were ahead of me. My small brother was in the front.

Q What happened? A I didn't notice. I just stepped back a couple of paces and watched the cars and the first thing I heard a yell and I saw my younger brother fly through the air and go in that ditch and my other brother was lying under the car, under the bumper. 40

Richard Ridgley Kemp, direct.

Q Did he make any sound? A He did then, but he hadn't before.

Q Did he cry out then? A Yes, sir.

Q What did he do then? A There was a line of trucks coming up Bloomfield avenue and he stopped one of the trucks and got a colored man, and helped to lift the car. I started to run toward the garage, and as I got to the triangle I saw Mr. Jackson, he was running toward the accident, and when I got back my both brothers were gone.

Q (Showing witness photograph.) Is that the kind of a sign that was pictured there? A This part of it that fell.

Q What kind of a sign? A About four feet high.

By the Court.

Q Prospect avenue, is that the street that goes up towards the Montclair Golf Club? A Yes, sir.

By Mr. Jones.

Q So the place where you are now pointing is the southwest corner of Pompton Turnpike and Bloomfield avenue? A If you had an angle the end would hit them both.

Q And you say your brother was hit and thrown over that sign? A Yes.

By the Court.

Q Mt. Prospect avenue, as it comes into Bloomfield avenue there, is on an upgrade, isn't it? A Just a little bit, but not at the corner. At the corner that is level.

40

Richard Ridgley Kemp, cross.

Q How about Pompton avenue, that goes up hill? A That has a steep incline there at beacon light.

Q In other words, from this point here it is an upgrade? A All the way up to the car track it is upgrade.

Q (Indicating.) And this is the grade going up that way? A Yes.

The Court: Indicating toward Montclair.

Mr. Jones: The witness specifies that the line would be about here, according to the scale (indicating).

Q What became of your brother Perry? A I don't know what became of him.

Q When did you next see him? A In the hospital.

Q Where did you see him then? A Mountainside.

Q How long was he there? A About four weeks.

Q Did he run around or what happened? A No, he stayed in bed for three or four weeks.

Q And has Perry been able to run around since that time? A He walked with a cane until the beginning of February or some time in that neighborhood, but he does fairly well, but he can't run very well, you can see a limp in his leg when he runs.

Cross examination by Mr. Markley.

Q How old is your brother? A Twelve.

Q Where do you live? A 16 Greenwood avenue, Brooklyn, New York.

Q When did you move to Brooklyn? A We have only been there just a few days.

40

Richard Ridgley Kemp, cross.

Q When did you move there? A I guess about a week ago.

Q Have you talked over this case with anybody? A No, I haven't been—just my mother; I told her about it once or twice.

Q You talked to Mr. Jones? A Yes; he
10 didn't know anything about it until I told him.

Q You talked to your mother? A Yes, sir.

Q And Mr. Jones? A Yes, sir.

Q And your father? A No, sir, I haven't. My mother has been the one that asked me about it.

Q Have you talked to your father? A No, sir.

Q You never told your father how it happened? A No.

Q Anybody else? A My brothers.
20

Q Your younger brothers that were in the accident, you talked to them about it? A Yes, sir.

Q You were going home from school on this particular day? A Yes, sir.

Q You say between three and three-thirty? A Yes, sir.

Q You said between three and three-thirty? A Yes, sir.

Q And, as I understood you, the school was
30 north of Bloomfield avenue? A Yes.

Q How many blocks off of Bloomfield avenue? A Two or three, I guess.

Q Two or three blocks north. My pointer is pointing north. Was it to the right or to the left of Pompton avenue? A To the left.

Q That would be to the west, wouldn't it? A Yes, sir.

Q And how far to the west of Pompton avenue was your school? A About four blocks.
40

Richard Ridgley Kemp, cross.

Q Then your school was about six blocks from the point where the accident happened? A Yes, sir.

Q About two blocks west? A Yes, sir.

Q You and your brothers walked about six blocks? A Yes, sir.

Q And as you were walking down Bloomfield
10 avenue on Pompton avenue, you were on what would be the west side, north? A Yes, sir.

Q What were you doing, talking? A My brothers were talking, but I was just walking by myself.

Q When did the accident happen? A 1926, September.

Q When is your birthday? A March 7th.

Q You will be thirteen when? A Next
20 March.

Q When you came down there how far were you—you said there was a path on the north-west corner? A Yes.

Q You say there was a sign there? A Yes, sir.

Q And that is the sign over which your brother was thrown? A Yes, sir.

Q Where were you? A I was in the back.

Q How far back of your brother were you? A I don't know. I was just back there, both of
30 them.

Q Can you point out in this court room how far your brothers were away from you? A After that first panel there, the wall, right from where I am now.

The Court: Between four and five feet.

Q Were they together, were your two brothers walking together? A No, one was a little ahead
40 of the other.

Richard Ridgley Kemp, cross.

Q Who was first? A Brooks.

Q Was Brooks smaller than Perry? A Yes, sir.

Q Although they are the same age, Brooks is the smaller of the two? A Yes, sir.

Q There is a curblin from Pompton avenue as you were walking alongside of the street?

A Yes, sir.

Q There were no sidewalks? A No, just the dirt.

Q Grass? A In some places, but not all of it.

Q Did you see a ditch on the corner? A There was a ditch all the way up that street, all the way from the bottom of the corner where that curve is and here.

Q That runs all the way north? A Yes, sir.

Q Is that block north? A No, they had a ditch there that runs quite a way, a little, anyhow.

Q How near was it to the curb? A About that much room.

Q About a foot and a half? A Just about.

Q How near were you to this northerly curblin of Bloomfield avenue? A Yes, sir.

Q How close were you to that, assuming that to be extended out, when you walked along, when you first saw the Davis automobile? A We were right near the telegraph pole. My brother was just a little behind the pole.

Q You were back of your other brother how far? A Four or five feet.

Q How far back of your smaller brother was Perry? A Just a short ways.

Q And a couple of feet off your first brother was about six feet from the corner, and you were walking in back of him? A Yes, sir.

40

Richard Ridgley Kemp, cross.

Q He was walking directly in front of you? A Yes, sir.

Q You say you saw the Davis car coming very fast? A Yes, sir.

Q How far were you from this beacon? A Right there.

Q I will indicate that on the map. The first beacon, you mean the beacon flare to Montclair?

A Yes, sir.

(The drawing referred to is marked Exhibit P. 1.)

Q When you first saw the car, the Overland—Mr. Davis' car is an Overland? A Yes, sir.

Q That was opposite you say, the first beacon light, which is the beacon light opposite the one on which I have put a mark there? A Yes, sir.

Q Do you want that all the way down to the point of the accident? A No, I don't.

Q You weren't paying attention to this car? A I was paying attention to it, but I was wondering if there was anything going to happen on the corner here.

Q Where were you when you first saw Mrs. Bright's car? A Just a few feet ahead of it when I saw Mr. Davis.

Q You walked a few feet before you saw Mrs. Bright's car? A Yes, sir.

Q You walked a few feet towards the pole when you first saw Mrs. Bright's car? A Yes, sir.

Q About how far? A About two feet north of it.

Q How close was the westerly curb of Pompton avenue to where you were walking how close were you to the curb as you were walking? A About ten or eleven inches.

40

Richard Ridgley Kemp, cross.

Q About a foot from the curb? A Yes, sir.

Q And your brother was about ten inches from the curb? A Yes, sir.

Q And it was your intention to go right across? A No, we were going down Prospect.

Q After you came to the pole you went on the sidewalk? A Yes, sir.

Q You were going to walk on that sidewalk? A Yes, sir.

Q You were going to cross Bloomfield avenue? A Yes, sir.

Q Over to the southwest corner? A Yes.

Q Then you were going to cross over to the east side corner to your home, I believe that is what you said? A Yes, sir.

Q Where was the Bright car when you first saw it? A It was just around the corner.

Q Can you point to that? A Yes, sir.

Q That is on the left side of the street, that is where they were?

The Court: Suppose you put a "B" there for Bright's car and a "D" where you first saw the Davis car.

Q Did you see the Bright car stop? A No.

Q Did you see it stop? A I didn't see it stop, no.

Q Do you know whether it stopped or not? A Well, I don't think it stopped—I think I know it didn't.

Q Do you know whether it did stop? A It didn't.

Q You say it didn't stop—is that what you want to say? A Yes.

Q And you observed it in the position you have marked here, marked with a "B," and you say that is where it was? A Yes, sir.

Richard Ridgley Kemp, cross.

Q Don't you know that it stopped on its right-hand side of Prospect avenue just before it got to the corner? A No, it didn't. It wasn't on its right-hand side anyway.

Q Don't you know it stopped there for quite awhile waiting for a chance to go across? A No, sir.

Q Did you discuss this with anybody? A No, this is just what I saw.

Q Did you tell anybody else that? A Mr. Jones.

Q If I understand you, you are perfectly clear that you watched the Bright car all the time and it didn't stop at all? A No, sir.

Q You say it didn't? A Yes, sir.

Q And you say when you saw it it was moving slowly, very slowly? A Yes, sir.

Q And you say it wasn't stopped entirely? A It didn't.

Q How close was it to Prospect avenue when it stopped? A It was away over; it was away over on the other side of the road.

Q Do you know how wide Mt. Prospect avenue is? Is there a curb on both sides of Mt. Prospect avenue? A Yes, sir.

Q One is the red asphalt? A No, cement.

Q Do you know how wide it is from curb to curb? A I couldn't say exactly how wide it is.

Q You haven't any idea? A Sixteen feet—I guess near that anyway.

Q This map is twenty feet to the inch. You think it is sixteen feet? A I think so. I couldn't say for sure.

Q You say there is a black line in the center? A Yes, sir.

Q A black line runs in the center of Mt. Prospect avenue as you come towards Bloomfield? A Yes, sir.

Richard Ridgley Kemp, cross.

Q Cement? A Yes, sir.

Q How far was the Bright car from the black line? A It was far away from that.

By the Court.

10 Q How far away was it, can you say that?
A About four feet.

Q To the right or left? A To the left of that.

By Mr. Markley.

Q All four wheels were to the west of the black line? A Yes, sir.

Q How far? A Four or five feet, that is, as near as I can say.

20 Q The Bright car, the wheels and fender, were four to four and a half feet to the west of Mt. Prospect avenue? A There was just a little space there.

Q How close were the right wheels of the Bright car, how close was it? A About six feet.

Q Did you see any car come along? A No, sir.

30 Q And you watched that car and you saw just where it was, did you? A Yes, sir.

Q You didn't see any car but the Bright car on Prospect avenue either approaching or going away from Bloomfield? A I didn't.

Q And yet you say the Bright car was away over on the left side, to the left of the center line? A Yes, sir.

40 Q And going very slow. How far did you watch that car as you saw it come out slowly, did you watch it all the time? A Until I got to the rail of the car track I watched, and then

Richard Ridgley Kemp, cross.

I watched the other one to see what was going to happen.

Q You hadn't looked again for the Davis car until it was near the beacon? A Yes, sir.

Q Was that 200 feet away from the northwest corner when you saw the Bright car was slowly coming out of Mt. Prospect avenue? A Yes, 10
sir.

Q You thought an accident was going to happen? A Yes, sir.

Q So you watched both cars then? A As much as I could.

Q And then you watched each one? A Yes, sir.

Q You saw this car with the wheels over on the sidewalk? A Yes, sir. 20

Q As I understand it, did either car turn to its right or its left or did it go straight? A Just a little bit.

Q I am asking you whether you saw it coming very slowly? A Yes, sir.

Q And it had the front wheels over on the rails, that is, the right wheels of the Bright car were over the curb on the north side of Bloomfield avenue? A Yes, sir.

Q Where were the rear wheels? A I believe they were just getting to the rail. 30

Q The second rail of the first car track that the Bright car came to as it went west? A Yes; I am not saying that for sure because I didn't notice that so very much.

Q Where was the Davis car when you first saw it? A I judge just to the triangle; I think it had just gotten to that triangle.

Q Suppose you indicate. The Davis car was up at this beacon? A Yes, sir. 40

Richard Ridgley Kemp, cross.

Q And you looked back at the Davis car again and where was it when you saw it again? A It was right here (indicating).

Q When you saw it the second time it was about there? A Yes, sir.

10 Q Suppose I put a figure 2 there? A Yes, sir.

Q Point to where I put the 2 on the map; it was on the asphalt between the little island and the corner, and how was it going then? A He was still going fast.

Q Where was the Bright car then? A It was coming over the last rail of the second car tracks.

20 Q Where was the Bright car when the collision occurred? A Everything except the back wheels were just getting across the second car track.

Q When the collision occurred? A Yes, sir.

Q So when the collision occurred the Bright car wheels were all over the rails, practically? A Yes, sir.

Q The rear wheels of the Bright car was just beginning to cross the last rail, the most north-erly rail? A Yes, sir.

30 Q It had passed already over three rails and the rear of the wheels of the Bright car did come over the last rail? A When the collision occurred.

By the Court.

Q When you told us your story first you said something different? A You mean when this was coming on the second track? It was going and continued to go much slower.

40

Richard Ridgley Kemp, cross.

By Mr. Markley.

Q I want to know if there was any change in the speed? A Yes, sir.

Q Where was it, what was the change? A When the collision occurred, just before the collision came, the Buick car darted forward. 10

Q It had already changed speed and you say just before the collision occurred the Buick car changed its speed? A Yes, sir.

Q Who told you about it? A Nobody; I saw it.

Q Where were the rear wheels of the Buick and the Bright car when it suddenly changed its speed? A They hadn't even reached the first rail of the second track.

Q Where do you say the rear wheels of the Bright car were? A That would be the third rail. 20

Q Car tracks going north? A Yes, sir.

Q Was there any change in the speed of the Davis car? A No, there wasn't.

Q It kept on going fast? A It had slowed up when it got to the second corner, slowed up.

Q Where did it slow up? A He started to slow and he started to go fast.

Q Was it still going fast at the time of the collision? A Yes, sir. 30

Q How many times did the Davis car skid? A Just the once.

Q Is that the only place it skidded? A Yes, sir.

Q That would be up in the southeast corner of the tracks? A Yes, sir.

Q So it headed up from the beacon all the way up? A Yes, sir.

Q Didn't he slow up? A No, sir. 40

Richard Ridgley Kemp, cross.

Q Was he still going fast? A Yes, sir. He wasn't going any faster than anybody else.

Q Are you telling us what you saw or what are you telling us? A If that car went slowly until about to over the third rail.

Q Did you see what part of the Buick, Mr. Davis' car hit, the left side or what? A It was right by the front door.

Q You say the left front door of the Buick? A Yes, sir.

Q And you won't say it was the radiator? A No, sir, that is where it hit.

Q How about the right side of the Buick? A It wasn't up in here (indicating), it may have bumped it, but it didn't hit.

Q So coming in here you say the front wheel of the Buick didn't come in contact with the car? A No, sir.

Q Was it on the left? A The bumper.

Q You say the left running board. What about the left running board? A But that didn't hit on the running board.

Q What happened to the Buick after the impact? A The engine stalled it, and it rolled then across the street.

Q What makes you judge that? A It seemed to be absolutely out of power and it just seemed to start backwards.

Q There is not any incline at Bloomfield avenue? A When you get to the car tracks there is an incline.

Q You mean the car track going to Verona? A Yes, sir.

Q That would be across to the westerly bound cars? A Yes, sir.

Q You say the wheels were on a slant? A Yes, sir.

Richard Ridgley Kemp, cross.

Q Then it rolled back again? A Yes, sir.

Q And rolled back to where? A Back to the curb.

Q What curb? A The present curb.

Q Well, show us where it rolled. A It rolled right back over there (indicating).

Q It rolled back to the southwest corner? A Yes, sir.

Q So the left wheels were over the westerly rails of the tracks and it rolled backwards? A Yes, sir.

Q You told me the rear wheels were going over the most northerly rails at the time of the collision? A Yes, sir.

Q Then the Buick started to roll backwards and went over to the northwest track? A Yes, sir.

Q The car wasn't turned? A There wasn't any turn of the wheels one way or the other.

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

Q Don't you know that when the Buick car was in the collision it was turned around? A The Buick didn't turn around.

Q You don't think there was any turn to the Buick whatever? A No, sir.

Q You are positive that it rolled back so that the wheels were at the northwest corner? A Yes, sir.

Q What happened to the other car? A It swung around right up there at the beacon. It turned right around and went up towards the west side of the Pompton avenue curb.

Q Will you describe the course the Overland took? A It swung right up there and came right across there (indicating).

Q Where did it stop, on the west side, referring to the poles? A Yes, sir.

Richard Ridgley Kemp, cross.

Q And the Buick wheels ran over the curb?

A Yes, sir.

Q What kind of an Overland was it? A A coach.

Q How far was that from the westerly bound track? A Well, not very close.

10 Q Well, how close was it? A About three feet, I guess.

Q The left side of the Overland? A The left side of the Overland, was, I think, three feet from the most north rail, from the westbound car tracks.

Q And after the collision it came to the north-west corner? A Yes, sir.

Q Is that right? A Yes, sir.

20 Q Won't you point to the place on the map where the two cars met, where it was the collision occurred? A (Indicating.) Right there.

Cross examination by Mr. Kane.

Q On this beacon light is there any sign? A Yes, sir.

Q What was on, do you know? A "Keep to the right."

30 Q What did you do after the accident? A I ran over to the garage to telephone the doctor.

Q You say this was right after the accident? A I saw Mrs. Bright out of the car, yes.

Q Did you see Mr. Davis? A Yes, sir.

Q Did you hear any conversation between them? A I heard them talking, but I don't know just what they said.

40 Q Are there any houses along there except this gasoline station and that restaurant up there and this house away up here? A No, sir.

Richard Ridgley Kemp, cross.

Q There are no houses around here and none on the park? A There are some on the west side, but they are west of the corner.

Q How far back from the sidewalk is it? A A little over a hundred feet.

Q When this Buick car darted forward where was the Davis car? A It had just gotten past 10 the beacon light.

Q How much? A Up to where the driver was.

Q Wasn't he over on his right-hand side of the street as he came down there? A Yes, he was.

Q Closer to the curb line or street line on that side than he was to the car tracks? A Yes, sir.

Q Did you notice Mrs. Bright's car as it came across here at this low rate of speed that you have described, didn't you notice that it turned to the left? A I didn't notice; I didn't notice any light whatever. 20

Q He was coming down on the right-hand side of the street, closer to his right than he was to the car tracks? A Yes, sir.

Q Was it further from the Buick car than when you first saw it? A It was about six feet past the beacon light. 30

Q About six feet from it, hadn't reached it yet? A It was beyond it.

Q Six feet from the beacon light? A Yes, sir.

Q When the Buick jumped forward? A Yes, sir.

James Jackson, direct.

JAMES JACKSON, sworn in behalf of plaintiffs.

Direct examination by Mr. Jones.

Q Where do you live? A Orange, New Jersey. 10

Q The address? A 158 Taylor street, Orange, New Jersey.

Q By whom are you employed now? A Lincoln Storage, East Orange.

Q By whom were you employed on September 14, 1926? A J. M. Pierce & Son Company, East Orange.

Q And they deal in cement, sand and building material? A Yes, building material.

Q Where is their place of business? A They have two places of business. I worked in Orange. 20

Q What were your duties with them? A I drove a truck.

Q On September 14, 1926, were you driving a truck that day? A Yes, sir.

Q Do you recall the accident that has been testified to this morning? A Yes, sir.

Q Did you see the accident? A I seen it shortly after it happened.

Q Where were you? A I was coming down the hill. 30

Q Driving a truck? A Driving a truck.

Q Do you mind taking this pointer and pointing to the judge and jury? (Indicating.) This is north and this is south? A This is Bloomfield avenue?

Q Towards Verona. A Yes, sir. I am coming down the hill with a load of sand, and finally I got half-way down the hill, I was on my way to West Caldwell, and just as I had got half-way down the hill this— 40

James Jackson, cross.

Q What is that? A I was coming down the hill and I had a load of sand and just as I got half-way down between Pompton Turnpike and near the gas service station, this Overland car came past me at a good rate of speed, and finally by the time I got here where the accident was and pulled alongside of the accident and stopped; I parked my car on the other side of the avenue. 10

Q How far from where the accident happened? A As far as where those people are sitting, about thirty or forty feet.

Q As you came down, as I understood you, about opposite the gas station, you saw an Overland car pass you? A Yes, sir.

Q Was that the Overland car that you subsequently found involved in this accident? A Yes, sir. 20

Q How fast was it going? A I imagine he was going between thirty and forty miles an hour.

Q How fast were you going? A About twenty miles myself.

Q Did you see the actual collision? A No, I didn't.

Q Did he continue that rate of speed all the way down? A He did.

Q Did he continue that rate of speed all the way down to the point where you subsequently found the accident was? A He did. 30

Q When you were at the gas station was any other car coming out of Pompton Turnpike going south? A I didn't see any.

Cross examination by Mr. Markley.

Q Did you see the Bright car at all? A I saw the Bright car while it was at this corner here. 40

James Jackson, cross.

Q (Indicating.) You are pointing to this corner here? A Yes, sir.

Q That is the southeast corner, was it moving or standing still or what? A It had been standing there.

Q Will you point to where you saw the car standing? Did you see it standing there (indicating)? A Yes, sir.

Q As you came along? A As I was coming down the hill.

Q Could you see it all right? A You can see better on this side than you can on this side.

Q Do you see a line on the map? A That is where it was.

Q And did you see it come out of there? A It was coming across this road.

Q Are you sure it was where I put the line on the map? A Yes, sir.

Q How close would you say the Bright car was to this curb? A I wouldn't say as close as that.

Q You don't know? A I couldn't say exactly how close it was.

Q How wide do you think Mt. Prospect avenue is? A Between forty and fifty feet wide.

Q How close was the Bright car to this right curb as you saw it there? A I should imagine five or six feet.

Q Was it a clear day? A Yes, sir.

Q What time of the day was it that the accident happened? A About 3 or 4 o'clock.

Q How fast were you going? A Twenty miles an hour.

Q How fast was the Overland car going? A I wouldn't say forty, but I should say twenty-five, thirty, and forty.

Q As you came along were you right on the road? A Right here (indicating).

James Jackson, cross.

Q You were alongside of your right-hand curb as you came along? A Yes, sir.

Q Which side of you did it pass you? A On my left.

Q Was he on the asphalt as he passed you? A The side near me was on the asphalt.

Q You are not sure about that? A No, there is cobblestones between the rails.

Q When you were coming out of Pompton avenue? A No, sir.

Q On either side of the aisle? A No, sir.

Q Did you see any cars come out of either side of the aisle? A No, I did not.

Q Did you see the Davis automobile slow up at all? A Well, I know—

Q I am asking you, did you see it slow up? A No, it didn't.

Q Did you see any skid marks on the ground? A Yes, I did.

Q From which car? A The car that was coming the same direction I was.

Q That was the Overland? A Yes, sir.

Q How great a distance were those skid marks? A Quite a distance.

Q Can you give us approximately a distance where you saw the skidmarks, from where to where? A (Indicating.) From here to here.

Q You are pointing now about the center of the triangle? A The skidmarks began along here somewhere.

Q I will put my pencil where I think you said the skidmarks began. A Yes, sir.

Q Suppose I put an X there. A Yes, sir.

Q How far down from X do they extend; they extend all the way down to the collision, they come down this way, over the lines, down

James Jackson, cross.

to where? A (Indicating.) About here, I guess, somewhere.

Q He turned out about over to where, like that (indicating)? A Yes, sir.

Q I will mark that X to Y. You say there were skidmarks the entire distance there? A
10 Yes, sir.

Q Both sides, the right wheels and the left wheels? A Yes, sir.

Cross examination by Mr. Kane.

Q What distance is that? How far are those skidmarks that you saw? A About thirty-five feet.

Q Is that your idea of thirty feet from that X right to that point? A That is more than
20 thirty feet.

Q If you saw them for only thirty feet, and this is more than thirty feet, how do you know they extend further than from here to here? A Because I saw skidmarks at this triangle.

Q Will you point out the thirty feet on that map that you know are the skidmarks? A (Indicating.) Here will be thirty feet.

Q And those are the skidmarks that you saw? A I seen that much more.
30

Q How much did you see? A I didn't measure it.

Q Approximate it of how much more? A I don't know how much more.

Q Can you indicate in the court room how far it was? A The skidmarks?

Q Yes. A As far as from here to that first column.

The Court: That is forty-one feet.

40 The Witness: That far.

James Jackson, cross.

Q And the skidmarks you are sure started at the point right here? A Yes, along there.

Q And they went along twenty-one feet? A Yes, sir.

Q And stopped, is that correct? A That is just as much as I seen about it.

Q That is all you know, what you saw—no-
body told you? A Nobody had to tell me. I
10 seen it myself.

Q How do you know there were not any more, if you only saw forty-one feet? A I say I seen skidmarks.

Q And they started about at this point? A Yes, sir.

Q Is that correct? A Yes, sir.

Q You were on the right-hand side of the street as you came down Bloomfield avenue going
20 west? A Yes, sir.

Q And the Davis car passed you at the gas station? A Yes.

Q East of the gas station? A Up towards the top of the hill.

Q How far east of the gas station was it? A I don't know how far it was; quite a little distance.

Q And you were going twenty-five miles an hour? A Yes, sir.
30

Q Did you watch the Davis car all the time? A I seen it right straight down.

Q Could you see it straight down? A There is a bend.

Q Where was the Davis car when you saw it the last time before the accident? A After the accident.

Q Where was it you saw the Davis car for the last time, point out on this map where it was, that you saw the Davis car the last time prior
40

James Jackson, cross.

to the accident? A It passed me up on the hill when I first seen him.

Q And you say you watched him come down the hill? A Yes, sir.

Q How long a distance could you see him?

A All the way down to where the accident was. 10

By the Court.

Q I thought you said you did not see the accident? A I couldn't see the accident because they were in front of me.

Q Who? A The both cars.

Q Did you see the two cars come together?

A I see the two cars stop.

Q Did you hear my question? Did you see the two cars come together? A No, I didn't. 20

By Mr. Kane.

Q Tell us where you saw the two cars before the accident happened? A Down to this point.

Q To what point? A All the way down the hill.

Q Can't you point out the last place you saw him? A Down to where the accident occurred.

Q But you didn't see the accident? A I don't know what the cause of that accident was. 30

Adjourned until tomorrow Wednesday November 3, 1927, at 10 o'clock, A. M.

James Jackson, cross.

SECOND DAY.

Wednesday, November 3, 1927.

Continued pursuant to adjournment.

Present, counsel as before stated.

10

JAMES JACKSON resumes the stand in behalf of plaintiff.

Cross examination (continued) by Mr. Kane.

Q Where did you stop your truck when you drove down past the scene of the accident? Will you point out where it was? A About there (indicating).

Q You say you stopped your truck at that point where you indicated with the pointer? A Yes, right here. 20

Q When you passed the scene of the accident was when you had the first knowledge that an accident had happened? A No.

Q When was the first time that you had knowledge that an accident had happened? A Before I got to the intersection of the street.

Q Whereabouts were you? A I was pretty close to this corner here. 30

Q Just show me, if you can, where you were, approximately. A I was pretty close to the intersection.

Q This side of the beacon? A I wasn't down to the beacon.

Q What was it attracted your attention? A I saw this car all the way down the hill and suddenly I saw him stop.

Q Where did you see him stop? A This corner over here. 40

James Jackson, cross.

Q You didn't see the accident, but you saw him suddenly stop and he was over here when he suddenly stopped; is that correct? A I wasn't down there.

Q You didn't see the accident, but you saw him suddenly stop and when you saw him suddenly stop he was over here (indicating). A
10 Over on this corner.

Q Could you see him all the time from here? A I could see him all the way down.

Q You didn't see it? A The two cars came in contact.

Q Somebody told you? A Nobody told me. I could see the cars all the time until the accident.

Q Did you see anybody come out of the
20 Pompton Turnpike? A No, sir; I didn't.

Q Did you see any cars go in or out of the Pompton Turnpike? A No, sir.

Q Are you sure? A I didn't see any.

Q You don't know whether they came out or not? A I didn't see any.

Q Didn't you see this man Davis when he came down there and stopped and let the car pass him? A I didn't.

Q When you got out of your truck over here
30 what did you do? A I stopped my truck and went to the cars and this one boy was down under the front end of this Overland car, and me and another fellow lifted the bumper and got the boy out, and finally the crowd came along and I left it.

Q So after you got to this point you helped to get the boy out of the car and the crowd came and you left? A Yes, sir; because I had a C. O. D. order.

James Jackson, cross.

Q What observation did you make as you came down the roadway, where did you look as you were coming down here? A I seen the two cars had collided together, so I stopped.

Q You watched the roadway? A I always watch the roadway when I am driving.

Q Don't you watch cars ahead of you? A
10 Yes, sir.

Q Didn't you watch the Davis car? A I watched him all the way down the hill, because he was coming so fast.

Q When did you see the skidmarks after the accident? A After the accident I took notice of the skidmarks.

Q Didn't you tell us a moment ago that the skidmarks started here? A Right along here
(indicating). 20

Q Do you want to change your other markings? You say the skidmarking started here? A
Yes, sir.

Q When you left your truck you didn't go back any further than this point than help to get the boy out. Would you say that was correct, where the boy was under the automobile, you didn't back up the road. Do you mean to tell us now from this point where you had taken the boy
30 from under the car you could see skidmarks from here to this point? A You could see marks all the way.

Q Could you see the skidmarks by helping getting a boy out from under a car? A No, but I walked.

Q I thought you said you went to where the boy was, helped get him out, and then you went back? A I told you we got the boy out and the crowd gathered there, and then I left and that is when I seen the skidmarks. 40

James Jackson, cross.

Q When? A I walked up behind this Overland car and looked at the marks from between the intersection of Pompton and Bloomfield avenue.

Q How far around the Overland did you walk, just around the back of it? A You could see the marks. 10

Q You could see them up to here; up to this point; is that right? A You could see the marks along here where the skidding was.

Q Where? A All along.

Q From where to where? A Here.

Q Could you see them start from this point all the way down to this point? A Yes, you could see them.

Q Are you sure about that? A Yes.

Q Was there anything that caused you to look for skidmarks? A Plainly enough to see that. 20

Q How wide were they? A I imagine about four inches wide.

Q What was the difference between these marks that you say were skidmarks that an automobile tire usually makes as a car drives along? A Because there wasn't black marks on the road.

Q What was the color of the road? A Around here, concrete or asphalt. 30

Q Do you know which? A Concrete and asphalt, too.

Q At the same point? A There is a slight change made since the time this accident happened.

Q Did Davis come down on his right-hand side of the street between the car tracks and the curb or was he in the car tracks? A The other two wheels was on the asphalt; the other two wheels I couldn't say was on the car track or not. 40

James Jackson, cross.

Q How many skidmarks could you see? A I could see skidmarks of both wheels.

Q Were they where you have indicated, between the trolley track and the curb line? A On the inner side of the road.

Q They were not in the trolley tracks? A No, sir. 10

Q Not in the trolley tracks when you saw skidmarks from both rear wheels? A No, sir.

Q You saw the car come down partly between the trolley tracks and partly on the other side of the road? A I couldn't say part car tracks, the two wheels was on the asphalt.

Q What part did he take? A Straight down.

Q You didn't turn to the right or left? A No. 20

Q You are sure the Bright car was along here after the accident? A It was facing—

Q Point to the place where the Bright car was after the accident? A The Bright car after the accident was turned back towards this way.

Q Can't you show us right where it was, where it stopped right after the accident? A I will say about here.

Q Put your pointer on the map where it was. I will mark it XZ. And it was facing this way, facing southeast or southwest? A Facing towards Prospect street. 30

Q Facing which way? A Facing towards Prospect street, this way.

Q Completely turned around? A Yes, sir.

The Court: Is that Prospect street or Mt. Prospect avenue?

Mr. Kane: It is marked Mt. Prospect avenue.

Mr. Jones: It is Prospect avenue. 40

Alexander Perry Kemp, direct.

Q Did you look at the Davis car after the accident? A No, I didn't.

10 ALEXANDER PERRY KEMP, sworn in behalf of the plaintiffs.

Direct examination by Mr. Jones.

Q You are the boy that was hurt? A Yes, sir.

Q And you are the one whose leg was hurt more seriously?

Objected to.

Objection sustained.

20 Q You are the boy that the car actually ran over? A Yes, sir.

Q Did you see the accident? A Yes, sir.

Q Did you observe the two cars before the accident? A No, sir; I didn't.

Q Where were you? A Coming down Pompton avenue from school.

Q Where were you just a second or two prior to being hit? A On the sidewalk.

30 Q What street? A Pompton avenue.

Q Was anybody in front of you? A Yes, sir.

Q Who? A Brooks.

Q That is your brother? A Yes, sir.

By the Court.

Q Where were you at the time of the accident? A On the sidewalk, coming home from school, on Pompton avenue.

Alexander Perry Kemp, direct.

Q My question was where were you a second or two before? A On Pompton avenue.

By Mr. Jones.

Q You didn't notice either car? A No, sir; I didn't.

Q The next thing you knew you were where? 10
A In a ditch with the bumper of the automobile on my leg.

Q And then you were in the hospital? A Yes, sir; I was.

Q How long were you in the hospital? A About a month.

Q And after that where did you go? A Home.

Q When you got home what did you do? A 20
Went to bed.

Q How long were you in bed, up to about when, do you remember? A No, I don't.

Q You finally got up, did you? A Yes, sir.

Q And could you walk around then? A No, sir.

Q What did you do? A I had to use a cane and would have to hold on to something.

Q Did you go to school that year 1926 after the accident? A No, sir. 30

By the Court.

Q What grade were you in? A Fourth.

Q That is, at the time you were hurt you were in the fourth grade? A Yes, sir.

Q When you went back in September what grade did you go to? A Fifth.

Q So you were promoted notwithstanding you were out of school all the year? A Yes, sir.

Alexander Perry Kemp, direct.

By Mr. Jones.

Q Did you stay at home? A I did.

Q Who saw you at home? A My brothers used to bring their books to the bed and I would study.

10 Q Is your leg well? A No, sir; it is not.

Q What is the trouble? A It bothers me when I am tired; I can't run at all.

Q Can you jump? A No, sir.

Q Is there any difference from the other leg as far as appearances? A Yes, sir.

Q What is the difference? A It is much harder, one leg, and my left leg gets tired quicker than my right leg.

By the Court.

20 Q Does it look any different than the other leg? A Yes, sir.

Q Tell us about that? A It is flat.

Q What part of it is flat? A From the knee down to the ankle.

Q Do you feel any pain in it? A Yes, sir.

Q All the time? A No, not all the time, but part of the time.

Q When? A At night when I get tired and when I walk on it a lot in the day.

30 Q Do you feel it after you get to bed at all? A Yes, it hurts me when I get to bed.

Q And has that been so ever since the accident? A Yes, sir.

Q And you do suffer pain? A Yes, sir.

Q Very much? A Yes, sir.

Cross examination waived.

Louis R. Kemp, direct.

LOUIS R. KEMP, sworn in behalf of plaintiffs.

Direct examination by Mr. Jones.

Q What is your business? A Civil engineer.

Q Where are you employed at the present time? A New York, consulting engineer. 10

Q Where were you employed or associated on September 14, 1926? A I was city engineer for the Town of Montclair.

Q Where did you live? A I lived just over the Montclair line, Verona, corner of Bloomfield avenue and Mt. Prospect avenue.

Q It is Mt. Prospect avenue? A It is, beyond Prospect, south.

Q Where did you live? A About 150 feet back of the property line of Bloomfield avenue, at the southeast corner. 20

Q Did you make that map (indicating)? A No, I didn't.

Q Do you know who did? A Not without looking at it.

Mr. Markley: I understand it is Mt. Prospect avenue, that one block only, and then it is Prospect avenue. 30

Q You were not home at the time of this accident? A No, I was to New York.

Q Where did you find your boy? A Down in the Mountainside Hospital, that is Perry, and Brooks was in a neighbor's house where he had been taken after the accident.

Q Let us take Brooks. Did you observe to what extent Brooks was injured? A His body was pretty badly bruised, the legs, and the lower part of his body. He had rather a large bump 40

Louis R. Kemp, direct.

on his head, and he had cuts on his legs, nothing very serious to require stitches or anything.

Q Did it disable him? A He was unable to walk for about a week.

Q How did he get about? A We used to carry him to the street and put him in the car and take him with us. 10

Q Did you have a doctor in attendance? A Dr. Scudder examined him and gave him some antitoxin or something of that sort to prevent infection.

Q After that did you see him since? A He has been seen several times since then, but Dr. Scudder didn't attend him.

Q Did he have any deafness before this accident? A No.

Q Have you observed anything of that sort since the accident? A You will have to call him twice before he will turn around. 20

Q Did he have that before the accident? A Not that I know of.

Q Have you observed anything else? A He frequently dreams, hollers out in his dreams, says he has bad dreams.

Q Has he lost weight? A Yes, about four or five pounds, less than he did a year ago.

Q Is he nervous? A Very nervous.

Q How is that nervousness manifested? A Hollers in his sleep, and if anybody touches him he will jump half-way across the room. 30

Q How long was Perry in the hospital? A About a month.

Q What was the situation during the first week? A Well, he was very dangerously ill, in my opinion.

Objected to.

40

The Court: That will be stricken out.

Louis R. Kemp, direct.

Q Was he in a private ward? A We had him moved up to a private room as soon as we got to the hospital.

Q Have a nurse? A Yes, day and night nurse.

By the Court.

10

Q Could you say how long he was in the hospital? A About a month.

By Mr. Jones.

Q Did you have to have nurses day and night? A Yes.

Q And then after he left the hospital where did he go? A He was taken home.

Q Did he go to bed at home? A Yes, sir; we took him from the hospital to the house in an ambulance and put him immediately in bed. 20

Q How long did he remain in bed? A Until just about Christmas time.

Q And then was he able to get up right along? A He got around the house for several days with a cane and with help and then we took him out in the car.

Q How long before he could get around without help? A He got around without his cane shortly after the first of the year. 30

Q Did he go to school that year? A No, sir.

Q He didn't return to school at all? A No.

Q Was he in condition to go to school, physical condition? A He was not.

Objected to.

The Court: The question may be answered.

40

Louis R. Kemp, direct.

By the Court.

Q When did he first go to school again? A This fall, when school opened, the 26th of September when the school opened.

10 *By Mr. Jones.*

Q So far as you, as a layman, can observe, is he completely cured now?

Mr. Markley: I object to that. That calls for a conclusion.

The Court: He can tell us what he observed about him.

20 Q What do you observe about the use of this limb now? A He walks with a slightly susceptible limp during the early part of the day and as the day goes on he has a tendency to limp more, and if he walks a great deal he gets very tired and he is likely to get more tired, and if he attempts to run he runs with more of a jump, he puts that leg forward.

Q Does he run? A He runs with a hop; he swings with his left leg, sort of hops.

30 Q How much did you pay for nurses at the hospital? A The hospital is \$267, which I paid, the balance which is due the hospital, \$126 and some cents.

Q Is this the bill (showing witness paper)? A The entire bill is \$386.30.

Q Then your items are not just correct. You said \$267 paid? A \$210, it should be.

Q What should be \$210? A The amount paid, and it is shown by cancelled checks.

40 Q And attached to that bill is the cancelled check which you speak of? A There are several cancelled checks here.

Louis R. Kemp, direct.

Q And they amount to \$210? A Yes, sir.

Q And you still owe the balance? A I still owe the balance.

Q How about the nurses? A The item for nurses was \$267, which was paid, and one item of \$48, which was unpaid.

Q Dr. Scudder's bill is how much? A \$475. 10

By the Court.

Q Dr. Love said his bill was \$150. A Dr. Love's bill to the 1st of January was \$150. The subsequent bill which I have last attached up to the 1st of April is \$198, subsequent bills are \$46.

Q Subsequent to what date? A That was from January 1st to April 1st.

By Mr. Jones.

20

Q That is for treating this boy for this particular accident? A Yes, sir.

Q Were there any other doctors that you had to pay? A There were two doctors that administered anesthetics.

Q I show you a bill of Dr. Arthur C. Busch, services, October 9th to 15th. A Yes, for anesthesia for Dr. Scudder at the hospital.

30 Q I show you a bill of Dr. James C. Wolfe, \$30. A That is also for anesthesia.

Q There was more than one operation? A There were several.

Q Did you spend anything for medicine? A I had a bill from the druggist in Montclair for \$34 and some cents, I think approximately \$35.

Q Were there any other expenses? A Yes.

Q What? A There was \$35 for additional linens; I had to have an additional bathrobe and some slippers, and other additional necessities for the boy in bed.

40

Louis R. Kemp, direct.

Mr. Markley: I object to that and ask that it be stricken out.

The Court: It will be stricken out.

Q Was there anything included in their treatment of the boy or help to make him well? A
10 I don't quite understand that question. There were expenses incurred for the boy. They were not for medicines and doctors, no; they were expenditures that we were obliged to make on account of his condition.

Q What other ones were there with reference to his sickness? A You refer to these expenditures?

Q Yes. A Taxi which we provided and took to the hospital and home, heavy blankets which
20 we bought to lay him on so that he could sit up on the porch, so he could sit out, and a cane to walk with.

Q Do you know how much the canes were? A I think there were two canes and they cost \$4 apiece. There were meals that we were obliged to have away from home because it was impossible for Mrs. Kemp to be at the hospital and be home, too. It would have been a great deal more economical if we had our meals home.

Q What made it necessary? A She got our
30 breakfast, of course. The boy's pain got worse in the afternoon and she had to go back to the hospital at night and she found it impossible to get meals and be at the hospital, so we stopped at the cafeteria in Montclair and oftentimes we stopped there for lunch.

Q Were there any other expenditures that you made? A Yes, the man who took Mrs. Kemp and I to the hospital had a taxi service at the top of the hill and also took care of the other
40

Louis R. Kemp, direct.

boys for us, we couldn't get anyone. We had to have somebody to look after them while their mother and I were away.

Q What was the amount?

Objected to.

Objection sustained.

10

Q Did anything happen to this boy's clothing at the time of the accident? A Yes, sir, they were all torn or covered with blood stains.

Q Did that include their shoes? A One of Brooks' shoes was lost, and the other boy's, his shoes were ruined.

Q Do you know how old the clothes were that Brooks had? A They had been purchased in late summer, a short time before he went back
20 to school. I don't recall exactly when it was. They were practically new. He never had worn them.

Q This relates to the two boys or one? A There are two pairs of shoes and caps.

Q Do you know how much the shoes cost? A The suits I know cost \$25 apiece; the shoes about \$5 a pair, and the cap for \$1.50, or \$2 apiece; and the shirts and underclothing, I don't
30 know the exact price, somewhere around a dollar or two.

Q When you say they were bought in the late summer, what month do you refer to? A I think it was some time in August. They hadn't worn them during the summer.

Q How much had they worn them? A They had worn them when they had been downtown with their mother or on Sundays. Other times they used to wear khaki clothes to play around
40 in.

40

Louis R. Kemp, cross.

Q You purchased the medicines that were purchased from the United Chemist Corporation? A Yes, sir.

Q And where is that? A Corner of Bloomfield avenue.

Q Can you tell us what the cost of the medicines prescribed was? A That check is for \$10.

Mr. Jones: I offer the druggist's bills and the doctors' bills in evidence.

The Court: They may be admitted.

Cross examination by Mr. Markley.

Q You live in Brooklyn now? A Yes, sir; we live with some friends in Brooklyn, 716 Greenwood avenue.

Q Where do you work? A 60 Church street, that is the Terminal Building.

Q Before that you were employed where? A Special engineer for the Town of Montclair.

Q Any other department? A I have some practice outside, yes.

Q You were not home at the time of this accident? A No, I was in New York on business for the town. Mrs. Kemp was not with me, but I met her; she returned with me.

Q When did you reach Montclair? A Some time between 7:30 and 8.

Q Was there anybody home to take care of these children while you were in New York? A The children were in school.

Q What time was school out? A Three o'clock.

Q And then they would come home and take care of themselves? A Yes, sir.

Q When did you move to Brooklyn? A Just a short time or a week ago.

Louis R. Kemp, re-direct—re-cross.

Q It wasn't last April, as stated by Dr. Scudder? A No, sir.

Q When you went to Brooklyn where did you live? A New York, the lower part of New York.

Q Did you stay there? A No, I was up on a job in New York City and then I returned to New York and kept the flat until the 1st of October, and they wanted to lease it, and I didn't want to lease it.

Re-direct examination by Mr. Jones.

Q You met your wife this particular day? A Yes; she was in New York that afternoon purchasing some necessities for the children, I believe.

Q But other days she would be home? A She was always at home.

Re-cross examination by Mr. Markley.

Q Where is this house, on the southwest corner? A That adjoins this property that I lived in. This is on Prospect avenue.

Q The house that would be nearest to the southeast corner, whose house was that? A I couldn't tell you the name of the people.

Q Did you live in the corner house? A The house in which I lived had a frontage on Bloomfield avenue and there was quite a large lot there and the house was back on the hill, about 200 or 250 feet from the street line and looked over the west, and it faces Mt. Prospect avenue.

Q On the same lot? A West from the line of the property that I occupied was the east line of the property.

Edith C. Kemp, direct.

Q There is a sign there "Crossways"? A Yes, sir.

Q (Showing witness photograph.) This is the southwest corner of Mt. Prospect and Bloomfield avenues. Does it show the corner? A It shows the southeast corner.

10 Q The first house has a sign "Crossways"? A Yes, sir.

Q Is your house here (indicating)? A No, my house is behind the tree. You can see the walk to the east of the house.

Q Which is the nearest to your property? A It is the Crossways Tea Room.

(The photograph referred to is marked Exhibit D. 1 for identification.)

20

EDITH C. KEMP, sworn in behalf of plaintiffs.

Direct examination by Mr. Jones.

Q You are the wife of the last witness? A Yes, sir.

Q And you lived with him September 14th where? A 49 Bloomfield avenue.

30 Q When did you hear of the accident? A About half-past seven or eight, possibly a little after; I don't remember positively when it happened.

Q Where did you find your boy? A When I came in I found one of the twins with a neighbor and the other one in the hospital.

Q You say one of the twins. These boys are twins? A They are.

40 Q What is the date of their birth? A May 20th.

Edith C. Kemp, direct.

Q What year? A 1916.

Q Did you notice Brooks' condition? A Well, he seemed very much wrought up and excited and after putting him to bed I soothed him the best I could.

Q How was he hurt? A His legs were cut and there was a bump on his head and he was rather excited. 10

Q How long was Brooks laid up, if he was laid up? A A few days.

Q Have you noticed any difference in his physical condition before the accident and after the accident? A He seems different to me, but he doesn't sleep so well and he don't sleep so well, and he has had two serious illnesses since the accident.

Q That is Brooks? A Yes, sir. 20

Q How long was Perry in the hospital? A About a month.

Q Were you there frequently? A Quite frequently, three or four times a day. He was so seriously ill and he even after he got better, about the same.

Q After a month he came home, and was he in bed? A Yes, sir.

Q How long was he in bed? A About Christmas time. 30

Q How long was it before he could get around? A Well, he got up about around Christmas time.

Q I mean get around fairly well? A It was after Christmas; I can't just remember; around the first of the year.

Q Did he use a cane or a crutch? A Yes, he used canes at first. The doctor gave him some sort of exercise. He couldn't get around at all at first. 40

Helen Bright, direct.

Q You saw him more than Mr. Kemp? A Yes.

Q Is he completely well now? A I wouldn't say so. His strength gives out when he plays, his leg hurts him, he complains of his injured leg hurting him at times and he is very different.

10 Q Does he use his leg? A He tries to play, he runs, but his leg gives out particularly in the heat, in the summer when it was hot and even in a warm room.

Q Do you notice any difference in the time of day? A He complains more after school.

Q Is there any limp late in the day? A Yes, he limps quite noticeably, more so when he is tired.

Cross examination waived.

20

PLAINTIFF RESTS.

HELEN BRIGHT, sworn in behalf of defendants.

Direct examination by Mr. Markley.

Q Where do you live? A Clifton.

30 Q Are you married? A Yes, sir.

Q How old are you? A Thirty.

Q Do you remember the day of this accident?

A Yes, sir.

Q Were you driving a car? A I was.

Q What kind of a car was it? A Buick sedan.

Q What year, model, do you know? A 1923.

Q Do you remember coming along Prospect avenue to Bloomfield avenue in Verona? A

40 Yes, sir.

Helen Bright, direct.

Q Was there anybody in your car at the time?

A My sister was riding in the front seat and my brother-in-law sitting in the rear.

Q What is your sister's name? A Mrs. Dorrell.

Q And was her husband in the back seat? A Yes, sir. 10

Q And you three were sitting in this car? A Yes, sir.

Q And you were driving? A Yes, sir.

Q How long had you been driving this car?

A Three and a half years.

Q You have been driving in New York City?

A Yes, sir.

Q When you came over here you got in this accident? A Yes, sir.

Q When you came to this corner on this day 20 what time was it? A Twenty minutes of four.

Q What is the physical health of your sister?

A She was an invalid.

Q What was the purpose of the ride? A I was taking her out for a pleasure ride.

Q Were they living at your home? A They were staying there, vacationing at my home.

Q Where did they reside at the time? Did they live in New York or New Jersey? A They lived on St. Mark's avenue, Brooklyn. 30

Q When you came to this corner of Prospect avenue and Bloomfield avenue did you continue to cross? A No; I made a complete stop at the corner.

Q Can you point to the corner on the map, P. 1, and tell me where it was that you brought your car to a full stop, as you say? A Yes, sir, right about here (indicating).

Q Indicating the southeast corner. How far back to the southeast corner where the pole is 40

Helen Bright, direct.

on the map, how far back of that was the car when you stopped? A Five feet back from the corner.

Q From the Bloomfield avenue curb? A Yes, sir.

10 Q Where were you with respect to your right-hand curb? A Within about two feet of the right-hand curb.

Q Are you sure you made a complete stop there? A Yes, sir, the traffic was heavy.

Q What traffic are you referring to now when you say the traffic was heavy? A The traffic on Bloomfield avenue.

Q That was the street you wanted to cross? A Yes, sir.

20 Q Is that the reason you made the stop? A Yes, sir, waiting for an opportunity to go across.

Q Did an opportunity present itself? A Yes, sir.

Q Explain to the jury just what you did, tell in your own words just what you did when you saw the opportunity to cross.

By the Court.

30 Q Was there a traffic light or a traffic officer there? A No, sir; there was nothing there, nor any light.

By Mr. Markley.

40 Q Go ahead and tell us. A I had been waiting to get an opportunity to cross and the traffic was cleared up, so there was nothing on my left and there was one car on my right, the distance of a full city block away on the opposite side of Bloomfield avenue, which would allow me plenty of time to cross. So I started to cross

Helen Bright, direct.

the street slowly, looking to my left, looking for traffic coming that way. When my front wheels had crossed the trolley tracks and there was a sudden rush of a car coming to my right and I swung left to give him ample room to go left in the opening of Pompton Turnpike, and I was hit in the front wheel and my car carooned 10 around so that it faced towards Newark on the trolley tracks. The car that hit me skidded and went ahead and over the curb and in the ditch.

Q As you were crossing from a standstill position at the southwest corner did you cross fast or slowly? A Slowly.

Q How fast do you think you were going? A About ten miles. I was in first and I had just started.

20 Q Where were your wheels with reference to the trolley tracks when your car started over? A Over the north rail.

Q As you were coming out past the corner you continued on the left with your car? A Yes, sir.

Q You didn't swerve? A No, sir.

Q If there had been a vacant lot there you would have crossed on the right-hand side of that? A Yes, sir.

30 Q You say there was no car to your left when you came out? A No, sir.

Q Can you point out where that car was on your right? A (Indicating on map.) It was here.

40 Q Suppose I put an X and a circle on there. I have some photographs here of your car, I believe. Looking at this first one what have you to say as to whether that shows the condition of your hubcap after the accident? A It does.

Helen Bright, direct.

Q Was that hubcap damaged before the accident? A No, sir; it was not.

Q What other damage was there to your car immediately after this accident? A The right running-board was bent right at the right fender or front.

10 Q You say the run-board was jammed up against the side of the car? A Not completely against the car—raised upward.

Q As it appears in the picture? A Exactly as shown in the picture.

Q What about the right front fender? A That was bent back in against the car.

Q Was there any glass broken in your car? A The left rear door, the glass was completely broken.

20 Q Any other glass broken? A No, sir, that is all the glass that was broken.

Q What about the chassis? A It was thrown out of alignment as it was hit.

(The photograph referred to is offered in evidence and marked Exhibit D. 2.)

Q (Showing witness another photograph.) I show you another photograph and ask you whether that is your car? A Yes, sir, it is.

30 Q It shows the front of your car? A Yes, sir.

Q I notice the light on the right side is taken out? A Yes. Mr. Applin took it out and towed the car and did the repair work so I could turn the car.

Q Was your car struck on the right side? A No, sir, on the left side, but the beam was forced over, forcing the fender.

40 Q The left front fender was bent? A No, sir.

Helen Bright, direct.

Q But you say the right front fender? A Forced it over that way.

Q Did you say the glass was broken on the left side of the car? A No, sir, the right back door.

Q Was there any glass broken on the left? A No, sir, that was the only glass that was broken. 10

Mr. Markley: I offer these photographs in evidence.

(The photographs referred to are marked Exhibits D. 3, 4, 5, 6, 7 and 8 respectively.)

Q Looking at D. 3, do you recognize that? A Yes, sir.

Q Can you tell me which way it is looking? A It is looking towards Newark on Bloomfield avenue. 20

Q And as you look to the left there is a beacon light? A Yes, sir.

Q Which beacon light is it? A That is the one across from Mt. Prospect avenue.

Q And the street at the left is what? A Pompton Turnpike.

Q And the street on the right, what is that? A Mt. Prospect. 30

Q You come from the left of the picture that runs into Bloomfield avenue, going across the picture? A Yes, sir.

Q Looking at D. 4, do you recognize in which direction that picture is looking across the car track? A Yes, sir, looking towards Verona.

Q Do you see that beacon light in the picture? A Yes, sir. 40

Helen Bright, direct.

Q In about the center of the photograph? A Yes, sir.

Q On the map which beacon light would you say that is? A Up here (indicating).

Q The first one you come to as you go west from the Montclair hill? A Yes, sir.

10 Q The first beacon light you come to leading into Pompton avenue? A Yes, sir.

Q The next is D. 5. Will you please look at that, and looking at the center of the picture, does that show that parkway, that little circle? A Yes, sir, it does.

Q In the center of the photograph? A Yes, sir.

Q And this beacon, this picture shows the three beacons? A Yes, it does.

20 Q Will you point out on the map which three beacons it shows? A (Indicating on map.) One here, one here and one here.

Q It shows three beacons as you enter Mountain avenue from Pompton and the one north of the park? A Yes, sir.

Q (Showing witness another photograph.) I show you D. 6. Can you tell me as you look at the picture which direction it shows on Bloomfield avenue? A Towards Verona.

30 Q And in the distance Newark? A Yes, sir.

Q That would be looking in a westerly direction, wouldn't it? A Yes, sir.

Q On the map which way would you be looking? A Those pictures are not quite clear to me.

Q As you look along the car track, is that looking toward Newark in a westerly direction? A It seems to be looking toward Verona.

40 Q Looking at the left of the picture, is that the street out of which you come on Prospect avenue? A I don't recognize that.

Helen Bright, direct.

Q This picture is looking westerly down hill?

The Court: Is that the most westerly beacon light?

Mr. Markley: Yes.

Q The next one is D. 7. Tell me what that shows? A That shows the corner of Mt. Prospect avenue. 10

Q Looking toward the center of the picture, that is Mt. Prospect avenue? A Yes, sir.

Q And looking straight ahead? A That is going through Pompton Turnpike.

Q That is looking north, the direction you were going? A Yes, sir.

Q The last one, Exhibit D. 8. What direction is that looking? A It looks up Mt. Prospect avenue. 20

Q The direction which you came? A Yes, sir.

Q Which would be a general southerly direction? A Yes, sir.

Q When your car stopped, at the turning as you describe, to its left, where was it? A It laid on the trolley track which goes towards Newark, on the northerly trolley track.

Q Would that be the westerly car track going to the left as you come out Mt. Prospect avenue? A No, to the right as I came out of Mt. Prospect avenue. 30

Q Were the front wheels damaged? A Yes, sir. They were locked. I turned as I was hit on the left and they were locked right there.

Q Did the car roll at all? A No, sir, it remained on the trolley tracks.

Q Until how long? A I should judge probably ten to fifteen minutes, until it was pushed off. 40

Helen Bright, cross.

Q Do you know whether Officer Johnson came there before it was moved? A Yes, he did.

Q Do you know whether it was he who had it moved? A I know it took a good many to move it because it didn't have any power to move it back.

10 Q At any rate, it remained on the trolley tracks until it was removed? A Yes, sir.

Q When it was removed where was it put? A I know it was approximately swung this way on the tracks, they had to push it back this way and it lay back about here, so it lay partly across Mt. Prospect avenue.

Q Indicating the southwest corner? A Yes, sir.

20 Q Won't you describe again how your car turned when it was in the collision? A As I swung left I was coming right out this way and it brought the car right around like this.

Q How was it pointing? A The front wheels, on account of being bent, the car was looking this way, on an angle.

Q As you came to this car, this goes on the southeast, as you have already testified, on Mt. Prospect avenue. Were you over on your left-hand side of Mt. Prospect avenue at any time?

30 A No, sir.

Q Were there any other cars alongside of you as you came to Bloomfield avenue? A Yes, sir.

Q Are you quite sure that you were close to the curb as you testified? A Yes, sir.

Q As you started across did you give any warning of any kind? A Blew my horn as I started over.

Cross examination by Mr. Jones.

40 Q You say you blew your horn? A Yes, sir.

Helen Bright, cross.

Q You didn't see any cars? A Just the one to my right.

Q I was wondering why you blew your horn? A It is customary at a place like that.

Q You did that? A As I came out.

Q You could see all around, couldn't you? 10 A Yes, sir.

Q It is a very wide street? A Yes, it is.

Q It is about twice as wide as this court room. There is a flare at each place? A Yes, sir.

Q That makes it unusually wider? A Yes, sir.

Q You could see half a mile on the avenue? A Yes, sir.

Q Without any other car but the Davis car, and you made the observation, and you saw no other car outside of the Davis car? A No, sir. 20

Q You didn't see this man struck? A No, sir.

Q There is a cement road at that point? A Yes, sir.

Q And it is about sixteen or twenty feet wide, the cement part? A Yes, sir.

Q The middle of that cement was a black line right at the inn running right and left? A Yes, sir.

Q After the accident your engine had stopped, hadn't it? A Yes, sir. 30

Cross examination by Mr. Kane.

Q Will you point out on the map just where the cars collided? A As I was coming up this way and swung left I should judge it would be here (indicating on map).

Q That is just north of the northern most rail of the westbound track. To the left is a 40

Helen Bright, cross.

beacon light? A Yes, sir; as the car comes around it would throw it slightly to the left.

Q Were you going on Pompton avenue or were you going west on to Verona? A No, sir, on Pompton avenue.

10 Q Are there any markers on the street indicating the course of an automobile coming out of Pompton avenue? A It is divided with a black line here; this is a beacon light right here.

Q Were there any marks here on the corner which should indicate slightly to your right before you make the turn? A No, there are no markers there.

Q Just a beacon light and a sign "Keep to the right?" A Yes, sir.

20 Q You say the car was on the car tracks just after the accident and then was moved over to this corner? A To about here.

Q It was removed to this corner (indicating)? A Not after the accident, no, sir.

Q You blew your horn before he started? A Yes, sir.

Q Did you notice whether the Davis' car was going fast or slow? A Not when it was a block away.

30 Q When was the next time you saw it? A When I first had my front wheels across the four tracks.

Q Where was the Davis car then? A Almost on top of me.

Q How close to you? A Just so you knew you had to be out of his way.

Q Can you tell me feet, whether it was five or fifteen or twenty feet? A Just a few feet he ran into us.

40 Q Not in front of you? A He was in front of me; he was right at my side.

Helen Bright, cross.

Q What part of the Davis car was hit? A The front of the Davis car struck my right front hub.

Q Wasn't the Davis car struck at a point opposite the front seat? A No, sir.

Q Didn't you diminish your speed? A No, sir. 10

Q You didn't do that? A No, sir.

Q Just turned slightly to the left? A To the left.

Q How far did you travel from the time you first looked and saw Davis about a block away from the time that you saw him right across the car tracks? A Yes, sir.

Q I say, how far is it? A Twenty-five to thirty feet.

20 Q You know Bloomfield avenue is approximately ninety feet wide? A I am not any judge of what a street is.

Q Can you indicate in this room from the time you started to cross and the time you were hit? A It would be about a third again the width of what this room would be.

The Court: That would be forty feet.

The Witness: I don't know how to judge by feet. 30

The Court: That would be over forty feet.

Q You kept looking to your left as you came out? A Yes, traffic that would come to my left on the first half of the crossing.

Q But you saw no traffic coming from your left? A No, sir.

Q And the only traffic you saw was the Davis car coming from your right? A Yes, sir. 40

Helen Bright, cross.

Q And you continued to look to the left instead of to the right, although there were no cars approaching from your left and there was one approaching to your right? A I looked to the left.

Q And you continued to look to the left? A
10 No, sir, I looked to the right and saw the Davis car coming.

Q You looked to the right and saw this car a block away? A Yes, sir.

Q And then you continued to look to the left? A Yes, sir.

Q And you then continued to look to the left until you got to a point which was approximately the last car track? A Yes, sir.

Q And didn't look to the left until you got
20 to the car track, and you don't know how fast he was going? A No, sir.

Q Did you have a talk with Davis? A Yes, sir, he asked me for my license and said a child had been hurt.

Q Do you remember testifying in the Recorder's Court in Verona? A Yes, sir.

Q Will you say there was no other conversation between the two of you other than you have just stated? A And the sergeant in his office.

Q What was the conversation there? A I
30 tried to tell about the speed that Mr. Davis was coming down and he said we would have to tell our story to the Recorder.

Q You didn't notice how fast he was going? A The fact that a car is coming at you at great speed and the fact that his brakes squeaked and he skidded, you know that he is coming fast.

Q Did you say to Mr. Davis after the accident that it was your fault? A I didn't.

Q You are sure of that? A I am positive.
40

Helen Bright, cross.

Q I ask you if you remember testifying in the police court in Verona? Did you testify as follows in the police court in Verona: "By the Court: Question: Did you at the time have alleged conversation with Mr. Davis admitting to him the accident was your fault? Answer: He said to me— Question: I ask you the simple
10 question, did you at the time have an alleged conversation with Mr. Davis admitting to him the accident was your fault." Did you testify that way? A No, sir, I did not.

Mr. Markley: I submit the entire record must go in.

The Court: Are you willing to stipulate that this was the record that was taken in the Recorder's Court?
20

Mr. Kane: Yes.

The Court: And you, Mr. Jones?

Mr. Jones: Yes.

Mr. Kane: I am willing to have all the record go in if the Court is satisfied.

The Court: I am satisfied.

Q Was the front headlights broken? A No, sir, it was not; it was whole.
30

Q But it was removed after the accident? A Yes, sir.

Q Where were these skidmarks, if you know? A They started about here and then they went on to the curb.

The Court: Indicating about the southwest corner of the triangle to the northwest corner of Pompton avenue and Bloomfield avenue.
40

Helen Bright, cross.

The Witness: They were not near the corner because they were down here coming to the car tracks and swung and went in like that.

The Court: Opposite the southwest corner.

10

Q They didn't extend down to this point? A Not to my knowledge.

Q Did you look on the road for the skid-marks? A Yes, I did.

Q Were there any other cars besides the Davis car coming on down there? A Not that I noticed at the time, no, sir.

Q And you were going at a speed of ten miles an hour? A I said somewhere between six and seven because I had gone in first speed and was going across the cobblestones.

Q As the cars collided I suppose they bumped each other on the side, do you understand what I mean? A As that car was here and my car was here they were right up together.

Q And I suppose this rubbing together was what caused this running board to be damaged? A No, sir.

Q You say that headlight wasn't smashed? A It wasn't broken.

Q It was cracked? A No, sir, it was removed whole.

Q And there was nothing the matter with the other one? A No, it was perfectly all right.

Q Was this mudguard bent down or broken off? A Bent back away underneath.

40

Alfred E. Dorrell, direct.

ALFRED E. DORRELL, sworn in behalf of defendants.

Direct examination by Mr. Markley.

Q Where do you live? A 419 Twentieth street, Richmond Hill. 10

Q Is Mrs. Bright your wife's sister? A Yes, sir.

Q Were you two in Mrs. Bright's car? A Yes, sir.

Q Where were you seated? A Rear seat.

Q What was the purpose of this drive? A Just a short drive.

Q And do you remember coming to the corner of Bloomfield avenue just prior to the accident? A Yes. 20

Q Do you remember that your car stopped as it came to Bloomfield avenue? A Yes, about two minutes.

Q Indicate on the map where you saw the car stop. A The southeast corner.

Q As you came along Prospect avenue, the street you were on, as you came along that street to Bloomfield avenue what part of the road was your automobile on? A On the right-hand side. 30

Q Was it at any time on its left-hand side? A No, sir.

Q Or to the left of the center of the road? A Never.

Q Won't you just describe to the jury in your own words what you know of this accident? A As we came along here the traffic on Bloomfield avenue was heavy in both directions. We stopped there several minutes; after all cars had passed, there were no cars directly opposite 40

Alfred E. Dorrell, direct.

where we were—after the cars had passed in both directions and were opposite the crossing Mrs. Bright sounded her horn and started to cross. As she started I glanced to the right of Bloomfield avenue and I noticed there was a car there, which is where this car swings over into Bloomfield avenue.

10 Q Opposite the gas station? A Yes, sir, up about there. As we started, as we got out of Bloomfield avenue, I glanced to the left, and just as we were going over the car track I heard a shrieking noise, like brakes make, and I observed this car that I first saw, I saw this car coming at a rapid speed, and as we crossed the rail it struck the front right side of our car about, I should say, at the wheel, and forced the car to the left. Just as it struck Mrs. Bright turned her wheel to the left and our car made a circle on the track right here (indicating).

20 Q You are pointing where the first track would come to? A I wouldn't say exactly on the rails. On the track leading towards Newark.

Q It turned you right around? A Yes, sir.

30 Q What happened to the other car? A As the Davis car struck his car and forced it to the left the cars then sideswiped. Mr. Davis' car went off to the right and struck the curb. He stopped right there with his rear wheels against the curb, on the far side of Bloomfield avenue.

Q That would be the northwest corner? A Yes, sir.

Q And the other car was in the ditch, you say? A Yes, sir.

40 Q Did you look at the ground afterwards to see if there were any skidmarks? A Yes, I did notice skidmarks that were there, about the end of this.

Alfred E. Dorrell, cross.

The Court: You are indicating on the southwest part of the triangle then.

Q Down to where? A Down to about here and then there were other marks.

Q The point you refer to now is just north of the most northerly rail of the car tracks? A 10 Yes, sir.

Q Where would you say that car was with respect to being opposite the beacon light? A It would be just about opposite, that is, running a straight line it would be.

Q Did this car give any warning of its approach, the Davis car? A Nothing but the brakes.

Q What did you hear about the brakes? A The shrieking noise that brakes make when they are applied very hard. 20

Cross examination by Mr. Jones.

Q Do you know that location? A Not very well, no.

Q Where do you say you live? A At the present time I live in Richmond Hill.

Q You have seen it quite a little since? A I haven't.

30 Q How wide is Bloomfield avenue at that point? A I couldn't say in feet, but it is a wide street.

Q At that particular point there is a great deal of space on account of the flare—makes it appear considerably wider? A The Pompton Turnpike leads into it.

Q There is quite a flare there? A On the curb, yes.

Q There is a decline there? A Yes, sir, it is down hill. 40

Alfred E. Dorrell, cross.

Q And across here, beginning in the middle of Bloomfield avenue and going north there is much more of abrupt slope? A Yes, sir, up hill.

Q A fairly abrupt one? A Yes, sir.

Q You are quite sure that the lady driving your car didn't make a little spurt to get up that hill? A No, sir.

Q How fast was she going? A Six miles an hour.

Q At that point you were just about at the Turnpike? A No, sir, we were on Bloomfield avenue.

Q Twelve feet after that it gets very abrupt? A I couldn't say.

Q As you recall it, as your driver was going up that hill, there had been no increase in speed? A No increase in speed.

Cross examination by Mr. Kane.

Q Did you notice the damage that was done to Mrs. Bright's car? A Yes, sir.

Q Were the headlights broken? A No, the glass was taken out after the accident, the right one was, light taken out. The light was slightly bent and the glass into it was loose.

Q But the right one was all right? A Yes, sir.

Q You say you saw the Davis car quite away up the street? A Yes, sir.

Q When your car started to go out into Bloomfield avenue? A Yes.

Q And the next time that you saw the Davis car it was about twenty-five feet away from you and the brakes were shrieking? A I should judge it was about the distance.

Q Where was the Bright car at that time? A We were just crossing the track.

Alfred E. Dorrell, cross.

Q Which tracks? A The front wheel, I should judge, was just going over the north rail as you would come into Bloomfield avenue.

Q Where was the Davis car, that is, with reference to the trolley tracks, and the right-hand side of the road when your car was at that point which you have just described? A Well, that was on the asphalt close to the rail.

Q How far away from the rail? A One foot.

Q And there was no other traffic in that immediate vicinity at all? A Not that I saw at that time.

Q What, if anything, did Mrs. Bright do from the time she left this curve until the time of the collision? A She was driving the car. She didn't do anything.

Q What did she do with her car? A She was driving it across Bloomfield avenue.

Q At what speed? A About six miles an hour.

Q Did she increase or decrease that speed? A No, sir.

Q Did she turn to the right or left? A Just as this car was about to strike her she turned her car to the left.

Q How far did she go to the left before the collision occurred? A I don't believe we went a foot or two.

Q Where was the point of collision? A Right about in here (indicating).

Q Directly on a line with the beacon light? A We were coming out across here and it was just about here where the collision occurred (indicating).

The Court: Indicating the most northerly rail and just south of the beacon light.

Alfred E. Dorrell, cross.

Q Are you sure that the collision didn't occur a little bit west of the beacon light? A I wouldn't say that it did.

Q Will you say that it didn't? A At this point here as the car was standing here if you drew a line straight down, we were coming out
10 at an angle, and it was just about opposite.

Q You are sure it was not just west of the beacon light that the accident occurred? A It wasn't to the west.

Q It couldn't have been to the west. It was almost opposite the beacon light and slightly to the east? A Yes, sir.

Q Will you describe the course of Mrs. Bright's car from the time she left this point where she was standing on Mt. Prospect avenue?

20 A We were standing here and started and we came out right like this and the collision occurred right there (indicating on map).

Q Did you say anything to Mrs. Bright as you saw this Davis car on your right twenty-five feet away? A There was no time to say anything.

Q Did you say anything? A No.

Q Did you do anything? A I saw my wife sitting in the front seat.

30 Q You said you were on the fourth rail when you saw the car twenty-five feet to the right of you? A Just about crossing.

Q How fast was it going? A It was going so fast—

Q Can't you point out something in this room? A No, he was coming so quickly that I couldn't.

40 Q You knew that he was twenty-five feet away from you? A We were moving at the time.

Alfred E. Dorrell, cross.

Q You couldn't point out any point in this room from where you are sitting that your car traveled before it was hit? A It occurred almost immediately; I couldn't, no.

Q Would you say it was three feet? A I couldn't say positively.

Q Did you examine the roadway for skid-
marks? A After the accident I saw skidmarks. 10

Q How soon after the accident did you examine the road for skidmarks? A I carried my wife over to the corner and then I came up and examined the skidmarks and that was about ten minutes.

Q Did they start at a point where you first heard a squeaking of the brakes? A Why, I should judge he was there.

Q And that was about twenty-five feet to
the right of you? A When I saw the car the
brakes were screeching, the car had probably
traveled twenty or twenty-five feet. 20

Q You are guessing at it. How fast would you say you were traveling? A I should say thirty-five or forty miles an hour.

Q It wasn't twenty-five? A I don't think so.

Q How long were those skidmarks? A Altogether they were several car lengths. 30

Q Did he turn to the right or left as he came down there with his brakes screeching? A I didn't see him make any turn at all, it happened so quick.

Q What parts of the cars collided? A Mrs. Bright's car was on the right front side with the front wheel.

Q What part of it? A The front.

Q What part of the car struck it? A The front of Mr. Davis' car. 40

Alfred E. Dorrell, cross.

Q What part of the front? A It would be the left.

Q The left side of his car struck your car?
A The front of his car. I couldn't tell you exactly what part of his car. I don't know whether it was the front of the car or half. I
10 would say about half.

Q You are not sure? A I know it was struck.

Q You are sure it was Mr. Davis' car? A Yes, sir.

Q You are positive about that, that it wasn't on the side of the Davis car? A Yes, sir.

Q Did you examine the Davis car? A The next day I examined it. The front fender was bent and there was a crack in the windshield and
20 I believe there was a bent axle.

Q Did you examine the axle to see whether it was bent or not? A Yes, sir.

Q That was after it went off the curbstone and into the ditch? A Yes, sir.

Q Did you make an examination of the left side of Davis' car? A The left side I am speaking of now. His axle was bent and his mudguard was crumpled up. I didn't notice anything else about the left side of the car particularly.

Q Did you examine the left door of the car?
30 A The door was open when I went over. I didn't notice there was anything the matter with it.

Q The left front running-board? A I didn't notice anything. I told you what I saw. I didn't see anything wrong with the door.

Q You didn't look to see, did you? A Not particularly.

Q Where was your wife? A In this Crossways Inn.
40

Alfred E. Dorrell, cross.

Q Who was in there? A The proprietors and one of the witnesses, I believe.

Q Was there anybody else? A There might have been somebody else upstairs.

Q You left your wife and came out to make the examination? A I didn't come out to make the examination. I thought the car might be
10 stalled on the tracks and I thought I would help to get the car off.

Q You left your wife in the custody of the proprietor and waitress of the hotel? A Yes, sir.

The Court: Let us get these measurements.

Mr. Jones: (After measuring.) 66 feet.

Q What is the distance from the most easterly
light blinker to the most westerly one? 20

Mr. Jones: 210 feet.

The Court: How far is it from the most westerly blinker to the northwest corner of the curb?

Mr. Jones: 31 feet. Measured outside this pole to the edge of the blinker.

The Court: How far is it from the southerly curb of Bloomfield avenue and Mt.
Prospect avenue to the most northerly car
30 rail?

Mr. Jones: 31 feet.

The Court: How far is it from the point opposite the southwesterly angle of the triangle to the curb of the northwest corner?

Mr. Jones: That is 90 feet.

Mr. Markley: May we have the width of Mt. Prospect avenue from curb to curb?
40

Raymond Johnson, direct.

Mr. Jones: 26 feet. Bloomfield avenue is away down here. It is 56 feet there.

(Mr. Markley reads the testimony of Grace L. Dorrell.)

10 At 1 o'clock P. M., the Court took a recess of one hour.

—————
AFTER RECESS.

RAYMOND JOHNSON, sworn in behalf of the defendants.

Direct examination by Mr. Markley.

20 Q Are you an officer? A I am.

Q Where? A Verona.

Q Do you know any of the parties to this accident? A I do not.

Q How did you happen to go? A I was detailed to go there by the sergeant.

Q You were sent from police headquarters? A Yes, sir.

30 Q How far is that from the place of the accident? A About half a mile.

Q How did you go? A By motorcycle.

Q What is the grade of the street as you go from Prospect avenue to cross Bloomfield avenue to Pompton? A Just a slight grade.

Q Is there a steep grade there? A No, sir.

Q Is there a steep grade down these tracks or around this parkway? A No, sir.

Q Just a slight grade, you said? A Yes, sir.

40 Q I believe you told me that the street that runs that way is Prospect avenue? A Yes, sir.

Raymond Johnson, direct.

Q It is Prospect avenue except the last block as you come to Bloomfield avenue? A Yes, sir.

Q It goes all the way through to Eagle Rock avenue? A Yes, sir.

Q Can you tell us where the seven-passenger sedan was? A It was in the track, across the track. The Overland car was across the street over the curb in the ditch. 10

Q Would you mind pointing on this map, if you can do so—you have seen this map before? A I have.

Q You know the layout? A Yes, sir.

Q Show, if you can tell us, where the Buick seven-passenger sedan was when you got there? A Right here (indicating).

The Court: Indicating about the middle of the car tracks and a little to the left of the point directly south of the beacon lamp. 20

Q What direction was it pointing? A Toward Newark—that is east.

Q Which way would that be on this map? A This way.

Q Going from the left to the right of the lamp. Where was the Overland car? A It was over the curb, in the ditch. 30

Q What was over the curb? A The two front wheels.

Q Where were the two rear wheels? A They were in the road.

Q You say that it was overturned? A No, the two front wheels were over the curb.

Q Where? A In the ditch.

Q Did you notice any skidmarks on the ground? A Yes, sir. 40

Raymond Johnson, cross.

Q Won't you tell us just where you saw them?
A Right from here, just a little beyond here.

Q Right from where I have got my pencil. Suppose I put "S" with a circle around it, about there (indicating). A All the way over to the curb.

10 Q That is, the curb near the pole? A Near the pole.

Q The northwest corner? A Yes, sir.

Cross examination by Mr. Kane.

Q You say, officer, that the Buick car was a little bit to the left of this beacon light, but it wasn't on the car tracks; is that right? A Yes, sir.

20 Q How far to the left was it? A I couldn't say.

Q Approximately? A I couldn't say.

Q You couldn't give us any idea of the distance in this room? A No, sir.

Q Did you observe the situation thoroughly? A No, sir.

Q How did you see the skidmarks? A I looked for skidmarks.

Q You did see something, observe something, besides the position of the cars? A Yes, sir.

30 Q From your observation can you tell us approximately how much to the left of this beacon light this automobile was, this Buick? A No, sir, I could not.

Q Would you say it was ten feet west of the beacon light? A No, sir.

Q You haven't any idea of just how far except it was some distance to the left or west of the beacon light? How far out? A Out on the car tracks.

40

Raymond N. Applin, direct.

Q The skidmarks started beyond the point just a little to the east of the beacon light, and is that where it started, about midway between the car track and what would be the curb line?

A That is where they started.

Q Can you tell us how far away from the car tracks that was? A No, I didn't observe it. 10

By Mr. Markley.

Q What did you do, if anything, with respect to the Buick car? A I had it pushed back to the curb.

By the Court.

Q From where? A Off the trolley tracks.

The Court: Indicating the southwest corner. 20

By Mr. Markley.

Q You had it done? A Yes, sir.

RAYMOND N. APPLIN, sworn in behalf of defendants. 30

Direct examination by Mr. Markley.

Q Where do you live? A I live in Newark.

Q What is your business? A Garage.

Q Where is your garage? A Bloomfield avenue, Verona.

Q How near to the scene of this accident? A About half a mile up.

Q How did you come to go down there? A I got a call from the police department. 40

Raymond N. Applin, direct.

Q Did you go down in response to that call?
A Yes, sir.

Q When you got there do you know where the Buick car was? A The Buick car was over in the gutter, right in the corner.

10 Q Right down to the southwest corner? A Yes, sir.

Q Where was the other car, the Overland? A It was over in the ditch, the other corner, the northwest corner.

Q Did you examine these cars? A Yes, sir.

Q Take the Buick first and tell the jury what was damaged as you observed it? A The rear front fender was bent up and the tie-rod was bent in; the front headlights fell to the ground and the impact had bent the rod.

20

The Court: He can tell what he observed and I think we will strike out the entire answer.

Q Just tell us once again as to what you observed—the damage to the Buick car? A I seen the fender was bent up, the right front fender.

Q What do you mean? A When the car was hit, which naturally—

30

Objected to.

Q Was it bent up or down? A It was bent under; the running board was bent.

Q What other damage did you see on the Buick? A The left headlight was bent.

Q And was the glass broken? A No, sir.

Q How long have you been in the automobile business? A I have been there about twelve years.

40

Raymond N. Applin, direct.

Q How long have you yourself been in the automobile business? A Mechanic for fourteen years.

Q And you now own a garage? A Yes, sir.

Q I show you a photograph. Do you recognize that car there on the day of the accident?
A Yes, sir.

10

Q I call your attention to the hub cap on the right rear wheel? A Yes, sir.

Q Was it in that condition in the photograph as you saw it that day? A Yes, sir.

Q I show you another picture and ask you do you recognize that? A Yes, sir.

Q Was that in that same condition when you saw it? A Very same condition.

Q Could you tell by looking at that car it had received the impact of the collision? A Yes, sir.

20

Q Where? A The front right wheel.

Q Can you tell from your experience as an automobile man whether on the Buick the headlights were on the cross member? A They are.

Q Did you observe when that fender was pushed in, did it have any effect upon that cross member? A It did. That cross member is an iron bar that goes between the two headlights, and that frame dropped off, naturally with a push like that it made the left-hand headlight bent in. It is nothing but a small sheet iron and they bend very easily. Your foundation to it is your headlight rim.

30

Q Where do you say the impact was on the Buick? A On the front fender and wheel.

Q You say that as it was struck it pushed it and crossed the cross member? A No, sir, it would go right to the right front fender.

40

Raymond N. Applin, cross.

Q Did you observe the damage on the other car? A Yes, I stood there and looked at it.

Q What did you see with respect to the Davis car? A It is over a year. It was lying on a rock. There was a big rock, it fell over on this rock.

10 Q Over on the side? A No, there is a gutter there extending about that high (indicating).

Q Ten inches? A Yes, sir.

Q Was there a curb there? A Yes, sir.

Q The curb was how high? A Ten inches. There is a big rock and the front axle laid over that rock.

Q How about the front of the car? A Yes, sir, the front was bent.

20 Q What part of the front was damaged? A The left fender and the tie rod and the axle.

Q Did you or did you not see any damage to the Davis car? A No, I didn't.

Q Did you take the Davis car? A No, sir.

Cross examination by Mr. Kane.

Q When you saw the Overland car the front wheels were in the bumper? A Yes, sir.

30 Q How long did you stay there? A About ten or fifteen minutes.

Q You say it is a year ago and you don't recall distinctly what damage was done? A Yes, I stood there about ten minutes, waited for my man to pick the rock up.

Q How many people were in the crowd? A When I got there there were about twenty people.

40 Q They were all gathered around the Davis car? A Both cars.

Louis Davis, direct.

Q Did you look to see what damage was done there? A I probably stood there fifteen or twenty minutes.

Q Did you make a detailed examination? A I just stood around looking at them.

Q Had the car jumped over the sidewalk? A 10 It jumped out right over the curb.

Q Had it passed over the rock? A Right on top of it.

Q Resting on the rock? A Resting on the rock and curb. The ends were holding it across like.

Q You say there is a beam across that left side, the two headlights? A Yes, sir.

Q Were you there when the lights fell out? A No, sir.

Q You didn't take it out? A I didn't. 20

Q There wasn't damage to the right headlight, even though the damage was on the left, and the left headlight wasn't touched? A No, sir.

Q Was this tie rod crushed? A Yes, sir, it was crushed.

LOUIS DAVIS, sworn in behalf of defendants.

Direct examination by Mr. Kane. 30

Q Where do you live? A 471 State street, Trenton, New Jersey.

Q Where did you live on the 14th of December, 1926? A At 656 Fifteenth street, Newark.

Q What was your business? A Druggist.

Q Employed by whom? A United Retail Chemist. 40

Louis Davis, direct.

Q On that 14th day of September were you driving your automobile along Bloomfield avenue? A Yes, sir, in Verona.

Q In what direction were you going? A Westerly direction.

10 Q How long did you have that car prior to the accident? A I bought it July 12, 1926.

Q A new car? A A new car, yes, sir.

Q Where were you going? A I was on my way to Summit, New Jersey.

Q Anybody with you in the car? A Mr. Lerner.

Q What kind of a day was it? A A very clear day.

20 Q As you approached the Pompton Turnpike what rate of speed were you going? A I was going about twenty or twenty-five miles an hour.

Q What streets were you driving on? A The right side, Bloomfield avenue.

Q Near the curb? A Yes, sir.

Q Was there any traffic in that neighborhood? A Yes, there always is.

Q Just answer the question. The question is whether there was then? A There was.

30 Q You remember passing the truck that Mr. Johnson was driving? A I remember passing a number of trucks going up to Newark, but I don't remember passing any particular one.

Q As you approached the Pompton Turnpike was there any traffic there? A Yes, quite a bit. As I was coming down here, I had let a car come out of this way, I saw there was traffic here; I shifted in second gear, I really hadn't stopped, so I could start with it right in gear.

40 Q Are you indicating in front of the service station? A Yes, sir.

Louis Davis, direct.

Q Where did that car come? A Out into Bloomfield avenue, after I shifted into second.

Q How fast were you going? A About fifteen.

Q That is a down grade there? A Yes, sir.

10 Q Did anything happen after you shifted into second gear, did you have an accident? A Yes, sir; Pompton avenue and Bloomfield avenue, the outer exit.

Q Point where the accident occurred. A (Indicating on map.) Right here.

Q Did you see Mrs. Bright's car before the accident? A Yes, sir.

Q Where did you see it? A I couldn't say it was Mrs. Bright's car, but I do know of the stopping at this first beacon when I went down.

20 Q You say that it was standing at one of these corners? A Yes, sir.

Q Did you notice it or anything after they started up? A I saw it standing in front there and I saw the car move.

Q Pass up slowly? A I don't know.

Q In what direction was it going? A In a westerly direction.

Q How fast was it going? A I couldn't say.

30 Q Did she continue to go straight ahead? A Yes, sir.

Q How far did she go before the car was collided with? A I couldn't accurately say the distance, but I should say it must have been going in the car track in an easterly position in a northerly direction.

Q As I understand you, you saw that automobile all the time from the time you were at the beacon until the collision occurred? A Yes, sir.

40 Q Where was your car when Mrs. Bright made that turn to the left? A When Mrs.

Louis Davis, direct.

Bright made a turn to the left and it seemed as if she was taking a direction, you know, to the concrete wall.

Q Where was it she started to make this ten-degree turn? A She was beginning at the second car tracks, the front wheels.

10 Q What did you do? A I continued driving ahead.

Q Did you notice her do anything else with reference to the speed of her car? A When I got down to about midway of the beacon light and the entrance to Pompton avenue it seems as if her car sped up.

20 Q What did you do then? A I was on the extreme right and the garage and the beacon light is right here and I was past the beacon light when I saw her swing to the left. There is a grade on Pompton avenue, and as I turned she struck me.

Q What part of your automobile was struck? A The back door to the car, the front of my car and the left wheel.

30 Q And your car went over the curbstone and hit these two boys? A At the time there was an excavation there, they were going to put up a signboard, and my car went on the curb, and my car was facing this way, the front of the car facing into here (indicating), and the wheels was right out here.

Q Where was Mrs. Bright's car? A Immediately after the accident, with the car facing this way (indicating).

Q Which way? A I should judge the wheels were over the car tracks.

40 Q You got out of the car? A Immediately after the accident.

Louis Davis, cross.

Q Was there any conversation there between you? A I immediately asked her for her license, and she said, "Just a minute," at the time I was excited, and I waited a second or two, and she showed me her license.

Q Was there anybody there at the time? A Lerner was there. 10

Q Was Lerner in the car with you? A Yes, sir.

Cross examination by Mr. Jones.

Q I thought you lived in Bloomfield? A I said I was managing a drug store at that time in Bloomfield.

Q Ordinarily there is a large amount of traffic back and forth there? A No, sir. 20

Q And there was room for Mrs. Bright's car and you? A Yes, there is.

Q There is a flare as shown on that map. You can come out of one of those flares into Bloomfield avenue and the blinker and the traffic light is right there? A Yes, sir.

Q And you say you were on your way to Summit? A Yes, sir.

30 Q Did you know on that day that the most direct and easiest way to start was over Prospect avenue and then west? A I did not.

Q How long had you been down in that section in business? A It is quite a distance from Bloomfield to Third.

Q How long had you been in the Bloomfield store and in business at that section? A I was in about ten months.

40 Q What have you got to say as to the grade of Bloomfield avenue from this point, that is indicating a point about 500 feet down to the

Louis Davis, cross.

northwest corner of Pompton and Bloomfield?

A Part of it is pretty steep and then it gets to a lower grade.

Q What have you to say as to the grade of Pompton from here up to there? A Short and steep grade.

10

Cross examination by Mr. Markley.

Q You had been up to Summit before? A No, sir.

Q Never was to Summit? A No, sir.

Q You had been driving a car? A Yes, sir, I knew it was past Verona.

Q How would you have gone to Summit—through Denville? A I didn't know. I thought I would ask someone the best direction.

Q You knew you were going to Summit and you knew you were going to Prospect avenue? A No, sir.

Q Had you ever been up there to the golf links? A Yes, sir.

Q When you were going to Summit? A Yes, sir.

Q You saw this car of Mrs. Bright's stop near the southeast corner? A I wouldn't say the northeast corner, but I wouldn't pay particular attention where it stopped. I saw the car there.

Q You knew it was her car? A Yes, afterwards.

Q How close was it when it stopped? A It was out to the corner.

Q Where this path is, down as far as that path? A Well, it is about that far away, but it wasn't close to the gutter.

Q How close to the gutter was it? A I couldn't say.

40

Louis Davis, cross.

Q You just pointed a moment ago to the point right along here. A That was out here, but I don't know how close to the curb.

Q Was it two feet from the curb? A I couldn't say.

Q Two feet? A I couldn't say.

Q You remember putting a mark on one of these pictures the last time to show where these two cars were? A Yes, sir.

Q I show you Exhibit P. 7 and I call your attention to the X on the picture you put on there the last time. A Whereabouts it was?

Q Yes, you put the X there at the last trial? A Yes, sir, I believe I did.

Q As a matter of fact, you put that X at a point about where? A (Indicating on photograph.) Here.

Q How far would you say that is from the right-hand curb? A I couldn't judge.

Q Give me your best estimate—would it be three or four feet? A I don't remember. It was on the last trial when you asked me how far out it was.

Q This is also a photograph of this accident. That is the scene of the accident? A Yes.

Q This is Bloomfield avenue? A Yes, sir.

Q Then you put an X on Prospect avenue? A Yes, sir.

Q And that is where the Bright car was standing? A Yes, sir.

Q And you put some marks down there at the beacon light as you came along in a westerly direction? A Yes, sir.

Q Do you know how far it is? A 200 feet.

Q And you saw this car come to a standstill while you covered that 200 feet? A I saw her standing when I came up.

40

Louis Davis, cross.

Q You saw her come to a standstill and slowly saw her go across?

Q That is where she crossed, you put that as she was on the second car track and you were at a point opposite? A (Indicating.) Right here.

10 Q As I understand your testimony when you were at a point here, the east corner and made a turn left? A No, sir. (Indicating.) I was down here when I was going over the second car track, to the east, that she made a turn to the left.

Q What happened when you got to the southwest corner? A She shot forward in this direction.

20 Q When you were opposite the southeast corner? A I don't remember exactly every minute where I was and where she was. That was my course.

By the Court.

Q When you were at the southwest corner of that triangle then where was she over there? A All the way over here, the front wheels at the time here over about the tracks (indicating).

30 Q Her four wheels were clear of the north track? A Yes.

Q As I understand you, your car was the southwest corner of the triangle? A About twenty.

Q Twenty or twenty-five? A Yes, sir.

Q How fast were you going when you came down here (indicating)? A About twenty-five or thirty.

40 Q Then you were going about thirty while you were going down the hill? A No, sir.

Louis Davis, cross.

Q That is quite a steep hill? A Yes, sir.

Q And you were on the asphalt? A Yes, sir.

Q And you say you were coming down how fast? A Twenty-five or thirty.

Q And you slowed up? A Almost slowed up to allow a car to come through. 10

Q Where was that you slowed up? A Opposite the gas station.

Q Where were you when you saw her first at a standstill? A At the beacon.

Q You were not going so fast at the beacon? A No, sir.

Q How fast were you going? A About eighteen.

Q Did you stay on the asphalt all the time? A Yes, sir. 20

Q Where were you when you put the car in straight? A When I started I was here (indicating) and she wasn't going straight.

Q How fast were you going past the first beacon light? A Fifteen or seventeen miles an hour.

Q Where did you put your brakes on? A When I passed the beacon.

Q You didn't put your brake on any time previous to that? A What do you mean, previous to reaching the beacon? 30

Q The question is, where you put your brake on? A Yes, sir.

Q That is the westerly beacon light? A Yes, sir.

Q And yet you saw her crossing? A Yes, sir; she was crossing.

Q And you saw when she was about over the four rails, the front wheels were there, that she turned to her left? A Yes, sir. 40

Louis Davis, cross.

Q At any time did you slow up? A Yes, sir; I saw her quite a distance, about twenty or twenty-one.

Q How were you going when you hit her? A About fifteen miles or eighteen miles an hour.

10 Q You only slowed up to seventeen or eighteen miles? Before the collision did you say you saw her forty or fifty feet? A No, sir; I didn't.

Q How far did you go before you put your brakes on, before the collision? A It is a long time, I am a little hazy.

Q You put your brakes on at the beacon light? A No—that beacon light would be just about right.

20 Q Isn't that what you said just a moment ago? A But I am not positive.

Q You don't know where you put the brakes on? A Right at the beacon.

Q Didn't you say on your direct examination that when you were opposite the southeast corner of the triangle, the part that she was on was the second car tracks? Didn't you say that? A When?

Q When Mr. Kane examined you? A That I was on the southwest here?

30 Q When you were coming along and you were opposite the southeast corner of the triangle, as you say, she wasn't on the track? A She was on the second rail.

Q The second rail of the easterly-bound car track? A Yes, sir.

Q When you were opposite the southeast corner of the triangle? A Yes, sir.

Q Do you go up there in that vicinity all the time? A Frequently.

40 Q Where would you go? A Phillipsburg.

Louis Davis, cross.

Q Do you know where Summit is? A No, sir.

Q Weren't you ever up to your store in Summit? A No, sir.

Q So you don't know even where this store is? A I know I go up there, up Bloomfield avenue. 10

Q You don't know that section well? A No, sir.

Q What were you doing this day? A I was manager of the store.

Q What were you going up for that day? A Looking over a new store.

Q Won't you repeat what Mrs. Bright said to you after the accident? A Mrs. Bright said to me that she would take all the same blame for it, that it was her fault, and that she passed 20 on the left of the beacon light, and that is all there was to it, and she said she was all excited.

Q Give me the entire conversation. A I can't give it to you word for word. I asked her for her license, and she said, "I am nervous, and I have got my sick sister with me." And she said she will take the entire blame for the accident. She said she came to the beacon light and after that the same conversation was heard by Officer Johnson. 30

Q You say Officer Johnson was there? A Yes, sir; she admitted the same thing.

Q She admitted her blame to Officer Johnson? A Yes, sir.

Q Did she say they had an invalid sister in the car? A Yes, sir.

Q Did she say that she waited a minute to get a chance to get across? A She did.

Q Did she say to you, "I saw you suddenly upon me?" A No, sir; I don't recall her saying that. 40

William M. Johnson, direct—cross.

Q “And I swung the same way that you did?”

A I couldn't say whether I did.

Q Do you remember testifying before yourself? A Yes, sir.

Q And Officer Johnson was there when you spoke to Mrs. Bright? A Yes, sir.

10 Q Did you or did you not say any such thing?

A No, sir; didn't say any such thing.

WILLIAM M. JOHNSON, recalled in behalf of the defendants.

Direct examination by Mr. Markley.

20 Q It has been testified here by Mr. Davis that you were present when Mrs. Bright stated that this accident was all her fault and she would take all the blame for it. Did she make any such claim as that in your presence? A I didn't hear it.

Q Did you hear any such statements made? A No, sir.

Cross examination by Mr. Kane.

30 Q Did you hear any conversation between Mr. Davis and Mrs. Bright? A I didn't hear any conversation.

Q Did you hear them as you were standing around? A No, sir.

Q You didn't pay any attention to them? A No, I was very busy.

Harry Lerner, direct.

HARRY LERNER, sworn in behalf of defendants.

Direct examination by Mr. Markley.

Q Where do you live? A 523 Charlton street, Newark. 10

Q On this day of the accident were you riding in the car with Mr. Davis? A Yes, sir.

Q Where were you going? A Summit.

Q What way were you proceeding? A Westerly.

Q How long have you known Davis? A A few years.

Q What is your business? A Drug clerk. We were in the same place.

Q Worked in the same company? A Yes, sir. 20

Q How fast was Davis going down or west on Bloomfield avenue as he left the top of the hill coming down? A About twenty miles an hour.

Q Did he do anything from the time he left the top of the hill coming down up to the time of the accident? A Yes.

Q What did he do? A There is a beacon light there. He came to a complete stop and let this car go by— 30

By the Court.

Q Do you say he stopped? A Almost to a complete stop, slowed down.

By Mr. Markley.

Q At the time of the accident how fast was he going? A He was almost to a stop. 40

Harry Lerner, direct.

Q Did you see Mrs. Bright's car before? A I saw her car.

Q Where was it going? A North.

Q What was the speed of it when you saw it? A It was going very slow, right in here, and all of a sudden she darts out here as if she hadn't control of the car.

Q Where was Mr. Davis' car when you saw Mrs. Bright's car on the car tracks? A Right at the beacon light.

Q To the westerly of the beacon light? A Yes, sir.

Q Then what next happened? A Then she hit us.

Q Did you notice a change in the speed of her car? A It looked as if she didn't have control of the car and she hit us.

Q What part of the car did she hit you? A The left front door and the left front fender.

Q And Davis' car continued on over to the sidewalk and hit these two little boys? A It came right around on the car track.

Q Did you hear any conversation between Mrs. Bright and Mr. Davis? A Yes, sir.

Q Where did that conversation take place? A Right in the middle of the street here.

Q When? A Right after the accident. We picked up the Kemp boy and I went over and asked her for her license.

Q Where was Mrs. Bright then when you were asking for the license? A She was coming towards this car and Officer Johnson was there also, he asked her for the license and just for a minute she said, "I am all excited." She said, "Here is my license." She said, "It was all my fault, I got excited and turned to the left

Harry Lerner, cross.

of the beacon instead of the right and all the damages, I will make up for it."

Cross examination by Mr. Markley.

Q How long have you known Mr. Davis? A About two years. 10

Q Can you drive? A Yes, sir.

Q How old are you? A Twenty-three years of age.

Q What is your business? A Drug clerk.

Q How long have you been living in Newark?

A All my life.

Q You have been living here all your life?

A Yes, sir.

Q You say Mr. Davis came to a dead stop?

A Yes, sir.

Q Where was that? A The beacon light, right here (indicating). 20

Q How far was he to the first beacon light?

A Yes, sir.

Q Almost to a complete stop? A Yes, sir.

Q What speed was he in? A Neutral.

Q Which way was the car coming that he let go by? A The car going up.

Q You say the car he let go was going toward Bloomfield avenue into the Pompton Turnpike? A Bloomfield. 30

Q Then the car you say he left go came east on Bloomfield avenue across the track? A Yes, sir.

Q Then this car came and turned around at the first beacon light? A Yes, sir.

Q Did you see it down Mt. Prospect avenue? A No, just down this street and we stopped to let that car go past.

Q Show us the street on the map. A (Indicating.) This is Prospect avenue. 40

Harry Lerner, cross.

Q (Indicating on map.) Here is the triangle?
A Yes, sir.

Q Where was this car? A (Indicating.)
Right here.

Q And where was Mrs. Bright's car when
you first saw her car? A Just past that beacon
10 light, right here (indicating).

Q You didn't see Mrs. Bright's car until you
were past the second beacon light in the direc-
tion you were going? A Yes, sir.

Q How far past that beacon light were you
when you first saw Mrs. Bright's car? A A
few feet.

Q You were directly a few feet right in front
and you never saw the lights? A No, sir.

Q You mean that? A Absolutely.

Q Did you see the car as it came from Pros-
20 pect avenue? A No, sir.

Q Didn't see it at all? A No, sir.

Q And you say Mr. Johnson was present at
this conversation, he was right there? A Yes,
sir.

Q As I understand, she got out of her car
and walked over to Mr. Davis' car? A No, the
way she was standing.

Q Where was she standing? A On the street.

Q Where in the street? A Right around
30 here.

Q Where was Mr. Davis standing when she
came over to him in the street? I want to know
where in the street? A I don't remember the
exact place she was standing.

Q Approximately what place was she stand-
ing when you came over? A Here (indicating).

Q You can remember the whole conversation.
You remember the conversation which took place
40 while she was in the street? A Yes, sir.

Shirley Heskett, direct.

Q He didn't come over to her car and ask
her for the license—you deny that? A Yes, sir.

Q Mr. Johnson was standing there and when
she came over to Davis, Mr. Davis said, "Where
is your license?" to her? A Yes, sir.

Q Before she had a chance to say anything?
A No, sir. 10

Q When you first saw her she was going
slowly? A Yes, sir.

Q Where was she when you first saw her? A
Just about the two rails.

Q Won't you point to those two rails, where
she was, on that map? A (Indicating.) Right
here.

Q That electric light, her front wheels were
there? A Yes, sir.

Q And when she was there you were already
20 apast five feet from the beacon light? A Yes,
sir.

Q You were going twenty miles an hour and
you were going slowly? A Yes, sir.

Q You were five feet below the beacon light?
A Yes, sir.

SHIRLEY HESKETT, sworn in behalf of de- 30
fendants.

Direct examination by Mr. Kane.

Q Where is your place of business? A
Pompton Turnpike, Bloomfield, New Jersey.

Q Near the scene of this accident? A Just
across from the scene of the accident.

Q That is the gas station that you operate?
A Yes, sir. 40

Shirley Heskett, cross.

Q Did you operate that on the 14th of September, 1926? A Yes, sir.

Q At the time of this accident where were you? A I was standing in the yard at the gas station, right in front of the house.

10 Q Were you in front of the gas station? A Right at No. 1 pump, pumping gas from a pump.

Q What attracted your attention? A The noise of the crash.

Q What did you do? A I looked down there with a customer that was with me.

Q What did you see? A It seemed to be moving to us.

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

20 Q At that time where were the cars? A One car was over the curb and down in the ditch. The other car was facing very nearly east. It pretty nearly curled off Bloomfield avenue.

Q You say that was before the cars were moved? A Yes, sir.

Q When you got there that was its position? A Yes, sir.

Q What did you do between the time of the crash and the time you went there? A I told him to wait and I would go down to the scene.

30 Q Did you notice traffic conditions there that day, do you remember? A I don't remember.

Cross examination by Mr. Markley.

Q You were waiting on a customer? A Yes, sir.

Q And you heard this and you ran? A No; I waited.

40 Q Four or five minutes? A No, I finished waiting on the customer.

Louis Etchman, direct.

Q The Buick had backed up to this southwest curb? A Yes, sir.

Q Right up against the curb? A Yes, sir.

LOUIS ETCHMAN, sworn in behalf of defendants. 10

Direct examination by Mr. Kane.

Q What is your business? A Automobile mechanic.

Q In business for years? A Yes, sir.

Q Where? A 450 Washington avenue, Belleville.

Q Did you see this car after the accident? A Yes, sir. 20

Q When? A Right after it was towed into the garage.

Q Did you make an examination of this car? A Yes, sir.

Q What part was damaged? A The left running-board, the manifold and tie-rod.

Q Do you know what damage was done to the door? A The door was bent in, had to be straightened, and the glass. 30

Cross examination waived.

Adjourned to Thursday, November 3, 1927, at 10 o'clock, A. M.

CHARGE TO JURY.

Thursday, November 3, 1927.

The Court charges the jury as follows:

DUNGAN, J:

10 On the 14th day of September, last year, these two boys, Alexander Perry Kemp, who was called in this case Perry, and Richard Brooks Kemp called in this case Brooks, were coming home from school and were walking in the path on the westerly side of Pompton avenue, in the Town of Verona, in this County. At the time when they reached that point, just at the northwest corner of Bloomfield avenue and Pompton avenue Mrs. Bright was operating her Buick automobile in a northerly direction on Mt. Prospect avenue, crossing Bloomfield avenue, for the purpose of proceeding northerly on Pompton avenue. The defendant Davis was operating his Overland automobile in a westerly direction on the northerly side of Bloomfield avenue. These two automobiles collided near the traffic post there, resulting in the Overland automobile, driven by Mr. Davis, going from the point of collision in a westerly direction to the sidewalk at the northwest corner of Bloomfield avenue and Pompton avenue, where these two boys were, striking them, and inflicting the injuries for which they have brought this suit.

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The mere statement of these facts does not entitle these boys to your verdict. More than that must appear before they are entitled to recover.

The plaintiffs' complaint alleges that the injury to these boys was because of the negligent operation of these two automobiles by the respective drivers, and before the plaintiffs are en-

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Charge to Jury.

titled to recover, it must appear by the greater weight of the evidence in the case that one or the other or both of these automobiles were negligently operated, resulting in the collision and injuries to these boys. That brings us to the consideration of what negligence is, and it has been defined so many times by the reported cases in this State and repeated time and time again by this Court, that there seems to be no better definition, no clearer definition that can be given to a jury, and when that is so there is no reason why repetition should be avoided, and that rule is that it is the duty of a person operating an automobile on the public streets to operate it as a reasonably careful and prudent person ordinarily would operate it under the same or similar circumstances and conditions. If they do that, and, notwithstanding that fact, accident and injury occur, they are not responsible in damages for the results of the collision; but if the drivers of automobiles fail to operate them as reasonably careful and prudent persons ordinarily, under the same or similar circumstances and conditions, and injury to another results, they are liable in damages. Remember that rule when you go to the jury room. That is a general rule, and applicable to that general rule we have particular rules of conduct laid down by our statute for the government of automobile drivers, and one of those rules has reference to speed, and only last year, by an act of the legislature which took effect March 29, 1926, our legislature has laid down the rules as to speed. For instance, it says that a speed of one mile in seven minutes may be maintained upon the sharp curves of a street or highway or when turning a corner, and a speed of one mile in four minutes at a junction

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Charge to Jury.

or intersection of a prominent crossing, where such street, road or highway, runs through the open country, that meaning where the houses are one hundred feet apart, and from anything that appears in this case, this was the open country, as here defined.

- 10 Continuing it says: "A speed of one mile in five minutes where said street or highway passes through the built-up portion of a city, town, township, borough or village, where the houses are an average less than one hundred feet apart. A speed of one mile in four minutes within two hundred feet of any horse or any beast or draught or burden upon the same street or highway, provided, however, that such speed does not exceed thirty miles per hour, shall be lawful in the
- 20 open country as may be necessary in order to pass a vehicle traveling in the same direction, but the speed shall be diminished forthwith, if necessary, to comply with the provisions of this act." Elsewhere, and except as otherwise provided in subdivisions 1, 2 and 3, of this section (which I have just read to you), "a speed of thirty miles per hour is allowed." So sometimes one may maintain a speed of a mile in two minutes, at other times a mile in seven minutes,
- 30 other places a mile in four minutes, other places a mile in five minutes. But this statute says, and this emphasizes everything that has been said upon the subject of maximum speed, "Provided, however, that reckless driving is hereby prohibited, and for the purposes of this act and the act to which this act is an amendment, reckless driving is hereby defined to be: 'the driving of a motor vehicle or motorcycle in any manner which unnecessarily interferes with the free and proper use of any highway, street,
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Charge to Jury.

road, turnpike, park or parkway or driveway, or in any manner which endangers the life or limb or the property of any person'." So that any speed which interferes with the free and proper use of the road by other persons or in any manner which endangers the life or limb or the property of any person, is reckless, and that is forbidden by the statute. Another statute which may have some application to this case is "That every motor vehicle shall be equipped with a horn or a signalling device and the operator of the same shall give reasonable warning of his approach to insure the safety of other users of the highway. Also at curves and intersecting streets and highways where the view of approaching vehicles is obscured," so that where it is necessary to warn others using the street of the approach of one's automobile it is necessary under this statute to give a signal. And there is another statute to which I shall call your attention, as I have heard mentioned during the arguments, and that is the statute as to the right of way, and that is this: "Every driver of a vehicle approaching the intersection of a street or public road shall grant the right of way at such intersection to any vehicle approaching from his right." As was said to you in the argument, that does not mean that if an automobile was about to cross Bloomfield avenue from south to north, and another automobile was approaching that crossing going from east to west, that it was necessary for the person going north to yield the right of way to the person going west, if the automobile going west was a sufficient distance away at the speed at which it is going so that it would not reach the point of crossing at about the same time as the person going north. How-

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Charge to Jury.

ever, if the automobile going west would reach the point of crossing at about the same time, or, if at the speed both were going, it should appear to the automobile going north that they would reach the point of crossing at about the same time, then it was the duty of the person going
 10 north under this statute, to yield the right of way to the person going west, which would be on the right side.

Violations of these rules in themselves may not be negligence, but these statutes should warn all drivers that it is dangerous to act other than in accordance with these rules laid down in these statutes. It is always for the jury to say when any of these rules have been violated whether that is not negligence. Of course, it is the duty
 20 of every driver to make reasonable observation for the approach of other vehicles which are crossing the street which are likely to come in the line of their progress, to look to the right and left, and to listen for the sound of the signal horn and to take care to avoid colliding with it. Taking these rules, and the general rule which I mentioned at first, it will be for you to say whether or not one or the other of these drivers
 30 was negligent in the operation of his or her automobile and whether or not that negligence was the cause of the injury to these boys. Usually, in a case of this kind, the question of contributory negligence occurs, the rule being that where a person seeking to recover from another contributes to a collision, he cannot recover; but the subject of contributory negligence does not enter into this case at all, although the defense of contributory negligence is raised in the pleadings, but there is no evidence in this case which would
 40 warrant you in finding that these boys by any

Charge to Jury.

negligence on their part contributed to their injuries. A sidewalk or a path behind a curb is usually considered a place of safety from automobiles being driven in the public streets, and persons in such positions are not supposed to apprehend that an automobile being driven on
 10 the public streets is likely to come over a curb and come on the sidewalk, or both; so that subject does not come in this case at all. So the only question you have to consider in the case is the negligence of these drivers.

Take, first, the story of Richard, a brother of these plaintiffs. He was right near his brothers. They were not exactly together, and he said this curb back of which they were was seven inches high. Other witnesses have said it was ten
 20 inches. There was no sidewalk there, but a path. They were walking on the path beyond the curb, and he said he heard brakes squeaking and he looked and saw this Overland automobile, which it appears was driven by Mr. Davis, coming fast and saw the Buick in Mr. Prospect avenue coming slowly, but on the wrong side of the road. I think I will quote his testimony exactly:
 30 "My brothers and I were coming down the sidewalk on Pompton avenue and I heard some brakes squeaking and I saw this Overland, and he came so fast, swinging from one side to the other. I looked right ahead of me and I saw the Buick car coming up Mt. Prospect avenue on the wrong side of the road, and it was going very slowly, and I wondered which one would stop, because it appeared that the Buick was going to keep on going, and I looked up, and the Overland was almost over the corner and Buick had gotten to the car track and had gotten the front wheels
 40 over the second car rail, and the Overland pro-

Charge to Jury.

ceeded to go right on by the beacon light, and he got the front part of his car and the Buick hit him and skidded his car around and knocked him around the curb, and the Buick got there and rolled back into the street into a little pile of sand, corner of Prospect and Bloomfield avenue, it rolled right back about here. There was a little tiny Montclair lighting pole there." He says that this Overland came so fast into the curb that it knocked Perry entirely up and over a sign that was five feet high, and struck the other boy, Brooks, and knocked him down. He says that the Bright car did not stop and that he was four to four and a half feet to the left of the black line, and he says that just before the collision, and when the rear wheels of the Buick were about at the third rail of the track, the Buick car jumped or darted forward into the Davis car, changing its speed considerably. James Johnson, who was the only other witness produced by the plaintiff except Perry, says he was coming down the hill the same direction as the Overland; that the Overland passed him at a good rate of speed, he thinks, thirty to forty miles an hour; that he was going at twenty miles an hour; that it continued at that same rate of speed, and he says that he saw the Buick standing—he disagrees with Richard—at the southeast corner and on the right side of Mt. Prospect avenue. He said the Davis car did not slow up. He saw the Davis car all the way down, but he did not see the two cars come together, and he says that the skidmarks of the Davis car extended all the way from the southeast corner of the triangle to the point which is marked "S" on the map, where it came to rest on the northwest corner of Bloomfield and Pompton avenue, which is a dis-

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Charge to Jury.

tance of 250 feet between the blinkers, as it is called, and it is thirty-one feet from the westerly blinker, to this northwest corner. Mr. Davis testifies that he was traveling twenty or twenty-five miles an hour and on the right side of the road. Nobody denies that he was on the right side of the road. He says that there was traffic there. He says that he slowed down almost to a stop to permit an automobile to go from Bloomfield avenue into that easterly branch of Pompton avenue, went in the same gear, and he says after that he was going about fifteen miles an hour. He does say, however, that at the time the collision occurred he was going fifteen or eighteen miles an hour. He says that the accident occurred about half-way between the west beacon light and the northwesterly corner and quite a distance from the trolley track, and that it seemed to him as if the Bright car speeded up. He does say that he saw the Buick all the time from this easterly beacon light until the collision occurred, which is over two hundred feet. If that be true, was he justified in going at that rate of speed, even though he had the right of way, because the rule is that where a person sees that his right of way is not being respected, it is his duty to avoid a collision, if, by the exercise of reasonable care he can do so, by either slowing his speed, stopping his automobile or changing its course. He denies, however, that it was his automobile that ran into Mrs. Bright's automobile, as she says it did; but he said it was her automobile that ran into the left side of his automobile at about the front door. Mrs. Bright testifies that she stopped at the northeast corner, at about the Bloomfield avenue curb. The traffic on Bloomfield avenue was heavy and she waited

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Charge to Jury.

until traffic had gone both ways, and looked to the left and saw no traffic at all and looked to the right and saw the Davis car up at the service station, which it appears is two hundred feet away; that she blew her horn and started slowly, looking to the left; that the front of her automobile was almost over the track, and she looked to the right and saw this automobile of Mr. Davis close to her; that she turned to the left, but the Davis machine collided with her right front wheel and turned her car almost completely around and upon the car tracks and he skidded, and she testifies to the skidmarks, as other witnesses did. Did she do what a reasonably careful and prudent person should have done in crossing that street? Did Davis do what a careful and prudent person should have done in operating his automobile upon that street? In determining that question you will not only consider the testimony that I have quoted, because I have quoted only a part of it, and there are a number of witnesses in the case whose testimony I have not alluded to, because it is impossible, in a charge, to embrace it all. But you will consider the testimony of all the witnesses to determine whether one or both of these defendants was negligent. From all this testimony you will observe that it was not Mrs. Bright's automobile that struck and injured these boys, but that would not prevent recovery against her if she was negligent in the operation of her automobile and it was her negligent operation that caused the collision with the Davis automobile and in turn drove it, or caused it to be driven across the sidewalk and strike these boys. If it was the negligent operation of her Buick automobile, concurring with the negligent operation by Davis of

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Charge to Jury.

his automobile that caused it to go over the sidewalk and strike these boys, even if it be a fact that Mrs. Bright did not strike these boys, if it appear that it was her negligent operation of her automobile which resulted in their being struck by the Overland, and there was no negligent operation of the Overland, then your verdict should be against Mrs. Bright alone. Or if it appear that she was negligent and that Davis was negligent, and it was the negligence of both that caused the collision and the injuries to these boys, your verdict should be against Mr. Davis and Mrs. Bright for such damages as will compensate these boys for their pain and suffering and disability. In awarding your verdict against the two of them, if you do, you should not apportion the damages between them. That is a matter that the law takes care of. If you decide they were both negligent render your verdict against both of them for the injuries these boys suffered. However, if you believe that negligent operation by Mrs. Bright has not been shown in this case, but that the injury to these boys was caused solely through the negligent operation by Mr. Davis of his automobile, then your verdict should be against him; or if you decide that it was a pure accident, and neither of them was negligent, then your verdict should be in favor of both defendants and against the plaintiffs.

However, if you decide one or both was negligent, and that their negligence was the result of injuries to the boys, then you come to the subject of damages.

Upon that subject Dr. Scudder, who is connected with the Mountainside Hospital of Montclair, to which Perry was taken, says that he saw him about six o'clock. This accident oc-

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Charge to Jury.

curred around between four and five o'clock
 in the afternoon; that he found him in shock,
 with cuts and bruises on his body, with a badly
 lacerated left leg, with the skin torn off, with the
 muscles chewed up, as he expressed it. He was
 taken to the operating room and a drain was put
 10 in the leg. He was at the hospital about four
 weeks, during which time Dr. Scudder attended
 him. At the end of the four weeks he was taken
 home and Dr. Love attended him. Dr. Scudder
 did not see him again until, I think he said, about
 a week ago, but he said when he did last see
 him that on this leg there was a very large de-
 forming scar about six inches long; that the leg
 showed the loss of superficial tissue or muscle
 tissue; that this condition was permanent; that
 20 this muscle would never make up in the left leg,
 which was considerably smaller than the right,
 and that he would never be able again to walk
 and run as an ordinary person; that he would
 never be able to engage, as other boys do, in
 sports, such as baseball, football, tennis and such
 things. He said he might do it, but he couldn't
 do it as other boys do it, with vigor. Dr. Love,
 who treated this boy after he left the hospital,
 said that two-third of the calf muscles had been
 30 destroyed, and there was scar tissues. He said
 it was a permanent disability and that this per-
 manent disability would increase as he grows
 older. Dr. Brothers, a witness produced on be-
 half of Mrs. Bright, does not agree with this
 testimony of Dr. Scudder and Dr. Love. He says
 that in the examination that was made a week
 ago Perry walked and ran with no limp, although
 he said he favored that side, and he said he
 thinks with use this leg will grow no worse as he
 grows older, and he thinks he will be able to
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Charge to Jury.

play at baseball and other sports, although he
 says he may have some tenderness in this leg.
 Dr. Farden, who was produced as a witness on
 behalf of the defendant Davis, testified that the
 boy walks with a slight limp. The father said that
 he jumped some. Dr. Farden thinks it has
 reached its maximum disability now and it may
 improve in flexibility and that he may be able
 to play games and he believes that he will have
 some power in his leg, but he thinks the condition
 will improve. 10

Of course, all the testimony you should take
 into consideration is determining the disability
 of this boy, and it will be for you to say, taking
 into consideration all of the evidence, what will
 compensate the boy Perry for his injuries, for
 his pain and suffering and for his disability, and
 not only the disability which he has suffered up
 to this time, but if it be a permanent condition,
 he is entitled to be compensated at this time for
 the disability which he will suffer through his
 entire life. This is not an amount which can be
 accurately determined, as you can determine the
 exact amount of moneys paid out, but it is an
 element of damage which must be decided by the
 very best judgment which you twelve men
 possess and should exercise when you go to the
 juryroom. 20 30

Brooks was not so badly injured. His father
 said that he was pretty badly bruised, that he
 was cut on the leg, although it was nothing very
 serious, that he was unable to walk for about a
 week, and that Dr. Scudder injected tetanus anti-
 toxin, and that he has been deaf since this injury,
 although he had no deafness before, and that
 that is indicated by the fact that he frequently
 does not answer when he is spoken to by his
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Charge to Jury.

family, and that he is very nervous and that he was not nervous before. Whatever will compensate him for his injuries and pain and suffering and his deafness, if he is deaf—we are not told how long that is likely to continue—and that should be the amount of your verdict against the defendants or one of them, if you decide that one or both of them was negligent.

The father is also a party to this suit and his right to recover depends on the boys' right to recover. If you decide that they are entitled to your verdict, then you should also decide that the father is entitled to your verdict. If you decide that the boys are not entitled to your verdict, then the father is not entitled to recover. You should compensate him for the expense to which he has been put by reason of the injuries to his boys, for the money which he has expended or for bills for which he is responsible. The fact that he has not paid them makes no difference. If they are reasonable, he is responsible for them. The hospital bill was \$336.08; the nurses have been paid \$267, and unpaid \$48, making altogether \$315. Dr. Scudder's bill is \$475. Dr. Love's bill \$152 up to, I think it was, January 1st. Since that time there has been added \$46, making \$198 altogether. Dr. Busch, who administered the anesthetic, his bill was \$15; Dr. Wolfe, who administered anesthetic, \$30. This, according to my figures, makes \$1,421.08. In addition to that the boys' clothes were destroyed. Clothes are like automobiles, as soon as you put them on and use them they are second-hand. But they are entitled to whatever the value was at the time they were destroyed. The father says he bought them in August and they cost \$25 each. He said they had gone away and that they wore them to

Charge to Jury.

school for about a week. He said the shoes cost \$5 a pair, and the hats cost \$1.25 each. Whatever their value was, if you can determine from the evidence, you should add to the \$1,421.08.

The defendant Davis requests the Court to charge as follows: 10

“1. Vehicle approaching from the right has the right of way.” I have charged that.

2. “Vehicles on the highway have the right to expect that other vehicles will observe the traffic regulations.” I have charged that.

3. “Defendant Helen Bright in crossing this intersection was bound under the law to pass to the right of the beacon light, if she was intending to proceed northerly on Pompton avenue and the defendant Davis had the right to assume that Helen Bright would observe the rule of passing to the right of this beacon light.” You mean that there is a statute requiring her to do that? 20

Mr. Kane: That is the traffic rules.

The Court: Is there any statute to that effect? I don't know whether they were to go to the left or right-hand of the beacon light or whether they should go straight ahead. I will say, however, that the statute requires drivers of vehicles to keep on the right side of the road. That is the most I can say with reference to that request. 30

4. “Where houses are more than 100 feet apart the legal rate of speed is 30 miles per hour..” That I have covered.

5. “When examining the testimony taken in the police Recorder's court, you are to disregard any decision or disposition of the case as 40

Exceptions to Charge.

made by the Recorder, and determine the liability in this case at bar solely upon the evidence presented by the various witnesses who have testified in this Court." That I decline to charge you because the record has gone in without reservation and there may be some testimony in there
 10 which has not been read which reflects upon the testimony given in this Court. If that be true, you have a right to consider that so I cannot say that you must disregard that testimony and consider only the testimony given in this Court by the witnesses.

6 "If you find that any of the witnesses have lied with reference to any of the details or facts regard the happening of this accident then it is within your province to consider that all of the
 20 testimony given by the said witness is equally untrue." That is so if by the word "lie" it is meant that they have wilfully testified to falsehoods. If they have just made a mistake it does not necessarily make it false testimony. But, of course, if you decide that any witness has testified falsely to any material fact, then you may disregard all his testimony.

(The jury retires.)

30 Mr. Jones: I respectfully except to that part of the Court's charge after a recitation of the facts, where your Honor stated, if, in effect, that the mere presence of those facts without proof of negligence on the plaintiff's part, would not entitle plaintiffs to a verdict, that the mere fact that they being on the sidewalk creates a case of *res ipsa loquitur* and casts the burden of exculpating the plaintiff.

40 Exception noted as ground of appeal.

Exceptions to Charge.

Mr. Markley: I except to that part of your Honor's charge wherein your Honor gives the jury the provisions of the Traffic Act with respect to speed and also the quotation of the last portion of the general provision to the effect that any speed which interferes with the free or
 10 proper use of the road by other persons, or in any manner endangers the life or limb of anyone—what your Honor said with respect to that provision; the specific point I am trying to state is that to say that any speed which in any way or manner endangers the life and limb of any person is forbidden is erroneous.

The Court: The word I used was reckless.

Mr. Markley: With respect to the right of way part of your Honor's charge, I want to note an exception to that part that Mrs. Bright, or
 20 a person that reached the intersection would have to grant the right of way to the person approaching on the right if both vehicles were approaching the intersection, at such speed, that if they continued at their respective speeds they would reach the intersection at the same time. The point of my objection is this, as I see it, that we wouldn't have to grant the right of way if the other vehicle was so far distant that
 30 traveling at lawful speed we would reach the intersection first; we would have a right to suppose that they would give us the right to cross first, assuming they were there first. It is not so much a question of speed; it is a question of distance.

Exceptions noted as ground of appeal.

Mr. Kane: I would like to have an exception to your Honor's refusal to charge requests numbers 3 and 5.

Exception noted as ground of appeal.

*Defendant Davis' Requests to Charge.*DEFENDANT DAVIS' REQUESTS TO
CHARGE.

The defendant requests the Court to charge the jury as follows:

- 10 1. Vehicle approaching from the right has right of way.
2. Vehicles on the highway have the right to expect that other vehicles will observe the traffic regulations.
3. Defendant Helen Bright in crossing this intersection was bound under the law to pass to the right of the beacon light, if she was intending to proceed northerly on Pompton avenue, and the defendant Davis had the right to assume that
- 20 Helen Bright would observe the rule of passing to the right of this beacon light.
4. Where houses are more than 100 feet apart the legal rate of speed is 30 miles per hour.
5. When examining the testimony taken in the police Recorder's court, you are to disregard any decision or disposition of the case as made by the Recorder, and determine the liability in this case at bar solely upon the evidence pre-
- 30 sented by the various witnesses who have testified in this Court.
6. If you find that any of the witnesses have lied with reference to any of the details or facts regard the happening of this accident then it is within your province to consider that all of the testimony given by the said witness is equally untrue.

New Jersey Court of Errors and Appeals

ALEXANDER P. KEMP and LEWIS
BROOKE KEMP, by their next
friend, LEWIS R. KEMP, and
LEWIS R. KEMP, individually,
Plaintiffs-Respondents,

v.

HELEN BRIGHT and LOUIS DAVIS,
Defendants-Appellants.

Action at Law.
On Appeal from
Supreme Court.

BRIEF IN BEHALF OF THE APPELLANT
HELEN BRIGHT.

(1)

Statement of the Case.

This appeal brings before this Court for review judgments aggregating almost \$8,000 (p. 17), in favor of the plaintiffs and against both defendants in an action wherein the plaintiffs sought to recover damages for personal injuries suffered by Alexander P. and Lewis Brooke Kemp, two minors, as the result of having been struck by the automobile of the defendant, Davis, on September 14, 1926, in Verona, New Jersey. The other plaintiff, Lewis R. Kemp, is the father of the boys and he sued to recover damages for the loss of services of his boys and the out-of-pocket expenses incident to the recovery of the boys from the effects of the accident.

Before the automobile of the defendant Davis collided with the boys it ran into an automobile operated and owned by the defendant Helen Bright. After it struck that automobile it then pro-

ceeded over to where the boys were standing or playing and they were injured as the result of the collision with them.

The case was submitted to the jury as against both defendants and the jury brought in verdicts as against both defendants. It is from the judgment entered on the verdicts in favor of the plaintiff that the present appeal is taken by this defendant Helen Bright (p. 1).

The grounds of appeal are two in number and both deal with errors in the charge of the Trial Judge (pp. 2 and 3).

(2)

Grounds of Appeal.

The appellants rely on the following grounds of appeal:

1. The Trial Judge erroneously charged the jury as follows:

“But this statute says, and this emphasizes everything that has been said upon the subject of maximum speed, ‘Provided, however, that reckless driving is hereby prohibited, and for the purposes of this act and the act to which this act is an amendment, reckless driving is hereby defined to be: “the driving of a motor vehicle or motorcycle in any manner which unnecessarily interferes with the free and proper use of any highway, street, road, turnpike, park or parkway or driveway, or in any manner endangers the life or limb or the property of any person.”’ So that any speed which interferes with the free and proper use of the road by other persons or in any manner which endangers the life or limb or the property of any person, is reckless, and that is forbidden by the statute.”

2. The Trial Judge erroneously charged the jury as follows:

“And there is another statute to which I shall call your attention, as I have heard mentioned during the arguments, and that is the statute as to the right of way, and that is this: ‘Every driver of a vehicle approaching the intersection of a street or a public road shall grant the right of way at such intersection to any vehicle approaching from his right.’ As was said to you in the argument, that does not mean that if an automobile was about to cross Bloomfield avenue from south to north, and another automobile was approaching that crossing going from east to west, that it was necessary for the person going north to yield the right of way to the person going west, if the automobile going west was a sufficient distance away at the speed at which it is going so that it would not reach the point of crossing at about the same time as the person going north. However, if the automobile going west would reach the point of crossing at about the same time, or, if at the speed both were going, it should appear to the automobile going north that they would reach the point of crossing at about the same time, then it was the duty of the person going north under this statute, to yield the right of way to the person going west, which would be on the right side.”

(3)

BRIEF OF THE ARGUMENT.

I.

The Trial Judge erred when he instructed the jury “that any speed which interferes with the free use of the road by other persons or in any manner endangers the life or limb or the property of any person is reckless, and that is forbidden by the statute.”

The instruction complained of, quoted verbatim from the charge, is as follows (p. 116, line 30, to p. 117, line 10):

"But this statute says, and this emphasizes everything that has been said upon the subject of maximum speed, 'Provided, however, that reckless driving is hereby prohibited, and for the purposes of this act and the act to which this act is an amendment, reckless driving is hereby defined to be: "the driving of a motor vehicle or motorcycle in any manner which unnecessarily interferes with the free and proper use of any highway, street, road, turnpike, park or parkway or driveway, or in any manner which endangers the life or limb or the property of any person."' So that any speed which interferes with the free and proper use of the road by other persons or in any manner which endangers the life or limb or the property of any person, is reckless, and that is forbidden by the statute."

In this instruction the Trial Judge was interpreting Chapter 275 of the Laws of 1926 (p. 458), which is an amendment to Section 16 of the Motor Vehicle Act. Section 16 is the section which sets forth at length the various rates of speed which may be maintained. This accident happened on September 14, 1926 (p. 18, lines 35-40), so that Chapter 275 of the Laws of 1926 would be applicable.

Chapter 275 of the Laws of 1926 is entitled as follows:

"An Act to amend an act entitled, 'An act defining motor vehicles and providing for the registration of the same and the licensing of the drivers thereof; fixing rules regulating the use and speed of motor vehicles; fixing the amount of license and registration fees; prescribing and regulating process and the service thereof and proceedings for the violation of the provisions of the act and penalties for said violations,' approved April eighth, one thousand nine hundred and twenty-one."

Article IV, Section 7, Paragraph 4, of the New Jersey Constitution as amended (1 Comp. Stat. of N. J., p. LXXI) provides:

"To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object and that shall be expressed in the title."

Examining the title of Chapter 275 of the Laws of 1926 we find that it has in no way as its object the creation of a cause of action for personal injuries sustained by one person as the result of the negligent operation of an automobile by another. That is entirely foreign to the object of that statute.

It therefore follows that the definition of reckless driving given at the beginning of Paragraph 16, as amended by Chapter 275 of the Laws of 1926, is not a test by which can be determined whether or not the particular operation of an automobile in any given case is or is not negligent, and this statute of 1926 is particular to point out that the definition of reckless driving as therein contained is for the purposes of that act *alone* and not for the purpose of defining the rights as between two highway travelers on the public highway.

Examining Chapter 275 of the Laws of 1926 (p. 458), as amended, we find that it begins as follows:

"1. Section sixteen of the act of which this act is amendatory be and the same is hereby amended to read as follows:

"16. The following rates of speed may be maintained, but shall not be exceeded, upon any public street, public road or turnpike, public park or parkway, public driveway or

public highway in this State by any one driving a motor vehicle; *provided, however, that reckless driving is hereby prohibited, and for the purposes of this act* and the act to which this act is an amendment, reckless driving is hereby defined to be: the driving of a motor vehicle or motorcycle in any manner which unnecessarily interferes with the free and proper use of any highway, street, road, turnpike, park or parkway, or driveway, or in any manner which endangers the life or limb or the property of any person."

Then follows the various speeds at which an automobile may be operated in various sections of the State, such as the open country, the built-up section and when turning corners or passing prominent crossroads, as quoted in the Trial Judge's charge (p. 116, line 10, *et seq.*). The Motor Vehicle Act provides a penalty for a violation of its terms, as stated in the title quoted *supra*, and a penalty is provided for reckless driving (Chapter 211, P. L. 1924, p. 462). At page 463 the statutes provides:

"Any person who shall be convicted of a violation of section 16 of this act shall, for the first offense, be subject to a fine not exceeding one hundred dollars, etc."

We submit that reckless driving as defined in the Motor Vehicle Act does not in the slightest degree assist in determining whether or not the operation of a motor vehicle is such as to justify the recovery of damages in a civil suit based on negligence. This is so because the definition in the act of reckless driving makes the test of recklessness depend on whether or not the life or limb or property of a person is endangered; or to take the other alternative given for determining recklessness, whether the driving of a motor vehicle interferes with the free use of the highway by an-

other. Neither test is applicable in a civil suit for damages, for if either was, then the mere fact that somebody was injured would be *prima facie* evidence of negligence.

In short, a man's conduct would be judged by the result of what he did, namely, the injury to another person or the damage to another's property, and not by the true rule, namely, whether or not he exercised reasonable care.

When the Trial Judge instructed the jury "that any speed which interferes with the free and proper use of the road by other persons or in any manner which endangers the life or limb or the property of any person, is reckless, and that is forbidden by the statute," he in effect instructed the jury that that was the test to be applied in determining liability, for he prefaced that instruction by this significant remark: "*But this statute says, and this emphasizes everything that has been said upon the subject of maximum speed.*" He then proceeded to define recklessness as it is defined in the Motor Vehicle Act. In short, everything is controlled, guided and determined by the definition of recklessness contained in the Motor Vehicle Act.

The definition of recklessness as contained in the statute and incorporated in the Court's charge, and the statement that that sort of driving is forbidden is not cured by the statement that violations of the motor vehicle rules in themselves may not be negligence, for that refers to the rules with respect to speed and not with what is forbidden.

It is well known that frequently automobiles cause injury to persons and damage to property so that the life or limb or the property of another person is endangered and yet, from the standpoint of the civil law, the operation of that particular automobile would not be regarded as reckless unless it appeared first, that the driver was negli-

gent in that he failed to exercise reasonable care; second, that said failure was the proximate cause of the accident; and third, that the person injured was not guilty of contributory negligence. Verdicts have been frequently found in favor of the defendant where life, limb and property have been endangered and loss has resulted. That is not the test of liability in a civil suit. On the other hand, under the definition of reckless driving contained in the Act of 1926, a person may be guilty of violating that act under that definition and yet no injury may have resulted to anyone, providing life or limb or property were endangered even though no loss resulted.

Even in a criminal action for violation of the Motor Vehicle Act it is very doubtful whether the definition of reckless driving therein contained would stand the test of a court attack, for it judges a man's conduct not by what he does but by the result which flows from what he did, irrespective of whether he was careful or not. Such a test should not even be applied in an action for violation of the Motor Vehicle Act, for it is unreasonable and unfair to judge a man's conduct by the result of rather than by what he did.

That such an instruction is erroneous clearly appears from a consideration of the following cases:

Foley v. Brunswick Traction Co., 66 N. J. L. 637;

Dotson v. Erie R. R. Co., 68 N. J. L. 679;

Mason v. Erie R. R. Co., 75 N. J. L. 521;

Olsofrom v. North Jersey St. Ry. Co., 81 N. J. L. 321.

The rule is admirably stated in *Mason v. Erie R. R. Co.*, 75 N. J. L. 521, *supra*, by GARRISON, J., speaking for the Court of Errors and Appeals, wherein, at page 523, he said (italics ours):

"The instruction exhibited by the first of the foregoing exceptions was erroneous in that it incorrectly stated that the duty of the plaintiff in error was to provide a reasonably safe place for its passengers to alight from its trains, whereby the jury was permitted to determine whether reasonable care had been exercised by the plaintiff in error not from the qualities of the conduct in that respect, but solely by the jury's opinion as to the results of that conduct. *The duty of the railroad company was, it is perhaps needless to say, merely to exercise reasonable care to provide a safe place for its passengers to alight. Dotson v. Erie Railroad Co.*, 39 Vr. 679.

"This distinction is fundamental,' as was said in the opinion of this court in *Foley v. Brunswick Traction Co.*, 37 Vroom 637, 'since it marks the difference between a carrier's liability for negligence and its guaranty of safe carriage. The former inheres in the implied duty owed by the defendant to the plaintiff. The latter does not so arise, and was not within the undertaking of the defendant.' In the same opinion this further language is used touching an instruction that is not distinguishable in principle from the one now before us: 'This instruction was, we think, erroneous. Its error lay in this, viz., that it gauged the liability of the defendant not by the quality of its conduct, but by the results of that conduct, thereby covering indiscriminately injuries resulting to the plaintiff from causes preventable by the exercise of due care on the part of the defendant, and injuries that might have happened notwithstanding the exercise by the defendant of the degree of care legally imposed upon it as a carrier of passengers. * * *

The gravamen of the plaintiff's action was the failure of defendant to use reasonable care for her safety as a passenger, hence the correct instruction would have been that the defendant was liable for the plaintiff's injuries, if it failed to take reasonable precautions to

see that the place provided by it for her discharge was a safe one for that purpose. * * * It was the defendant's right to have that question submitted to the jury. The question that was submitted to the jury did not give the defendant its right in this respect, for while the occurrence of the accident demonstrated the unsafe character of the place at which the plaintiff was invited to alight, it could not lawfully be permitted to establish also the negligence of the defendant, which, upon this writ of error, was the effect given to it by the verdict.' Upon the authority, therefore, of the case cited, and of the reasoning on which it rests, the charge in the respect indicated was reversible error."

To instruct a jury that any speed which interferes with the free use of the road by other persons (*without further saying that such other persons must be lawfully operating their cars and using reasonable care to do so*) or in any manner which endangers the life or limb or property of any person, is forbidden, and to instruct them as a matter of law that it is reckless, is in direct conflict with the rules laid down in *Healy v. Braested*, 98 N. J. L. 502, 522, and *Baker v. Fogg and Hires Co.*, 95 N. J. L. 230.

Further to say that such a speed is reckless and that it is forbidden is not cured by later saying in the charge that the violations of the rules of the Motor Vehicle Act in themselves may not be negligence, for one is contradictory of the other, and unless we can conceive of our jury system as one in which the jury is clothed with the capacity to decide between two judicial statements of the law and unerringly to select the correct statement and to disregard the incorrect, the error of the charge in the present case was not cured or rendered non-injurious to the defendant, who excepted to it.

State v. Erie R. R. Co., 84 N. J. L. 661;
McLoughlin v. Damboldt, 1 N. J. Adv.
Rep. 510, 512.

In the case at bar the evidence was very clear that the defendant Helen Bright was operating her car in a very careful manner. An examination of all the testimony in the case is strongly in favor of that conclusion. It also appeared that the defendant Davis was operating his car at a very reckless and fast rate of speed. Mrs. Bright was operating her car toward the intersection going in a northerly direction while Davis was going in a westerly direction, and they both reached the intersection where the accident happened about the same time. The fact that Mrs. Bright's car interfered with the free use of the highway by Davis in the operation of his car, or the fact that the operation of Mrs. Bright's car in any manner endangered the life or limb or the property of a person, may have led the jury to believe that the verdict should be against her as well as against Davis, irrespective of whether she exercised reasonable care in the operation of her automobile in their judgment.

We therefore respectfully submit that the Trial Judge erred in instructing the jury that this defendant was reckless if she so operated her car as to interfere with the free use of the road by other persons *under any circumstances* or in any manner which endangered the life or limb or the property of any person, and further, that the Trial Judge erred in instructing the jury that this defendant was forbidden from so operating her car. Exception was duly noted to that part of the Trial Judge's charge (p. 129, lines 1-15), and that exception is preserved in the first ground of appeal (p. 2).

II.

The Trial Judge erred when he instructed the jury that a person going north in an automobile would have to yield the right of way to a person going west if the automobile going west was going at such a speed as to reach the intersection at the same time as the automobile going north, no matter how fast the automobile going west might be traveling.

The instruction complained of is as follows (p. 117, line 20, to p. 118, line 10):

“And there is another statute to which I shall call your attention, as I have heard mentioned during the arguments, and that is the statute as to the right of way, and that is this: ‘Every driver of a vehicle approaching the intersection of a street or public road shall grant the right of way at such intersection to any vehicle approaching from his right.’ As was said to you in the argument, that does not mean that if an automobile was about to cross Bloomfield avenue from south to north, and another automobile was approaching that crossing going from east to west, that it was necessary for the person going north to yield the right of way to the person going west, if the automobile going west was a sufficient distance away at the speed at which it is going so that it would not reach the point of crossing at about the same time as the person going north. However, if the automobile going west would reach the point of crossing at about the same time, or, if at the speed both were going, it should appear to the automobile going north that they would reach the point of crossing at about the same time, then it was the duty of the person going north under this statute, to yield the right of way to the person going west, which would be on the right side.”

This instruction was excepted to (p. 129, lines 15-35), and that exception is preserved in the second ground of appeal (p. 3). The point of the objection is that the Trial Judge instructed the jury that the person approaching on another's right had the right of way at an intersection irrespective of how far away that person might be from the intersection, providing he was traveling sufficiently fast to reach the intersection about the same time as the other person.

The Trial Judge puts the case specifically of one automobile going north and the other west and says that it was not necessary for the person going north to yield the right of way to the person going west if the automobile going west was a sufficient distance away *at the speed at which it was going so that it would not reach the point of crossing at about the same time as the person going north. However, if the automobile going west would reach the point of crossing at about the same time, or if at the speed both were going, it should appear to the automobile going north that they would reach the point of crossing at about the same time, then it was the duty of the person going north under this statute, to yield the right of way to the person going west, which would be on the right side.*

In short, speed alone is the test in determining the right of way. If a man traveling west is five hundred feet from the intersection while a man going north is only ten feet from the intersection, yet, if the speed of the man going west is sufficiently fast so as to bring him to the scene of the intersection at about the same time as the man going north, then the man going north must yield the right of way. This, we submit, is absurd. Furthermore, according to the Trial Judge's instruction, the duty is cast upon the man going north to judge how fast the man going west is going for

the purpose of determining whether they would reach the intersection at the same time. This is not the law, for the law is settled that a traveler on the public highway coming to an intersection is not required to extend his observations to a distance beyond which vehicles driven at a lawful speed would imperil his safety.

Newark Passenger Railway Co. v. Block,
55 N. J. L. 605;
Consolidated Traction Co. v. Glynn, 59
N. J. L. 432;
Higgins v. Public Service Railway Co., 79
N. J. L. 471;
Peterpolo v. Public Service Railway Co.,
81 N. J. L. 390;
Santholm v. Whiting Motor Company, de-
cided by this Court June Term, 1921,
unreported.

In the recent case of *Jackson v. Geiger*, 100 N. J. L. 330, the Court of last resort held, that one who is riding upon a portion of the highway where he was lawfully entitled to be, and in a position which was not one of obvious danger, but was made so solely by the action of the driver of another vehicle, is "under no legal duty to anticipate that the driver (of the other vehicle) will not obey the law."

Another case in point is *Peterpolo v. Public Service Ry. Co.*, 81 N. J. L. 390, 392, where this Court, in a unanimous opinion reversing the Supreme Court, which latter Court has held that the plaintiff was guilty of contributory negligence as a matter of law, said that question was for the jury. At page 392 this Court held:

"But, laying this point entirely aside, and assuming that when the plaintiff observed the car approaching and attempted to cross

in front of it he was indisputably charged with notice that it was being operated at a speed that, if persisted in, would endanger his safety, it is, we think, by no means clear that he was negligent in attempting the crossing. For how was he charged with notice that such a speed would be persisted in? The jury might find that at that juncture the car was two hundred and twenty-five feet from the crossing, perhaps somewhat more, and that the plaintiff had but fifteen feet to go before reaching the crossing, perhaps somewhat less; for the evidence as to these distances is of course only approximate. The plaintiff had a right to rely upon the duty imposed by law upon the traction company, and upon the motorman in charge of the car in question, to exercise care in operating the car in respect to its speed, and the control thereof, so as not to endanger the safety of other travelers using the highway, whether on foot or in wheeled vehicles. Plaintiff might reasonably suppose that the motorman was aware that he and his employer had no paramount or exclusive right in the highway, and that he must keep such a lookout on the tracks ahead of him, and must keep his car under such control, as to be able to reduce its speed, and even to bring it to a standstill, if necessary, to avoid collision with a traveler who, without negligence on his part, might happen to cross the tracks in front of the trolley car. Plaintiff had a right to assume that the motorman was aware that if plaintiff, without negligence on his part, reached the point of crossing ahead of the trolley car, he had the right of way, and that such right of way would be respected by the motorman. In short, plaintiff might reasonably assume that the motorman would keep a lookout, and would control and reduce the speed of the car, until plaintiff was charged, or at least until a reasonably prudent person in his position would have been charged, with notice that the car was being operated either in ignorance of his presence or in complete defiance of his rights."

An examination of the testimony in the case at bar will show that the defendant Helen Bright was going slowly in a northerly direction while the defendant Davis was going very rapidly in a westerly direction, and they both met at the intersection. Under the Trial Judge's charge the defendant Davis had the right of way (see Testimony of Bright, p. 64; Dorrell, p. 79; Jackson, p. 38; Kemp, p. 18; Davis, p. 95). All of these witnesses agreed and there is no dispute about the fact that Mrs. Bright was operating her car very slowly because she had an invalid sister with her whom she was taking for an airing, and that Mrs. Bright actually brought her car to a stop before she attempted to cross the intersection and that the defendant Davis was in his automobile several hundred feet from the intersection when she did that. If he was going sufficiently fast to reach the intersection at the same time as Mrs. Bright, then he had the right of way under the Trial Judge's charge, whereas, as a matter of law, Mrs. Bright would have the right of way because she was at the intersection first and was in the act of passing over before Davis was within several hundred feet of it notwithstanding that Davis approached the intersection on Mrs. Bright's right-hand side.

We respectfully submit that the Trial Judge erred in this instruction to the jury. If the defendant Davis traveling at a lawful speed would have reached the intersection at about the same time as the defendant Bright, then the defendant Bright under the law would have been compelled to yield the right of way to Davis because he was approaching on her right. But if the defendant Bright reached the intersection first and was in the act of crossing, she would be under no obligation to yield the right of way to Davis. If he was a considerable distance from the intersection, even though he were on her right, she would not have

to assume that he would negligently drive his car or negligently fail to control it, slow it up and stop it, if necessary. On the contrary, she would have the right to assume that he would lawfully operate the car and control it, slow it up and stop it, if necessary, in order that she might lawfully exercise her right of crossing.

III.

For these reasons we respectfully submit that the judgment below should be reversed as against the defendant Helen Bright and a venire de novo ordered as to her.

EDWARD A. MARKLEY,
Of Counsel.

COLLINS & CORBIN,
Attorneys of Helen Bright.

69 FEB.T.1928

110 FEB.T.1928

New Jersey Court of Errors and Appeals

ALEXANDER P. KEMP and LEWIS BROOKE KEMP, by their next friend, LEWIS R. KEMP, and LEWIS R. KEMP, individually, Plaintiffs-Respondents,	} Action at Law. } On Appeal } from Su- } preme Court.
vs.	
HELEN BRIGHT and LOUIS DAVIS, Defendants-Appellants.	

BRIEF OF APPELLEE FILED IN ANSWER TO APPELLANT LOUIS DAVIS.

Statement.

In this case, two young boys returning from school were injured while on the sidewalk beyond the curb at the Northwest corner of Pompton Avenue and Bloomfield Avenue, Verona. Plaintiff alleged that it was caused by the joint negligence of the defendant Helen Bright and Louis Davis, whose automobiles collided a short distance from this corner. As a result of this collision, Davis lost control of his automobile and it went over the curb, causing the injury complained of.

It is practically conceded that there was negligence on the part of either one or both of the defendants, and the real contest at the trial was the effort of each of these defendants to put the blame on the other. This brief, therefore, should be read in connection with the brief filed in answer to the defendant Helen Bright.

Law.

Before going into a discussion of the defendant Davis's brief, the court's attention is directed to the fact that the only exceptions taken by the defendant Davis appear on (p. 129) as follows:

"Mr. Kane: I would like to have an exception to your Honor's refusal to charge requests numbers 3 and 5.

Exception noted as ground of appeal."

Defendant Davis's written requests to charge appear on (p. 130) and numbers 3 and 5 read as follows:

"3. Defendant Helen Bright in crossing this intersection was bound under the law to pass to the right of the beacon light, if she was intending to proceed northerly on Pompton Avenue, and the defendant Davis had the right to assume that Helen Bright would observe the rule of passing to the right of this beacon light.

5. When examining the testimony taken in the police Recorder's court, you are to disregard any decision or disposition of the case as made by the Recorder, and determine the liability in this case at bar solely upon the evidence presented by the various witnesses who have testified in this Court."

It will be noted that no exception whatever is taken to what the court *did* charge. It is respectfully submitted that the defendant Davis is confined in this appeal to a discussion of the law relative to what he excepted to. He attempts, however, to discuss four alleged exceptions, none of which exist in the form he sets them forth in his grounds of appeal.

Answer to Point I-A.

Appellant says that the instruction complained of quoted verbatim from the charge is as follows: (p. 127, ll. 17-34)

"Defendant Helen Bright in crossing this intersection was bound under the law to pass to the right of the beacon light, if she was intending to proceed northerly on Pompton Avenue and the defendant Davis had the right to assume that Helen Bright would observe the rule of passing to the right of this beacon light." You mean that there is a statute requiring her to do that?

Mr. Kane: That is the traffic rules.

The Court: Is there any statute to that effect? I don't know whether they were to go to the left or right hand of the beacon light or whether they should go straight ahead. I will say, however, that the statute requires drivers of vehicles to keep on the right side of the road. That is the most I can say with reference to that request."

This is not a fact, no such exception was taken. The only exception was to a certain written request No. 3, which appears above.

Moreover, he attempts now to include in his exception a colloquy between counsel and the court when the latter asked counsel to refer him to a statute to justify request No. 3. No exception was taken to what the court said, hence appellant Davis is bound merely to a consideration of whether the court committed legal error in refusing to charge written request No. 3.

In fact, *no statute or traffic rule exists* which justified the charge asked for. Those quoted by the defendant in his brief clearly do not apply. Moreover, the court substantially charged all that

the plaintiff was entitled to when he stated that the statute required drivers of vehicles to keep on the right side of the road, (See p. 127, l. 11, also ll. 20-40). The rule is settled that when a request to charge is made, all that the Judge is required to do in dealing with a request, when the legal principle involved is sound and applicable to the matter, is to charge the substance. See *Gluckman vs. Darling*, 85 N. J. L. 457 affirmed 87 N. J. L. 320; *Grybowsky vs. Erie R. R. Co.*, 88 N. J. L. 1.

In the case of *Armstrong vs. Lehigh Valley R. R. Co.*, 82 N. J. L. 704, it was held that a charge would be unassailable if the judge merely charged the legal principle involved. The trial judge's refusal to charge certain requests is not an error and all the propositions contained therein which were sound and relevant were charged. *Miller vs. Thomas & Sons*, 89 N. J. L. 364.

Answer to Point 1-B.

What seems to be a complete answer to this point is that no exception was taken to it.

Appellant Davis's exception is to a certain written request No. 3 set forth on (p. 130).

Moreover, the language complained of, to wit:

"I don't know whether they were to go to the left or right hand of the beacon light, or whether they should go straight ahead."

was merely part of a colloquy between counsel and the court, in which the court was trying to find out from counsel whether he could refer him to some statute as a basis to support the request asked for.

Answer to Point 2.

The statement of appellant here is also incorrect. All that appellant's counsel excepted to was the court's refusal to charge the following request:

"5. When examining the testimony taken in the police Recorder's court, you are to disregard any decision or disposition of the case as made by the Recorder, and determine the liability in this case at bar solely upon the evidence presented by the various witnesses who have testified in this Court."

The court's refusal to charge this request could not be erroneous for two reasons. In the first place, on (p. 77) the following colloquy took place between appellant's counsel and the court, in reference to this record.

"Mr. Markley: I submit the entire record must go in.

The Court: Are you willing to stipulate that this was the record that was taken in the Recorder's Court?

Mr. Kane: Yes.

The Court: And you, Mr. Jones?

Mr. Jones: Yes.

Mr. Kane: I am willing to have all the record go in if the Court is satisfied.

The Court: I am satisfied."

Having agreed that the entire record could go into evidence, appellant cannot now be heard to object.

In the second place, the trial Judge gave a very good reason why he should not charge in the manner requested. This appears at the top of (p. 128) namely, that there might have been some testimony in this record which had not been read, and which reflected upon the testimony given in

Court. Therefore, to ask the Jury to limit its consideration of the Recorder's record, and to merely determine the liability on the spoken evidence presented in the Supreme Court, was erroneous. A mere reading of the fifth request to charge coupled with the knowledge that appellant's attorney had consented that the entire record go in, shows that the request was altogether too broad and the Judge properly refused to charge it.

If counsel had merely asked the Court to tell the Jury that they were to disregard the Recorder's decision, there might be some point to it. That is what appellant's counsel has discussed in his brief. But the difficulty is that appellant's counsel made a request which was entirely *too broad*, and included other things besides this.

It is respectfully submitted that the judgment of the Court below should be affirmed.

CHARLES JONES,
Attorney of Appellees.

69 FEB.T.1928

110FEB.T.1928

New Jersey Court of Errors and Appeals

ALEXANDER P. KEMP and LEWIS BROOKE KEMP, by their next friend, LEWIS R. KEMP, and LEWIS R. KEMP, individually, Plaintiffs-Respondents, vs. HELEN BRIGHT and LOUIS DAVIS, Defendants-Appellants.	}	Action at Law. On Appeal from Su- preme Court.
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BRIEF FOR RESPONDENTS, ALEXANDER P. KEMP, Et. Al.

Facts.

On September 14th, 1926, two little school boys, Alexander P. Kemp and Lewis Brooke Kemp, were returning from school together with a third brother. As they were walking on the sidewalk on the West side of Pompton Turnpike near its intersection with Bloomfield Avenue, and while still on the sidewalk, the defendant Davis's car ran into them. A few feet away from the curb, the defendant Davis's car and the defendant Bright's car had collided, and as a result of this collision, Davis lost control of his car and it ran up over the curb thus doing the injury complained of.

The contest, therefore, is for all practical purposes a contest between the two defendants Bright and Davis, each attempting to fasten the blame on the other.

The Jury found a verdict against both defendants. So far as the defendant Bright is concern-

ed, there seemed to be ample evidence (bot. p. 75 and first half p. 76) that on a broad straight street where she could see half a mile up and down the avenue (p. 73, ll. 15-20), nevertheless she was looking in the opposite direction from where the Davis car was coming. It further appears that in order to go from Mt. Prospect Avenue, the point where she had stopped, to the entrance of Pompton Avenue, she would have to cross Bloomfield Avenue in a diagonal direction. It further appears that she was an inexperienced driver; that she apparently became confused and was steering considerably to the left of the blinker which designated the center of Pompton Avenue, and failed to yield the right of way to the Davis car, which was approaching on her right. Furthermore, it appears from the evidence that the entrance to Pompton Avenue is a rather steep incline (top p. 23), and just before the impact, the Bright car was seen to "dart forward" (p. 33, ll. 7-12).

Law.

The obvious effort of the appellant Bright in her brief is to call attention to an excerpt of the Judge's charge, to the exclusion and utter disregard of what was said before and after. Juries naturally listen to the charge as a whole as it applies to the facts before them.

Reading the whole charge as to the negligence, we find in this order.

a. A clear statement that an injury alone does not entitle the plaintiff to recover. There must be *negligence* shown on the part of the defendant.

b. A clear statement of what negligence is—a legal definition that has stood the test of time.

c. A statement of particular rules of conduct under certain Statutes—which Statutes the Judge read.

d. A clear warning that a violation of these Statutes or rules of conduct is not in itself proof of negligence but must be considered along with other proofs of negligence under the general rule laid down.

Reading the charge in this light, appellant Bright's first point seems answered completely by a reading of the charge itself.

We cannot close our eyes to the fact that a Judge's charge is intended to help a Jury in the particular case before him—that it is not a lecture on jurisprudence or a mere academic statement of all the law.

There was no evidence that Mrs. Bright was going *fast*. No one contended she was. Her negligence was not based on the question of speed at all. The whole gist of the defendant Davis's negligence, however, was the question of speed, and it is clear beyond peradventure that the Judge was reading the Statute of 1926 to tell the Jury what the Legislature said about *speed*. For instance, on (p. 115) he says,

"One of those rules has reference to *speed*, and only last year, by an act of the legislature which took effect March 29, 1926, our legislature has laid down the rules *as to speed*."

then he quotes various rates of *speed*. Then on (p. 116, l. 30) he says,

"But this statute says, and this emphasizes everything that has been said upon the subject of maximum *speed* * * * So that any *speed* which interferes with the free and

proper use of the road by other persons or in any manner which endangers the life or limb or the property of any person, is reckless, and that is forbidden by the statute."

Thus, when he made the comment complained of by the defendant Bright, he was speaking of *speed* and he merely repeated again the language of the statute he had just read. Then, to obviate any possible misunderstanding of these statutes, he says, (p. 118)

"Violations of these rules in themselves may not be negligence, but these statutes should warn all drivers that it is dangerous to act other than in accordance with these rules laid down in these statutes. It is always for the jury to say when any of these rules have been violated whether that is not negligence."

This is a clear statement of the law and answers the first argument of the defendant Bright.

In *Evers vs. Davis*, 86 L. 196 at p. 204 (Court of Errors and Appeals) the Court in construing a purely penal statute under the tenement house law and its effect on negligence in a civil action says,

"Upon common law principles, therefore, when the legislature has by public statute established a certain standard of conduct in order to prevent a danger that it foresaw, it has in this regard forewarned the 'ordinary prudent man' and through him the defendant in a civil action, whose conduct must always coincide with this common law criterion. Such danger, therefore, does not have to be proved by the plaintiff, since there is no longer room for a reasonable difference of opinion, for by his breach of the statute the defendant, through his common law conscience, is charged with knowledge that if injury ensues he will have acted at his peril.

The court therefore should so instruct the jury, whether such instruction be couched in the terms of the defendant's duty to perform or of his culpability for neglect, or of his liability for the result of his action or inaction, as the case may be; and thus upon common law principles the plaintiff in an action of negligence obtains the benefit of the statute if he be one of the class for whose protection it was enacted and the breach of such statute was the efficient cause of the injury of which he complains."

See also *Pesin vs. Jugovich*, 85 L. 256.

But the court further guarding the jury says (p. 118, l. 25)

"Taking these rules, and the general rule which I mentioned at first, it will be for you to say whether or not one or the other of these drivers was negligent in the operation of his or her automobile and whether or not that negligence was the cause of the injury to these boys."

The rule referred to as being first mentioned was at (p. 115) of the charge.

But the court was still cautious about insisting that negligence be shown (p. 122, l. 17),

"Did she do what a reasonably careful and prudent person should have done in operating his automobile upon that street?"

In thus charging the jury, the Judge was following familiar law. See *Paulsen vs. Klinge*, 92 L. 99 at 101

"The negligence of the defendant is to be determined upon all the facts and circumstances of the situation, and, therefore, the conceded violation of the statutory regulation, by a defendant, does not per se warrant

the trial court in directing a verdict for the plaintiff."

Also in *Healey vs. Braested*, 98 L. 520 (Court of Errors and Appeals),

"While a mere infraction of that statute will not alone form the basis of a right of recovery, such violation may be considered by the jury along with other testimony on the question of defendant's negligence."

It was quite proper for the judge to quote the 1926 statute for that showed the jury what the legislature termed reckless, so that the prudent man is put on his guard to act accordingly, and by his breach of the statute, "he is charged with knowledge that if injury ensues, he will have acted at his peril."

The appellant would have this court believe that the Judge's charge left an impression on the jury crudely expressed as follows:

"If you find that the defendant drove in a manner endangering life and limb, and if you find that he actually did injury to life or limb or property, then such driver is reckless."

Adversary's cases on this point clearly show that is what he is aiming at.

In *Mason vs. Erie R. R. Co.*, 75 L. p. 521, quoted by adversary, Justice Garrison said the charge of the lower court was erroneous because,

"The jury was permitted to determine whether reasonable care had been exercised by the plaintiff in error not from the qualities of its conduct in that respect, but solely by the jury's opinion as to the *results of that conduct.*"

The other cases quoted on this point are of precisely the same effect.

The fundamental error that adversary seems to fall into is that he keeps repeating that the Judge instructed the jury that any speed which interferes with the free use of the road by other persons *and does damage*, is as a matter of law, reckless. In such an interpretation, we submit that he does violence to the Judges' charge. The Judge said in effect—the statute fixes certain maximum speeds under certain circumstances; the law makers, however, realize that proper speed depended at the time upon the surrounding circumstances and every circumstance could not be covered by a statute. A speed of fifteen miles might be reckless on a street in a crowded district where children are at play, while forty miles might not be reckless over a straight road through an open country. Certainly, driving *in a manner* which endangers (puts in danger) the life or limb or property due to that speed is and should be termed reckless.

Answer to Adversary Bright's Second Point.

It is submitted however, that this discussion is purely academic, in view of the facts. The jury had listened to evidence of relative distances, had before them carefully prepared surveys marked by the respective witnesses. Fairly accurate testimony appears of the whole situation, and there was not much dispute as to those distances.

The testimony shows that Mrs. Bright was coming North out of Mt. Prospect Avenue. Just as she was about to enter the Southerly curb line of Bloomfield Avenue,—in fact, as she says, five feet before she reached it, she stopped and made her observations. Bloomfield Avenue at this point is 66 feet wide (Case p. 87). She, however, was going

over in a somewhat diagonal manner. Davis saw her before she started across, and when he saw her, he was 200 feet away (p. 101). The distance appears actually 210 feet (p. 87). Mrs. Bright says that Davis was a City block away, but nevertheless, points to about the same spot as Davis said he was. Mrs. Bright therefore had between 71 and 100 feet to go, inasmuch as she was going diagonally. She had to go across the trolley tracks and upgrade, while Davis approached from her right on a very broad and most important through street in Essex County; he was coming *downgrade* at a point 200 feet off. Mrs. Bright says that she could see half a mile and *there were no other cars* (p. 73); so with no other cars either right or left, and a clear vision up and down the Avenue for a half a mile, and knowing from observation that a car was coming down hill on her right, what did she do? Here is what she says she did (bot. p. 75, top p. 76)

“Q. You kept looking to your left as you came out? A. Yes, traffic that would come to my left on the first half of the crossing.

Q. But you saw no traffic coming from your left? A. No, sir.

Q. And the only traffic you saw was the Davis car coming from your right? A. Yes, sir.

Q. And you continued to look to the left instead of to the right, although there were no cars approaching from your left and there was one approaching to your right? A. I looked to the left.

Q. And you continued to look to the left? A. No, sir, I looked to the right and saw the Davis car coming.

Q. You looked to the right and saw this car a block away? A. Yes, sir.

Q. And then you continued to look to the left? A. Yes, sir.

Q. And you then continued to look to the left until you got to a point which was approximately the last car track? A. Yes, sir.

Q. And didn't look to the left until you got to the car track, and you don't know how fast he was going? A. No, sir.”

With these practically undisputed facts as to relative distances and the question of the right of way being made quite a point in the argument on the part of Davis, the court comments on the statute.

Immediately afterward, however, (p. 118, l. 11) the court calls attention to the fact that this is not a hard and fast rule which *per se* connotes negligence and then adds,

“Of course, it is the duty of every driver to make reasonable observation for the approach of other vehicles which are crossing the street which are likely to come in the line of their progress, to look to the right and left, and to listen for the sound of the signal horn and to take care to avoid colliding with it. Taking these rules, and the general rule which I mentioned at first, it will be for you to say whether or not one or the other of these drivers was negligent in the operation of his or her automobile and whether or not that negligence was the cause of the injury to these boys.”

The court's charge was in accord with the leading case in the Court of Errors and Appeals, *Erwin vs. Traud*, 90 L. p. 289 at 290,

“We are unable to adopt this view for two reasons—first, the *evidence was of such a nature* that it was a question of fact whether the two vehicles did reach the crossing at substantially the same time. There was evidence that appellant's car was running

'very fast,' at a 'terrible gait,' and that it struck the auto-bus on the latter's side. From this the jury were justified in finding, if they did so find, that the auto-bus reached the crossing first and was consequently entitled to cross first; second, the fact, (if it was a fact) that appellant's car was entitled to cross before the auto-bus crossed did not absolve appellant's driver from (using the language of Mr. Justice Kalisch, in *Pool vs. Brown*, 89 N. J. L. 314) his 'legal duty to use reasonable care to avoid colliding with other vehicles and persons in the highway.' This is not a case, as was aptly suggested by the learned trial judge in his charge to the jury, where the driver looked and saw the approaching auto-bus in a position and going at a rate of speed which justified him in thinking that it would, as in duty bound, yield the right of way to him. It was a case where the driver, as the jury from the evidence may have found, did not look to his left at all. This, we think, as a reasonably careful man he should have done where, as here, there was full unobstructed opportunity for him to have done so."

Assuming, as the defendant Bright says, that she was far enough across to have the right of way, nevertheless, as was said in *Earle vs. Consolidated Traction Co.*, 64 L. 573,

"While the first to reach the crossing had the right of way, yet where it appeared that the other was not yielding this right, he could not recklessly proceed, but was bound to stop and turn aside."

See also *Rabinowitz vs. Hawthorne*, 89 L. 308. It will be noted that the cases cited in adversary's brief are practically all trolley or railroad cases.

Justice Parker held in the case of *Reed vs. Pub-*

lic Service Railway Co., 89 L. p. 431 that this particular paragraph of the traffic act does not apply to trolleys and the like. Certainly, the statute has added something to the common law.

Halpin vs. Tillou, 126 Atl. 665, seems to go much further. At (p. 666) speaking in reference to this statute, it says,

"The two automobiles met at the intersection of two streets in the city of Newark, as has already been stated. The plaintiff Halpin, Jr. was approaching the intersection from the right of the defendant's car. Under the provisions of the Road Law (Laws 1915 c. 156 4), therefore, he had the right of way over the defendant Tillou, Jr., and the fact that in exercising it he would not only put himself in jeopardy, but would also have endangered the safety of the person who unlawfully refused to recognize that right, did not operate to destroy it."

In the case of *Ash vs. Blanchard*, 126 Atl. 428,

"At the intersection of the two streets Blanchard, under the Motor Vehicle Law, had the right of way, providing he was traveling at a lawful speed, and was entitled to assert that right, unless by doing so he placed others in jeopardy. There is no reason why Ash should not have observed the Blanchard car as it approached the intersection, if he had used due care in making observation, and have avoided a collision, if he had his car under proper control. Moreover, even if it be true, as he asserts, that the Blanchard car was traveling at a speed in excess of that which the law permits, that fact did not justify him in attempting to cross the intersecting street without first making proper observation."

This somewhat controverts the theory advanced

in adversary's brief that Mrs. Bright could cross ahead, assuming that Davis would obey the law. To the same effect are *Zanzonico vs. Yellow Cab Co.*, 133 Atl. 84 and *Gabbia vs. Sproviero*, 130 Atl. 607 (Court of Errors and Appeals).

When all of the Judge's charge is read in connection with what was said about the right of way, and with a concrete proposition before them, it is certain that the charge was perfectly clear.

It is respectfully submitted that the judgment in the Court below, so far as the defendant Bright is concerned, should be affirmed.

CHARLES JONES,
Attorney of Appellees.

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New Jersey Court of Errors and Appeals

ALEXANDER P. KEMP and LEWIS
BROOKE KEMP, by their next
friend, LEWIS R. KEMP, and
LEWIS R. KEMP, individually,
Plaintiffs-Respondents,

vs.

HELEN BRIGHT and LOUIS DAVIS,
Defendants-Appellants.

Action at Law

On Appeal
from Su-
preme Court.

BRIEF IN BEHALF OF THE APPELLANT LOUIS DAVIS.

(1)

Statement of the Case.

This appeal brings before this Court for review judgments aggregating almost \$8,000 (p. 17), in favor of the plaintiffs and against both defendants in an action wherein the plaintiffs sought to recover damages for personal injuries suffered by Alexander P. and Lewis Brooke Kemp, two minors, as the result of having been struck by the automobile of the defendant, Davis, on September 14, 1926, in Verona, New Jersey. The other plaintiff, Lewis R. Kemp, is the father of the boys and he sued to recover damages for the loss of services of his boys and the out-of-pocket expenses incident to the recovery of the boys from the effects of the accident.

Before the automobile of the defendant Davis collided with the boys it was run into by an automobile operated and owned by the defendant Helen

Bright. Then the Davis car proceeded over to where the boys were standing or playing and they were injured as the result of the collision with them.

The case was submitted to the jury as against both defendants, and the jury brought in verdicts as against both defendants. It is from the judgment entered on the verdicts in favor of the plaintiff that the present appeal is taken by this defendant Louis Davis (p. 5).

The grounds of appeal are two in number and both deal with errors in the charge of the Trial Judge (pp. 6, 7, and 8).

(2)

Grounds of Appeal.

The appellant relies on the following grounds of appeal:

1. The Trial Judge erroneously charged the jury as follows:

“Defendant Helen Bright in crossing this intersection was bound under the law to pass to the right of the beacon light, if she was intending to proceed northerly on Pompton Avenue and the defendant Davis had the right to assume that Helen Bright would observe the rule of passing to the right of this beacon light.’ You mean that there is a statute requiring her to do that?

Mr. Kane: That is the traffic rules.

The Court: Is there any statute to that effect? I don’t know whether they were to go to the left or right hand of the beacon light or whether they should go straight ahead. I will say, however, that the statute requires drivers of vehicles to keep on the right side of the road. That is the most I can say with reference to that request.”

2. The Trial Judge erroneously charged the jury as follows:

“When examining the testimony taken in the Police Recorder’s Court, you are to disregard any decision or disposition of the case as made by the Recorder, and determine the liability in this case at bar solely upon the evidence presented by the various witnesses who have testified in this court.’ That I decline to charge you because the record has gone in without reservation and there may be some testimony in there which has not been read which reflects upon the testimony given in this court. If that be true, you have a right to consider that, so I cannot say that you must disregard that testimony and consider only the testimony given in this court by the witnesses.”

3. The Trial Judge erred in refusing to charge defendant’s request No. 3:

“Defendant Helen Bright in crossing this intersection was bound under the law to pass to the right of the beacon light, if she was intending to proceed northerly on Pompton Avenue, and the defendant Davis had the right to assume that Helen Bright would observe the rule of passing to the right of this beacon light.”

4. The Trial Judge erred in refusing to charge defendant’s request No. 5:

“When examining the testimony taken in the Police Recorder’s Court, you are to disregard any decision or disposition of the case as made by the Recorder, and determine the liability in this case at bar solely upon the evidence presented by the various witnesses who have testified in this court.”

(3)

Brief of the Argument.**1 A.**

The Trial Judge erred when he refused to instruct the jury that the defendant Bright was bound under the law in crossing the intersection to pass to the right of the beacon light if she intended to proceed northerly on Pompton Avenue.

The instruction complained of, quoted verbatim from the charge, is as follows (p. 127, line 17 to line 34) :

“3. Defendant Helen Bright in crossing this intersection was bound under the law to pass to the right of the beacon light, if she was intending to proceed northerly on Pompton Avenue and the defendant Davis had the right to assume that Helen Bright would observe the rule of passing to the right of this beacon light.’ You mean that there is a statute requiring her to do that?

Mr. Kane: That is the traffic rules.

The Court: Is there any statute to that effect, I don’t know whether they were to go to the left or right-hand of the beacon light or whether they should go straight ahead. I will say, however, that the statute requires drivers of vehicles to keep on the right side of the road. That is the most I can say with reference to that request.”

With reference to the question of the lawfulness of the existence and erection of the beacon light in question, it is patent that the Town of Verona was properly authorized to erect, maintain and operate this beacon light. And in this respect we refer to Chapter 92, P. L. 1923, p. 178, which is entitled as follows:

“A Supplement to an act entitled ‘An Act concerning municipalities’ approved March twenty-seventh, nineteen hundred and seventeen”.

“1. The governing body of every municipality shall have the power to establish safety zones, to erect, construct and maintain platforms, commonly called ‘safety isles’; to erect, construct, maintain and operate standards, commonly called ‘silent policeman’, beacon lights, guide posts or other structures, which in judgment may be necessary for the safety and convenience of persons and vehicles using the streets in said municipality”.

Now let us consider the refusal of the Court to charge that it was the duty of the defendant Bright to pass to the right of the beacon light.

The State Traffic Act, Chapter 156 P. L. of 1915, and amendments thereto, in part two section two, is as follows:

“A vehicle shall keep to the right, and when the improved portion of a road is of sufficient width, the vehicle shall keep to the right of the center of such road, except when passing a vehicle ahead.”

There was a duty therefore, upon the defendant Bright to keep to the right of the center of the said road, namely Pompton Avenue, and also the center of the intersection of Bloomfield Avenue and Pompton Avenue. Moreover, the duty was most patent for there is testimony in this case to the effect by the defendant Bright, that the beacon light was located in the center of Pompton Avenue, (see Testimony, p. 69, line 40); and that there was a printed sign on the beacon light warning drivers of vehicles to “Keep to the Right”, and also a further warning in the nature of a black line on the street coming out of Pompton Avenue toward Bloomfield

Avenue. (See Testimony of Bright, p. 74, lines 9 to 19).

“Q. Are there any markers on the street indicating the course of an automobile coming out of Pompton Avenue?

A. It is divided with a black line here; this is a beacon light right here.

Q. Were there any marks here on the corner which should indicate slightly to your right before you make the turn?

A. No, there are no markers there.

Q. Just a beacon light and a sign ‘Keep to the right’?

A. Yes, sir.”

Moreover, the improved portion of the road was about sixty-two feet in width, so that the defendant Bright had about a thirty-one foot width upon which to enter Pompton Avenue. (See Testimony, p. 87, line 23).

The duty of the defendant Bright to pass to the right of the beacon light is further evident after a consideration of the following. The State Traffic Act, Chapter 156, of the Laws of 1915 and amendments thereto is as follows:

“Section 4. (1)

Excepting as herein otherwise provided, every driver of a vehicle when entering or crossing any public road, street, highway or turnpike, shall grant the right of way at all times to any vehicle approaching from his right.”

And Part 2, Section 3 of the aforementioned act is as follows:

“A vehicle meeting another shall pass to the right”.

While the Motor Vehicle Act of New Jersey, Chapter 208, P. L. 1921, p. 667 and amendments

thereto, and in particular Section 15 (1) provides as follows:

“Drivers of motor vehicles, whether a burthen or pleasure using any of the turnpikes or public roads in this State, when met by another motor vehicle or by a carriage, sleigh, or sled, shall keep to the right, and when overtaken by another motor vehicle, carriage, sleigh, or sled, they shall likewise keep to the right, so as and when overtaken by another motor vehicle, carriage, sleigh, or sled, either met or overtaken to pass uninterrupted.”

In the case at bar the evidence was very clear that the defendant Davis both in law, and in fact, had the right to the right of way. In law, because he was to the right of the defendant's right at the intersection, as provided for in the acts aforesaid. In fact, because there was testimony given by the witness Kemp to the position of the Davis car at the time of the accident as follows: (Page 37, line 27).

“Q. Was it (the Davis car) further from the Buick car than when you first saw it?

A. It was about six feet past the beacon light.

Q. About six feet from it, hadn't reached it yet?

A. It was beyond it.

Q. Six feet from the beacon light?

A. Yes, sir.

Q. When the Buick jumped forward?

A. Yes, sir.”

From this testimony it is evident that the Davis car was six feet to the left of, or in other words beyond the beacon light when struck by the Bright car which suddenly darted forward with a sudden increase of speed when not under proper control.

Moreover, from the testimony in the case, the defendant Bright even before entering Bloomfield Avenue, and while still upon Prospect Avenue was violating the law and negligent in that, at that time she did not keep to the right of the said street but was about some four feet to the left of the black line in the center of that street. (See Testimony of Kemp, p. 29, l. 39 and p. 30, l. 2, etc).

Moreover, defendant Bright was again negligent in that according to her own testimony she failed to continue observing the traffic on her right, (see p. 66); and continued negligently across Bloomfield Avenue on a line to the left instead of to the right as required by law, and when at a point about six feet to the left of the beacon light, the Bright car changed its speed and darted forward into the Davis car. (p. 33, l. 3).

This testimony shows clearly the failure of the defendant Bright to keep to the right of the streets she drove upon, and her failure to pass to the right of the beacon light was the proximate cause of this accident. And in this connection we refer to the case of Hammill vs. Penn. R. R., 56 N. J. Law 370.

“Whoever does a wrongful act is answerable for all the consequences that may ensue in the ordinary and natural course of events, though such consequences be immediately and directly brought about by intervening causes, if such intervening causes were set in motion by the original wrongdoer”.

See also the cases of Jutesen vs. Penn. R. R., 106 Atlantic Rep. p. 137, and Kelson vs. Public Service, 110 Atlantic, 919.

Finally the defendant Davis was not under any obligation to anticipate that the driver of the Bright car would not obey the law by passing to

the right of the beacon light. This was the principle of law enunciated in the case of Jackson vs. Geiger, 100 N. J. L., p. 330, wherein the Court of last resort held, that one who is riding upon a portion of the highway where he was lawfully entitled to be, and in a position which was not one of obvious danger, but made so solely by the action of the driver of another vehicle “Is under no legal duty to anticipate that the driver (of the other vehicle) will not obey the law.”

We, therefore, submit that the trial judge erred in refusing to instruct the jury that the defendant Bright was bound under the law to pass to the right of the beacon light, if she was intending to proceed northerly on Pompton Avenue; and that the defendant Davis had the right to assume that the Bright car would observe the rule of passing to the right of this beacon light.

Exception was duly noted to that part of the Trial Judge's charge, p. 129, lines 38 to 40, and that exception is reserved in the first ground of appeal, p. 6.

1 B.

The Trial Judge erred when he charged the jury “I don't know whether they were to go to the left or right hand of the beacon light, or whether they should go straight ahead.” The instruction complained, quoted verbatim from the charge, is as follows: (p. 127, l. 17 to l. 34)

“3. Defendant Helen Bright in crossing this intersection was bound under the law to pass to the right of the beacon light, if she was intending to proceed northerly on Pompton Avenue and the defendant Davis had the right to assume that Helen Bright would observe the rule of passing to the right of this beacon light.’ You mean that

there is a statute requiring her to do that?

Mr. Kane: That is the traffic rules.

The Court: Is there any statute to that effect? I don't know whether they were to go to the left or right-hand of the beacon light or whether they should go straight ahead. I will say, however, that the statute requires drivers of vehicles to keep on the right side of the road. That is the most I can say with reference to that request."

We now refer particularly to the following portion of the instruction which is as follows:

"I don't know whether they were to go to the left or right-hand of the beacon light or whether they should go straight ahead".

This was a very patent error for as a matter of fact the testimony of the defendant Bright on page 74, line 3, is as follows:

"Q. Were you going on Pompton Avenue or were you going west on to Verona?

A. No, sir, on Pompton Avenue."

This instruction was fatal as a matter of law for the jury were led to infer that there was no statute requiring her to pass to the right of the beacon light, which is untrue. In support of this contention, we refer to the sections of the State Traffic Act and the Motor Vehicle Act as above set forth in Point IA of the argument.

And the mere statement "I will say, however, that the statute requires drivers of vehicles to keep on the right side of the road. That is the most I can say with reference to that request" it not sufficient in point of law to cure the injury committed when coupled with the denial of the existence of the statute, requiring her to pass to the right of the beacon, together with the misstatement as to

the direction of the defendant Bright, who intended to pass the beacon as shown by her own testimony, and as cited above in Point IA of the Argument. Moreover, the jurors were not instructed that they were the sole judges of the facts in the case.

Exception was duly noted to that part of the Trial Judge's charge, page 129, lines 38-40, and that exception is reserved in the first ground of Appeal, pp. 6 and 7.

II.

The Trial Judge erred when he refused to charge the jury that they were to disregard any decision or disposition of the case as made by the Recorder, and determine the liability of the case solely upon the evidence presented by the witnesses who testified in this Court.

The charge which the Trial Judge refused to charge, quoted verbatim from the charge, is as follows, pp. 127, l. 37 to l. 15 on p. 128.

"5. When examining the testimony taken in the Police Recorder's court, you are to disregard any decision or disposition of the case as made by the Recorder, and determine the liability in this case at bar solely upon the evidence presented by the various witnesses who have testified in this Court. That I decline to charge you because the record has gone in without reservation and there may be some testimony in there which has not been read which reflects upon the testimony given in this Court. If that be true, you have a right to consider that so I cannot say that you must disregard that testimony and consider only the testimony given in this Court by the witnesses."

The refusal of the Trial Judge to disregard any decision or disposition as made by the Recorder, and determine the liability of the case upon the evidence presented by the witnesses in this Court, was harmful because of the fact that the decision of the Recorder of the Town of Verona showed that the defendant Davis was convicted and fined for reckless driving. This decision should not have been admitted as evidence in the civil action for the recovery of damages. Moreover, the Trial Judge should have warned the jurors, that while they might consider the testimony in the record, they should not consider the verdict or decision because it had no bearing upon the matter at issue. And if the decision of the Recorder was an improper one, and the jurors were influenced by it, serious injury was, therefore, sustained by the defendant Davis.

Furthermore, the tests employed in arriving at a decision in considering the evidence of a case of this nature, are different in a Criminal Court, than in a Civil Court. In the former, the decision is based upon testimony indicating the defendant's guilt beyond a reasonable doubt. In the latter, the decision is based upon the testimony indicating the defendant's liability by a fair preponderance of the evidence.

Moreover, the decision of the Recorder's Court convicting the defendant Davis of reckless driving is based upon the definition of reckless driving as set forth in the Motor Vehicle Act, paragraph 16, as amended by Chapter 275 of Laws of 1926, p. 458, and is as follows:

"16. The following rates of speed may be maintained, but shall not be exceeded, upon any public street, public road or turnpike, public park or parkway, public driveway or public highway in this State by any one

driving a motor vehicle: provided, however, that reckless driving is hereby prohibited, and for the purposes of this act and the act to which this act is an amendment, reckless driving is hereby defined to be: the driving of a motor vehicle or motorcycle in any manner which unnecessarily interferes with the free and proper use of any highway, street, road, turnpike, park or parkway, or driveway, or in any manner which endangers the life or limb or the property of any person."

It is evident, that this definition does not in the slightest degree assist in arriving at a conclusion whether or not the operation of a motor vehicle is such as to justify the recovery of damages in a civil suit based on negligence. On the other hand, the definition sets forth that it is confined solely to the purposes of the act alone. This is so because the definition in the Motor Vehicle Act of reckless driving consists in whether or not the life, limb, or property of a person is endangered or whether the operation of a motor vehicle interferes with the free use of the highway by another. It is patent that these tests are not proper in a civil suit instituted for damages, for if they were, the mere fact that a person suffered injuries would, in effect, be prima facie evidence of negligence. This means that a person's conduct would be judged by the result of what he did, namely, caused injury to another person or damages to another's property, and not by the correct test, namely, whether or not he used reasonable care. Such a test should not be applied in an action for violation of the Motor Vehicle Act, for it is unreasonable and unfair to judge a man's conduct by the result of, rather than by what he did. In this connection, see the case of *Foley vs. Brunswick Traction Company*, 66 N. J. L. 679. In this case, a passenger alighting from a street car, at a temporary terminus, select-

ed by the defendant, stepped upon a stone in the highway, and sustained injuries for which she brought suit. The jury was instructed that the plaintiff could recover damages if the place selected by the defendant for her to leave its car was not a safe one for that purpose. It was held by the Court, 37 Vroom, on p. 637:

"This instruction was, we think, erroneous. Its error lay in this, viz., that it gauged the liability of the defendant not by the quality of its conduct, but by the results of that conduct, thereby covering indiscriminately, injuries resulting to the plaintiff from causes preventable by the exercise of due care on the part of the defendant, and injuries that might have happened notwithstanding the exercise by the defendant of the degree of care legally imposed upon it as a carrier of passengers."

* * * The gravamen of the plaintiff's action was the failure of defendant to use reasonable care for her safety as a passenger, hence the correct instruction would have been that the defendant was liable for the plaintiff's injuries, if it failed to take reasonable precautions to see that the place provided by it for her discharge was a safe one for that purpose. * * * It was the defendant's right to have that question submitted to the jury. The question that was submitted to the jury did not give the defendant its right in this respect, for while the occurrence of the accident demonstrated the unsafe character of the place at which the plaintiff was invited to alight, it could not lawfully be permitted to establish also the negligence of the defendant, which, upon this writ of error, was the effect given to it by the verdict. Upon the authority, therefore, of the case cited, and of the reasoning on which it rests, the charge in this respect indicated was reversible error."

See also the cases of Dotson v. Erie R. R. Co., 68 N. J. L. 679; Mason v. Erie R. R. Co., 75 N. J. L. 521; Olsofrom v. North Jersey St. Ry. Co., 81 N. J. L. 321, all of which are in point.

Finally, the refusal of the Trial Judge to instruct the jury to disregard the decision of the Recorder of the Town of Verona, was improper because, the penalty provided by the statute considered by the Recorder at his hearing is merely penal in nature, and does not create a right of action against the convicted party for personal injuries, sustained by an injured party, and cannot assist in determining the negligence of a person in a civil suit for damages.

In this connection, we refer to the principle of law enunciated in the case of *Fielders vs. North Jersey Street Ry. Company*, 68 N. J. L. p. 352.

"Where the provisions of an ordinance are intended not for the benefit or protection of individuals, comprising the public, but for the benefit of the municipality, as an organized government, and more particularly if they impose upon property owners, the performance of a part of the duty of the municipality to the public, a legislative intent is indicated that a breach of such ordinance shall be remediable only at the instance of the municipal government or by enforcement of the penalty prescribed therein; and that there shall be no right of action to an individual citizen, especially injured in consequence of such breach. The most conspicuous cases of this sort are those that deny liability to private suit for violation of the duty imposed by ordinance upon abutting property owners to maintain sidewalk pavements, or to remove ice and snow from the walk."

See also the cases of *Rupp vs. Burgess*, 56 Atlantic Rep. 166, *Rose vs. Slough*, 92 L. 233.

In the civil law, the operation of a motor vehicle is not regarded as reckless unless it appears first, that the driver was negligent, in that he failed to exercise reasonable care; that said failure was the proximate cause of the accident; and that the injured party was not guilty of contributory negligence.

III.

For these reasons, we respectfully submit that the judgment below should be reversed as against the defendant Louis Davis and a venire de novo ordered as to him.

Respectfully submitted,

JOHN A. MATTHEWS,
Attorney for and of Counsel
with Louis Davis.