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Complaint.

COMPLAINT.

Essex County Court of Common Pleas

<p>NICHOLAS CARAMBAS,</p> <p style="text-align: right;"><i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>ARMIN BERGIDA,</p> <p style="text-align: right;"><i>Defendant.</i></p>	}	<i>Complaint.</i>	10
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Plaintiff, residing in the City of Newark, County of Essex and State of New Jersey, complaining of the defendant, says that:

FIRST COUNT. 20

1. On or about July 28, 1924, plaintiff was the owner and operator of a certain automobile.

2. On said date, the defendant was the owner and operator of a certain automobile.

3. On said date, while the plaintiff's automobile was on Bloomfield avenue, a public street or highway in the City of Newark, County of Essex and State of New Jersey, and standing still, the automobile of the said defendant was, by the defendant, his servants or agents, so carelessly, negligently and improperly driven out of North Sixth street, another public street or highway in the said City of Newark, County and State aforesaid, and into Bloomfield avenue, so as to collide with the automobile in which the plaintiff was, whereby the plaintiff's automobile was damaged and the plaintiff received severe injuries. 30

Complaint.

4. Whereby and by means of the premises, the said plaintiff became and was sick, sore, lame and disordered and so remained and continued for a long space of time, to wit, from thence hitherto, and suffered and underwent and in the future will suffer and undergo great physical pain, nervous shock and mental anguish, and lost and was deprived of and in the future will lose and be deprived of divers great gains, profits and advantages which he might and otherwise would have acquired, and was hindered and prevented and in the future will be hindered and prevented from transacting and attending to his necessary and lawful affairs by him during all that time to be performed and transacted, and was forced and in the future will be forced and obliged to lay out and expend divers large sums of money endeavoring to be cured and relieved of his wounds, bruises and injuries received as aforesaid.

Plaintiff demands of the defendant, as damages, the sum of seventy-five thousand (\$75,000) dollars.

SECOND COUNT.

1. Plaintiff repeats paragraphs 1, 2 and 3 of the first count and makes them a part of this count.

2. By means whereof, the said plaintiff's automobile was greatly damaged and the said plaintiff was obliged to expend large sums of money in and about repairing said automobile, and lost and was deprived of the use of the said automobile and in the future will lose and be deprived of the said automobile for a long space

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Complaint.

of time, and said automobile was greatly reduced in damage.

Plaintiff demands for damages to his said automobile the sum of fifteen hundred (\$1500) dollars.

KALISCH & KALISCH, 10
Attorneys of Plaintiff.

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30

40

Answer.

ANSWER.

ESSEX COUNTY COURT OF COMMON PLEAS.

10	NICHOLAS CARAMBAS, <div style="text-align: center;"><i>vs.</i></div> ARMIN BERGIDA,	}	Plaintiff, <i>Action at Law.</i> Defendant. <i>Answer.</i>
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The answer of Armin Bergida, the defendant above named, residing in the City of Newark, County of Essex and State of New Jersey, to the complaint heretofore filed against him in the above-entitled action says that:

FIRST DEFENSE TO FIRST COUNT.

He has no knowledge of the allegation contained in paragraph 1 and leaves the plaintiff to make proof thereof.

He denies paragraph 2 as alleged. He admits that on or about July 28, 1924, he was the owner of an automobile and denies the other allegations contained therein.

He denies paragraphs 3 and 4.

SECOND DEFENSE TO FIRST COUNT.

He denies that he was guilty of the negligence charged against him in the said complaint.

THIRD DEFENSE TO FIRST COUNT.

He denies that he was guilty of any negligence whatsoever.

Answer.

FOURTH DEFENSE TO FIRST COUNT.

The plaintiff was guilty of contributory negligence in that at the time and place in question he was operating his automobile in an easterly direction on Bloomfield avenue, in a careless and reckless manner, without any regard to the presence of this defendant's automobile then and there being operated in a lawful manner north on 6th street, without giving any notice of its approach, without yielding the right of way to the said defendant's automobile, and otherwise carelessly, as the result of which the said plaintiff's automobile collided with the said defendant's automobile, and the said plaintiff sustained the injuries complained of in the first count.

FIRST DEFENSE TO SECOND COUNT. 20

He repeats his answers to paragraphs 1, 2 and 3 of the first count in answer to paragraph 1 of this count.

SECOND AND THIRD DEFENSES TO SECOND COUNT.

He denies paragraph 2 and repeats the second and third defenses to the first count and makes them the second and third defenses to this count.

FOURTH DEFENSE TO SECOND COUNT.

The plaintiff Nicholas Carambas was guilty of contributory negligence in that at the time and place in question he was operating his automobile in an easterly direction on Bloomfield avenue, in a careless and reckless manner, without any regard to the presence of this defendant's automobile then and there being operated in a lawful manner north on 6th street, without

Reply.

giving any notice of its approach, without yielding the right of way to the said defendant's automobile and otherwise carelessly, as the result of which the said plaintiff's automobile collided with the said defendant's automobile and sustained the damages complained of in the second count.

10

McCARTER & ENGLISH,
Attorneys of Defendant.

REPLY.

ESSEX COUNTY COURT OF COMMON PLEAS.

20

NICHOLAS CARAMBAS, vs. ARMIN BERGIDA,	}	<i>Plaintiff,</i> <i>vs.</i> <i>Defendant.</i>	<i>Reply.</i>
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Plaintiff replying to the answer filed by the defendant in the above-entitled cause says that:

1. He denies all the new matter set forth in the answer filed by the defendant.

KALISCH & KALISCH,
Attorneys of Plaintiff.

Judgment.

JUDGMENT.

ESSEX COUNTY COMMON PLEAS COURT.

NICHOLAS CARAMBAS, vs. ARMIN BERGIDO amend to, and A. BERGIDO, INC., a corporation, Defendant.	}	<i>Action at Law.</i> <i>On Verdict by Jury.</i> <i>Judgment for Defendants.</i> <i>Costs, \$66.49.</i>	10
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McCarter & English, att'ys of defendants.

This action was tried before Judge Newton H. Porter with a jury at the Essex County Common Pleas Court on February 25, 1926.

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

They found in favor of the defendants, Armin Bergido amend to, and A. Bergido, Inc., a corporation, against the plaintiff, Nicholas Carambas.

WHEREUPON, it is adjudged that the complaint of the plaintiff be dismissed and the defendant recover of the plaintiff costs which are taxed at the sum of Sixty-six Dollars and forty-nine (\$66.49) cents.

Judgment entered and signed February 25, 1926.

ESSEX COUNTY COURT OF COMMON PLEAS.

Tuesday, February 23, 1926.

10 NICHOLAS CARAMBAS,

vs.

ARMIN BERGIDA, INC.

Action at Law.

Before Hon. Newton H. Porter, Judge.

For the plaintiff appear Kalisch & Kalisch (by Harry Kalisch).

20 For the defendant appear McCarter & English (by Augustus C. Studer, Jr.).

30 (During examination of talesmen Mr. Kalisch asked the first talesman whether he was a stockholder in any casualty insurance company; Mr. Studer objected. The Court sustained the objection and Mr. Kalisch was granted an exception. Mr. Kalisch again asked, "Do you know Mr. Studer?" Mr. Studer objected, quoting from 127 Atl. 667, Chief Justice Gummere, on the ground that it has been held improper by the Supreme Court. After argument the objection was sustained and Mr. Kalisch was granted an exception.)

(A jury is called and sworn.)

The Court: I understood from the questions you asked that the defendant was a corporation.

40 Mr. Studer: Yes, sir. I have so advised Mr. Kalisch.

Nicholas Carambas, direct.

Mr. Kalisch: We have agreed upon the ownership and operation of the truck which we claim caused this accident as being in the defendants.

Mr. Studer: That is true.

The Court: The papers will be amended to read, "A. Bergida, Inc., a corporation."

Mr. Studer: Yes, sir. 10

Mr. Kalisch opens for the plaintiff.

Mr. Studer opens for the defendant.

Mr. Studer: I have a map which we might put up if Mr. Kalisch is satisfied. It is drawn to scale.

Mr. Kalisch: It is satisfactory to me.

NICHOLAS CARAMBAS, the plaintiff, sworn in his own behalf. 20

Direct examination by Mr. Kalisch.

Q Mr. Carambas, where do you live? A I used to live 304 Plane street, but I move to New York City for treatment and I live in New York City, 444 West 56th street.

Q Where did you live on July 28, 1924? A Before the accident?

Q Yes. A I used to live in Boonton, 707 was my store and 717 my home, Main street. 30

Q What business were you in? A Market business.

Q Just tell us what that required you to do. What did you do in conducting that business? A I buy down the market and I went to Boonton to sell that in my store.

Q Did you go down to the market yourself? A Every night except Saturday night, because Sunday closed. 40

Nicholas Carambas, direct.

Q What kind of a car did you drive? A Dodge three-quarter-ton delivery car.

Q You are a married man? A Yes, sir.

Q How long had you been in this business? A Two months and nine days.

10 Q And before that time, what business were you in? A I was in the Horn & Hardart Automat Company.

Q What work did you do there?

Objected to as too remote.

The Court: What is the purpose of it?

Mr. Kalisch: To show the man's earning capacity.

The Court: Ask him that.

Objection withdrawn.

20 Q Were you working for wages? A I was working for wages. I was down the commissary office.

Q I mean in the Automat Company. A I was working by wages.

Q What were your wages per week? A I was work by month.

Q What were your wages per month? A \$245.

30 Q How long did you work there? A I worked two years.

Q You did not get that when you first started there? A \$200.

Q And then they increased it until you got \$245? A And two per cent., vacation every summer with my expenses and wages.

Q This two per cent. was a sort of bonus at the end of the year? A At the end of every year; yes, sir.

40 Q What did that amount to? A About \$75.

Nicholas Carambas, direct.

Q At the end of the year? A And the second year, three and a half per cent.

Q How much did that amount to? A The second year—I wasn't a correct two years, twenty-four months; I was only about twenty-two months.

Q You say you went into this produce business in Boonton two months before the accident? A Two months and nine days.

Q What were your average earnings in that business after your expense was taken out; your net average earnings per week? A I used to clear \$150.

Q That is during the two months you were there? A Yes, sir.

By the Court.

Q \$150 a month? A A week.

By Mr. Kalisch.

Q You say you left Boonton on the night of July 28, 1924, to come to Newark? A Yes, sir.

Q Who was with you in the delivery wagon or the truck? A There was two young fellows. I took them from Boonton; they couldn't get a bus to come down to Newark and they please 30 asked me to take them down, and I took them down. They sit in the front.

Q Who drove the car? A I drove the car.

Q You had been driving a car how long? A At that time it was a couple of weeks that I took the license, but I drove the truck in the army and a transport truck.

Q You drove a truck in the army? A In 1915 I drove a truck and in 1912 in the World War and the Balkan War.

Nicholas Carambas, direct.

Q Tell us what happened when you got down in the vicinity of 6th street and Bloomfield avenue. A I came down to Bloomfield avenue and go down straight to Center Market, and before I reached the corner—

10 Q What corner? A Sixth street and Bloomfield avenue. I hear big noise—twenty-five feet, something like that; I blow my horn. I make very slow the gas; about ten feet I see the noise yet and I stop. That time I stop big truck hits me. I couldn't see the truck. He hits me left side.

Q What side of Bloomfield avenue were you on? A On the right-hand side.

20 Q Your right-hand side going down? A Between the street car tracks and the curb, but near the curb.

Q After this car ran into you on the left side, what did you do? A Hits me; he makes my car all smashed.

Mr. Studer: I move to strike that out.

The Court: I will let it stand. He ought to know. He was there.

30 Q And then what happened to you? A Well, that wheel where I travel squeeze me between the seat and the wheel; I was all squeezed. I was, all my body, ribs, here (indicating), my leg, my head hurt—

Q When you got down to North 6th street, did you hear and signal of any kind? Any horn blown? A Not nothing.

40 Q Did you notice whether or not there were any lights on the truck that struck you? A I couldn't see it, only the time it hits me.

Nicholas Carambas, direct.

Q Did you have your lights burning? A Yes, sir.

Q How did you get off your car? A They took me off; the fellows—somebody else help me to; I don't know who.

10 Q What became of you then when they took you off the truck? A I saw a colored fellow coming near me; I couldn't do anything because bleeding my head; I was all bleeding my arm, my head; I couldn't talk. I hollered, "Take me to the hospital." I saw the colored fellow he come near me and I ask—

Objected to.

Objection sustained.

20 Q What did you do? A I tried to speak with him, but I couldn't; I was too much bleeding. I got dizzy; I couldn't do anything; I couldn't take numbers, nothing. I don't know who took my license.

Q What happened? A They took me, the officers, the police; they took me in the ambulance.

Q Where were you taken? A To the City Hospital.

30 Q Do you remember what doctor saw you when you got to the City Hospital? A I don't remember.

Q Do you remember how long you were in the City Hospital? A Over ten days, something like that.

Q Over ten days? A Something like that.

40 Q Where did you go from the Newark City Hospital? A I wasn't satisfied and I tried to go out and the doctor forbid me to go. I told them I wanted to go—

Nicholas Carambas, direct.

Objected to.

Objection sustained.

The Witness: She make me sign to go.

Q Then where did you go? A Before I left the hospital I told the doctor—

10 Q Just what you did. A Dr. Jesserun, after I left the hospital, on High street.

Q He examined you? A Yes, sir.

Q Did he treat you at all or did he prescribe anything for you? A Yes, sir, he examined me.

Q Did he treat you? Did he give you medicine or didn't he give you medicine? A He saw my body and I went to the hospital again.

20 Q What hospital? A The City Hospital; and they changed my bandages.

Q Did you say New York or Newark? A Here, City Hospital, Newark.

Q You went back? A Yes, three times.

Q How long did you stay? A Just to change my bandages.

Q How long did you do that? A For three times. I went once a week down the extra room.

30 Q When did you first notice anything the trouble with your eyes? A The last day I was ready to go out from the City Hospital I complained about my eyes to the doctor.

Q That was the last time you were in the City Hospital? A The last Monday they took me out of bed and put me in the chair to sit down.

Q Before that time had you had any difficulty with your eyes? A Nothing at all.

40 Q Did you ever have any trouble? A Nothing at all. I used to do write work—no glasses or nothing.

Nicholas Carambas, direct.

Q Were you in the army? A Commissary.

Q Which army? A In the Horn and Hardart Automat Company.

Q You were in the Greek army, weren't you? A Yes, sir, five times.

Q When? A 1900—two years.

10 Q In the war? A No, not the war. Every Greek have to go two years; and in 1904, 1908, 1912 in the war.

Q What war? A Balkan war. I was in America and I went from America, I went in 1915. I been back again in America and I went again in the war, in the European war on the side of the allies.

Q During all that time did you have any difficulty with your eyes? A Nothing.

20 Q You say that the last day you were in the hospital, the Newark City Hospital, you had trouble with your eyesight? A Yes, sir.

Q At the present time can you see at all? A Now?

Q Now. A Nothing at all.

Q How long after you first noticed trouble with your eyes in the hospital did you become totally blind? A Every day more worse.

30 Q How long after you first noticed it did you become totally blind? Do you understand what I mean? A Yes. After I came out of New York Hospital after an operation.

Q How long after you first noticed trouble with your eyes? A I think five months, something like that.

Q Then you became totally blind? A Yes, real blind.

40 Q After you stopped going to the Newark City Hospital did you go anywhere else for treatment? A For my eyes, or for examination?

Nicholas Carambas, direct.

Q For examination. A Dr. Niekas, 34th street, next to the Manhattan Opera House, he examined me several times.

Q Do you know for what? A Several times I went to him.

10 Q Did you have any trouble about anything else? A Only this, the last day I was to come out of the City Hospital I see like a nut here (indicating) and I showed it to the doctor and he said it is nothing—

Objected to.

Objection sustained and answer stricken out.

20 Q You showed a swelling to the doctor. A Yes, sir. Small nut.

Q Did it bother you at all? A He said, "That is nothing"—

Q I don't want to know that. Did it affect you? A Oh, yes; every day it becomes bigger and became like big grapefruit in my belly.

Q Then you went to a doctor in New York? A Yes, he told me to go to a doctor in New York.

30 Objected to.

Objection sustained, and answer stricken out.

Q You saw this doctor in New York and what did you do as a result of seeing him? A He sent me in the hospital in New York for an operation.

Q What hospital? A In New York City.

40 Q Whereabouts? A 16th street between Fifth and Sixth avenues.

Nicholas Carambas, direct.

Q Where was the operation? What part of your body was operated on? A The right side, for a rupture.

Q Where this swelling was? A Yes, sir.

Q How long were you there? A Two weeks—fifteen days.

By the Court.

10

Q When was it you were there? A The month of November I get in the hospital.

Q Was it November, 1924 you were in this hospital for the rupture? A Yes, sir.

Q November, 1924? A Yes, sir.

By Mr. Kalisch.

Q You said, I believe, you noticed this swelling the last day you were in the Newark City Hospital. 20

The Court: That is what he said about his eyes.

By Mr. Kalisch.

Q When did you first notice that little swelling? A In the City Hospital—both my eyes, too. 30

Q Did you ever notice any swelling there before you got to the City Hospital? A Nothing, I was examined all the time in the place where I was working.

Q What place? A The Horn & Hardart Automat Company; I was examined by the City doctor.

Q So as to permit you to work there?

Objected to.

Objection sustained. 40

Nicholas Carambas, direct.

Q At the time of the operation you say you were in the hospital two weeks or fifteen days?

A Yes, sir.

Q After that where did you go? A I go home in Boonton.

10 Q What had become of your business meanwhile? Who was taking care of it? A At that time I was in the City Hospital the people tend to my business that works for me. I had people that used to work for me. They tend to my business while I was in the hospital.

Q When you went back after leaving the hospital in New York were they still there? A No, they closed the place and left the key to my wife.

20 Q What has become of the business since? A I was there; the place was closed for a week and a half. My wife opened the place with my brother and we sell out the place. My health used to grow every day more worse.

By the Court.

30 Q When was this week and a half that this place was closed? A The last time I came out to Boonton—I think I went out seven o'clock every night to Boonton, they closed the place and give the key to my wife.

Q That was a week and a half after you came back from the hospital? A From the City Hospital.

Q Long before you went to the New York hospital? A Yes, sir.

By Mr. Kalisch.

40 Q You were the owner of this business, were you not? A Yes, sir.

Nicholas Carambas, direct.

Q What about the Dodge truck? Were you the owner of that? A Yes, sir.

Q When did you buy that? How long before the accident? A I buy it included with the business—business truck.

Q How much did you pay for it?

10

Objected to on the ground that it is immaterial; the measure of damages is what it was worth before and after, and not what he paid for it.

(Argument.)

Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

20

By Mr. Kalisch.

Q What did you pay for the business and the truck? A \$3,000.

Q You bought it altogether? A Yes, sir, altogether, included.

Q When you sold out the business did the truck go with it? A No.

30 Q What did you get for the business when you sold it out?

30

Objected to.

(Question withdrawn.)

Q Since this accident, have you been able to attend to this business in Boonton? A No, no more.

Q Have you that business now? A No.

40 Q Where is the Dodge truck that you had? What became of it? A I don't know; the police

40

Nicholas Carambas, direct.

took it to the police garage and after I got out of the hospital I asked for information what became of the truck. I said—

Objected to.

Objection sustained.

10

Q Just tell us what became of the truck. A I sold it as junk.

Q What did you get for it?

Objected to.

Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

20

The Witness: \$85 for some materials of the truck; \$30 for the body. It was iron body. I sold separate the body.

By the Court.

Q \$85 and \$30 is that all? A Yes, sir; because I couldn't pay garage and storage.

By Mr. Kalisch.

30

Q You say that your wife took charge of the business with your brother-in-law? A My brother.

Q When did they take charge of that business? A Only they stayed until I sold the place.

Q You were in the City Hospital. Who had charge of it when you were in the hospital? A The people that works for me by wages, not my wife.

40

Nicholas Carambas, direct.

Q They conducted it until you came out of the City Hospital? A Yes, sir.

Q Then you went back to Boonton? A Yes, sir.

Q What did you do about the business? What arrangement did you make? Did you do any work? A No, sir, no work at all; I wasn't able to work.

10

Q Who did it? A My wife opened with my brother and tried to sell the place.

Q Where were these men that had taken care of the place? A They run away, and I complained to the Police Department—

Q Your wife and your brother took care of the business until you sold it? A Not I sold it.

Q How long did they take care of your business? A Until the first of November.

20

Q From August until the first of November? A Yes, sir.

Q Did you have any net income from that business while they were taking care of it? A I didn't pay any income.

Q Did you have any income? Did you make any money out of it while they were taking care of it? A I couldn't make nothing at all.

30

Q What was your purpose in going on with the business?

Objected to.

Objection sustained.

Q You finally sold the business, didn't you? A Yes, sir.

Q Did you get any money for it? A I didn't get any part from the business. The

40

Nicholas Carambas, direct.

man that took the place paid my bills and I didn't get a penny. I was short \$28.

Q The man who bought the business just cancelled your debts? A Yes, sir.

Q The business had debts? A Yes.

10 Q How much were the debts? A In Center Market \$900, the commission houses—and I owed to him \$300 what took the business.

Q So that you gave him the business for that?

Objected to as leading.

The Court: He has already testified that they took the business and paid the debts and he paid him \$28.

20 Q Did you have any hospital bills? A Yes, sir; New York Hospital and Newark City.

Q How much?

Mr. Studer: I object. There is better proof than his hearsay as to what he owes the hospital.

Mr. Kalisch: He paid it.

The Court: Find out whether he paid in cash.

30

By Mr. Kalisch.

Q Did you get bills? A Yes, sir.

Q From the Newark Hospital? A Yes, sir.

Q Do you remember what you paid? What were those bills? A I can't tell you how much; I don't remember now.

40

The Court thereupon took a recess from 1 to 2 P. M.

Nicholas Carambas, cross.

AFTER RECESS.

NICHOLAS CARAMBAS resumes the stand.

Cross examination by Mr. Studer.

Q Mr. Carambas, when did you come to America? A 1906. 10

Q Are you hard of hearing? A What did you say?

Q Are you hard of hearing? A I can't understand that. I didn't get that question.

Q Are you a little deaf? A On that side; I don't know what is the matter.

Q You have a little trouble hearing? A I never had, but I can't feel very good that side.

Q You are hard of hearing in your left ear, is that right? A Just a little. 20

Q Did you come right to Boonton in 1906? A No, to New York City.

Q When did you go to Boonton? A To Boonton, May, 1919. Before I bought the business.

Q What was the business that you bought? A Market business.

Q Did you have a farm? A No, I went down to commission houses in Center Market and I bought the stock. 30

Q You just bought the right to go to the commission market? A Yes, sir. Every night.

Q Did you have any customers that you bought for? A There is commission houses where I buy the stuffs.

Q What was it you bought, just the rights to go to the market and buy stuff? A Yes, sir, and I bring it in the store and I sell it.

Q What did you buy? A Fruits, vegetables, macaroni, oil, and groceries. 40

Nicholas Carambas, cross.

Q You ran that business for two months and nine days you say and then this accident happened? A Yes, sir.

Q Whom did you buy this business from? A From Patsy D. Cressenso.

Q And you bought with the business one truck? A One truck, yes, sir.

Q How old was that truck? A It is 1922 Dodge.

Q How far had it gone when you bought it? A What did you say? I can't get the question.

Q How many miles had it been driven when you bought it? A Every night, two months except Saturday night because on Saturday he close the place for Sunday.

Q Before you bought it, do you know how many miles it had been driven? A I can't tell you, sir.

Q How long had you been driving that car? A About pretty near two months I had the license.

Q You had the license two months? A Yes, something like that.

Q You say that you came down from Boonton on Bloomfield avenue, is that right? A Yes, sir.

Q Had you been over there many times before? A Every night.

Q Did you know that North 6th street was on your right-hand side? A Yes, sir, I know.

Q You said that you heard a big noise. A Yes, sir.

Q Had you heard that before you reached the corner of North 6th street, twenty-five feet? A Yes, sir.

Q That is what you said, isn't it? A Yes, sir.

Nicholas Carambas, cross.

Q Does that mean that you were twenty-five feet west of 6th street when you first heard the noise?

Mr. Kalisch: I don't think he knows the cardinal points of the compass.

The Court: That is for him to say. 10

The Witness: I can't tell you north or south.

Q Toward Boonton? A From Boonton side, yes, sir.

Q You were twenty-five feet away from the corner on the Boonton side of 6th street when you first heard the noise? A Yes, sir.

Q How fast were you going? A About twelve miles the hour—something like that. 20

Q How fast? A Twelve miles.

Q No faster? A No, sir.

Q You say you then made slow the gas when you heard the noise? A Yes, sir.

Q Where was the noise, on the right or on the left? A On the right.

Q Where was the noise, on the right or on the left? A On the right.

Q What was the noise? A It was a truck.

Q You say you went on and ten feet you stopped? A Yes, sir. 30

Q Does that mean that you were fifteen feet from the corner on the Boonton side when you came to a stand-still? A Yes, sir.

Q You are sure of that? A I stopped ten feet.

Q You stopped your car? A Yes, sir.

Q Could you see the truck? A No, sir.

Q Could you hear it? A Still more noise.

Q Coming from your right? A Yes. 40

Nicholas Carambas, cross.

Q Did you remain in that position until you were hit? A Yes, only I saw the truck that time hit me.

Mr. Studer: I move that that be stricken out as not responsive.

10 Stricken out.

Q Did you say where you stopped, fifteen feet on the Boonton side, until you were hit? A Ten feet.

Q Ten feet? A Yes.

Q But you stayed right there? A I stopped right there.

Q And you were there when you were hit, is that right? A Yes, sir.

20 Q What part of your truck was hit? A The left side.

Q What part of the other truck hit you? A The front.

Q The very front of the truck? A Yes, sir.

Q And were you between the car rails and the curb on the right side of the street when you were hit? A Yes, sir.

Q Which were you nearer, the curb or the car rails? A From the curb.

30 Q How near the curb were you? A Pretty near two or three feet somewhere.

Q Two feet? A Yes, sir.

Q Two feet from the curb, is that right? A Yes, I was the curb, more near the curb, not from car tracks; from tracks I was a little further.

Q Were you two feet from the curb when you were hit? A Something like that.

40 Q How much like that? A I couldn't tell exactly.

Nicholas Carambas, cross.

Q About how much? A Well, pretty near—near, not close—but I was near there on that side.

Q Was it dark or light? A No, it was plenty light there.

Q Was it daylight or dark? A Dark, it was three o'clock in the morning. 10

Q What time did you leave Boonton? A I left one o'clock.

Q What time did this happen? A Three o'clock—three o'clock I am sure it was.

Q How far was it from Boonton to the place where you were hit? A Maybe fourteen or fifteen miles.

Q Fifteen miles? A I think so.

Q And you drove at the rate of twelve or fourteen miles an hour? A Yes. 20

Q And it took you two hours to get from Boonton to the place where you were hit? A It was between two-thirty and three; I told between two-thirty, three o'clock, I told you.

Q And you got out of your truck, did you not? A No.

Q Did you stay in your truck? A I was in my truck.

Q After the collision? A Some fellows 30 took me out from truck.

Q You stood in the street? A I stand on the street my face, my arm bleeding.

Q You were taken to the City Hospital? A Yes.

Q How were you taken to the hospital? A In the ambulance.

Q How long did you stay there? A About ten days.

Q As long as that? A Yes, that is all. 40

Nicholas Carambas, cross.

Q It was August fifth you left the hospital, wasn't it? A Maybe, I don't remember the day exactly.

Q You are not sure? A I don't remember the day.

10 Q You went from the hospital to your place in Boonton? A To my place in Boonton, yes, sir.

Q How long did you stay there? A In Boonton?

Q Yes. A I stopped longer in Boonton.

Q Did you stay in Boonton until November? A Until December.

Q December? A Yes, sir.

Q Was it in December that you went to the New York Hospital? A No, it was only November.

20 Q Then you went to New York in November, is that right? A Yes, sir.

Q To the New York Hospital? A New York Hospital, yes, sir.

Q What did you do in Boonton from August up to November? A Nothing, I didn't touch any work at all; I wasn't able to.

Q You say you went to see some doctor near the Metropolitan Opera House.

30 Mr. Kalisch: The Manhattan Opera House.

Q You went to see some doctor near the Manhattan or the Metropolitan Opera House in New York? A Yes, Dr. Newton Niekas.

Q Did you go to him for the pain in your side? A He examined it.

40 Q Did you see him before going to the New York Hospital? A After the City Hospital I saw Dr. Jesserun.

Nicholas Carambas, cross.

Q Did you see the doctor in New York near the Opera House, Dr. Niekas, before you went to the New York Hospital or after? A Before.

Q You say you saw Dr. Jesserun? A Yes, sir.

Q Did you see him before the doctor in New York? A After I left the hospital. 10

Q In Newark or New York? A Newark, here.

Q When did you see Dr. Jesserun? A After the hospital.

Q How much after? A The same day I left the hospital I went to his house.

Q The same day you left the Newark City Hospital? A Yes, sir.

Q On or about August 5, 1924? A Yes, sir. 20

Q Dr. Jesserun has a sister who is a lawyer? A Yes, sir—

Objected to as not proper cross examination.

The Court: It may be relevant.

Q Is that right? A No, no sister a lawyer.

Q Is she not his sister? A No.

Objected to. 30

Q You have a lawyer, Miss Jesserun, in this case?

Objected to on the ground that the record shows it is not so, and that the suit was brought by Kalisch & Kalisch.

Objection overruled.

Plaintiff's counsel prays an exception to this ruling of the Court. 40

Nicholas Carambas, cross.

Exception noted as ground of appeal.

The Witness: Yes, I have a lawyer, Miss Jesserun.

Q You have told us of both doctors, the doctor in the Newark City Hospital, Dr. Niekas and Dr. Jesserun? A Yes, sir.

10 Q You also went to see Dr. Knapp in New York—Dr. Arnold Knapp. You haven't told us about him, have you? A Yes, sir—

Objected to.

Objection overruled.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

The Witness: I went to Dr. Knapp.

20

By the Court.

Q No, have you testified today here in court about Dr. Knapp? A I cannot understand.

Q Is this the first time you are telling us today about Dr. Knapp? A No, sir.

Q I mean this morning. A No, not this morning.

30

By Mr. Studer.

Q You did go to Dr. Knapp for your eyes? A Yes, sir.

Q That was January, 1925? A Yes, sir.

Q How long did he treat you? A For five months—four or five months, I can't tell you exactly today; I don't remember.

By the Court.

40 Q It was four or five months, is that it? A That is right.

Nicholas Carambas, cross.

By Mr. Studer.

Q How long were you in the Greek army? A I was the first time two years, 1900.

Q To 1902? A Yes, sir. After 1904 I was for three months.

Q You were obliged to serve in the Greek army because you were a Greek? A Yes, sir, I was not a citizen then. 10

Q You mean a citizen of the United States? A Yes, sir.

Q How many times did you serve in the Greek army? A 1900, 1904, 1908 three months again; 1912 in the Balkan War, seventeen months; in 1915 for thirteen months.

Q Isn't it a fact that you were kicked by a horse when you were in the Greek army? A I was by a horse kicked. 20

Q Where did the horse kick you? A Right here (indicating).

By the Court.

Q Indicating what? A The left side, right here (indicating).

By Mr. Studer.

Q The left hip? A Yes, the bone; the left hip right here in the bone (indicating). 30

Q Going back to the accident. A The horse kicked—

Q No, the automobile. You say you didn't see the other car until it hit you? A Yes, sir.

Q Were you talking to the man in the front? A After they took me out.

Q Not before? A No, sir.

Q All were sitting on the front seat? A Yes, sir. 40

Nicholas Carambas, cross.

Q You were on the left side, the extreme left?

A Yes, sir.

Q These two men were on your right? A Yes, sir.

Q You had two men on the back? A Two men inside—closed body; the back was open.

10 Q How near you were these other two men?

A I meet on the road.

Q Were these two men on the road or in the car with you? A The two men in the front I took from Boonton and the other two I took in the road and they please me take them.

Q At the time of the accident how near were they to you in your car? A In the back near the tail-board.

20 Q Did you have a cab on your truck? A I had, sure.

Q Yes? A Yes, sir.

Q How far did that extend on the left and right sides? A Myself?

Q The cab. A How far is it?

Q Did it have sides? A It had a left side.

Q It had a right side, too? A Yes, sir.

Q And a top? A Yes, sir.

Q How far in front did the top come? A Right in the front they cover me.

30 Q It covered you? A Yes.

Q You said that your wife opened the place with your brother? A Yes, sir.

Q What kind of place? A The market business.

Q She carried on the market business, didn't she? A Yes, sir.

Q Did you keep any books? A Yes, sir, I had books.

40 Q Did you have books? A I haven't now the books.

Nicholas Carambas, cross.

Q Did you have them then? A Yes.

Q Who kept those books? A Only I couldn't do no business after November, \$5 a day, something like that.

Mr. Studer: I move that that be stricken out as not responsive.

10

Stricken out.

Q Who kept those books? A My brother marked down.

Q While you were running the business or while he was running the business? A He was running the business with my wife.

Q While you were running the business you kept the books? A She kept the cash; there was no business at all; the place busted.

20

Q But while you ran the business you said you earned \$150 a week? A Before the accident.

Q Is that true? A Yes, sir, before the accident.

Q Did you keep any books to show that? A I have books.

Q Have you those books here? A I haven't the books here.

30

Q To whom did you sell the business? A John Koralis, California Market man; he had two places and my three.

Q In November, 1924, when you went to the New York Hospital, you went for a rupture, didn't you? A Yes, sir.

Q And that is all they treated you for in the New York Hospital? A And my eyes, too.

Q And they sent you from there to an eye specialist, Dr. Knapp? A Yes, sir.

40

Nicholas Carambas, cross.

Q In connection with your work, before July 28, 1924, when this automobile accident happened, you used to lift barrels of garden truck, didn't you?

Q Is that right? A Yes, I used to work—

10 Q You used to work all day long? A Not heavy stuff, not all day long; I used to work in the store. I have a driver; driver takes stuffs down and make delivery to.

Q You had a driver? A Yes. Only used to make the delivery because I delivered stuffs all over.

Q You went to market? A Myself, yes.

Q You would help pick it up in the truck and take it off? A Commission houses would load the truck.

20 Q They didn't go home with you to Boonton and unload it? A I go to Boonton myself; I had driver there and I had three or four fellows work for me.

Q You didn't have any driver the day this accident happened? A No.

Q How long were you in the hospital in New York? A Fifteen days, two weeks.

Q When did you come out of the New York Hospital? A December.

30 Q What date, do you know? A I don't remember the day, sir.

Q Were you able to see or not when you came out of the New York Hospital? A I could see the big things; I couldn't see the small things at all.

Q When you came out of the New York Hospital? A From the City Hospital, I lost my sight.

40 Q When was it you could see only the large things? A From the City Hospital, Newark.

Nicholas Carambas, re-direct.

Q When you came out of the New York Hospital could you see anything at all? A I was more worse.

Q When you went to see Dr. Arnold Knapp, could you see anything at all? A Dr. Knapp, I saw him in January.

Q You were able to see him? A I couldn't 10 recognize very good.

Q Were you able to recognize large objects when you went to Dr. Knapp to be treated? A Yes.

Q Do you remember that some police came after the accident? A Police came after the accident. Took me in the hospital.

Q When the police came were your truck and the other truck at the same place they were when you say the other truck hit you? A Yes, sir. 20

Q And you didn't see the other truck at all until it hit you? A I didn't saw the truck, no, sir.

Q Did the other truck hit you with its radiator? A Radiator, yes, sir.

Q The front part of the other truck? A The front part, left side.

Re-direct examination by Mr. Kalisch.

30 Q You say that the front part of the truck struck your car. Which side of the other truck struck your truck? A The left side.

Q You understand what I mean? A I can't understand. That means which side hits me?

Q Which side of the other truck struck you? A The left side of the other truck.

Q And that hit you on your left side? A The left side, yes, sir.

40 Q You have said that the policemen came after the accident and took you to the hospital or

Nicholas Carambas, re-cross.

had someone take you to the hospital? A The police.

Q How soon after the accident did the police get there? A Maybe five minutes, two minutes, I don't know how long.

Q When you were taken to the hospital—
10 when you were taken off the truck, what position was your truck in? Where was it in reference to the railway tracks? A The big truck hits me and pushed my car to the railroad tracks, the street car tracks.

Q The big truck hit you and pushed you where? A To the tracks. He tried to run away—

Mr. Studer: I move to strike that out.
20 Stricken out.

Re-cross examination by Mr. Studer.

Q You say that the other truck when it hit you pushed you in the same direction toward the railroad tracks? A Yes, sir.

Q Did it back your car? Did it push your car back? A Pulled that way (indicating).

Q Pulled it to your left? A Yes, pulled it
30 to my left.

Q With the front of the other truck? A The front of the other truck, yes, sir.

Q How far did it pull you? A Near the tracks; right near the tracks.

Q How near the tracks? A Near the tracks; after I got dizzy, too much bleeding, they took me to the hospital—

Q Do you remember that some time in November last year I examined you before trial in
40 Mr. Kalisch's office when Mr. Isidor Kalisch

Nicholas Carambas, re-cross.

and Miss Lucille Jesserun were there for you?
A Not November.

Q November 4, 1925, wasn't it? A No, about two months ago in Mr. Kalisch's office.

Q I was there? A I was examined.

Q Don't you remember I asked you some questions? Do you remember hearing my voice
10 before? A I don't recognize it.

Q Do you remember someone asked you questions in Mr. Kalisch's office, assuming it was I, I asked you some questions, do you remember that? A I remember very well somebody asking me there.

Q Do you remember this question (page 17) "And then you brought your car to a stop, is that right?" Is that right? A Yes, sir.

Q You said that? A Yes, sir. 20

Q And I said, "Then the other car hit you with the radiator?" Do you remember that? A Yes, sir.

Q And you said, "The front, yes, sir." And I said, "The radiator of the other car hit you?" And you said, "Yes, the front, the radiator." And I said, "You are sure of that, aren't you?" And you said, "Yes." A I don't remember that question.

Q And then I said, "Was the other car coming up Bloomfield avenue?" And you said, "He tried to go through Bloomfield avenue, up." A I don't remember. 30

Q And I said, "And he struck you with the very front of his car?" And you said, "Yes, sir." A I don't remember that question.

Q And I said, "Against the front of your car?" And you said, "Yes, sir." Do you remember all that? A I don't remember that questions. 40

Nicholas Carambas, re-cross.

Q You don't remember any of that? A That you said before, I remember, but this other truck hit me in front of my radiator I don't remember that questions.

Q Is that the truth or not? A I can't remember.

10 Q Do you remember where he hit you? A I remember where hits me in the left side.

By the Court.

Q Was it the radiator of his car that hit your car on the left side? A It hits me on the front. His left side, the end of his radiator, not all the radiator, the left side hits me in the left side.

By Mr. Studer.

20 Q Isn't it true you said, "The front, yes, sir," when I asked you, "The radiator of the other car hit you?" A The front, I don't remember.

Q Didn't you say that?

Objected to.

Objection overruled.

30 Q Do you deny that you told me the front radiator of the other car hit you? A I remember now my car was—his left side of radiator hits my car left side with his radiator; his radiator left side hits my car to left side from radiator and up.

40 Q I said, "The radiator of the other car hit?" And you said, "Yes, the front, the radiator." And I said, "You are sure of that, aren't you?" And you said, "Yes." Do you deny that you said that? A Not the front of my car, the left side.

Nicholas Carambas, re-cross.

Q Do you deny that you said what I just read to you? A I don't remember; I say now he hits me with his radiator to left side of my car, my radiator.

Q In November, 1925, do you deny that you said that that is not what happened? Is that so?

A I told you I don't remember at that time what I said. 10

Q If you did say so, do you say now that isn't so?

Objected to.

Objection overruled.

The Witness: I say I don't remember; I didn't say I didn't say that; I don't remember.

20 Q But you are certain, are you, that when you were hit, no matter what part of the other car hit you, you were ten feet on the Boonton side, of 6th street, within two or three feet from the right-hand curb? A Right near the curb.

Q And ten feet toward Boonton? A Ten feet.

Q You are sure of that? A Yes, I am sure.

30 Q Is there a building on the right-hand side of the street corner Bloomfield avenue and North 6th street? A Both sides has buildings.

Steve Barkos, direct.

STEVE BARKOS, sworn in behalf of the plaintiff, testifies as follows:

Direct examination by Mr. Kalisch.

10 Q Where do you live, Mr. Barkos? A Trenton.

Q Trenton, New Jersey? A Yes.

Q Where did you live on the 28th of July, 1924? A New York.

Q Do you know the plaintiff, Mr. Carambas? A Yes.

Q You knew him on that date? A Yes.

Q Were you with him on the truck when this accident occurred? A Yes.

20 Q Where did you get on the truck? A Boonton, Main street.

Q To go to where? A To Newark.

Q Where did you stay on the truck? A Front part.

Q On the front seat? A On the front seat, right Carambas.

Q Next to Carambas? A No, we was there in the right.

30 Q You were on the right-hand side of the truck going down Bloomfield avenue? A Yes, on the right-hand.

Q Was there anyone else on that truck? A Yes, two fellows in the back; there was two more fellows in the body in the truck; two more fellows.

Q In the back? A Yes, Carambas put him on; he stopped and take them in first, in Newark.

40 Q Where did he pick them up? A I don't know exactly because I don't know the directions.

Steve Barkos, direct.

Q How did he happen to take them on the truck? A They pleased him; they signaled him and he stopped and take them.

Q Where did they sit? A Inside.

Q Do you know where? A I can't tell you exactly, but inside.

10 Q Was there anything on the truck? A Just the barrels and empty boxes.

Q Were they up high? A All full, all the way up; big barrels.

Q Tell us what you know of the accident as you saw it? A I saw the accident was the time that we were driving down the right side of Bloomfield avenue, as soon as we come near North 6th we all hear the noise and driver cuts his gas and slow down his speed, but we all hear the noise—

By the Court.

30 Q You can't testify what somebody else heard? A I only heard the noise and simply hear the noise, we going down and the car was slowly down—always slowly down—near the corner the car was brought near stop, mostly stop, but wasn't stop; the time the accident happen it was a little further away from the corner; at the time the accident happened I can't say exactly how far it was but it was—I don't know how many feet from the corner the time the two truck hit together.

Q Just point out in the room how far from North 6th street you were when the two cars hit together. A I don't know exactly.

40 Q Indicate it from where you are sitting. A Where we are sitting when the accident.

Steve Barkos, direct.

By the Court.

Q You mean when the accident happened? A Yes.

By Mr. Kalisch.

10 Q From where? A From the corner of North 6th to the rails.

Q You say you were the distance from where you are to where I am from North 6th street when the two trucks came together? How far was your truck or the car you were in, Carambas' car, from the corner of North 6th street when the other truck and your truck came together? Do you understand that question? A I said I can't exactly because, too, I says from here to you, they sit.

20 Q How many feet is that? A The tape says eight feet.

Q Did you see this truck that struck the truck that you were in at any time before the accident? A No, just the accident happens. We all was upset. The only thing I remember—I was so excited myself that time.

By the Court.

30 Q He is asking when you first saw the other truck. A That was only time I saw the truck, at the accident.

By Mr. Kalisch.

Q When the accident was about to take place? A I was about to open my mouth to say, "Stop," or something; I wasn't finish when the accident happen.

40 Q What part of your truck was hit? A The left part.

Steve Barkos, direct.

Q What part of the other truck struck your truck? A Left; left front part.

Q What happened to your car after it was struck? A All the front left was smashed and all the front glass was smashed and the body was broke, too.

Q What about the left front wheel? A The left front light was smashed, but the light keep still lighting. 10

Q Where was your car after the accident? What part of the street was it on? A After the accident—the same time the accident happens the truck where they struck together pulled us and pulled us nearer to the railroad track and turned us a little to the left.

By the Court.

20 Q You mean he pushed you? A Yes, he turned us a little to the left, the big truck, because the time we hit the big truck had so much speed. He can't stop until he—and since he goes he pull us and since he go I can't explain exactly—he tried to run away with the truck.

Mr. Studer: I move to strike that out.

Stricken out. 30

By Mr. Kalisch.

Q What did he do? A See, the time he pull us, the two truck was stick together; he was turned up. He tried to turn his right side away and the two trucks was sticking together and he can't do it.

By the Court.

Q Do what? A Run away. 40

Steve Barkos, direct.

Q Did he try to get off the truck? A Yes.

Q Is that what you mean when he tried to get away; because he wanted to get off the truck?

A Yes.

Q That is why you say he tried to run away?

A Yes.

10 Q You wanted to get off, too? A Yes, he come off easier.

Q He wanted to back off? A No, he wanted to get away with his truck.

Q After you came in collision you were jammed together and then did he back off? A He pulled us and then he stopped because he can't get away; they were stuck together.

Q And he tried to get the two trucks apart?

A Yes.

20 Q Is that what you mean? A Yes.

By Mr. Kalisch.

Q Then what did you do? A I jumped out at the same time the accident happened because I was on the right side, there was nothing to stop me to jump out.

30 Q Where did you go? A I looked for the driver but he was stuck together between the drive wheel and the chair and the other fellow, too.

Q The man next to you? A Yes, and we help him out.

Q You weren't hurt? A I weren't hurt at all.

Q Did you get him off the truck? A Yes.

Q How did you get him off? A The other fellow was pull out the wheel.

Q What wheel? A The steer wheel.

40 Q What was the matter with the steering wheel? A It was all the ways in his stomach;

Steve Barkos, direct.

it was squeeze with the chair together and another fellow was pull up the steering wheel and I pull the driver out; and since I pull him out he was trying to cry or something—see—and then the officer came with the patrol wagon and he took him to the hospital. I don't know what happens after.

10 Q What was his condition when you took him off his car? A He was in very bad condition, bleeding all over, his hands and his face and all over his clothes was full blood.

Q Just before the two cars came together, did you hear any horn or whistle or any other signal? A Nothing at all.

Q Did you see any lights, on the front of the other truck? A I remember the time when I saw the truck and tried to see the truck; I didn't see any lights on the truck when I start to say is a truck coming; I didn't see no lights.

20 Q On the other truck? A No.

Q Just before these cars came together, what part of the road, that is, what part of Bloomfield avenue, was your truck going on, which side? A Right side.

Q And how near or how far from the curb or from the trolley rail? A About two or three feet from the rail—from the curb, I mean.

30 Q What part of the roadway were both cars on after the accident? A I believe it was the hurt of us car was pretty near on the railroad.

Q You mean our car? A Yes, he was so speed, the other car, that he pull us and push us.

Q Where did he push you? A Nearest to the track.

Q Where was the truck that struck you after the accident when it stopped? A They stopped together but it was a little far—at the time the

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Steve Barkos, cross.

officer came they was pretty near the same road to go, but the officers get them; this officer was hollering—

Q You say they were pretty near together after the accident? A Yes.

Q Which way was your truck or your car
10 turned just after the accident? A Left.

Q To the left of what? A Left of Bloomfield avenue.

Q Going toward Newark? A Yes.

Q Left side going toward Newark? A Yes.

Q How far from the corner of 6th street were the cars right after the accident? A About five or six feet, I can't tell exactly, only the place where they hurt; they must pull them back.

20 *Cross examination by Mr. Studer.*

Q Where do you live? A Trenton.

Q On what street? A 13 North Warren street.

Q Are you a Greek? A Yes.

Q How long have you known Carambas? A How long did I know Carambas?

Q Yes. A I beg your pardon; five years.

Q Did you just meet him by chance on Main
30 street, Boonton, that night? A No, I knew before.

Q Did you just happen to meet his truck on Main street that night in Boonton? A Yes, that happen.

Q Did you have an appointment to meet him there? A I was there in the car; I got in the car in Boonton.

Q Did you get in the car at his place of business? A No, I got in his car to get down to
40 Newark.

Steve Barkos, cross.

Q You knew he was going to Newark? A Yes.

Q And you wanted him to give you a ride to Newark? A Yes.

Q What time of day did you leave Boonton?
A July, 1924.

Q Was there any clock time? A I can't exactly say; I know every day they leave Boonton, all the cars, to come to market, two o'clock, half-past two; one o'clock is the early car.

Q What time was it you left? A I can't say exactly; it wasn't necessary to know the time.

Q Assuming it was necessary, have you any idea when you left Boonton? A No.

Q It might have been two o'clock? A It
20 might be.

Q It might have been half-past two? A Yes.

Q It was nearer two or two-thirty than half-past one? A It was earlier than two-thirty.

Q Where were you going? A To Newark.

Q Were you in the trucking business? A No.

Q Were you in the green goods business? A No.

Q Going to market? A No. 30

Q Going to work? A Yes.

Q What was your business? A In Newark.

Q What did you work at? A In a restaurant.

Q Waiter or cook? A Cook.

Q What time were you due at work? A I wasn't going to work; I was able to start work next day.

Q You were going to go to work? A The next day, the twenty-ninth; my vacation was last. 40

Steve Barkos, cross.

Q You were not working at the time the accident happened? A No, I was a week vacation.

Q You sat on the right side? A Yes.

Q Who sat between you and Carambas? A Another fellow; I don't know his name even; the first time I seen him.

10 Q Did he get on the truck when you got on the truck? A The same time?

Q At the same place? A The same place.

Q Was he also Carambas' friend? A The other fellow?

Q Yes. A I don't know; I can't tell.

Q But you and he got on together? A Yes.

Q At Main street, Boonton? A Yes.

Q About two or one-thirty on the day of the accident? A I can't tell the time; I got up twelve o'clock. I have an appointment at some
20 lunch with Nick; when he got with his truck we go.

Q Can you operate a Dodge? A No.

Q Do you drive an automobile? A No.

Q Do you know how fast that car was going as it approached North 6th street? A I drive many times with Carambas' car; every time I drive with him he was never going fast.

Q Confine yourself to that particular time.
30 How fast was it going? A I can't tell exactly, because it was very slow, because at the time I hear the noise he stop very slow; he was pretty near stop at the time when the accident.

Q He wasn't stopped at the time of the accident? A I cannot tell you that.

Q You opened your mouth to say, "Stop?"
A I opened my mouth to say is a truck.

Q Did you open your mouth to say "Stop."
A I opened my mouth to say the truck at the
40 time the truck was coming up the curb. I only

Steve Barkos, cross.

passed here three or four times but I remember it was curb in here because the time we also came—

Q Where was this truck when you first saw it? The truck you say ran into Carambas' car on the left? A Right in North 6th street.

Q The other truck was? A Yes. 10

Q Was that within eight feet away from you? A I beg your pardon?

Q What were the eight feet you refer to that you measured a few minutes ago? A Yes.

Q What did that indicate? A We was eight feet from the corner at the time the truck tried to turn up—at the time we—

Q What did you see, confine yourself to what you said and what you saw. Where was the other truck when you say you were eight feet
20 from the corner? A Yes.

Q Yes, what? A I don't see the time I was eight feet from the corner.

Q What did you see eight feet from the corner? A I saw the truck the time the accident happened.

Q Did you see the truck then at all when the accident occurred? A I seen the truck but it was so very close until I can't see no more.

Q Did you see it at all before it collided with
30 your truck? A Yes.

Q How far away? A It might have been a foot—half a foot.

Q One foot from you was the first time you saw it? A Yes.

Q Here is a map (indicating). Bloomfield avenue is here and this is the way you were coming down toward Newark. This is North 6th street from the south to the north and this is the way the other truck came and the way you came. 40

Steve Barkos, cross.

Do you recognize the general situation from that map? Does that mean anything to you? A Yes.

Q Take the pointer and show me where your truck was when the other truck hit you? A I can't even say that.

10 Q Will you try to say it?

Objected to.

The Court: He says he can't say.

Mr. Studer: I would like to have the photograph marked for identification.

The Court: Mark the map.

(The map is marked Exhibit D. 1 for identification.)

20 (The photograph is marked Exhibit D. 2 for identification.)

By Mr. Studer.

30 Q I show you a photograph marked Exhibit D. 2 for identification. That shows Bloomfield avenue looking West toward Boonton, in which direction you came. It shows a pole I am pointing to which was on the left side and you were coming down at North 6th street. Do you recognize that? Does that refresh your memory? A This is Bloomfield avenue?

Q These (indicating the car tracks), are the car tracks on Bloomfield avenue. The way I am pointing is that direction in which you were going. This is North 6th street out of which the other truck came. A We were going this way (indicating).

Q Do you recognize the picture? A We were going this way.

40 Q Do you recognize that at all? A No.

Steve Barkos, cross.

Mr. Studer: I ask that this photograph be marked for identification.

(The photograph is marked Exhibit D. 3 for identification.)

10 Q This is a photograph looking east toward Newark on Bloomfield avenue and to your right here is North 6th street. Do you recognize that? A This is the railroad tracks?

Q The trolley tracks. A This is Bloomfield avenue?

Q Both tracks are in Bloomfield avenue. You don't understand that either? A No.

Q Had your car reached North 6th street— A Yes—

20 Q Yes what? At the time it was struck? A At the time us car reached North 6th street.

Q At the time it was struck? A No.

Q It had not reached North 6th street at the time it was struck, is that your answer? The car in which you were driving, driven by Carambas, had it reached North 6th street at the time it was struck? A Not yet.

Q Was it on the Boonton side of Bloomfield avenue from North 6th street? A The right side of Bloomfield avenue.

30 Q How far toward Boonton from North 6th street was it when it was struck? A About ten feet.

Q Ten feet? A Yes.

Q Two or three feet from the curb, you said? A Yes.

Q Do you know how wide Bloomfield avenue is at that point? A Yes, I know Bloomfield avenue well.

Q How wide is it? A How long?

40 Q How wide? A I can't say exactly.

Steve Barkos, cross.

Q Is it any wider than North 6th street? A Wider? I can't answer that question.

Q About all that you are sure of is that you were about two feet from the curb, some eight to ten feet in from North 6th street? A I can't say exactly.

10 Q Was Carambas' truck moving or not moving when you say the other truck hit you? A Yes.

Q Yes what? Was it moving? A It was not moving because at the time we were going down we hear the noise—Carambas—we slowed down—at the time the accident happened we mostly stopped.

Q That means you were moving? A I was so scared I don't know if I was moving or stopping or what—

20 Q You aren't sure what happened? A At the time the accident happened we was far from the corner when we got hit.

Q You say the other truck pushed you and pulled you? A Yes.

Q What do you mean? A At the time the other truck tried to turn.

30 Q Which way? Toward Boonton? A Right side toward Bloomfield, toward Boonton, yes. He hit us and at the same time push us and turn so right his way.

Q Pushed you first in and then out? A Yes.

Mr. Kalisch: I want to offer the hospital records in evidence.

Mr. Studer: I object. I do not think that is evidence at all. The hospital records do not prove anything.

40 Mr. Kalisch: This is the record that shows the man's condition at the time he

Steve Barkos, cross.

was in the hospital and this is a public institution, and upon that ground these records have always been accepted by Judge Dungan and Judge Adams.

The Court: Aren't they secondary evidence? I understand a hospital record is not of itself evidence. It can be used by a witness to refresh his recollection. 10

Mr. Kalisch: I want to make the offer and get myself on record.

The Court: It is excluded as not being the best evidence.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

20

30

40

Alois J. Mueller, direct.

ESSEX COUNTY COURT OF QUARTER
SESSIONS.

SECOND DAY.

Wednesday, February 24, 1926.

10

NICHOLAS CARAMBAS,

Plaintiff,

vs.

ARMIN BERGIDA,

Defendant.

Trial continued pursuant to adjournment.

20

Appearances as before stated.

ALOIS J. MUELLER, sworn in behalf of the
plaintiff.

Direct examination by Mr. Kalisch.

Q What is your business, Mr. Mueller? A
Automobile mechanic.

Q How long have you been in that business?

30 A Sixteen years.

Q Do you remember seeing a Dodge delivery
wagon, owned by the plaintiff? A Why, yes, I
did.

Q Where did you see it? A Why, I didn't
see it until it was brought into our garage, I
believe, the latter part of August, 1924.

Q By whom? A By our wrecking car.

Q Did you see the plaintiff? A Yes; he was
there, before, and made arrangements to bring
the car into our place.

40

Alois J. Mueller, direct.

Q (By the Court.) The latter part of 1924,
did you say? A Yes.

Q (By Mr. Kalisch.) Did you examine the
car? A Not personally. That is, our foreman
generally makes all those estimates or examina-
tions himself, and at that time I used to have to
go with him to see that there was nothing over-
looked and see that everything that was included
was remembered. 10

Q You went over it with your foreman? A
Yes, sir.

Q What condition did you find it in? A In
very bad condition—

Mr. Studer: I object. It is too remote,
under the cases. 20

The Court: What do you say about that?
Can you show the condition of the car in
the meantime?

Q Where did you say you saw this car? A
I didn't see the car until it was towed into our
garage by our wrecker, and our wrecking car got
the car, I believe, from the Black & White taxi-
cab garage, which is now known as the Bennett
garage, it is a police garage. 30

Mr. Kalisch: We cannot account for
every second that it was there, but the pre-
sumption is that it would remain in the
police garage until it was taken away. The
evidence now is that it was taken to the
police garage.

The Court: I will allow it, and grant you
an exception. I will allow it subject to being
properly connected up. 40

Alois J. Mueller, direct.

Q What month did you say you saw this car brought in? A August, 1924.

The Court: I understood him to say the latter part of 1924, because I asked him myself. He said the latter part of 1924. I have it on my notes in that way. If it was the latter part of August, all right.

Q What did you find the condition of this car to be? A I found the condition to be a very bad condition.

Q Talk so the jury can hear you. A I found that the car was in very bad condition. That would mean, in our business—we get all kinds of wrecks. This was, I thought, an exceptionally bad, a very bad wreck. In fact, I told—

Q Never mind what you told anybody. What did you consider it? A I considered the car as junk.

Q Do you mean worthless? Is that what you mean by junk? A Yes.

The Court: No, that is not what he meant.

Q What do you consider it worth in the condition you saw it? A The only thing I could consider was what we could salvage on it; in other words, sell parts for what we could get for them.

Q What did you consider it was worth? A I thought first probably I could get \$100 for it from a junk man.

Q Did you notice what parts of the car were damaged? A To the best of my knowledge, I think it was the left side. By that I mean the front axle on the left side was bent into the inner

Alois J. Mueller, direct.

frame of chassis of the car; the left mudguard, if I remember correctly, was very badly smashed; the right side of the mudguard was also smashed, which, to the best of my knowledge was probably due—

Mr. Studer: I object to what it was probably due to.

The Court: No, we don't want that.

The Witness: I found the right mudguard was also damaged; both wheels were smashed; the left one smashed entirely, the tire and rim, tire all cut, nothing left at all. The right wheel was broken at the hub. In other words, the tire and rim were still there when it was brought to our place. The top of the car was very badly smashed.

Q On which side? A On the left side mostly.

Q What about the radiator? A The radiator on the left side was very bad; in fact, the radiator as well as the core was a complete total loss, but it seemed as though the radiator's stanchion on the right side seemed to be intact; by that I mean it seemed as if the left side took most of the blow there. The face of the cowl as well as the doors was badly smashed; the left door was off about five inches I would say; but in between the channel, the right door was off; looked bad, but not as bad—it seemed as if it was done around this way—

Mr. Studer: I object.

The Court: Strike that out, what it seemed, unless he could demonstrate it.

Mr. Kalisch: I cannot get in the motion of his hands.

Alois J. Mueller, direct.

The Witness: The steering wheel and steering post, and post assembly was all pitched down. There was a little bracket that comes down to hold this assembly into place, and that was completely smashed; the wheel lay down.

10 Q Which wheel? A The steering wheel, the driver's wheel.

Q That was on the left side? A Yes.

Q (By the Court.) Did you sell it? A Yes.

Q What did you get for it? A We got, to the best of my knowledge, I think it was \$85. I sold it to a man up in Orange who had a job in the shop with a good transmission. By that I mean because he was getting his rear end transmission. The rear was very bad—I spoke to him—

20 Q We don't care about that. What did you get for it? A \$85.

Q In total? Didn't you sell some parts separate? A No, sir.

Q The total sum you got was \$85? A Yes, sir.

30 Q That is all? A No, I believe the top and the body was sold separate.

Q That is what I am trying to find out. Did you sell them separate? A No, sir; just what was left.

Q Who sold it separate? A I believe Mr. Carambas had a customer for it himself.

Q You got \$85? A Yes.

Q The other part was sold separately by someone else? A Yes.

40 Q What model was it? A 1922, Dodge Brothers three-quarter ton commercial.

Nicholas Carambas, re-direct—re-cross.

Q You say the radiator was a complete total loss? A Yes, sir.

Cross examination waived.

NICHOLAS CARAMBAS, recalled in his own behalf. 10

Re-direct examination by Mr. Kalisch.

Q Mr. Carambas, did you give us the date of your marriage? Do you remember when you were married? A I was married in 1906.

Q You were only married once? A Only once.

Q And have you had any children? A I 20 have a little daughter.

Q What? A I have a little daughter, right here (indicating).

Q This child here (indicating)? A This is my daughter.

Q How old is she? A She is, next May, the 24th of May, six years old.

Q You have had no other children? A No. 30

Re-cross examination by Mr. Studer.

Q You say you were married in 1906? A Yes, sir.

Q You were married in Greece? A In Greece.

Q Were you then in the army? A Yes, I was in the army in 1915.

Q Were you in the Greek army in 1910? A 1915 to 1916, I was discharged from the army. 40

Frank F. Evans, direct.

Q I think you don't understand me. Were you in the Greek army in 1906, when you were married? A Yes, I was in the army.

By Mr. Kalisch.

Q How many years have you been married?
10 A 1906—I am ten years, over, now, in America.

Q When were you married, then, in 1906 or 1916? A 1906 or 1916 yes—I beg your pardon. My age proves that.

Q You say it is 1916? A Yes, sir; 1916, this is the year.

PLAINTIFF RESTS.

20 FRANK F. EVANS, sworn in behalf of the defendant.

Direct examination by Mr. Studer.

Q Did you, at my request, sometime in the past, take some pictures of North 6th street and Bloomfield avenue, Newark or thereabouts? A Yes, sir.

30 Q Do you know when you took the pictures?
A November tenth.

Q 1925? A 1925.

Q I show you Exhibit D. 3 for identification and ask you what that represents. A A view looking down Bloomfield avenue.

Q You mean east? A Yes, that is practically east. I did cross North 6th street.

40 Q Is North 6th street on the right side of that photograph or left side? A It goes right across.

Frank F. Evans, direct.

Mr. Studer: I offer it in evidence.

Mr. Kalisch: I would like to examine him on it.

By Mr. Kalisch.

Q Do you know whether the towns in that vicinity have changed from the time—from August, 1924, to the time you took this picture? A No, sir; they have not, to the best of my knowledge. I have traveled over that route a good many times. 10

Q Have any new buildings been erected there, that you know of? A No, sir.

Q Are you positive of that? A Yes, sir.

(Photograph marked Exhibit D. 3.)

By Mr. Studer. 20

Q Now, I show you D. 2 for identification and ask you if you took that photograph and what it represents. A Yes, I took it. This represents a view looking north and I should say west on Bloomfield avenue, just before you cross North 6th street.

Q When you say west, is that in the direction— A Towards Bloomfield, yes, and the road does not travel exactly east and west. 30

Mr. Studer: I offer this, Mr. Kalisch, do you want to ask any questions?

By Mr. Kalisch.

Q You say this was looking towards Newark? A No, sir; toward Bloomfield, in the opposite direction.

Q This one here (indicating) that you have just located, you say that is looking toward 40

Frank F. Evans, direct.

Bloomfield? A Yes, sir; North 6th street is that (indicating) corner and that (indicating) corner—Newark is back of you.

Q Are you sure about that? A Absolutely.

Q What is it from here (indicating)? A This is looking towards Newark. That is the
10 pumping station and water tower.

Q The first one looking towards Newark? A Towards Newark, yes, sir.

Q And this is looking down— A Toward Bloomfield.

Q Was this taken at the same time? A Absolutely the same. That is, within a few minutes of each other.

(Photograph marked Exhibit D. 2.)

20

By Mr. Studer.

Q I now show you a photograph which is not yet marked for identification and ask you what that represents and did you take it? A Yes, sir; I took it. That is looking north on North 6th street, just before we cross Bloomfield avenue.

Q Was this taken at the same time the others
30 were? A Absolutely the same time.

Mr. Studer: I offer it.

By Mr. Kalisch.

Q This (indicating) is North 6th street, you say? A North 6th street.

Q Looking north? A Looking north. Newark is on your right and Bloomfield on your left. This tower which you see is right here—that is
40 on the curb.

Frank F. Evans, direct.

Q Where that little round curve is? A Yes, and on the end of the picture, yes.

(Photograph marked Exhibit D. 4.)

Q I show you another photograph and ask you if you took it and what that picture represents. A Yes, sir; I took this picture. 10

Q It represents what? A It represents North 6th street, looking south, just before you cross Bloomfield avenue.

Mr. Studer: I offer the photograph.

The Court: Do you want to examine him on it?

Mr. Kalisch: All right.

(Photograph marked Exhibit D. 5.) 20

Q Now, I show you another photograph of a truck and ask you if you took that picture and where you took that picture and what it is of—

Mr. Kalisch: One moment. I want to cross examine him on that.

Mr. Studer: I am going to connect it up.

A This is a Mack truck. 30

By Mr. Kalisch.

Q Well, generally describe it. A Taken by myself. We took it down at the warehouse in Newark.

Q (By Mr. Studer.) All right. A It shows the left front side of the truck with the head and left front structure—

Q This was taken the same day you took the other pictures? A No, sir; that was taken prob- 40

Frank F. Evans, direct.

ably, I think, the twenty-sixth before we took the intersection of the street.

Q Two days before you took the pictures to which you have just testified? A Yes, sir.

10 Mr. Studer: I ask that it be marked for identification.

The Court: You can ask on cross examination anything you want to with respect to it.

Mr. Kalisch: My objection would go more toward its introduction in evidence.

Mr. Studer: We have in mind—I propose to connect it, and therefore I ask that it be marked for identification.

(Marked D. 6 for identification.)

20

Q I show you another photograph of part of that truck and ask you if you took that, and when you took it, and what it represents. A It is a photograph of the same truck which is in the other picture and shows the left front side, the close-up view.

Q When was that taken? A At the same time as the other photograph was taken.

30

Mr. Studer: I ask that it be marked for identification.

Q (By Mr. Kalisch.) Do you know when that was taken—the month? A Yes, about November eighth.

Q What year? A 1925.

Q November eighth? A The 8th, 1925.

40

(Photograph marked D. 7 for identification.)

Frank F. Evans, cross.

Cross examination by Mr. Kalisch.

Q How did you happen to go up there to take these pictures? A Of the street or truck?

Q Of the street. A At the instruction of Mr. Studer.

Q And the truck? A The same thing.

Q Did you have anyone with you? A No, sir.

10

Q Did you do it all alone? A Well, I will say that I did have someone with me, because I come around to this place in an automobile, and I took it out, and my wife was with me in the car, and she could be a witness to the automobile, if necessary.

Mr. Studer: I would like to offer a certificate of the motor vehicle inspector of this State showing the issuance of a license to the plaintiff in this case.

20

Mr. Kalisch: No objection to that.

The Court: Let it be received. Is it an application for a driver's license?

Mr. Studer: An application and certificate of the date of the issuance of the license.

(Marked Exhibit D. 8.)

The Court: Why not read it to the jury now?

30

(Mr. Studer reads Exhibit D. 8 to the jury.)

40

James Burl, direct.

JAMES BURL, sworn in behalf of the defendant.

Direct examination by Mr. Studer.

10 Q Now, I want you to keep your voice up so all these gentlemen can hear you, Burl. How old are you? A Thirty-two the 1st of July, 1926.

Q On July 28, 1924, did you work for the Bergida Company? A I did.

Q What work did you do for it? What capacity? A I was chauffeur for them.

Q How long had you driven a car before July 28, 1924? A In the neighborhood of between nine and ten years.

20 Q What kind of a car were you driving on the early morning of July 28, 1924, for the Bergida Company? A A Mack seven and one-half ton truck.

Q How long a truck is that? A In the neighborhood of twenty-one feet over all.

Q (By the Court.) How many feet?

Mr. Studer: Twenty-one feet.

30 Q (By Mr. Studer.) Was there a load on the truck that morning? A There was.

Q Where were you going? A I was going up to the country, to Andover and Newton.

Q Was there anyone on the truck with you? A My helper.

Q What was your helper's name? A William Meadows.

Q Was there any other truck following your truck, which was also a Bergida truck? A There was.

40 Q Was that going in the same direction that yours was going in? A It was.

James Burl, direct.

Q In the course of that early morning did you go over North 6th street, Newark? A I did.

Q Do you remember approaching Bloomfield avenue that morning, before there was an accident? A I do.

Q In which you were in an accident? A Yes. 10

Q What side of North 6th street were you going on as you approached Bloomfield avenue? A The right side.

Mr. Studer: If your Honor please, I understand Mr. Kalisch does not make any—well, I don't know whether he does or not—but I would like to use that, I would like to have the use of the map until Mr. Bradley comes, who made the map. 20

Mr. Kalisch: There is no objection to using it. Of course, I expect that Mr. Bradley will be here.

Mr. Studer: That is, the man who made the map?

Mr. Kalisch: Yes.

Mr. Studer: Yes.

30 Q I direct your attention to this map. I am now pointing out Bloomfield avenue—I am now pointing out North 6th street. Does the map indicate anything to you? A It does.

Q Now, take the pointer and show me on which side of North 6th street you were driving the truck as you approached Bloomfield avenue that morning? A I came out of North 6th street on the right side here, and come up North 6th street—

Q Now, just a minute. There is a street on this map marked "First avenue"? A Yes. 40

James Burl, direct.

Q Do you recall that street? A I do.

Q Did you ever approach that street? A I did.

Q Did you have any kind of a warning signal on your truck? A I had a Buel whistle on that truck.

10 Q Do you remember whether or not you gave any signal? A I did, before reaching the corner of First avenue.

Q About how fast were you going as you approached First avenue? A Coming at the rate of about twelve miles an hour. On reaching the corner, I slowed down to six—six to eight miles an hour.

Q Then did you pass First avenue? A Passed First avenue.

20 Q And continued over North 6th street from First avenue? A Yes.

Q Did you have any lights on your car? A Had two front and one rear.

Q Were they lighted? A They were all lighted.

30 Q Then, approaching Bloomfield avenue, did you give any signal? A Continued giving a signal from the corner of First avenue to the corner of Bloomfield avenue and North 6th street.

Q Had you ever been over that course before? A Continuously.

Q As you entered Bloomfield avenue or thereafter, did anything happen to your truck? A This morning?

Q Yes. A I had an accident that morning.

Q With Carambas' truck? A Yes.

40 Q Where did your truck and his truck come into collision? A On the right-hand rail of the trolley tracks going towards Newark.

James Burl, direct.

Q Had you turned into Bloomfield avenue?

Mr. Kalisch: I object. I think that is positively leading. He can ask him what he did. I don't think he ought to suggest what he did.

The Court: I do not see that that is very leading. 10

Mr. Kalisch: He said, "Did you turn into Bloomfield avenue."

The Court: I will allow it. I do not think it is leading. I will grant you an exception if you wish.

Mr. Kalisch. I will have to press it.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal. 20

Q (Question read.) A Yes.

30 Q How much of the turn had you made at the time of the collision? A In correct figures I couldn't say what angle I was at, but I had begun to turn at the time of the collision. I had turned and my wheels were going over the west-bound tracks of the Public Service Railway Company, going towards Bloomfield, going west; my wheels were turned and were laying directly on the furthest rail at the time of the accident. 30

Q How far after the impact did your car go? A Three feet, no further.

Q No further? A No.

Q Had you seen the other truck coming before the collision? A I did.

40 Q Where was it when you first saw it? A When I first saw it, I was heading out of 6th street, before making my preparations for turn- 40

James Burl, direct.

ing west on Bloomfield avenue, and it was twenty-five feet, twenty-five or thirty feet from the corner of North 6th street and Bloomfield avenue, in the eastbound car tracks.

Q And had you blown? A I had blown.

Q What did you do when you saw him? A
10 What did I do when I saw him? Why, I slowed down just figuring—I didn't know whether he was going to pull to the right of me, because I knew he was coming at a rate of speed that something was bound to happen. I slowed down, after seeing he was not going to stop. I started up again. At the time I had just gained the middle track, or the rail, and he had rolled into me, and I rolled about three feet after the impact and stopped.

20 Q Did you run into his truck with any part of the front of your truck? A I did not.

Q Was his truck stopped at the time of the impact? A It was not.

Q What part of your truck did he run into?
A He ran into the left front mudguard, in the rear part of it, carrying off the tool box, and my rolling the three feet brought him near the middle of my truck, about a foot from my rear
30 wheels.

Q Were the two trucks together when you came to a stop and got out? A They were not.

Q Where was his car with reference to your car when you got out, when you had stopped? A After I had stopped, the impact of him coming against my car bounded him back about two feet from my truck, and from where I had stopped, also bringing him about a half a foot or a foot—
40 of the left front wheel, from the eastbound car track toward the westbound car track, about a

James Burl, cross.

foot, after I was out of the truck, after the impact.

Q Did any part of your truck pull any part of his truck? A It did not.

Q Was there any horn sounded by him? A Not that I heard.

Q What do you say as to the speed of his truck at the time of the collision? A Be-
10 tween thirty and thirty-five miles an hour.

Q Did you get out after the accident? A I did.

Q Do you remember that the police came? A They did.

Q Now, who was on the truck behind your truck, which you say was also one of the Bergida Company's trucks? A Mr. Bergida, my employer, and the driver.
20

Cross examination by Mr. Kalisch.

Q Did you ever see this map before, Mr. Burl?
A I have not.

Q The first time you saw it was today? A Yes, sir.

Q Are you positive about that? A No—yes-
terday when it was put up.

Q Where did you see it? A Here, right
30 there (indicating).

Q Of course you have spoken about this accident, haven't you? A I have what?

Q You have talked about this accident, haven't you? A No—I have and I have not.

Q What do you mean by that? A I talked about it at the time that it happened, but since then I have not.

Q You were subpoenaed to come here? A I was.
40

James Burl, cross.

Q Did you come directly here to the Court House? Did you go elsewhere first? A Did I come directly to the Court House after receiving the subpoena?

Q No. When you started out for the Court House did you go anywhere else before you came to the Court House? A When?

Q Yesterday, or any time after you got the subpoena. A Any time after I received the subpoena, naturally I did, because I received the subpoena two or three days ago.

Q Where did you go? A I went about my business.

Q Whose office did you go to?

Mr. Studer: I object.

20 The Court: Objection sustained. Ask him where he went.

Mr. Studer: Ask him if he went to my office.

Q Did you go to Mr. Studer's office? A I did.

Q Who did you see there? What did you talk about there?

30 Mr. Studer: I object.

The Court: Objection sustained.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

The Court: You may ask him who he talked to.

40 Q Who did you talk to? A I didn't talk to anyone but the office girl.

James Burl, cross.

Q What did you go there for? A I went there to meet Mr. Kehoe.

Q Who is he?

Mr. Studer: I object.

The Witness: I don't know who he is.

Q How did you know Mr. Kehoe was to be there?

Mr. Studer: I object to that as immaterial and irrelevant.

Q Who told you to go there?

Mr. Studer: I object.

The Court: Objection sustained. What difference does it make? You have a right to ask him who he talked to.

Mr. Kalisch: I am trying to find that out. This is cross examination. I have some latitude; it ought to be allowed.

The Court: I am going to give you some latitude, but I want to get through with the case; I don't want to have things get in that are absolutely immaterial and irrelevant.

Q Did you go to Mr. Studer's office concerning this case? A I did not; not directly.

Q What do you mean by "not directly," did you go indirectly? A I did.

Q Well, now, in what way? Explain your answer. I don't understand what you mean. A Well, if I know what you mean—ask me.

Q You said you went there, not directly but indirectly. A I was given a subpoena, and not

James Burl, cross.

knowing what it was for, or exactly what it was about, I went to see about it, what it was for.

Q You knew that it was for this accident? A I did not, not directly.

Q How long were you there? A About seven minutes.

10 Q You didn't see Mr. Studer, did you? A I did not.

Q Did you see anyone else there that you spoke to about this accident? A I did.

Mr. Studer: I object.

The Court: I will allow it.

Q Who did you speak to about it? A Mr. Kehoe.

20 Mr. Studer: I object.

The Court: Objection overruled. He has already answered.

Q Who is Mr. Kehoe?

Mr. Studer: I object to that as immaterial, who the man is.

30 The Court: I will allow it and grant you an exception.

Q (By the Court.) Do you know who Mr. Kehoe is? A I don't.

The Court: He doesn't know.

Q Now, Mr. Burl, you drove from North 6th street, is that correct? A Yes.

40 Q All the way over from what street? A All the way over from Orange street.

James Burl, cross.

Q And your speed at that time was about—while you were driving on North 6th street, was about twelve miles an hour the whole way over?

A Between twelve and fourteen miles an hour.

Q Where did you first see Mr. Carambas' car? Where were you when you first saw it? A I had begun to make my turn out of North 6th street, turned west on Bloomfield avenue—

Q One moment, now. Where did you start to make your turn? A From the right-hand side of North 6th street, turning into Bloomfield avenue.

Q Is that when you first saw Carambas? A Yes, when I first saw him.

Q Can you understand this picture marked Exhibit D. 5? A I do.

Q Do you know the direction toward Newark? A I do.

Q Just point it out—and the tower would be on your right-hand side, going toward Newark? A Yes.

Q Can you point out on the picture where you were when you first saw Carambas, in his car? A I was about three feet or two feet and a half from this corner, here, turning into Bloomfield avenue.

Q Do you mean before you got to the corner? A From this corner here, going into Bloomfield avenue, I was about three feet from this corner here, the corner of this curb.

Q Had you passed the corner here?

Mr. Studer: He indicates the southeast corner.

The Court: Indicating the southeast corner where the tower is—what do you call it?

Mr. Kalisch: The water tower. 40

James Burl, cross.

Q Had you got to the corner or had you passed the corner? A I had passed the corner.

Q You were three feet past it? A Yes.

Q When you got to the corner did you look up Bloomfield avenue? A I did.

10 Q And you looked down Bloomfield avenue?
A Positively, yes.

Q You didn't see the car when you looked up Bloomfield avenue, then? A I did.

Q But that was when you got to the corner? A Sure, after passing the corner.

Q But I am now asking you whether you saw it, whether you were looking up Bloomfield avenue before you got to the corner. A How can I, when the building is here to keep me from it.

20 Q Well, does it? Look at it and see (handing photograph to witness) whether it does. A It does.

Q You mean, then, you have to get three feet beyond the corner before you can see up Bloomfield avenue? A You have got to get to the corner here before you can look up Bloomfield avenue.

Q Not beyond the corner, though? A No, not beyond, going south.

30 Q Then you looked up Bloomfield avenue. Where did you see this car? How far from the corner of 6th street? A Twenty-five feet from the corner, that is 6th street here.

Mr. Studer: Indicating the southwest corner.

The Court: Right.

40 Q How fast was it going then? A It was going at the rate of between thirty and thirty-five miles an hour.

James Burl, cross.

Q You were going at what speed when you saw him? A Between six and eight miles an hour, turning the corner.

Q How far from the place where you came together with his car was he, that is, the plaintiff, at the time you saw him? A How far was he? 10

Q From the place where you collided? A From the place where I collided?

Q When you saw him? A Well—

Q Do you understand that? A I do not.

Q Well, point out where your car and his car came together. A Not being able to give you the exact location, I will say here (indicating).

20 Q Well, you can give me the exact location. You were there. A I was there—but still the map, and the exact outlay of the street is kind of—

Q (By the Court.) Could you do it better on the map, Mr. Burl? A I could, sir.

Q Point it out on the map, then. A (No response.)

30 Q (By Mr. Kalisch.) Point it out on the map.

The Court: Stand on that chair, if you need to, and take a pencil and mark where the cars were.

Q (Continuing.) Do you understand the question? When you first saw Carambas' car, now, where was it?

Mr. Studer: No, you want him to point it out on the map. 40

James Burl, cross.

Q Point the collision out. Point out where you collided, on the map. A (Witness indicates.)

Q No, no. Point out where you collided.

10 Mr. Studer: Show where you went, in the street, when you came together.

The Court: The front part of your truck.

A The front part of my truck was here (indicating).

The Court: Mark an X there.

(Witness marks on the map.)

20 The Court: Is that an X that the jury can see when they go into the jury room? It looks pretty light, now.

Q (By Mr. Studer.) Here, get up. Let him do it. You go ahead and do it, wherever it was that you came together. Make it big. A That is the front part of my truck.

Q (By Mr. Kalisch.) Now, then, how far away from that point that you have just indicated, Mr. Burl, was Carambas' car when you first saw it? A At the time?

30 Q When you first saw it, when you saw it you said you looked up Bloomfield avenue and you saw his car coming down toward Newark. A Yes.

Q How far was it when you first saw it from this point that you have just indicated? A From the point where I have just indicated it was twenty-five feet.

Q That is when you first saw it? A That is when I first saw it.

40 Q Now, you are sure of that? A Sure.

James Burl, cross.

Q Where were you when you first saw it? A Where was I when I first saw it?

Q How far from the point that you have indicated? A Going back toward this corner, which you call the southwest corner, it was still three feet from this corner there when I first saw it. 10

Q You mean south or north of Bloomfield avenue? A South of Bloomfield avenue.

Q You were three feet south of Bloomfield avenue when you first saw it? A Three feet from this mark here, going west, turning west off of North 6th street into Bloomfield avenue.

Q Then it is north? Which was it, north or south? A Which was what?

Q Were you north or south of the corner of North 6th street and Bloomfield avenue when you first saw this car? A I was three feet north of it. 20

Q Then you were in Bloomfield avenue? A Turning into Bloomfield avenue.

Q Where was the head of the truck? A The front of the truck?

Q The head of the truck was three feet into Bloomfield avenue when you first saw it? A Yes, going maybe a few feet into Bloomfield avenue. 30

Q Now, how far was it from this place here where you say the collision took place? A How far?

Q Yes, you can measure it up, I suppose, with the ruler.

The Court: Well, let him tell what it is, what he thinks it was. 40

James Burl, cross.

A I will not be able to tell you in exact feet, but I would judge—in fact, you had better ask me that question again. I don't understand it.

Q (By the Court.) How far were you from the point of the collision when you first saw the car? A From the point of the collision when I first saw the car? 10

Q Yes. A I rolled about five feet.

Q (By Mr. Kalisch.) Well, do you mean to say that when you first saw the car you were at a point only five feet from where you were struck? Did you travel fifteen feet from the point where you first saw the car until you were struck? A Between five and eight feet, the distance from the corner to the car tracks, because I was rolling very slow and he was going at a very rapid rate of speed.

Q You think that that is about five to eight feet? A Yes. 20

Q Point to some object in the room that you think is about as far as from the time you first saw him until the time you were struck? A From here to the first bench.

(The distance indicated by the witness is measured by a court officer.)

30 *By the Court.*

Q What part of the bench? A Take the back of the bench.

Q From where you are sitting? A No, from here (indicating the rail in front of the witness stand).

The Court: How far is it?

Mr. Kalisch: That is 96 and 51 equals 40 141 inches.

James Burl, cross.

The Court: Twelve feet, less three inches.

Mr. Kalisch: Yes, twelve feet.

Q (By Mr. Kalisch.) During the time that you went from the point where you first saw him you did not increase your speed? You slowed down, didn't you? A Slowed down. 10

Q Yes. Now, what was your speed then? Did it become slower? A It became slower.

Q How slow? A Well, I should say between three and four miles an hour.

Q Then you were going at a speed that you could stop within how many feet? A I was going at a speed that I could stop within a space of three or four feet.

Q Now, I believe you said on your direct examination that you saw his car coming down, and you suspected that there would be some sort of a collision, something might happen. When did you first get that in your mind? When you saw him coming down Bloomfield avenue the first time? A Yes, twenty-five or thirty feet from me, from the west corner, from North 6th street to the corner. 20

Q A little louder. A From the upper corner, from twenty-five to thirty feet. 30

Q Where was he then? In what part of the road? A He was in the eastbound car track.

Q Going toward Newark? A Going toward Newark.

Q You weren't then on the eastbound car track? A I was just beginning to pull in.

Q You were just coming out of this street? A Yes, three feet from the corner there where the water tower is, turning west into Bloomfield avenue. 40

James Burl, cross.

Q How far from the track would you say that street is? A I don't know—

Q No, how far from the track were you when you were three feet from the corner of Sixth street? A I couldn't say.

10 Q Can you point out some object in the room that would indicate the distance? A From the car track?

Q From three feet north of North 6th street to the car tracks. That is the point you say you first saw him? A Yes.

Q From that point, what is the distance to the car track that you say he was on? A I don't know.

Q Can you point out some object that you say will represent the distance? A I cannot do it.

20 Q Why not? A Because it has been a good while since I have been up there and it has kind of slipped my memory. I might say it is three or four feet, or two feet, and yet still be off, not being able to bring it back to my memory; I wouldn't be able to say.

Q You say you were three feet north of North 6th street and Bloomfield avenue when you first saw him? A Yes.

30 Q You cannot tell how much further it is to the car tracks? A The car track?

Q Yes. A I haven't the least idea how wide Bloomfield avenue is.

Q Can you not point out some object in the court room that would indicate that distance, from three feet north of North 6th street to the car tracks, just the same as you did before? A (No response.)

Q You don't remember? A No.

40 Q You have no idea? A No idea about what?

James Burl, cross.

Q About the distance. A I have an idea about distance, yes.

Mr. Studer: Well, give it to him yourself.

The Court: That is what we want, your idea, Mr. Burl. 10

Q Have you got any? A Yes.

The Court: Well, how far is it?

Q If you know. Don't guess. A I would say about nine feet.

Q Now, you are laughing about this. I don't know whether this case—

Mr. Studer: I object. I don't think that was proper. I don't think that is fair. He said nine feet. 20

Mr. Kalisch: All right.

Q You are sure that it is nine feet? A No, I am not sure.

Q Would you say it would be more? A I wouldn't say it would be more; I wouldn't say it would be less. 30

Q That is your guess? A Yes.

Q What was it that you saw, when you saw this car for the first time? That there was going to be a collision? A The rate of speed he was going, and I had already shifted down to my third gear in turning the corner—

Q He kept coming? A He kept coming, and I didn't know whether he was going to keep coming, or whether he was going to stop.

Q Why didn't you stop? A I had already had the right of way, because I had turned out 40

James Burl, cross.

and was making my turn into Bloomfield avenue, and he was twenty-five feet from the corner, giving him perfect time to stop.

Q You thought that if there was going to be a collision there was to be one, and you had a big truck, and it didn't make much difference to you?

10 A I didn't do any thinking at all about it.

Q But you could have stopped in four feet, you said? A Which I did, after the collision.

Q You have just testified that when you saw this car on Bloomfield avenue, twenty-five feet away, and coming thirty miles an hour, that you thought then that there was going to be a collision, and you were within nine feet, you have estimated, from the track, upon which he was driving, and you have said that you could have
20 stopped within four feet, and you were going so slow, about eight miles an hour. Now, why did you go the balance of the nine feet, when you knew there would be a collision if you continued on?

Mr. Studer: I object.

The Court: I didn't understand him to say that he knew there was going to be a collision.
30

Mr. Kalisch: He said that that is what he thought would happen if this man was going thirty miles an hour and he continued to come, and at that time when he saw him, he was coming down Bloomfield avenue, and he was nine feet from the track and this man was on the track, and he could stop his car within three or four feet.

Mr. Studer: He further said he went on because he had his nose in the street, and
40

James Burl, cross.

he had the right of way; now he is arguing the case, and I object to it.

The Court: Objection sustained. If it is to be a hypothetical question you have got to have more facts in it. This man did not say he expected a collision. He said he was afraid of a collision and expected the man
10 was going to stop, and, having the right of way, he didn't expect the man was going to run into him.

Mr. Kalisch: I didn't hear him say any such thing. My recollection is that the man was going at such a rate of speed, and he continued to go—

The Court: I think he said he feared a collision, but did not expect it, but if I am wrong, the jury will remember what he did
20 say.

Q You gave a signal on North 9th street, when you reached First avenue, didn't you? A North 6th street.

Q Or, North 6th street. A Yes.

Q What did you do that for? A It is customary, after you go up First avenue, that is almost an intersecting street, because it comes out
30 into North 6th street and crosses it, and we give a signal below First avenue, and you might as well keep on giving your signal until you get to Bloomfield, because there is not much distance between First avenue and Bloomfield avenue.

Q You do it at all the crossings? A No, sir.

Mr. Studer: I object.

The Court: I will allow it to stand.
40

James Burl, cross.

Q Why did you do it just at these two streets? What other streets did you do it at? A All intersecting streets.

Q At all intersecting streets you give a signal? A Yes.

10 Q Then the car behind you gave a signal, too?

Mr. Studer: I object.

A I don't know anything about what the car behind me did.

Mr. Kalisch: It is important, what signals this man heard.

The Court: Objection sustained.

20 Plaintiff's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q Where do you work now, Mr. Burl? A In the trucking business now.

Q By yourself? A Yes.

Q How long have you been in that business? A Two months.

30 Q How long did you remain in the Bergida corporation after the accident? A I don't exactly know whether it was two months or three months; something in the nature, now, of three or four months, something like that.

Q How long have you been there? A I have been there in the neighborhood of—before the accident?

Q Yes. A Around six months, something like that, six or seven months.

40 Q And did you go right in the trucking business after you left Bergidas? A I did not.

James Burl, cross.

Q Did you chauffeur for somebody? A I did.

Q Had numerous jobs before you went into the trucking business? A Since when?

Q Since you left Bergida. A No, only one.

Q How long were you in that? A Over a year. 10

Mr. Studer: I think it is very far-fetched, your Honor.

The Court: It is very far-fetched.

Mr. Kalisch: Well, I do not argue the matter.

Mr. Studer: I will object to the question.

The Court: I will let it stand, proceed.

Q Was there any arc light on North 6th 20 street and Bloomfield avenue? A I think I do remember an arc light.

Q Was it lit? A I think it was.

Q What time of the morning was it that this accident took place? A Between two and three o'clock.

Q After the accident occurred, what did you do? A After the accident occurred, I got down to see who was injured or what had happened, after he got out. He got out of the car himself 30 and came down, and came around to the front of his car.

Q Who got out? A Mr. Carambas.

Q Was anyone with him? A Yes.

Q Did you see him get out of the car or after he got out? A I saw him get out of the car.

Q Did anyone help him out? A No.

Q Did anyone get the steering wheel away from him? A No.

Q Did you see whether they did? A I did. 40

James Burl, cross.

Q Was the man covered—were there any blood stains around about his body, face or clothes? A Yes.

Q What happened to him afterwards? A I took his license number.

10 Q No. Not what you did. What happened to him? A What happened to him?

Q Yes. Where did he go? A Where did he go?

Q Yes. You must have seen what happened to him, what occurred to him.

The Court: (Addressing the witness.) Do not repeat the questions.

20 Q Did you see a police officer come? A I did.

Q Did you see the ambulance come? A No.

Q Do you know whether or not he was taken away in the ambulance? A Did I know whether he was taken away in the ambulance there?

Q (By the Court.) Well, was he? A He was supposed to be; I don't know.

30 Q (By Mr. Kalisch.) You were there? A I was up by where the accident happened. The officers were clearing the way, the street, so it wouldn't block the traffic, and I followed up above the corner and waited.

Q Did you get off the truck? A Yes.

Q You say you saw the man get out of his car? A Yes.

40 Q Then didn't you see the ambulance come? A Not when he came—when he left, I don't know when he left. I got his license number and everything, and I pulled my truck up to the corner and Mr. Bergida, my boss, and the officers were straightening things out there.

James Burl, cross.

Q Did you give your license number? A Yes.

Q Who did you give it to? A Gave it to him.

Q Then, where did you go, afterwards? Did you continue to drive your car and leave the scene of the accident, or what became of you? A 10 After the accident?

Q Yes. A After the accident I pulled up to about ten feet from where the accident happened, on the side of the street, and came back.

Q What side of the street? A On the right side of Bloomfield avenue, going west.

Q Were there any people gathered around there? A I remember the officers; I remember my helper and I remember Mr. Bergida and the driver, and I remember two or three people that were in the car with Mr. Carambas, also, after I came back. 20

Q Was there anyone else besides that, I mean, any people that came to the scene of the accident before you left? A I don't remember.

Q Was anyone in the car with you? A In my car?

Q Yes, in your car. A Yes.

Q How many? A One.

Q What is his name? A William Meadows. 30

Q When did you get your license?

The Court: What license?

Q (Continuing.) That you say you showed Carambas or to the police officer, or whoever you showed it to. A I got my first license—

Q (By the Court.) No, he don't mean that one. He means the one you showed. A That is a duplicate. I am thinking, because I had lost my license up in New York state. 40

James Burl, cross.

Q (By Mr. Kalisch.) When did you lose it?
A I don't exactly know.

Q When did you get it? A When did I get what?

10 Q (By the Court.) The original. A Around the first of the year, whether January or February I don't know exactly; but no later than February.

Q A New Jersey license? A New Jersey license.

By Mr. Kalisch.

Q You say you got it in January or February? A Yes.

20 Q That is, the driver's license? A A driver's license, yes.

Q Were you down to police headquarters after that?

Mr. Studer: I object to that as immaterial.

Mr. Kalisch: What became of the man that was involved in the accident?

30 The Court: What is the materiality of it?

Mr. Kalisch: I want to show all of the circumstances surrounding this.

The Court: We are not very much interested in what happened afterwards, are we? I don't know that it is material. I will allow it.

(Exception to the defendant.)

40 Q (By the Court.) Did you go to the Police station afterwards? A I did not.

William Meadows, direct.

Q (By Mr. Kalisch.) Are you quite sure about that, that you didn't go to the police station after this accident? A I have answered you. I have told you I did not.

Q You can answer me again. (No response.)

The Court: Aren't you sure about it? 10

Q Are you sure about it? A Yes.

Q Was that the first license that you got, driver's license, in January, 1924? A No, sir.

Q Had you had one before? A I had had a previous license.

Q How many?

Mr. Studer: I object to that as immaterial. 20

The Court: It might be material. He said on direct examination that he had been driving nine or ten years. I will allow it.

A You mean a New Jersey license?

Q Any kind. A My first license was in West Virginia. My New Jersey licenses began in 1914.

Q And you have had one every year since? A 30 Every year.

WILLIAM MEADOWS, sworn in behalf of the defendant.

Direct examination by Mr. Studer.

Q You want to talk loud so we can all hear you. A Yes. 40

William Meadows, direct.

Q Did you work for the Bergida Company on July 28, 1924? A Yes, sir.

Q Did you work for Bergida in July, 1924? A Yes, I did.

Q What did you do for him then? A I was helper on the truck.

10 Q You were helper on Burl's truck on the morning of this accident? A Yes, I was.

Q Do you remember going over North 6th street that morning? A Yes.

Q Yes? A Sure.

Q Were there any lights on your truck? A Yes, there were.

Q How many? A Two.

Q Any tail light? A Yes; we had a tail light and all, three lights in all.

20 Q Do you remember going to Bloomfield avenue? A Yes, I do.

Q Were you on North 6th street? A Yes, we were.

Q Do you remember coming to First avenue on North 6th street? A Yes.

Q Which side of North 6th street was your truck on as you came to First avenue? A On the right-hand side.

30 Q Do you know whether or not there was any whistle or horn on your truck? A Yes, there was.

Q What was it? A Sure, it was a whistle. I just disremember what kind it was—the name.

Q I don't care about the name. What kind of a noise did it make? Did it make a noise? A Yes, sure, it did.

Q Did it whistle? A Sure, it did.

40 Q Did he whistle as he came to First street or First avenue? A Yes, sir; started in to whistle before he came into First avenue.

William Meadows, direct.

Q Do you remember, as he approached Bloomfield avenue, as he went into First avenue on North 6th street, hearing him blow the whistle? A Yes, he blew the whistle.

Mr. Kalisch: I object.

10 Q Do you remember whether or not he blew his horn as he approached Bloomfield avenue, as he came out of North 6th street? A Yes, I do.

Q Do you remember a collision? A Yes.

Q Do you remember where the collision took place? A Yes.

Q Do you remember where in Bloomfield avenue with reference to the car tracks was your car when the collision took place? Do you remember that there were car tracks in Bloomfield 20 avenue? A Yes, I do.

Q Do you remember whether or not your truck had gotten to the car track?

Mr. Kalisch: I object. It is leading. The question was put to him whether he remembered where it took place.

The Court: I will allow that.

30 Q Where, with reference to the car tracks in the street was your car at the time of the collision? A Yes, I remember.

Q Where was it? A Why, the front wheel was to the—I expect I could explain it much better—

By the Court.

40 Q Why, the front wheel was where? A Into the last track.

William Meadows, cross.

Q The last track? You mean the last track that you came to or the first track that you came to from North 6th street? A The last one, at the time of the collision.

Q The last rail, do you mean? A Yes.

Q How many rails are there there? A Four.

10

By Mr. Studer.

Q What part of the truck on which you were riding was in collision with what part of the other truck? A I don't get you. I beg your pardon, sir.

Q What part of your truck and what part of the other truck came together? A That other truck hit the front step near the middle of the chassis.

20

The Court: On what side?

Q On which side? A On the left side.

Q (By the Court.) On your left? A Yes.

Cross examination by Mr. Kalisch.

Q Did you see Carambas' machine before the accident? A Yes, I did.

30 Q Where were you when you saw it? A Well, we were into the car track when I seen it.

Q Which car track? A The first car track.

Q The first rail or the first track? A The first rail.

Q That is when you first saw it? A Yes.

Q Where was it then? A It seemed to me as if it was fifteen or twenty feet away.

Q Do you remember looking up Bloomfield avenue before that time? A Yes.

40 Q Where were you when you first looked up Bloomfield avenue? A When I first started to

William Meadows, cross.

look up Bloomfield avenue was just as I was entering onto Bloomfield avenue.

Q How far from the place of the collision was the car then, Carambas' car? A About twenty-five feet.

Q Are you sure of that? A Yes.

10 Q And that was when you were just entering into Bloomfield avenue from North 6th street? A Yes.

Q How fast was that car going? A I don't know just exactly how fast it was going.

Q Was it going fast? A It was going pretty fast.

Q How fast was it going? A I guess it was going about twenty-five or thirty miles; it seemed to me as if it was.

20

Q How fast were you going when you were coming out from North 6th street into Bloomfield avenue? A About six or eight miles an hour.

Q He was going about six times as fast as you were going? A Yes.

Q And you saw him about twenty-five feet away then from the place of collision? A Yes.

30 Q What side of the truck were you sitting on? A The right side.

Q And the driver of the truck was on the left? Was it a left-hand drive? A Yes.

Q Were you talking to the driver at all? A No, I was not.

Q Was he talking to you? A No.

Q Just sat looking out and didn't do any talking from the time you left, say, First avenue, and got into Bloomfield avenue? No words passed between you? A We didn't talk. He didn't never talk to me very much at any time. 40

William Meadows, cross.

Q He didn't do much talking? Now, when you say you were on this first track—I think you said. A Yes.

Q You saw the car how many feet away? A I guess it was about twenty-five feet away when I saw him first.

10 Q Did that car slow down as it came into Bloomfield avenue? A Yes, it did.

Q What was your speed before you started to slow down, as you came into Bloomfield avenue? A I guess it was about eight miles an hour.

Q He slowed down still more when he came into Bloomfield avenue? A Yes.

20 Q To what speed, about? A I don't know exactly, I guess it was going—it was about six miles an hour when he was making his turn.

Q And he continued to do that until the time of the collision? A Yes, he was slowing down the car from the time—

Q So he was probably going less than six miles an hour at the time of the collision? A Oh, he was near stopped at the time.

Q Near stopped? A Yes, about two miles an hour, something like that.

30 Q Do you drive a car? A Yes.

Q And you were simply a helper there, though? A Yes, that is what I was, a helper.

Q How long had you been employed with the Bergida concern? A I had been employed with them twelve months, then.

Q Did you make these trips with Burl? A Yes, I did.

Q Every day? A Yes.

40 Q Are you a friend of his, outside of being employed in the same place? A No, I was not.

William Meadows, cross.

Q Are you working for Bergida now? A No, I doesn't work for Bergida.

Q Who do you work for now? A I work for Mr. Burl

Q A driver? A Yes.

Q How long have you worked for him? A I worked for him about four months now. 10

Q Now, after the collision, what did you do, get off your truck or stay on the truck? A I had gotten down off the truck.

Q Did you see the injured man, the plaintiff here? A Yes, I did.

Q Did you see them taking him away? A No, I didn't see them taking him away.

Q Where did you go? A I had to get the tools; they were scattered around there; and I was picking up the tools, wrenches and one thing and another. 20

Q Whose tools? A Ours.

Q How did they get—where were they kept, these tools? A It was a tool box on the step of the truck.

Q On the step? A Yes.

Q Is that— A It is right down on the running board.

Q By the front step? A Yes.

Q Was that damaged? A It was torn off. 30

Q What else was torn off? A That was all.

Q Was the wheel in any way marked? A No.

Q Was the step? A Yes.

Q Was that damaged, too? A Yes, it was kind of bent.

Q Where, in the front or back? A In the back, right at the end of it.

Q Was the hood in any way damaged? A No. 40

William Meadows, cross.

Q And any marks on it? A No.

Q You collected these tools, together and put them back in the truck? A I put them in the truck.

Q Then what did you do? A I got on the truck, after Mr. Burl had pulled about ten feet
10 up the street.

Q You got up on the truck? A Yes.

Q Did you see the ambulance come? A No, I didn't.

Q Can you tell me where the truck was immediately after the collision?

Mr. Studer: Which truck?

Q (Continuing.) Your truck, the one you
20 were on? A No, I don't know exactly how you mean. At what time?

Q Right after the collision. You say that your truck had almost stopped. That is what you testified to, that your truck had almost stopped at the time of the collision. Now, where had it stopped with reference to the tracks? A Well, it didn't roll over two or three feet after the collision.

Q Then he didn't come to a stop until after
30 the collision? A No.

Q That is correct, is it? A Yes.

Q Now, where did it come to a stop? A It came to a stop, I guess the front wheel was in the last track.

Q The front wheel was in the last track? A Yes.

Q Well, which one, the left or right wheel? A The right.

Q Your right wheel was in the—on the last
40 rail? A Yes, turned northwest.

William Meadows, cross.

Q How far was it north of North 6th street?

A I don't know exactly how far; I disremember.

Q I don't mean north, I mean west. I mean toward Bloomfield avenue, or toward Boonton. How far? A You mean how far was it away, the truck?

Q How far was your truck, after the col-
10 lision, west of North 6th street? A I wasn't so far.

Q How many feet? A I couldn't tell you.

Q (By the Court.) Tell us, if you can, how far your car was, west of North 6th street after the collision? A I couldn't explain, I disremember; it was quite a while ago and I cannot remember.

Q Well, try to think. You say your car
20 was moved ten feet after the collision, over to the right-hand side of Bloomfield avenue? A Yes.

Q Where was that? Was that above North 6th street? A Yes, it was.

Q How much above? A Ten feet.

Q Does that give you any idea where your truck was when the collision occurred, where it stopped after the collision? A I guess it was something like three or four feet.
30

Q Three or four feet what? A From 6th street, at the time of the collision.

Q Above 6th street or below it? A Above it.

Q How far is it from that rail there (indicating) to that corner where that man is sitting? That corner there (indicating), would you say? A Twenty feet.

Q From this tack. Do you see that tack (indicating)? A Yes.

Q From that tack to that mark?
40

Clifford L. Landmesser, direct.

Mr. Studer: Which corner?

The Court: Right where this man is; right there where he is putting his hand.

A About twenty-one or twenty-two feet.

Q It is twenty-four feet six inches.

10

Mr. Studer: That is not bad.

Mr. Kalisch: That is not bad.

Q Meadows, after the accident, did you see how Mr. Carambas got out of his truck? A Yes, I did.

Q How did he get out? A He got out himself.

Q Was he helped? A No, I didn't see anybody help him at all.

20

Q Were you there when they took him? A Yes, I was.

Q Was he bleeding? A He had scratches, or something on his face.

Q Was there blood there? A Yes, there was.

30

CLIFFORD L. LANDMESSER, sworn in behalf of the defendant.

Direct examination by Mr. Studer.

Q Are you a surveyor? A Yes, sir.

Q How long have you been a surveyor? A Twenty years.

Q Where do you work? A City of Newark.

40

Q Did you, at my request, make a map showing North 6th street to Bloomfield avenue, sometime heretofore? A I did.

Clifford L. Landmesser, direct.

Q When was it you made it? A November 6, 1925.

Q Who did you make it with? A Mr. Bradner, my partner.

Q You did make the measurements together?

A I did.

Q Did you make that map? A I did.

10

Q Go to the map—or if you can do it from your seat without going to the map—how wide was North 6th street at the time you made the map? A North 6th street from curb to curb?

Q How wide is Bloomfield avenue, on the westerly side of North 6th street? A Thirty-nine and seven-tenths feet from curb to curb.

Q How wide is Bloomfield avenue at the easterly side of North 6th street? A Thirty-nine and seven-tenths feet.

20

Q What is the distance from the continuation of the building line on the southerly side of North 6th street, at the southeast corner of the southerly rail to the eastbound car tracks? I mean, from the intersection of the two building lines to the southerly rail of the eastbound car tracks? A I will have to scale it.

Q Well, scale it. A Twenty-six feet.

Q How wide are the four trolley tracks from the southerly to the northerly rail? A Fourteen feet and six-tenths.

30

Q How wide is the sidewalk on the southerly side, from the building line to the curb line, on the west side of North 6th street and Bloomfield avenue? A Thirteen and four-tenths feet.

Q How wide is the sidewalk on the easterly side of North 6th street—or, I mean, on the westerly side of North 6th street? A Twelve feet and eight-tenths.

40

Clifford L. Landmesser, cross.

Q What is the distance from the building line of the curb on the westerly side of North 6th street? A Approximately twelve feet. There is no building there.

Q What is there there? A There is a water tower in the center.

10 Q What is the width of the sidewalk on the southerly side of Bloomfield avenue, below North 6th street? A Thirteen feet, two and a half inches.

Q Are there buildings there? A No.

Q Is there a building on the southwest corner of North 6th street and Bloomfield avenue? A There is.

20 Q What is the distance from the southerly rail of the eastbound car track on Bloomfield avenue west of 6th street? A Twelve feet four inches or twelve feet and four-tenths.

Q Is this map drawn to a scale? A Yes.

Q Then it is possible, from any part of the map, to figure the distance of any other? A Yes.

Q Did you make any note of the grade of the street? A On Bloomfield avenue only. 6th street is practically flat.

30 Q How much of a grade is there on Bloomfield avenue? A On Bloomfield avenue there is a descending grade of fully ten and a half inches in a hundred feet.

Q That is, down hill from Newark to Bloomfield? A Yes.

Cross examination by Mr. Kalisch.

40 Q Is there any grade on North 6th street? A Very slight.

Louis Frayler, direct.

Q In which direction? A Running toward Bloomfield avenue.

Mr. Studer: I offer the map and now it becomes P. 1.

(Map marked Exhibit P. 1.)

10

LOUIS FRAYLER, sworn in behalf of the defendant.

Direct examination by Mr. Studer.

Q Can you talk loud? A Fairly loud.

Q What is your business? A Chauffeur.

Q For whom? A A. Bergida, Inc.

20 Q Did you work for the company, in that capacity on July 28, 1924? A I did.

Q Were you driving a truck on North 6th street on that morning? A Yes.

Q Was there a truck belonging to Bergida on North 6th street, driven by Burl? A There was.

Q Was that truck behind you or ahead of you? A Ahead of me.

30 Q What kind of a truck did you drive? A A Mack truck.

Q Who was in the truck? A Mr. Bergida was sitting alongside of me as a helper.

Q Where did you start from? A From Sherman avenue and Peddie street, the warehouse.

Q Were you going north, over North 6th street? A I was.

40 Q How far behind the truck ahead of you, were you? A About ten or twelve feet.

Louis Frayler, direct.

Q As you approached First street or First avenue? A How far behind me?

Q How behind were you? A About ten or twelve feet; in the neighborhood of that.

Q Was your truck the same kind of a truck as Burl was driving? A It was.

10 Q That was what kind? A A Bull-dog Mack, seven and a half ton.

Q Was it light or dark just before this accident occurred? A It was a clear night; it was around half-past two in the morning, between two and three; a clear night; the stars were out.

Q Had you started from where you had started, at the same time as the Burl truck? A Yes.

Q Whereabouts were you going? A Sussex and Hamburg.

20 Q Were you all bound on the same expedition? A We were.

Q (By the Court.) With a heavy load? A Yes.

Q Both trucks had? A Yes.

Q (By Mr. Studer.) As you came to the intersection of North 6th street and First avenue, do you know whether or not the truck that Burl was operating blew any whistle or sounded any horn? A I do.

30 Q What do you know about it. A I knew he sounded a warning whistle as he approached First avenue.

Q As he was approaching Bloomfield avenue, what side of North 6th street was he driving on? A The right side.

Q Was there a curb line there? A There was.

40 Q How near the curb was he? A About five feet.

Louis Frayler, direct.

Q Do you know whether or not he blew any whistle as he approached? A He did. He had blown his whistle from the time he had crossed First avenue.

Q Did you see a collision between his truck and another truck, a Dodge truck, which was operated by this man Carambas? A I did. 10

Q Where did that collision take place? A Directly on the rails.

Q Which direction was Burl's truck headed when the collision occurred? A Directly across North 6th street.

Q The head of it was in what direction? North and south or east and west? A It was passing across Bloomfield avenue; I believe it is north.

Q In which direction was Carambas' truck headed at the time of the impact? A The direction of towards Newark, coming from Boonton. 20

Q Which part of the trucks came together? A The front end of Carambas' truck hit the step on Burl's truck, between the step and the sprocket.

Q Where was Carambas' truck when you first saw it? A About in the neighborhood of ten or fifteen feet from the corner. 30

Q Which corner? A It was my left-hand corner, the way I was driving, on my left-hand side.

Q Where was Burl's truck then? A It was out on Bloomfield avenue and North 6th street.

Q How near the southerly rail of the east-bound track was Burl's truck, and where was this other truck? A When I first saw him his front wheel was about to go on the first rail. I don't know whether it was east or what it is. 40

Louis Frayler, cross.

Q That would be the southerly rail of the eastbound tracks. I think that is agreed. Was there any horn or whistle sounded by Carambas or signal, as he approached? A There was not.

Q Do you know whether there were lights on Burl's truck? A There were.

10 Q Did the front part of Burl's truck collide with any part of Carambas' truck? A It did not.

Q What part of Carambas' truck collided with Burl's truck? A It appeared to me, from where I was, that it was the front end.

Q The front end of whose truck? A Carambas', that collided, from the direction I was sitting in. I was sitting at an angle.

Q Did you observe the speed of Carambas' truck just before the impact? A I did.

Q And when you first saw it, did you first observe its speed? A Yes.

Q What speed did you observe, when you first saw it? A About twenty-five or thirty miles an hour.

Q Did he increase or decrease his speed? A He did neither.

Q Did he alter his course? A He did not.

30 Q Where was he when you first saw him? A On the car rails.

Cross examination by Mr. Kalisch.

Q How long is this Mack truck that you were driving, from the head to the rear? A About twenty-two feet, or twenty-three feet, it is a little larger than the other one.

Q How wide is it? A About eight feet, I imagine, in the neighborhood of that.

40 Q A left-hand drive? A Yes.

Louis Frayler, cross.

Q Were there any other cars on this trip up to Sussex county? A There were four of us.

Q What? A There was four, but two had already preceded us in the direction of Bloomfield, about, well, I will say, twenty or fifteen minutes ahead of us, something like that.

Q But there were only two together at the time of this accident? A Yes, sir. 10

Q And you followed this truck of Burl's? A Yes, sir.

Q Did you keep directly in back of him? A I did.

Q You didn't try to get ahead of him at all? A No.

Q Or to one side of him? A No, sir.

Q You were directly in back of him? A Yes, sir.

Q You were directly in back of him up to the time of the accident, I mean, of course? A Yes, sir. 20

Q Did you blow a whistle, too, as you approached First street? A I did.

Q He blew the first whistle? A Yes.

Q Then you blew a whistle as you approached First street and Bloomfield avenue? A Yes; to me it is an intermittent blast, because it is a compression whistle. 30

Q Did you do that at all intersections? A We did.

Q Every intersection that you came to? A We did; we sound a signal, either of the whistle or the klaxon.

Q Was there a top to this Mack truck? A To which part of it?

Q Well to— A The body or the cab?

Q To the body? A No top to the body, no, sir. 40

Louis Frayler, cross.

Q Was there anything on the truck? A Yes, there was groceries on the truck.

Q And what was it in, barrels or boxes? A No, it is in side racks; it is a rack body with a canvas top.

Q That is what I mean. A I thought you
10 meant whether it was a closed-in body.

Q No. There was a canvas top to the body?
A Yes.

Q Then, in front of the truck where the driver sits, what is there there? A There is a cab there.

Q That is stationed pretty high, is it, the seat? A The seat is high, yes.

Q And the seat of the truck is—what is there
20 between the seat of the truck and the floor of the truck in the front where the driver sits? A Why, there is a separate cab altogether different from the body of the truck, the cab is mounted separate. The body is build in back of the cab.

Q Was the truck pretty well filled up? What were you going up to Sussex County for? A We were carting groceries for the A. & P.

Q Pretty good load? A About seven or
30 seven and a half tons.

Q Were they barrels or boxes or both? A No; they were the ordinary run of groceries, the way they made up.

Q Ordinary boxes? A Some was bags; they don't handle no barrels; some was bags.

Q Bags? A Yes.

Q How were they placed in the truck? A All set in tiers.

Q Did they run to the top or half way? A
40 No, they don't go—I wouldn't say to the top;

Louis Frayler, cross.

they were; I should say, about three-quarters of the way up.

Q Your truck was the same way? A Yes.

Q Where did you get this truck? A Which truck?

Q The truck you were driving? I believe you said you were driving one of the trucks. A
10 Sherman avenue and Peddie street.

Q Is that the garage where they keep these trucks? A That is the garage, yes, sir.

Q Had Burl's truck—had that started out, or were they ready to start out when you got on that truck? A No; they were waiting for me.

Q Where did you come from? A From home.

Q When you went in the garage did you see
20 Burl's truck in there? A Yes, I did.

Q When you went into the garage did you see Burl's truck in there? A Yes, I did.

Q In there? A No, it was waiting outside for me.

Q Outside on the curb? A Well, outside, the space that they have there when we stand in front of the warehouse.

Q Then you got on your truck? A Yes, sir.

Q And started out of the garage, and went
30 along in back of them all the way over to Bloomfield avenue? A I did.

Q The truck had already been loaded? A Yes, sir.

Q Your speed was ten or twelve miles an hour all the way up to Bloomfield avenue? A In the neighborhood of that. Sometimes slower.

Q Now, you say that this impact took place on the trolley tracks? A It did.

Q You saw it? A I did.

Louis Frayler, cross.

Q Did you see just what part of the truck ahead of you and what part of Carambas' car came together? A Yes.

Q You saw it, when it happened? A Yes.

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

Q Where did you first see Carambas' car? A
10 When I was behind their truck, as it started out on Bloomfield avenue and there is a sort of— goes on a sort of an angle, and as I got to where the building was, on my left, I looked up Bloomfield avenue, and there is a telegraph pole there, and I believe between that and the house, that building, rather, I looked up Bloomfield avenue, and that is where I first saw Carambas' truck.

Q Where was that? How far above North
20 6th street? A From where I was sitting, I would say—

Q Not from where you were sitting. A The place where I saw him, then.

Q No, no. How far was it from the place of the collision at the time you saw him? A From the place of the collision?

Q Yes. A Around thirty-two or thirty-three feet.

Q How far into Bloomfield avenue were you
30 then? A I wasn't into Bloomfield avenue at all.

Q You were at the corner? A I was not at the corner.

Q Isn't there a building there at the left-hand side of the corner? A There is, but if you are on this side of Bloomfield avenue, about ten feet, you can observe by looking around the corner and see anything coming down, if it is out in the car rails.

Q How many feet in, do you say? A In
40 the neighborhood of about ten feet, I imagine.

Louis Frayler, cross.

Q How far up can you look, when you are ten feet in on North 6th street? How far in Bloomfield avenue can you look? A Say about twenty-five feet from the corner.

Q But you weren't at the corner? A No, sir; from the corner on my left, I can observe about twenty-five feet up Bloomfield avenue, in
10 the position the car rails are located.

Q But you have just said that when you saw the car you had not yet got to the corner? A I had not yet got to the corner, but you asked me how far I was from the corner.

Q I know that, but before that you said that when you saw Carambas' car you were not yet to the corner, that you were thirty-two feet from the point of the collision. A Right.

Q But you say now the distance that you
20 could see up Bloomfield avenue from the corner was twenty-five feet? A But the impact was not on the corner.

Q I didn't say that it was, but I want you to explain how it was that you could see thirty-two feet up Bloomfield avenue when you were not at the corner. You now say that you could see about twenty-five feet up Bloomfield avenue when you were not at the corner? A About that, I
30 say. I wouldn't say exactly.

Q Well, which was it? A I wouldn't say exactly. I wouldn't say that it was twenty-five or thirty-five, but I say about; I am not judging the distance, so far as that goes; I am just giving you my opinion, of what I say it was.

Q Well, now, when you were ten feet in North 6th street you can see about thirty-two feet, according to what you have already said? A Something in that neighborhood, not directly on the curb line of Bloomfield avenue, but in the
40 position that the trolley rails are located.

Louis Frayler, cross.

Q When you got to the corner where was Carambas' car? A I didn't get to the corner, the collision was just about when I was about three feet, I will say, this side of the corner.

Q You were three feet in North 6th street?
A In North 6th street.

10 Q And you followed Burl's truck? A Yes.

Q When he got to the corner, did his truck turn or did it go straight? A It didn't appear to me as if it turned at all.

Q Didn't he turn at all—didn't make any turn into Bloomfield avenue? A There is no necessity to make a turn.

Q I am not asking what is necessary, I am just asking what you saw. A I am just trying to explain to you.

20 Q Don't tell me what is necessary. A It came out of North 6th street.

Q Did he continue on into Bloomfield avenue? A Yes.

Q How far over did he get before the collision? A He got about the second trolley rail.

Q With the front wheels? A Yes.

30 Q He had not yet made a turn? A No; his wheels had not made a turn; they were inclined at a small angle; I wouldn't say that a turn was made; just an angle there, because there is a wide swing that you can make.

Q Did you see the wheels? A What do you mean?

Q From where you sat? A Yes, I could see the front wheels from where I sat.

Q You could see them? A Yes.

40 Q Were you looking at it? A I wasn't looking at the front wheels, I was looking at the truck.

Louis Frayler, cross.

Q You say that the front wheels had made a small turn at the corner, an angle was made, and you say you could see that. A From observing, as I drove along, whether the man was going to turn in.

Q You were not directly in back of him? A Not directly, or I couldn't see what the man was going to do. 10

Q Didn't you say that you followed right in back of him, and you didn't turn to the left and didn't try to get alongside of him, that you rode in back of him? A Yes, I did.

Q Is that correct? A That is correct, from the position I sat in I could see out on the side of him.

Q Could you see the front wheels of this truck that was ahead of you? A Yes, sir. 20

Q Did you have to look out to the side to see them, in that position? A I always drive in that position.

Q That is the way you drive? A Yes.

Q You always drive that way? A Yes, sir.

Q Lean out of the side of the car? A I don't have to lean out.

Q I mean, look out of the side of the car? A Yes. 30

Q With your body that way? A No, not with my body this way; I am resting up against the side of the cab.

Q Of course you cannot see through his car? A No, I cannot see through his car, but I can see alongside of his car.

Q Now, you say this car of Carambas' was going about thirty miles an hour? A Somewhere in the neighborhood of that.

Q When you first saw it? A Yes. 40

Louis Frayler, cross.

Q Do you say it continued to go that fast? A It appeared to me—

Q What did you say, whether the car ahead of you, Burl's car, continued to go at the speed it was going? A It slowed down a little bit. I couldn't just say why it slowed down.

10 Q Where did it start to slow down? A Right about at near the corner was where it appeared to me it would be.

Q Which corner? A The corner of North 6th street and Bloomfield avenue.

Q You mean this corner here (indicating)? A Yes, about that.

Mr. Kalisch: What do you call that?

The Court: The southwest.

20 Q Just as he got to the southwest corner? A He had started out there to slow down.

Q Did you go across Bloomfield avenue, straight across? A Yes.

Q Straight, this way (indicating)? A No.

Q Well, tell us which way he was going? A At sort of an angle, like about in the street there; he was started over like that (indicating).

30 Q With what part of his car? A At the time of the impact?

Q Yes. A His front wheels was about on this (indicating) rail.

Q Which rail? A This rail here.

Q That is the last rail, we will call it? A Yes.

40 Q Where was the tail-end of his car? A The tail-end was, I will say, somewhere in the neighborhood of over there (indicating); I don't know just how far it is.

Louis Frayler, cross.

Q You say it is over the southerly rail? A Yes.

Q Do you work for the Bergida Company yet? A I do.

Q What sort of a brake did you have on there? You have an emergency of course? A Yes. 10

Mr. Studer: I object to what he had.

The Court: Objection sustained.

Q Do you know whether this first car had an emergency brake on or not? A I do.

Q And a foot brake? A He did.

Q Now, then, did you see any arc-light? A I did.

Q Was it lighted up? A It was. 20

Q Did you get out of your car after this happened? A I did.

Q Did you see this man Carambas? A I did.

Q Where did you see him? A He was getting out of the Dodge commercial car.

Q Was anyone with him? A At the time he was getting out of the car?

Q Yes. A No, there was two men on the street that had preceded him out of the car.

Q Did you go up to him at all? A Yes. 30

Q What was his condition? A He was bleeding; I don't know whether it was his head or face, but he was holding his hand up over his face in that (indicating) position; he was covered with blood there. You couldn't just see what it was.

Q Who did you see standing around there besides Mr. Carambas, and the two people that were standing there when you got off the car?

A There were two other young men, I believe, 40

Armin Bergida, direct.

there, had got out of the back of the car or something. They came over from that direction, as though they came from the car, and there was one other man there. I believe they said he worked for the telephone company.

10 Mr. Studer: I object.

Q Did you see the police officer? A There was three of them.

Q Three of them when you got there, or afterwards? A Afterwards.

Q How long afterwards? A I would say two or three minutes, something like that.

Q Did he move the car? A I don't recall.

20 Q Were they moved before the police got there? A They were not.

Q They were in the same position they were at the time of the accident when the policemen were there? A Yes, sir; they were, yes.

ARMIN BERGIDA, sworn in behalf of the defendant.

30 *Direct examination* by Mr. Studer.

Q You live in Newark? A Brooklyn.

Q Are you the president of the A. Bergida Corporation, which is the defendant in this case? A Yes, sir.

Q Did you own a Mack truck on July 28, 1924? A Yes.

40 Q Were you riding in a Mack truck car, which was driving behind a Mack truck, which was driven by your chauffeur Burl? A Yes.

Armin Bergida, direct.

Q Were you on North 6th street with that car? A Yes.

Q Was Burl just behind you, on that truck on which you were driving? A Yes.

Q How far behind the truck on which you were driving was the one that Burl was driving, as you approached North 6th street? A About 10 twenty or twenty-two or twenty-five feet; I couldn't say.

Q Then you were behind him? A Yes, behind him.

Q Do you remember whether there was any horn on that truck? A There was a whistle.

Q Was there a whistle on the truck Burl was driving? A Yes.

Q Did you hear any whistle from the truck driven by Burl as he approached North 6th street and Bloomfield avenue? A Yes. 20

Q Did you hear any whistle from Burl's truck as you approached Bloomfield avenue and North 6th street? A I did.

Q Did you see an accident? A I saw an accident when the two trucks came together.

Q How long before Carambas' truck collided with your truck did you see Carambas' truck? A Well, I saw him about—I couldn't say exactly; 30 between thirty and thirty-five feet, on Bloomfield avenue.

Q Where were you when you saw him? A I was behind the other truck, about ten or twelve feet, some fifteen feet, something like that.

Q Where was your truck at the time of the collision with reference to the four trolley rails? A Well, I was maybe, about ten feet.

Q No, when I say your truck, I confuse you. I mean Burl's truck. Where was Burl's truck with reference to the four trolley rails at the 40

Armin Bergida, direct.

time of the collision? A When we came there, when the collision was together, the front wheels was on the east side of Bloomfield avenue, on the track, and the rear was on this (indicating) side of the track.

Q That is, the southerly side? A Yes.
10 When you are coming out from North 6th street the first track was the rear wheel, and the other side was the front wheel there.

Q Did you get down out of your truck after the collision? A Yes, we stopped and went down.

Q What part of Carambas' truck collided with what part of the truck Burl was driving? A After the radiator had gone by the step has to go by.

20 Q Of which truck? A On my truck. He drove—he hit that step.

Q With what part of his car? A With the front, the front of his car hit Burl's sprocket.

Q That was the end of the car? A That is the rear end, the sprocket is on the front; he just hit in the middle.

Q He hit on the left side? A On the left side.

30 Q Did you wait until the police came? A Yes, sir.

Q Did you see Carambas after the accident? A I saw him on the street.

Q Was he bleeding? A Yes, sir.

Q Have you that truck yet which Burl was then driving? A Yes, sir.

Q Do you know whether at that time that truck had a governor on it? A Yes.

40 Q To what speed was it governed? A Fifteen.

Armin Bergida, cross.

Q Was it working that day, do you know? A Always did.

Q Have you that truck yet—I think you said you had. A Yes, sir.

Q Have there been any repairs made to that truck? A No, sir.

Q From the time of the accident until some time in November, when some photographs were made of it? A No, sir. 10

Q Are you familiar with the fact that two photographs were taken of that truck? A Yes, sir.

Q You know there were? A Yes, sir.

Q I show you a photograph which has been marked D. 7 for identification and ask you if that is a photograph of your truck, and when I say your truck I mean the truck Burl was driving at the time of the accident. A Yes, sir; that is one of my trucks. 20

Q Is that the truck Burl was driving? A Yes, sir.

Q Does the way that truck is represented in the photograph—no—does that truck look, in that photograph, as it looked after the accident on July 28, 1924? A Yes, sir.

Mr. Studer: I offer the picture. 30

Cross examination by Mr. Kalisch.

Q Who took the photographs? A The photograph man.

Q Were you there? A Yes, sir.

Q Where was it taken? A Right at Sherman avenue.

Q Sherman avenue? A Yes, sir.

Q When was it taken? A Some time in November. 40

Armin Bergida, cross.

Q Who was the man who took it? A I couldn't tell you.

Q Was there more than one truck there? A No, sir.

Q Was there more than one picture taken? A I guess two of them.

10 Q Two trucks? A No; two pictures.

Q What, of the same truck? A Of the same truck.

Q Who pointed out the truck? A Nobody pointed out the truck.

Q Who was there to point out which truck? A Oh, the man came down and asked for Bergida.

Q Were you there? A Yes, sir; in the warehouse. We was waiting to load up, and I came
20 over with the truck, and he took the pictures then.

Q How many trucks were there there when this picture was taken? A Only one truck.

Q Well, this driver that is, Burl, said there were four Mack trucks. A Where?

Q On July 28, 1924, two of which had proceeded him up to Sussex County. A That is true.

30 Q Were they there then? A No, sir.

Q Only this truck? A Only one truck, because he was asked to speak for that truck, how the accident happened.

Q Where were the other trucks?

Mr. Studer: I object.

The Court: I will allow it.

Defendant's counsel prays an exception to this ruling of the Court.

40 Exception noted as ground of appeal.

Armin Bergida, cross.

A If you want to know where that truck is, you can find sometimes twenty trucks there.

Q Don't argue. A I am not arguing.

Q (By the Court.) Were trucks there during the time the photographer came to take this picture? A That truck was there.

Q Were there any other trucks there? A 10 In the warehouse, not out in the street.

Q They were in the warehouse? A In the warehouse.

Q (By Mr. Kalisch.) Was this truck in the warehouse? A Yes.

Q Who drove it out?

Mr. Studer: I object to that as immaterial.

The Court: I will allow it.

Q Who drove it out? A The chauffeur. 20

Mr. Studer: I object.

The Court: Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q What chauffeur? A I think Clark is his name. 30

Q Who went in with him to get the truck? A Myself.

Q You went in? A Yes.

Q You told him to take out this truck to have a picture taken? A I didn't tell him that.

Q You told him to take the truck out. A After he was loaded, when the photographer was waiting outside, we went out and he took the picture.

(Photograph marked Exhibit D. 7.)

40

Armin Bergida, cross.

By Mr. Studer.

Q I show you the photograph marked D. 6 for identification and ask you if that is a picture of the same truck which was involved in this accident on July 28, 1924? A Yes.

10 Q Was this picture taken at the same time as the other picture, regarding which we have just had testimony? A At the same time.

By Mr. Kalisch.

Q Are all these Mack trucks the same looking kind of trucks?

The Court: What are you examining on now?

20 Mr. Kalisch: As to the admission of the pictures.

A Now, there is a difference, but not very much. Now, what I have got, I have got four speeds. There is on the old ones, three speeds; but there is not much difference. If you give me the picture I will show you what there is to it. On the radiator I don't think—you got the radiator, didn't you? Now, here (indicating) you see, this radiator here (indicating).

30 Q Yes. A Now, on the old ones, they haven't got these radiators, you only got like a cross iron, that is all.

Q How many of the old ones—

Q (By Mr. Studer.) Have you got any old ones? A No, sir.

Q (By Mr. Kalisch.) How many are there like this? A I couldn't tell you. I just know what I own.

40 Q That is what I asked you. How many did you own? A Trucks like this? Three.

Armin Bergida, cross.

Q You had three at the time this picture was taken? A I had three, yes, but only this one was out.

(Photograph marked Exhibit D. 6.)

The Court thereupon took a recess from 1 to 2 P. M. 10

—————
AFTER RECESS.

ARMIN BERGIDA, resumes the stand in behalf of the defendant.

Cross examination (continued) by Mr. Kalisch.

Q Mr. Bergida, I show you a picture marked Exhibit D. 7 and ask you to tell me what this white appearance of the step there is. What is that? A That I couldn't tell you, what it is. If you want me, I shall answer you. 20

Q Well, explain it, that is all. A A tool box comes to this end.

Q From where? A From about there (indicating).

Q You say, "from here," the jury doesn't know what that means. A I couldn't just exactly measure the tool box. 30

Q I don't want you to do that. You say that tool box was on the step? A Yes.

Q You don't know just where? A Yes, I do.

Q Point out where. A The end of this tool box comes to here (indicating).

Q The end of the tool box comes to the end of the step? 40

Armin Bergida, cross.

Mr. Studer: Pointing to the right end of the step as you look out from the front.

Mr. Kalisch: Of the left-hand side of the truck?

Mr. Studer: Yes.

10 Q Where does the tool box begin? A About around here (indicating).

Mr. Kalisch: Pointing to the middle of the step.

The Witness: No, not the middle of the step.

Q Well, near the middle? A Well, I cannot say just exactly what it is.

20 Q Near the middle of the step? A Near the middle of the step.

Q Now, Mr. Bergida, I believe you testified that you were in the second truck? A Yes.

Q And that when the collision took place the truck that you were on was on the corner of 6th street and Bloomfield avenue? A Which truck?

Q The truck that you were on. A It was not on Bloomfield avenue, it was on North 6th street.

30 Q How far in? A Well, I wouldn't say exactly; maybe two, maybe fifteen, maybe ten feet; I couldn't say exactly how much.

Q Then you say you saw the truck ahead of you, that is the one that Burl was operating—you saw that truck go into Bloomfield avenue? A Yes.

Q From 6th street? A Yes.

40 Q Where was the truck when the collision took place? The front of the truck? A On the other side. There are four tracks.

Armin Bergida, cross.

Q Yes. A Past the third track.

Q There are only two tracks. There are four rails? A There are four rails.

Q The two tracks? A It is past the third rail.

Q How far past had it got? A It couldn't be a lot, because there is only about three feet or three and a half feet between the rails. Maybe one foot, maybe two feet, I couldn't tell you that. 10

Q Which rail was the truck on, or was it between the rails? A The front wheels?

Q Yes. A It was between the rails.

Q Where was the front truck, that is, Burl's truck, with reference to North 6th street, when the collision took place? A It didn't move until the collision took place. At the same place where the track was. 20

Q I know that, but where was it with reference to North 6th street? A The rear end was on this side of the track.

Q Which side? A Toward Newark.

Q You mean the tracks that go to Newark? A Yes.

Q It was on the tracks that go to Newark? A Yes.

Q And the front wheels were on the tracks that go to Bloomfield? A To Bloomfield. 30

Q And how far above North 6th street or below North 6th street was it? A What?

Q The truck. A It couldn't be below or further up.

Q Where was it? A It was right in the middle of the rails.

Q But I mean with reference to North 6th street, where was it? A I couldn't tell you that. 40

Armin Bergida, cross.

Q Oh, don't you know whether the front of the truck was above North 6th street or at North 6th street? A Well, North 6th street runs up the other side of the tracks also.

Q Well? A So long as I can explain, that the front wheels was there, rolling over, that is
10 all there is to it.

Mr. Kalisch: All right.

By the Court.

Q No, he is asking you. North 6th street crosses Bloomfield avenue, doesn't it? A Yes.

Q He is asking you whether, after the truck had crossed North 6th street, whether it was on Bloomfield avenue, above or below North 6th
20 street.

Mr. Kalisch: I don't believe he understands.

The Court: That is what you asked.

Mr. Kalisch: Yes, that is what I want to know—at the time of the impact.

Q (Continuing) Do you understand that map? A I don't think so. If you ask me once
30 more, I guess I can—I will explain this on the map.

By Mr. Kalisch.

Q I say, where was the truck that was ahead of you? That is, the truck that was in the collision? A Yes.

Q Where was that truck with reference to North 6th street? Was it above or below North
40 6th street, or about at the intersection. Now,

Armin Bergida, cross.

do you understand that question? If you don't I will use the map. A Now, the truck was going on North 6th street. The rear end was, the wheel was on this side (indicating).

Q That don't mean anything—"This side."
A Well, that is what it is. I couldn't explain
10 any different.

Q See if you cannot understand this map. A All right, I will see. Maybe I may.

Q This (indicating) is Bloomfield avenue where you see these tracks? A Yes.

Q To this way is Bloomfield and Boonton? A Yes.

Q This (indicating) way is toward Newark? A Yes.

Q Now, that truck, the truck ahead of you, was first in North 6th street? A Yes.
20

Q And came toward Bloomfield avenue? A Yes.

Q Now, point out where that truck was when the collision took place, the truck ahead of you. A About around here (indicating).

Q (By the Court.) Where were the front wheels? A Right here (indicating).

Q (By Mr. Kalisch.) So that it was right opposite this (indicating) corner, that would be? A
30 The right-hand corner.

Q The right-hand corner. So that he went straight across here (indicating)? A Yes.

Q He didn't turn up? A Not—he went straight up.

Q Was his wheel turning? Was it right up toward the curb? A When we came over?

Mr. Studer: I object. He has not said it was up toward the curb.
40

Armin Bergida, cross.

The Court: He asked him if it was straight or was it up toward the curb.

The Witness: When I came there, and the collision was, and I came out of our truck, the wheel was turned to the left.

- 10 Q That is, the front wheel? A Yes.
 Q And the front wheel was on the track running toward Newark? A No, no.
 Q I mean, toward Bloomfield— A Yes.
 Q And it was turned up toward Bloomfield? A Yes.
 Q And the rear of your truck was not yet on this track, the trolley track that runs to Newark? Wasn't yet on there? A No; it was between the two tracks.
 20 Q Well, I mean part of your truck was not—
 A Right around here (indicating). I showed you that truck before.
 Q That is, the rear end of the truck? A The rear end of the truck.
 Q It had not yet gotten on the Newark-bound track? A No.
 Q Where did you first see Carambas' car? A I saw him on Bloomfield avenue.
 Q I know, but where were you when you first
 30 saw it? A I was around about from twenty to twenty-five feet, maybe more, maybe less, on North 6th street, from Bloomfield avenue.
 Q Twenty-five feet in North 6th street from Bloomfield avenue? A Yes.
 Q Where did you see it? A On Bloomfield avenue.
 Q How far from North 6th street? A That is what I just said.
 Q How far from North 6th street? A I just
 40 told you that.

Raymond L. Mabus, direct.

Q No, you told me where you were. A Yes.

Q I asked you where Carambas' car was when you first saw it? A Maybe it was twenty-five; maybe thirty; maybe less or more; I couldn't say that exactly.

By the Court.

10

Q Where? A On Bloomfield avenue.

Q From where you were? A No, from the truck, but my truck was coming in—I mean, not mine but Gene Burl's.

Q And it was coming pretty fast, you say? A Whose?

Q Carambas' car? A I couldn't say exactly what it was coming; more than twenty-five, anyway.

Q You were coming how fast? A Not more
 20 than maybe six or maybe seven, something like that.

Q You were sitting next to this man Frayler—is that his name? A Yes.

Q On the right-hand side? A Yes.

RAYMOND L. MABUS, sworn in behalf of the
 30 defendant.

Direct examination by Mr. Studer.

Q Are you a police officer of the City of Newark? A Yes, sir.

Q Were you a police officer of the City of Newark on July 28, 1924? A Yes, sir.

Q Were you then attached to the Fifth Precinct of this city? A Yes, sir.

Q Were you on duty that morning, early in
 40 the morning? A Yes, sir.

Raymond L. Mabus, direct.

Q Did you, early in the morning of that day, learn of a collision between the two trucks at the intersection of North 6th street and Bloomfield avenue, in Newark? A I don't quite get that question.

10 Q Did you, early on the morning of that day, learn of a collision between two trucks at the intersection of North 6th street and Bloomfield avenue, Newark? A Yes, sir.

Q Where were you when you heard of the collision? A At Bloomfield avenue and North 8th street.

Q Is North 8th street and Bloomfield avenue in a direction west of the place where this happened or east of the place where this happened? A West of the place where it happened.

20 Q That is, toward Bloomfield? A Yes.

Q Did you hear a crash, or hear a noise? What attracted your attention? A I heard a terrible crash.

Q What did you do after hearing the crash? A Ran toward where I saw two parties meet in the middle of the street.

Q And when you arrived was there a Mack truck there?

30 Mr. Kalisch: I object to that as leading. Let him describe what he saw.

Q When you arrived there, was a Mack truck there?

Mr. Kalisch: I object.

The Court: I will allow it.

40 Q (By the Court.) As you said, you ran toward the place where you saw two cars together? A Where two cars were in the middle

Raymond L. Mabus, direct.

of the street. It could be seen from North 8th street.

Q Didn't you testify that you saw them come together? A No, sir.

Q (By Mr. Studer.) When you got there, what trucks were together? A There was a Mack truck and a small delivery Dodge truck. 10

Q In which direction was the Mack truck headed? A It was headed on, coming towards the car tracks, heading north.

Q How far out into Bloomfield avenue was the front of that Mack truck? A The front wheel was on the extreme left, the left car track—the extremely right car track—that means the furthest car track out.

Q That is, leading toward— A Bloomfield.

Q Where was the rear of the Mack truck? A 20 On the extreme south side of the street. In other words, just the other side of the first car track that he hit.

Q Where was the Dodge, three-quarter ton delivery truck? A About the center of the Mack truck.

Q Did you see Carambas there when you arrived? A I did.

Q Was he in his truck or on the street when you arrived? A He was on the street. 30

Q When you arrived, about how long was it from the time you had first heard the crash? A Approximately three minutes.

Q You ran down? A Yes, sir.

Q Did the ambulance come? A No, sir.

Q What did come? A The police patrol.

Q Was Carambas taken to the hospital? A Yes, sir.

Q In what was he taken to the hospital? A In the police auto patrol. 40

Raymond L. Mabus, cross.

Cross examination by Mr. Kalisch.

Q Did you examine the Dodge car? A I looked it over.

Q Did you look over the Mack truck? A I didn't what you would call thoroughly look it over. I barely looked it over. 10

Q Did you see any tools lying around the street? A There were some tools.

Q Did you see any tool box on the street? A There was a tool box on the street.

Q Where was it, on the street? How near or how far from the tracks? A Well, it was, what I would call about a foot away, between the step and the rear wheel, underneath the truck.

Q Underneath the Mack truck? A Underneath the Mack truck. 20

Q Further away, between what, did you say? A The step and the rear wheel.

Q That is, the tool box? A The tool box.

Q Did you examine the step of the Mack truck? A It was slightly cracked, what you might say a little splintered.

Q Whereabouts? A On the rear end of the step. 30

Q On the front step? A Well, there is only one step that I know and that is on the left side of the truck.

Q Who was there when you got there? A There were quite a number of people there when I arrived.

Q How many, about? A Approximately ten or twelve people.

Q Did you take any names? A I took the names of both drivers and both helpers. 40

Raymond L. Mabus, cross.

Q Took the names of any of those people? A I did, as much as I could; I took about five or six names.

Q Do you remember who they were? A I couldn't remember.

Mr. Studer: I object. It is immaterial whether he does or not. 10

The Court: I will let it stand. He has answered it.

Q Did you write those names down? A Yes.

Q And turned them in, did you? A I turned them in to the fellow in charge of the police patrol.

Q They were there when you got there? A Who? 20

Mr. Studer: Who is "they"?

Q These people whose names you took. A Yes.

Q How far is it from 6th to 8th street, where you were at the time you heard the crash? A Approximately five or six hundred feet.

Q You heard the crash and ran down? A Yes. 30

Q Were there any other officers there? A Yes.

Q Who were there? A There was Officer Holsworth and Officer McNish.

Q They were there when you got there? A No, sir; they came down with me.

Q Was Lieutenant Durkin there, too? A No, sir.

Q Didn't he come down there afterwards? A No, sir. 40

Raymond L. Mabus, cross.

Q Wasn't there at all? A No, sir.

Q Who moved the trucks? A Why, I, with several other people helped move the small Dodge back to the curb.

Q Which curb? A To the right-hand curb or south-west corner of North 6th street and
10 Bloomfield avenue.

Q You moved it to the curb? A Yes, sir.

Q How did you do that? Did you push the car? A We had to push it. It was pretty heavy shoving.

Q How did you do that? First push it away? A Some got on what you call the driver's seat and some got on the rear.

Q How did you move the Mack truck? A Well, the Mack truck got moved first.

20 Q You simply operated it? A Yes.

Q Where did you go with that truck? A We pulled on the right-hand side of the north-west corner of North 6th street and Bloomfield avenue.

Q In which direction was the Mack truck pointed when you got there? A It was pointed north, on North 6th street.

30 Q Which way were the wheels turned? A The wheels were slightly turned on Bloomfield avenue.

Q In what direction? A Toward Bloomfield.

Q Where was the rear end of the car, the truck? A The rear end of the truck was on the eastbound track, what you would call the right track of the eastbound.

Q That is the rear wheel? A The rear wheel.

40 Q How far does the end of the truck extend beyond the rear wheels? A Probably six feet.

Raymond L. Mabus, re-direct—re-cross.

Q Six feet more? A (No response.)

Mr. Studer: I did not ask one question.

Re-direct examination by Mr. Studer.

Q Did you observe whether or not there were
any lights on the Mack truck when you arrived? 10

A There was.

Q Were they lighted? A Yes.

Q Where were they? A Two on the front, one on the rear.

Re-cross examination by Mr. Kalisch.

Q You got there about three minutes after the accident happened? A Yes.

Q Was the driver down off his seat of the
Mack truck when you got there? A Yes, sir. 20

Q (By the Court.) You can run five hundred feet in less than three minutes, can you not? A Well, at the time we stopped a second in order to find out the location where the noise came from.

Q (By Mr. Kalisch.) Couldn't you see it as you looked down Bloomfield avenue.

Q (By the Court.) Did you see this car
pass before the accident? Did you see it mov- 30
ing? A Well, I probably did see it moving, but didn't pay particular attention to it.

Q Do you remember that car passing you while you stood on Bloomfield avenue at North 8th street, before the accident? A We wasn't standing at Bloomfield avenue and North 8th street.

Q Well, wherever you were, you did not observe it, did you, before the crash? A I didn't observe the speed of the car. 40

Anthony Holsworth, direct.

Q (By Mr. Kalisch.) Were there many cars going down Bloomfield avenue at that time of the night? A Well, taxis and so forth. They come down quite regularly.

Q You don't remember that particular car? A No.

10 Q (By Mr. Studer.) Was it a clear night? A A very clear night.

Q Was it starlight or dark? A It was what you call a bright moonlight night.

Q (By Mr. Kalisch.) Do you remember hearing any whistles of the truck? A Well, you hear so many you wouldn't know whether—

Q —it was theirs or someone else's? A That is the idea.

20

ANTHONY HOLSWORTH, sworn in behalf of the defendant.

Direct examination by Mr. Studer.

Q Are you a police officer of the City of Newark? A Yes, sir.

30 Q Were you a police officer of the City of Newark on July 28, 1924? A Yes, sir.

Q On that day, were you attached to the Fifth Precinct? A Yes, sir.

Q Where were you on duty around two-thirty or three o'clock? A I was standing at the corner of Roseville and Bloomfield avenue, the continuation of 8th street—Roseville avenue.

40 Q Did you learn of a collision between two trucks at the intersection of North 6th street and Bloomfield avenue that morning? A From the noise that I heard at that corner.

Anthony Holsworth, direct.

Q You heard a noise? A An impact and glass breaking.

Q After you heard the noise, what did you do? A Immediately hastened down to the said corner where I thought I heard a noise.

Q When you arrived there, did you find two trucks? A Two trucks. 10

Q What were the two trucks you found? A There was a very large truck, the name of which I didn't know until I heard it here, and the Dodge delivery.

Q In which direction was the large truck facing when you arrived? A It was facing north on North 6th street.

Q Where was the front of that truck when you arrived? A The front of the truck, the radiator, was just past, beyond the furthest track. 20

Q Was that the northerly rail of the west-bound track? A Yes, the northerly rail.

Q Where were the rear wheels of that truck? A I didn't observe the wheels.

Q Where was the end of that truck? A Why, a little bit past the first track. That is considerable more than the front.

Q By the first track do you mean the southerly rail of the eastbound tracks? A Yes. 30

Q Was your brother officer, Officer Mabus, there? A Yes, sir.

Q Where was the Dodge truck with reference to the big truck when you arrived? A The Dodge truck seemed to be, or it was, straddling the south track.

Q Where with reference to the big truck was the Dodge truck? A It remained in the center of the big truck. 40

Anthony Holsworth, cross.

Q Did you see any tools scattered about? A I did not.

Q Did you see a man, Carambas, who was driving the Dodge truck? A Yes.

Q Where was he, on the truck or in the street? A On the street.

10 Q Was he bleeding? A At the face.

Cross examination by Mr. Kalisch.

Q When you say straddling the southbound track, just what do you mean? A I mean one wheel on the other side of the southbound track, and the left wheel was between the two southbound tracks.

Q I don't get you. A What I mean, the right wheel of the Dodge was beyond or off to the right of the south track.

20 Q That is, the track going to Newark? A Yes.

Q And the left wheel— A Was over near the other track but not touching it; it was just what I would say about a foot.

Q That is, between the two rails of the northbound track? A Yes.

Q You understand what I mean? A Yes.

30 Q That is where the left-hand wheel of the Dodge was when you got there? A Yes, sir.

Q You say the front wheels of the Mack truck were a little over the farthest track? A I didn't say the wheels.

Q Oh, I mean the radiator? A The radiator.

Q That is what I said. A Yes.

Q The radiator was a little over the farthest track? A Yes, sir.

40 Q About how far over? A Well, I should judge two or three feet; I am not sure about that.

Anthony Holsworth, cross.

Q About two or three feet? A About two or three feet.

Q And which way were the front wheels of the Mack truck? A I didn't notice the wheels at all.

Q Oh, you didn't notice the wheels? A No.

10

By the Court.

Q You say the Dodge truck headed in what direction? A In a westerly direction.

Q Westerly? A I mean easterly direction, going down.

Q Toward Newark? A Toward Newark, yes.

Q It was at right angles, then, to the Mack truck, was it? A A little bit, yes, sir.

20

Q It wasn't headed the same as the Mack truck, was it? A No, it was going as though it was going to continue on North 6th street, on the other side of Bloomfield avenue.

Q And the Dodge truck was headed toward the side of the Mack truck, is that right? A Yes, sir.

Q Was there any other officer there besides Officer Mabus and yourself? A I am sure there was another officer there but I couldn't positively tell.

30

Q Were there any other people there besides the other officer and the people who were in the accident? A Yes, there was a few.

Q Were there any other names taken?

Mr. Studer: I object.

The Court: It is immaterial. I will allow him to testify if he wishes, I mean if Mr. Kalisch wishes to bring that out.

40

Anthony Holsworth, cross.

Q Were there any? A Yes, a few people. Outsiders, you mean?

Mr. Kalisch: Yes; that is all.

By Mr. Studer.

10 Q Were there any street lights or arc-lights in Bloomfield avenue or North 6th street at that time and place, do you recall? A Yes; there is an arc-light on the northwest corner of Bloomfield avenue and North 6th street.

By the Court.

Q Was it lighted? A Yes.

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

20 Q Did you observe whether there were any lights on the rear truck, the Mack truck, when you arrived? A Yes, sir.

Q Were they lighted? A Yes, sir.

Q How many were there? A Two in front and one in the rear.

Q (By Mr. Kalisch.) Did you notice the front of the Mack truck? A The front?

Q Yes. A Not the front half of it, but from the side.

30 Q Did you look at the step? A No, sir; I did not.

Q You didn't take notice of that? A No observations.

DEFENDANT RESTS.

Adjourned to Thursday, February 25, 1926, at 10 A. M.

ESSEX COUNTY COURT OF COMMON PLEAS.

Thursday, February 25, 1926.

THIRD DAY.

NICHOLAS CARAMBAS,

Plaintiff,

vs.

ARMIN BERGIDA,

Defendant.

10

Mr. Kalisch: It is agreed that the Mack truck involved in this accident was owned and operated by the defendant, Armin Bergida, and A. Bergida, Inc. 20

DEFENDANT RESTS.

Mr. Studer sums up for the defendant.

Mr. Kalisch sums up for the plaintiff.

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Charge to Jury.

COURT'S CHARGE.

The Court charges the jury as follows:

PORTER, J.

10 Gentlemen of the Jury: You have been em-
panelled to try a case between Nicholas Caram-
bas, on the one hand, and A. Bergida, Incorpo-
rated, on the other. This is a question, as coun-
sel has said, very largely of fact, and the func-
tion of the jury is to find the facts. It is the
function of the Court to explain the law in-
volved, and you will take from the Court as a
correct definition of the law what the Court lays
down to be the law. But you will decide the
issue of facts raised in this case wholly from
the testimony that has been adduced before you.
20 It is your function to sift the wheat from the
chaff, the truth from the untruth. You are to
weigh the testimony and find wherein the truth
lies from the testimony of the witnesses and the
attendant circumstances.

Counsel in the case have both very thoroughly
and ably summed up the facts. Suffice it to say,
by the Court, that the plaintiff comes here and
says that he was driving his motor truck, a
Dodge car, east on Bloomfield avenue, at approx-
30 imately three o'clock on the morning of July
28, 1924, as I recall the date, on the right-hand
side of the road, at a proper rate of speed; that
as he approached the intersection of Bloomfield
avenue at North 6th street, he heard a noise
but saw nothing; that he slowed down, and
when he arrived at the intersection of the street
he had come to a stop, and that he was then
run into by the truck of the defendant, driven
by an agent of the defendant; that he suffered
40 certain personal injuries; that his truck was

Charge to Jury.

demolished, that he went to the City Hospital,
where he was kept some ten or eleven days, and
then left and received other medical treatment;
that later on he submitted to an operation for a
hernia and received treatment for eye trouble;
that he was not suffering from hernia before
10 the accident; that the hernia was the result of
the injuries he received in the accident; that he
had not suffered from impaired vision before
the accident, and that since the accident he has
gradually lost his eyesight, so that he is now
stone-blind; and he says that the loss of his eye-
sight is the proximate result of this collision, or
that it was accelerated by reason of the injuries
that he sustained, one of the two.

Now, the defendant comes in and answers
this complaint by saying, first, that he was not
negligent in the operation of his truck, but that
20 he did all that he was able to do; and he was
operating his car at a slow rate of speed; that
he gave the proper signal as he approached the
intersection of Bloomfield avenue and North
6th street; that he did not turn before he reached
the middle of the street. The plaintiff contends
that he made what is known as a short turn,
that he turned before he came to the center of
the intersecting streets. He says that he came
30 right straight into Bloomfield avenue from North
6th street, and he did not begin to turn until he
had passed the intersection of the street, and
that then, with his car in the same direction in
which he had been going, he was run into, about
the center of his car, by the plaintiff's car. It is
true that the defendant's front wheels were
turned, to make the turn, but, as I understand
the testimony, his contention is that he had not
yet turned, that he had just begun to turn. He
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Charge to Jury.

says, moreover, that not only was he not responsible because he did not negligently drive his car, but that on the other hand the plaintiff was himself negligent, and that his negligence contributed to the accident, and was in fact the cause of the accident; that he saw him—I mean to say that the witnesses for the defendant, the driver of the Mack truck and the other witnesses that were there, said that they saw this plaintiff's truck some twenty-five feet or so up Bloomfield avenue as they arrived at the corner, and that, having the right of way, proceeded, feeling that he would not continue in his course; that he did not discontinue his speed or his course, but in fact collided into them, into the side of the Mack truck, and that, therefore, it was his fault, his negligence, and not the negligence of the defendant at all that caused this accident.

The defendant says, further than that, through his witnesses, that aside from the question of who was at fault, this man's blindness was not the result of injuries that he received in that accident at all; that the man was suffering from the disease known as syphilis, and that locomotor ataxia is a symptom of one of the final stages of it; that he is now suffering from atrophy of the optic nerve, and that that is also a symptom of that disease, also the result of syphilis, and is not the result of the injuries he received in this accident; and in connection with the plaintiff's contention that there was a fracture at the base of the skull which causes paralysis or atrophy of the optic nerve and loss of sight, they say that the examination of the pictures, X-ray films, that were taken at the City Hospital, at the time the man was there, do not bear out that contention, that a fracture

Charge to Jury.

is not discernable on the films, although it is also stated by the doctor that the man may have had a fracture of the skull and yet it might not be discernable on the pictures.

Now, that, in brief, without analyzing the testimony, is, as I understand it, the position of the respective parties in this suit.

Of course, the theory of the plaintiff's case is that there was negligence on the part of the defendant and no contributory negligence on his part.

I am asked by counsel to charge you certain things. The plaintiff requests me to charge, first, that "The Motor Vehicle Act of this State provides that 'every automobile shall carry, during the period from thirty minutes after sunset to thirty minutes before sunrise, and whenever fog renders it impossible to see a long distance, at least two lighted lamps showing white or yellow-tinted lights visible at least 250 feet in the direction toward which said automobile is proceeding,' and I charge you that a violation of this law may be considered with all the other circumstances in the case in determining the defendant's negligence." I so charge you.

2. "The traffic law of this State provides, 'A vehicle turning into another road to the left shall, before turning, pass when possible to the right of and beyond the intersection of the two roads,' and I charge you that a violation of this law may be considered together with all the other circumstances in the case in determining the defendant's negligence." I so charge.

3. "If you find that this accident was caused solely through the negligence of the defendant,

Charge to Jury.

then the plaintiff is entitled to a verdict." I so charge.

4. "The defendant has set up a defense of contributory negligence, and upon the defendant therefore, rests the burden of establishing this affirmative defense."

10 I so charge. In that connection I might say, if I have not already said it, and I don't think I have, that the theory of the plaintiff is that he was exercising what he had a right to exercise, that is to say he was where he had a right to be, and that it was through the negligence of the defendant that he was hurt. Now, the burden of proof is on him to show you by the preponderance of the evidence the truth of that position, so that when the defendant comes in and says
20 the plaintiff contributed to this negligence by his act, as I have charged you, now the burden is on him, at that time, to prove by the weight of the testimony, the fact of that contributory negligence.

5. "If you find that the plaintiff was placed in a dangerous position through the carelessness of the defendant, then the mere fact that the plaintiff did not exercise the best judgment in
30 extricating himself from this dangerous position, would not relieve the defendant from the result of such negligence or carelessness." I so charge you.

6. If you find that the plaintiff is entitled to a verdict, he is entitled to recover damages for all injuries and all disabilities, also for all pain and suffering attending them, past, present and future which were caused by this accident." I so charge you.

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Charge to Jury.

7. "If you find that the plaintiff is entitled to a verdict under the rules of law which I lay down before you, then you may consider whether the blindness at the time it set in was in any way connected with the accident, and if this accident accelerated a condition present in the plaintiff which resulted in the blindness, then the plaintiff is entitled in addition to damages for any other injuries or losses occasioned by the accident, to such damages as would fairly compensate him for such accelerated condition." I so charge you. In other words, if you should find as a fact that this man's blindness may be due to syphilis and that he was going to be blind in another year, but that by reason of this accident he became blind in six months, he is entitled to compensation for that blindness, for that six months' period.

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8. "If the plaintiff is entitled to recover you may also allow him for any property damage which was caused by this accident, and in fixing the amount for the automobile damage, I charge you that the measure of damages is the difference in the value of a car from the time just before the accident and directly after." I so charge you.

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9. The plaintiff if entitled to a verdict is entitled to such reasonable sums as he has been obliged to expend for medical treatment and for any losses in business which reasonably resulted from the accident." I so charge you.

10. "It is for the jury who see and hear the witnesses to determine what credit should be given to each. The mere fact that those called by one side outnumbered those called by the

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Charge to Jury.

other, does not standing alone control the jury in reaching a verdict." I so charge you.

11. "Witnesses are not counted. Creditability is not necessarily on the side of numbers." I so charge.

10 Now, on behalf of the defendant I am asked to charge you as follows:

1. "The Traffic Act of this State provides: 'On all public roads, streets, highways or turnpikes, the following rules and regulations shall be in force:

(1) 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.'" I so charge you.

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2. "In order for the plaintiff to recover the burden of proof is upon him to prove by the greater weight of the evidence that the injuries sustained by him were the proximate result of the negligent operation of the defendant's automobile." I so charge you.

3. "If you find that the plaintiff's eye condition was not the proximate result of injuries sustained by him in the collision in question, he cannot recover for that eye condition." I so charge you, and as I have already charged you, that the acceleration, if you find an acceleration of the eye condition, was the proximate cause, he may recover for that accelerated period in which the blindness occurred.

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4. "If you find that the plaintiff alone was negligent then your verdict must be in favor of the defendant." I so charge you.

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Charge to Jury.

5. "Even though you should find that the defendant was negligent, if you should also find that by his own negligence the plaintiff, in any degree, contributed to the collision in question your verdict must be in favor of the defendant." I so charge you.

What is negligence? An omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing something which a prudent and reasonable man would not do. The failure to observe, for the protection of the interests of another person, that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. Such an omission by a reasonable person to use that degree of care, diligence and skill which it was his legal duty to use for the protection of another person from injury as, in a natural and continuous sequence, causes unintended injury to the latter. The failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation, or the doing what such a person under the existing circumstances would not have done.

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Now, with respect to contributory negligence, if the evidence shows that the plaintiff himself was guilty of negligence contributing to the injury, there can be no recovery, as I have already stated. The distinction, however, must be drawn between condition and causes. The question must always be considered whether the act of the plaintiff had a natural tendency to expose him directly to the danger which resulted in the injury complained of. If it had not, the plain-

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Charge to Jury.

tiff's negligence is not considered in law as contributing to the injury. One who sees or could have seen if he had looked, and had the faculties to understand the danger to which he is exposed, is charged with a knowledge of them; and his failure to act on the knowledge as a prudent and cautious man would act under like circumstances, is negligence which, notwithstanding the negligence of the defendant, will defeat a recovery.

Gentlemen, you will take with you the exhibits in the case and you will find, as I said at the outset, the question of fact. Has the plaintiff by the weight of the testimony established the fact that he suffered injury by reason of no fault of his own, no contributing negligence, but solely by the negligence of the defendant, and if so, what is the measure of his damages? If you find that he has established, by the weight of the testimony, that fact, then he is entitled, as I have already said, to compensation for his pain and suffering, for the loss of property that he has sustained, to the pain or suffering that he will in the future sustain, and if you find that the blindness that he now suffers from is the proximate result of that, the cause of that injury, you will take that into consideration in fixing the damages.

Now, what is the proximate cause? That which, in a natural and continuous sequence, unbroken by any new cause, produces an event, and without which the event would not have occurred. The proximate cause is that which is nearest in the order of responsible causation.

If, on the other hand, he should find that the plaintiff has not sustained the burden of proof by the preponderance, the weight of the evidence, but that the defendant has, by the weight of the

Exceptions to Charge.

evidence, shown contributory negligence on the part of the plaintiff, then of course, your verdict must be for the defendant.

You may now retire and consider the case.

THE JURY RETIRES.

Mr. Kalisch: I have no exceptions.

Mr. Studer: I respectfully pray an exception to your Honor's charging of the plaintiff's sixth and seventh requests. Also I respectfully pray an exception to what your Honor said following the plaintiff's seventh request, with reference to the matter of acceleration, I think it was. I also respectfully pray an exception to the statement made in the beginning as to the plaintiff's contention, where you said, "I believe that when he arrived at the intersection of the streets the collision occurred," my idea being that he said when he was ten feet west of the intersection the collision occurred, not at the intersection. I also pray an exception to your Honor's modification of my third request, as requested.

Exception noted as ground of appeal.

Mr. Kalisch: There is one request that I did want to take, and that is your Honor's reference to defendant's case, in which you said that their contention was, and the proof was, that they had crossed Bloomfield avenue and then made a turn, whereas the evidence of the driver himself is that he did not, that he turned from the right side of North 6th street, made his turn into Bloomfield avenue. That is the evidence of the driver.

The Court: Very well. Now, there is one thing that I did not charge, though, that I usually do, and that is that they must be guided by their own recollection. I am not sure that I did

Further Charge to Jury.

charge them that. I do not quite recall charging them on that one point.

Mr. Studer: I do not see any need of it.

The Court: I usually tell them that they must not pay too much attention to what you lawyers say to them or what I state to them.

10 Mr. Kalisch: I do not like to have them brought in again; but there was this reference, and of course, it was unintentional, by the Court, about crossing Bloomfield avenue, whereas the driver says not.

The Court: I will bring them back if you both say so.

Mr. Studer: I say no.

The Court: Then they will not come back.

20 (After some time the jury returns and is addressed as follows):

The Court: Gentlemen of the jury, I have a note from you in these words, "If a person operating a car is supposed to see an object approaching him, notwithstanding who has the right of way, and an accident occurred, will the fact that he does not see the object be contributing negligence?" I cannot answer that except
30 by again defining what contributory negligence is, and I can merely define once more to you contributory negligence. You must, from the evidence, find the fact.

If the evidence shows that the plaintiff himself was guilty of negligence contributing to the injury, there can be no recovery. The distinction, however, must be drawn between condition and causes. The question must always be considered whether the act of the plaintiff had a natural
40 tendency to expose him directly to the danger

Further Charge to Jury.

which resulted in the injury complained of. If it had not, the plaintiff's negligence is not considered in law as contributing to the injury. One who sees or could have seen if he had looked, and has the faculties to understand the dangers to which he is exposed, is charged with a knowledge of them; and his failure to act on the knowl-
10 edge as a prudent and cautious man would act under like circumstances, is negligence, which, notwithstanding the negligence of the defendant, will defeat a recovery.

You may again retire. If I have not answered your question satisfactorily, let me know and I will try again.

The jury retires again.

Mr. Kalisch: I will take an exception to your Honor's charging what you did charge in answer
20 to the jury's request for further instructions.

Exception noted as ground of appeal.

NEWTON H. PORTER,

(SEAL)

J.

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Notice of Appeal.

NOTICE OF APPEAL.

ESSEX COUNTY COURT OF COMMON PLEAS.

10	NICHOLAS CARAMBAS, <div style="text-align: center;"><i>vs.</i></div> ARMIN BERGIDA, <i>et als.</i> , <div style="text-align: right;"><i>Defendants.</i></div>	}	Plaintiff, Notice of Appeal.	Action at Law.
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To McCarter & English, attorneys of defendant.

Sirs:

20 TAKE NOTICE that the plaintiff, Nicholas Carambas, appeals to the New Jersey Supreme Court, from the whole of the judgment entered in this cause in favor of the defendants and against the plaintiff.

KALISCH & KALISCH,
Attorneys of Plaintiff.

Dated, April 7, 1926.

30 Service of a copy of the within Notice of Appeal is hereby acknowledged this 8th day of April, 1926.

McCARTER & ENGLISH,
Attys. of Defendant.

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Grounds of Appeal.

GROUND'S OF APPEAL.

NEW JERSEY SUPREME COURT.

NICHOLAS CARAMBAS, <div style="text-align: center;"><i>vs.</i></div> ARMIN BERGIDA, <div style="text-align: right;"><i>Defendant.</i></div>	}	Plaintiff, Defendant.	Reasons.	10
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The plaintiff assigns the following grounds of appeal from the Essex County Court of Common Pleas:

1. The Court erroneously charged the jury as follows: 20

“If the evidence shows that the plaintiff himself was guilty of negligence contributing to the injury, there can be no recovery. The distinction, however, must be drawn between condition and causes. The question must always be considered whether the act of the plaintiff had a natural tendency to expose him directly to the danger which resulted in the injury complained of. If it had not, the plaintiff’s negligence is not considered in law as contributing to the injury. One who sees or could have seen if he had looked, and has the faculties to understand the dangers to which he is exposed, is charged with a knowledge of them; and his failure to act on the knowledge as a prudent and cautious man would act under like circumstances, is negligence, which, notwithstanding the negligence of the defendant, will defeat a recovery.” 30

KALISCH & KALISCH,
Attorneys of Plaintiff. 40

Grounds of Appeal.

Service of a copy of the within Reasons is hereby acknowledged this 9th day of April, 1926.

McCARTER & ENGLISH,
Attys. of Defendant.

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Opinion of Supreme Court.

OPINION OF SUPREME COURT.

Filed March 23, 1927.

NEW JERSEY SUPREME COURT.

No. 99, October Term, 1926.

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NICHOLAS CARAMBAS, <i>Plaintiff-Appellant,</i> <i>vs.</i> ARMIN BERGIDA, INC., a cor- poration, <i>Defendant-Respondent.</i>	}
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Submitted October 15, 1926; decided March 20
, 1927.

On appeal from Essex County Common Pleas Court.

For appellant Kalisch & Kalisch.
For respondent McCarter & English.

Before Justices Kalisch, Katzenbach and Lloyd.

The opinion of the Court was delivered by LLOYD, J.

This is an appeal by the plaintiff Nicholas Carambas from a judgment in favor of defendant rendered in the Essex Court of Common Pleas.

The single complaint is to the instruction given by the Court to the jury several hours after it retired, upon a question from the jury as follows:

“If a person operating a car is supposed to see an object approaching him, notwithstanding who has the right of way and an accident occurred, will the fact that he does

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Opinion of Supreme Court.

not see the object be contributing negligence?"

The response of the Court was:

10 "If the evidence shows that the plaintiff himself was guilty of negligence contributing to the injury, there can be no recovery. The distinction, however, must be drawn between condition and causes. The question must always be considered whether the act of the plaintiff had a natural tendency to expose him directly to the danger which resulted in the injury complained of. If it had not, the plaintiff's negligence is not considered in law as contributing to the injury."

To this the Court added that

20 "One who sees or could have seen if he had looked, and has the faculties to understand the dangers to which he is exposed, is charged with a knowledge of them; and his failure to act on the knowledge as a prudent and cautious man would act under like circumstances, is negligence which would defeat recovery."

30 The criticism is directed to the last sentence and is that it assumes an obligation on the plaintiff to look and to observe the dangers to which he is exposed. The accuracy or inaccuracy of this charge it seems to us depends much upon the conditions which were confronting the plaintiff in the Court below. He was driving a three-quarter ton truck east on Bloomfield avenue in Newark on the night of July 28, 1924. He was on his way to Center Market and as he was attempting to cross Sixth street he was struck by the truck of the defendant going north on Sixth street and from plaintiff's right.

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Opinion of Supreme Court.

He testified that when he was twenty-five feet away from the corner he heard the noise of the truck; that he himself was going about twelve miles an hour; that the noise was on his right side; that he went on ten feet and stopped at fifteen feet short of the corner; that he could not see the truck; that he remained in that position until he was struck; that there was plenty of light at the corner although it was three o'clock in the morning. It appears that the plaintiff was deaf in one ear but there was no evidence that his eyesight was impaired.

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In effect the language of the judge was that if the plaintiff could have seen if he had looked, and had the faculties to understand the dangers to which he was exposed, he was charged with a knowledge of them and his failure to use reasonable care under such circumstances would defeat recovery. It seems to us under the circumstances this was not a misdirection to the jury. The plaintiff was approaching a crossing where he would expect to meet vehicles holding a right of way over him. He heard the noise of the approaching car. There was light enough to see. Public crossings are always places of danger. While the usual method of charging a jury is an instruction that the faculties must be used, in this case it was nothing more than a requirement that the plaintiff, as he approached this dangerous place, should use at least one of the faculties with which he was provided.

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This portion of the charge was taken from Bouvier's Dictionary (1897 Ed. p. 481) and has sanction in our own courts. The same rule is as we think substantially stated by Mr. Justice Kalisch speaking in a somewhat similar case for the Court of Errors and Appeals in *Pool v.*

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Opinion of Supreme Court.

Brown, 89 N. J. L. 314, wherein he says: "The driver of the automobile was under a legal duty to use reasonable care to avoid colliding with other vehicles or persons in the public highway. His duty was to be on the alert, to observe persons who were in the street, or about to cross the street, and to use reasonable care to avoid colliding with them. He was under a duty to have his automobile under proper control. He was under an obligation to take notice of the conditions existing in the public street and to propel his car in a manner suitable to those conditions." So here it was the duty of the plaintiff to be on the alert, to observe other vehicles that were in the street or were about to cross it and to use reasonable care to avoid colliding with them. This is substantially what the trial judge told the jury.

It will be observed further that the instruction to the jury complained of is but part of a more comprehensive reply involving a number of legal propositions. It is doubtful therefore if the exception is available to the appellant in view of the fact that the exception comprises more than a single legal proposition, and therefore the judge's attention was not properly drawn to the particular phase of the instruction of which complaint is now made. That the exception was not directed to his phase of the instruction might also well have been assumed by the trial judge in view of the fact that the reply of the Court upon the inquiry of the jury was precisely the same instruction that had been previously given to the jury and as to which counsel for the plaintiff had already stated that he had no exception.

The judgment will be affirmed.

*Notice of Appeal.***NOTICE OF APPEAL.**

ESSEX COUNTY COURT OF COMMON PLEAS.

NICHOLAS CARAMBAS,	}	<i>Plaintiff,</i>	<i>Action at</i>	<i>Law.</i>	10
<i>vs.</i>					
ARMIN BERGIDA,		<i>Defendant.</i>	<i>Notice of</i>	<i>Appeal.</i>	

To McCarter & English, attorneys of defendant.

SIRS:

TAKE NOTICE that the plaintiff, Nicholas Carambas, appeals to the New Jersey Court of Errors and Appeals, from the whole of the judgment entered in this cause in favor of the defendant and against the plaintiff.

KALISCH & KALISCH,
Attorneys of Plaintiff.

Dated March 17, 1926.

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Grounds of Appeal.

GROUNDS OF APPEAL.

New Jersey Court of Errors and Appeals

10	NICHOLAS CARAMBAS,		<i>Plaintiff,</i>	}	<i>Reasons.</i>
	<i>vs.</i>				
	ARMIN BERGIDA,		<i>Defendant.</i>		

The plaintiff assigns the following grounds of appeal from the Essex County Court of Common Pleas:

1. The Court erroneously charged the jury as follows:

“If the evidence shows that the plaintiff himself was guilty of negligence contributing to the injury, there can be no recovery. The distinction, however, must be drawn between condition and causes. The question must always be considered whether the act of the plaintiff had a natural tendency to expose him directly to the danger which resulted in the injury complained of. If it had not, the plaintiff’s negligence is not considered in law as contributing to the injury. One who sees or could have seen if he had looked, and has the faculties to understand the dangers to which he is exposed, is charged with a knowledge of them; and his failure to act on the knowledge as a prudent and cautious man would act under like circumstances, is negligence, which, notwithstanding the negligence of the defendant, will defeat a recovery.”

KALISCH & KALISCH,
Attorneys of Plaintiff.

New Jersey Court of Errors and Appeals

NICHOLAS CARAMBAS, <i>Plaintiff-Appellant,</i>	}	<i>Action at Law.</i>
<i>vs.</i>		<i>On Appeal from the Supreme Court.</i>
ARMIN BERGIDA, INC., a corp., <i>Defendant-Appellee.</i>		

BRIEF OF PLAINTIFF-APPELLANT.

State of Facts.

This is an appeal from the New Jersey Supreme Court affirming the judgment of the Court of Common Pleas. (See p. 157, state of case.) The suit arose out of an accident that occurred on July 2, 1924, in which the plaintiff sustained injuries of a serious and permanent nature. On the above date plaintiff, who was in the produce business in Boonton, N. J., was driving along Bloomfield avenue toward Newark, at nighttime, and when he reached the corner of Sixth street and Bloomfield avenue, Newark, he heard a noise from his right and stopped his car within fifteen feet short of the corner and there remained until he was struck. Without any warning, defendant’s truck came out of Sixth street on plaintiff’s right-hand side, turned left on Bloomfield avenue without first going to the intersection as required by the motor vehicle act and ran into plaintiff’s car, severely injuring plaintiff. The collision took place on plaintiff’s right-hand side of Bloomfield avenue. As a result of the accident, plaintiff lost the sight of both eyes, besides sustaining a hernia and other lesser injuries.

The defendant asserts that the blindness was the result of syphilis, which plaintiff contracted twenty-five years before the accident. This, of course, was denied by the plaintiff and his medical witnesses.

The case was tried in the Common Pleas Court of Essex County before a jury, Judge Porter presiding. After the Court's charge, the jury retired but returned for additional instructions after which they again retired and shortly thereafter brought in a verdict for the defendant. Exception was taken by the plaintiff to the additional instructions and that exception is the basis of this appeal.

Plaintiff assigns one reason for reversal:

I.

The Court erroneously charged the jury as follows:

"If the evidence shows that the plaintiff himself was guilty of negligence contributing to the injury, there can be no recovery. The distinction, however, must be drawn between condition and causes. The question must always be considered whether the act of the plaintiff had a natural tendency to expose him directly to the danger which resulted in the injury complained of. If it had not the plaintiff's negligence is not considered in law as contributing to the injury: *One who sees or could have seen if he had looked, and has the faculties to understand the dangers to which he is exposed, is charged with a knowledge of them; and his failure to act on the knowledge as a prudent and cautious man would act under like circumstances, is negligence, which, notwithstanding the negligence of the defendant, will defeat a recovery.*"

The foregoing instruction was not only error, but was misleading and highly prejudicial; the harmful part of it was the following:

"One who sees or could have seen if he had looked, and has the faculties to understand the dangers to which he is exposed, is charged with a knowledge of them; and his failure to act on the knowledge as a prudent and cautious man would act under like circumstances, is negligence, which, notwithstanding the negligence of the defendant, will defeat a recovery."

In order to bring out in relief the error complained of I will restate the charge and insert therein in parenthesis a clause which would have rendered the charge proper:

"One who sees or could have seen if he had looked (and whose duty it was at the time and under surrounding circumstances to have looked), and has the faculties to understand the dangers to which he is exposed, is charged with a knowledge of them; and his failure to act on the knowledge as a prudent and cautious man would act under like circumstances, is negligence, which, notwithstanding the negligence of the defendant, will defeat a recovery."

The plaintiff-appellant maintains that he should not have been charged with knowledge of a danger from the mere physical fact that he could have seen it if he had looked, unless it was his duty at the time and under the circumstances to have looked in the direction from whence the danger came; and whether it was his duty at the time and under the circumstances to look in that direction, was a jury question. The Court, however, did not leave that question to the jury but gave them binding instructions that if plaintiff could have seen if he had looked, that that alone was sufficient to charge him with knowledge of the danger; so that if the jury had found that

plaintiff at the time and under the circumstances was not careless in failing to look in the direction from whence the danger came at a time when he could have seen it, nevertheless, under the Court's charge, the jury was required to impute to the plaintiff knowledge of the danger from the mere physical fact that plaintiff could have seen it if he had looked.

In the case of *Houston v. Traphagen*, 47 N. J. L., beginning on page 24, the Court says:

"The second objection is equally without force. Plaintiff, at the time of the fall, was approaching a druggist's window just over this unguarded opening. Attracted by the contents of the window, he did not observe the opening in the pavement, and stepped into it. *But such conduct was not necessarily negligent. Whether so or not depended on the circumstances.*"

In the case of *Brown v. Railroad Co.*, 68 N. J. L., p. 681, the Court has this to say upon the question of contributory negligence.

"When he says that at that time he could see no trolley car in sight, he conclusively established that he did not then make the observation which *duty required of him, etc.*"

That case was brought to the Court of Errors and Appeals on a writ of error and it was there decided that there should have been a non-suit, but the principle contended for by the plaintiff in the case *sub judice* is there recognized and applied when the Court says that he did not then make the observation *which duty required of him*.

In the case of *Mahnken v. Freeholders of Monmouth*, 62 N. J. L., p. 408, the Court say:

"It cannot be said that the plaintiff actually saw the opening in question or even knew of the existence of any of these openings, for her uncontradicted evidence is that she did not. *And on the question of whether*

she is to be held liable for imputed knowledge on the subject, on the ground that she must have seen them if she had looked, the further principle of law is pertinent that it is not negligence per se for a traveler on foot or upon a vehicle to lift his eyes from the path he is traveling where there are other objects that may attract his attention."

From the evidence in the case the jury would have been justified in finding that the defendant was on his wrong side of Bloomfield avenue, when his truck collided with the plaintiff's automobile which was on its right side of Bloomfield avenue. On page 12, beginning on line 16, plaintiff testified:

"Q What side of Bloomfield avenue, were you on? A On the right-hand side.

Q Your right-hand side going down? A Between the street car tracks and the curb, but near the curb."

and at the bottom of the same page he says as follows:

"Q Did you notice whether or not there were any lights on the truck that struck you? A I couldn't see it, only the time it hits me."

and again plaintiff testified on page 26, beginning at l. 26:

"Q And were you between the car rails and the curb on the right side of the street when you were hit? A Yes, sir."

And on page 68, l. 35, James Burl, the chauffeur of defendant's truck, says:

"Q Where did your truck and his truck come into collision? A On the right-hand rail of the trolley tracks going towards Newark."

and on page 75 this same witness on cross examination, beginning at l. 8, testified as follows:

"Q Where did you first see Mr. Carambas' car? Where were you when you first

saw it? A I had begun to make my turn out of North 6th street, turned west on Bloomfield avenue—

Q One moment, now Where did you start to make your turn? A From the right-hand side of North 6th street, turning into Bloomfield avenue.”

From this piece of evidence it is apparent that the defendant started to make his left turn into Bloomfield avenue, without first going to the intersection as required by the Motor Vehicle Act of New Jersey, and from all of the foregoing evidence it appears that the defendant was on his wrong side of the street when the collision took place, and that it did not take place in the intersection of Bloomfield avenue and 6th street, but a short distance above 6th street.

Under those circumstances the jury were justified in finding that the plaintiff was not negligent in not looking in a direction where he had no reason to expect danger and was not required to anticipate that anybody would violate the Motor Vehicle Act and drive on the wrong side of the road or make a left turn without first going to the intersection of the road.

In the case of *Fox v. Great Atl. & Pac. Tea Co.*, 87 Atl. Rep., the Court on page 341, says:

“The plaintiff was under no legal duty to anticipate any action on the part of the chauffeur that would imperil her safety. She had an equal right in the street. *She was under no duty to look behind her or to anticipate, without having received any warning, that the vehicle was intending to pass her on that side of the street, as it apparently did. Whether or not, therefore, the plaintiff exercised reasonable care for her own safety in crossing the street, under the circumstances, as developed by the evidence, was clearly a jury question, and therefore the motions to*

non-suit and direct a verdict were properly denied.”

In the case of *Pool v. Brown*, 89 N. J. L. on page 318, which is a case cited by Justice Lloyd in the Supreme Court decision of the case *sub jud.*, the Court says as follows:

“Nor was the appellant bound to anticipate that a vehicle would approach him on the left side of the road which was the wrong side for vehicles to be going on, going south.”

From the testimony cited above, it appears, not alone from the plaintiff's testimony, but from the testimony of defendant's chauffeur, that the collision took place on plaintiff's right-hand side of the road, justifying the inference that defendant's truck approached plaintiff on defendant's left-hand side of the road, which was the wrong side.

It is our contention, therefore, that the Court erred in instructing the jury to impute knowledge of a danger which under all the circumstances plaintiff was not bound to anticipate or look for.

The whole question was whether the plaintiff was contributorily negligent. The Court, however, did not permit the jury to determine that question. See *Searles v. Public Service Ry. Co.*, 126 Atl. Rep., p. 465; and in 29 Cyc., p. 519, appears the following:

“Knowledge on the part of the person injured of the defective or danger will be presumed *where it was his duty to know it, etc*”

That the Court's additional instruction, which is the basis of this appeal, was fatal to the plaintiff's case is obvious when we consider the circumstances under which the additional instruction was requested. On page 152 of case, beginning at line 20, appears the following:

(After some time the jury returns and is addressed as follows):

“The Court: Gentlemen of the jury, I have a note from you in these words, ‘If a person operating a car is supposed to see an object approaching him, notwithstanding who has the right of way, and an accident occurred, will the fact that he does not see the object be contributing negligence?’ ”

This request for further instructions would indicate that the jury in their deliberations had reached the question of contributory negligence; and wrong instruction on that question was fatal to the plaintiff’s case. The case turned upon the question of contributory negligence alone. It was that very question that the jury wished to be enlightened upon. We maintain that because of the Court’s mis-direction, the jury brought in a verdict for the defendant. They were not permitted to determine whether the plaintiff was guilty of contributory negligence, in failing to look in the direction from whence the danger finally came.

A plain reading of the jury’s request for further instructions would indicate that the jury had the correct idea of what the determining question should be, for their language is “If a person operating a car is *supposed* to see an object, etc.” That question should have been answered in the affirmative but the Court mis-lead and wrongfully instructed the jury by stating that the jury had only to find the physical fact whether the plaintiff could have seen and not whether he was supposed to see. This, we maintain was fatal to the plaintiff’s case.

Supreme Court Decision Discussed.

It is to be remembered that this case did not reach the Supreme Court on a rule to show cause, but upon an exception taken to the trial judge’s charge. The objection was to a statement of law made by the trial judge on the subject of contributory negligence. It seems that the Supreme Court decision missed the point raised. It proceeds to state in a general way what the duty of a traveler on the public highway, upon reaching an intersection, is, for it says:

“The plaintiff was approaching a crossing where he would expect to meet vehicles holding a right of way over him. He heard the noise of the approaching car; there was light enough to see; public crossings are always places of danger. While the usual method of charging the jury is an instruction that the faculties must be used, in this case it was nothing more than the requirement that the plaintiff, when he approached this dangerous place, should use at least one of the faculties with which he was provided.”

The opinion then goes on to quote from the case of *Pool v. Brown*, 89 N. J. L., p. 314, in which the Court in that case said as follows:

“The driver of the automobile was under a legal duty to use reasonable care to avoid colliding with other vehicles or persons in the public highway. His duty was to be on the alert, to observe persons who were in the street, or about to cross the street, and to use reasonable care to avoid colliding with them. He was under a duty to have his automobile under proper control. He was under an obligation to take notice of the conditions existing in the public street and to propel his car in a manner suitable to those conditions.”

The Supreme Court opinion, *sub jud.*, further says:

“So here it was the duty of the plaintiff to be on the alert to observe other vehicles that were in the street or were about to cross it and to use reasonable care to avoid colliding with them. This is substantially what the trial judge told the jury.”

While the statement of general principles in that case and in the opinion in the Supreme Court is unobjectionable, still it does not meet the objection made to the charge in the case at bar. The trial court in the case *sub jud.*, particularized by telling the jury under what circumstances a plaintiff would be charged with knowledge of a danger and in doing that, he gave them wrong instruction as we have endeavored to show above. It is to be remembered that the collision in this case did not occur at the intersection but according to the evidence referred to above, about fifteen feet above the intersection and that further it took place on defendant's wrong side of Bloomfield avenue. Under those circumstances, the jury should have been permitted to say whether plaintiff had failed in his duty to observe the approaching vehicle, or to put it in other words, whether he had exercised reasonable care for his own safety under the circumstances that he was then confronted with. That, however, as we have already said, the jury was not permitted to do.

It is, therefore, respectfully submitted that the judgment in the above cause be set aside.

KALISCH & KALISCH,
Attorneys of Plaintiff

HARRY KALISCH,
On the Brief.

New Jersey Court of Errors and Appeals

NICHOLAS CARAMBAS, <i>Plaintiff-Appellant,</i> <i>vs.</i> ARMIN BERGIDA, INC., a corpora- tion, <i>Defendant-Appellee.</i>	}	<i>Action at Law.</i> <i>On Appeal from the Supreme Court.</i>
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BRIEF OF DEFENDANTS-APPELLEES.

This case was tried before the Honorable Newton H. Porter, Judge of the Essex Common Pleas, with a jury, on February 23rd, 24th and 25th, 1926, and resulted in a verdict in favor of the defendants. The title of the action, as above stated, names only one defendant, but, by agreement, the name of A. Bergida, Inc., was added (141) and the judgment was entered in favor of both defendants (7).

An appeal was taken by the plaintiff-appellant to the Supreme Court and the Essex Common Pleas was affirmed by the Supreme Court in an opinion filed by it on March 23rd, 1927 (157-160), whereupon this appeal was taken from the Supreme Court to this Court.

One reason alone was assigned by the plaintiff-appellant both in the Supreme Court and in this Court, as a ground of appeal and it has to do with a part of the Trial Court's charge on the question of contributory negligence. The language which the plaintiff-appellant takes exception to appears twice in the Court's charge to the jury. During Judge Porter's original charge to the jury, the language under discussion appears on pages 149

and 150 of the State of the Case, and when first given was not excepted to, as the Supreme Court pointed out in its opinion (160). After the jury had been deliberating for several hours, a note was sent to Judge Porter asking for further instructions, the language of the jury's request being set forth at length at page 152 of the record. In reply, Judge Porter said at page 152:

"I cannot answer that except by again defining what contributory negligence is, and I can merely define once more to you contributory negligence. You must, from the evidence, find the fact.

If the evidence shows that the plaintiff himself was guilty of negligence contributing to the injury, there can be no recovery. The distinction, however, must be drawn between condition and causes. The question must always be considered whether the act of the plaintiff had a natural tendency to expose him directly to the danger which resulted in the injury complained of. If it had not, the plaintiff's negligence is not considered in law as contributing to the injury. One who sees or could have seen if he had looked, and has the faculties to understand the dangers to which he is exposed, is charged with a knowledge of them; and his failure to act on the knowledge as a prudent and cautious man would act under like circumstances, is negligence, which, notwithstanding the negligence of the defendant, will defeat a recovery."

The so-called state of facts contained in the plaintiff's brief regarding what occurred, is not accurate. The defendants' witnesses, and some of those produced by the plaintiff contradict the plaintiff's story as to where and how the collision occurred, but the record speaks for itself, so here it is only necessary to say that the plaintiff-appellant's brief does not set forth the facts with anything like accuracy.

In justice to the defendants, however, it is only fair to say here that the medical evidence was overwhelming to the effect that the plaintiff's blindness was the result of syphilis and not of the accident and it is also to be borne in mind that none of the medical testimony is included in the state of the case, although the defendants-appellees objected to its omission. The sole matter before the Court is the correctness or incorrectness of Judge Porter's charge as a matter of law.

The Court Properly Charged the Jury.

The particular language used by Judge Porter and assigned as error was taken word for word from Bouvier's Law Dictionary, (Rawle's Third Revision) page 2317, where the text reads:

"*Contributory Negligence.* If the evidence shows that the plaintiff himself was guilty of negligence contributing to the injury, there can be no recovery; Beach, Contrib. Neg. 14. The distinction, however, must be drawn between condition and causes, between *causa causans* and *causa sine qua non*. The question must always be considered whether the act of the plaintiff had a natural tendency to expose him directly to the danger which resulted in the injury complained of. If it had not, the plaintiff's negligence is not considered in law as contributing to the injury. One who sees or could have seen if he had looked, and has the faculties to understand the dangers to which he is exposed, is charged with a knowledge of them; and his failure to act on the knowledge as a prudent and cautious man would act under like circumstances, is negligence which, notwithstanding the negligence of the defendant, will defeat a recovery; *Glascok v. R. Co.*, 73 Cal. 137, 14 Pac. 518."

In *New Jersey Express Co. v. Nichols*, 33 N. J. L. 434, Errors and Appeals, 1867, Depue, *J.*, said, with reference to contributory negligence:

“It is also assumed by the exception, and was argued here, that if the plaintiff, by his own conduct, contributed to the injury complained of, he cannot recover. This statement of the principle is incorrect. In many cases where the plaintiff’s conduct was, to some extent contributory to his injury, he has been allowed to recover. In fact, it would be difficult to conceive of any case in which the conduct of the party injured might not, in some sense, be said to have contributed to his injuries. To conclude him from maintaining his action, his conduct must have been negligent, and his negligence must have contributed to the injury in such a way that if he had not been negligent, he would have received no injury from the negligence of the defendant. This is substantially the rule laid down in the cases cited above, and in *Runyon v. The C. R. R. Co.*, 1 Dutcher 566; *Telfer v. The Northern R. R. Co.*, 1 Vroom 188.

But if the plaintiff’s negligence is established, the comparative degrees of the negligence of the parties is immaterial, for the reason that it would be impossible to say that, without such fault on his part, the occurrence would have happened. The injury must be attributable to the defendant’s negligence, and to that alone; if occasioned, in any degree by the plaintiff’s own negligence, he is without redress.”

In *Menger v. Laur*, 55 N. J. L. 205, Supreme Court, 1893, Depue, *J.*, said:

“In this state the established rule is, that if the plaintiff’s negligence contributed to the injury, so that if he had not been negligent he would have received no injury from the defendant’s negligence—the plaintiff’s negligence being proximately a cause of the injury—he is without redress, unless the

defendant’s act was a willful trespass or amounted to an intentional wrong, and in such a case the comparative degree of the negligence of the parties will not be considered. *New Jersey Express Co. v. Nichols*, 4 Vroom 435; *Pennsylvania R. R. Co. v. Righter*, 13 *Id.* 180.”

In *Osburn v. DeYoung*, 99 N. J. L. 204, Errors and Appeals, 1923, Kalisch, *J.*, said at page 209:

“for it is firmly settled that it is only where the plaintiff’s act is a negligent one and proximately contributes to the defendant’s negligence that caused the plaintiff’s injury that the latter is debarred of a recovery. The leading cases in this state which illustrate this doctrine are: *New Jersey Express Co. v. Nichols*, 33 N. J. L. 434; *New York, Lake Erie and Western Railroad Co. v. Ball*, 53 *Id.* 283; *Menger v. Laur*, 55 *Id.* 205.”

Judge Porter’s charge to the jury respecting contributory negligence was not confined to the language objected to. At page 146, he used the following language, part of which was a direct request submitted to him by the plaintiff-appellant:

“4. ‘The defendant has set up a defense of contributory negligence, and upon the defendant therefore, rests the burden of establishing the affirmative defense.’

I so charge. In that connection I might say, if I have not already said it, and I don’t think I have, that the theory of the plaintiff is that he was exercising what he had a right to exercise, that is to say he was where he had a right to be, and that it was through the negligence of the defendant that he was hurt. Now, the burden of proof is on him to show you by the preponderance of the evidence the truth of that position, so that when the defendant comes in and says the plaintiff contributed to this negligence by his act, as I have charged you, now the burden is on

him, at that time, to prove by the weight of the testimony, the fact of that contributory negligence.”

At page 149, he said in the language of the defendants' request:

“5. ‘Even though you should find that the defendant was negligent, if you should also find that by his own negligence the plaintiff, in any degree, contributed to the collision in question your verdict must be in favor of the defendant.’ I so charge you.”

The cases are clear that the charge of the Court must be read and considered as a whole. *Heckle v. Ford Motor Company*, Errors and Appeals, 1925, 3 A. R. 631; *State v. Martin*, 4 A. R. 312; *Anthony v. Public Transit Company*, 3 Misc. 1204. On that subject the Court of Errors and Appeals by Trenchard, J., in *Kargman v. Carlo*, 85 N. J. L. 632, at page 638, said:

“With respect to other instructions, said to be erroneous in law and as to assumptions of matters of fact, and to which objections were made at the trial, it is sufficient to say that we have examined them in the light of the entire charge, and find no error in them, when properly tested. So long as the law is stated correctly and intelligently, the ultimate test of the soundness of instructions is not what the ingenuity of counsel can, at leisure, work out the instructions to mean, but how and in what sense, under the evidence before them and the circumstances of the trial, would ordinary men and jurors understand the instructions as a whole.”

Referring back to the language of Judge Porter's charge which has been questioned by the plaintiff-appellant, it will be observed that after saying there could be no recovery if the plaintiff himself was negligent, the Court said a distinction must be drawn between condition and causes. That that is the law is definitely settled

by numerous cases, among which are: *Griffiee v. Delaware River Ferry Co.*, 91 N. J. L. 280, Errors and Appeals, 1917; *Wherry v. Public Service Railway Co.*, 1 Misc. 539, Supreme Court, 1923; *Menger v. Laur*, 55 N. J. L. 205, *supra*.

In *Menger v. Laur*, *supra*, Depue, J., said at page 216:

“In the trial of cases of this kind, where it appears that both parties were in fault, the primary consideration is, whether the faulty act of the plaintiff was so remote from the injury as not to be regarded in a legal sense as a cause of the accident, or whether the injury was proximately due to the plaintiff's negligence as well as to the negligence of the defendant. If the faulty act of the plaintiff simply presents the condition under which the injury was received, and was not in a legal sense a contributory cause thereof, then the sole question will be whether, under the circumstances and in the situation in which the injury was received, it was due to the defendant's negligence. But if the plaintiff's negligence proximately, that is, directly, contributed to the injury, it will disentitle him to a recovery, unless the defendant's wrongful act was willful or amounted to an intentional wrong.”

Similar language was used in the Griffiee case and the Wherry case, cited above.

On page 3 of his brief the plaintiff-appellant restates the charge as he says it should have been delivered by inserting “and whose duty it was in the exercise of reasonable care to have looked.” It is difficult, if not impossible, to conceive of a situation where an operator of an automobile on a public highway at three o'clock in the morning, is not under a duty to look.

In *Pool v. Brown*, 89 N. J. L. 314, Errors and Appeals, 1916, Kalisch, *J.*, said at page 316:

“The driver of the automobile was under a legal duty to use reasonable care to avoid colliding with other vehicles or persons in the public highway. His duty was to be on the alert, to observe persons who were in the street, or about to cross the street, and to use reasonable care to avoid colliding with them.”

In the case at hand, the plaintiff was driving toward the east and the defendant's truck came from the south, going north, so that as between the two, the defendants had the right of way under the Traffic Act.

In *Erwin v. Traud*, 90 N. J. L. 289, Errors and Appeals, 1916, a collision between two automobiles at a street intersection was involved. The driver of the car coming from the right and who, as between the two, had the right of way under an Ordinance of the City of Newark, failed to look to his left. White, *J.*, said at page 290:

“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.”

As we have said above, the defendants' truck, in the case at hand, had the right of way and, therefore, it would seem both because of that fact, and his general obligation to act as a reasonably prudent person would have acted under similar circumstances, that there was a double duty upon the plaintiff to have looked. See also, *Connolly v. Public Service Railway Co.*, 94 N. J. L. 157, and cases therein cited.

Three cases are referred to in the plaintiff's brief as authority for his proposition that the Court erred by not telling the jury there was a duty upon the plaintiff to look. In *Houston v. Traphagen*, 47 N. J. L. 23, referred to by the plaintiff in his brief, the plaintiff, a six-year-old child, fell down a flight of stone steps leading from a public street into the cellar of a house, at a time when he was approaching a druggist's window and in looking at the contents of the window, did not observe the opening in the pavement. Following the part of the opinion quoted in the plaintiff's brief, on page 24, Magee, *J.*, said:

“I think the motion to non-suit on this ground was properly denied, and that it was correct to permit the jury to say whether plaintiff was negligent in walking upon a public sidewalk, and, in the absence of any notice of danger, in reliance on the public way being preserved safe for passers, permitting his attention to be drawn from the spot on which he was about to step, to surrounding objects. A verdict finding no negligence in such conduct ought not to be disturbed on that ground. *Durant v. Palmer, supra.*”

In *Brown v. Railroad Co.*, 68 N. J. L. 618, the completed sentence of Magee, *J.*, only part of which was quoted in the plaintiff's brief reads as follows:

“When he says that, at that time, he could see no trolley car in sight, he conclusively establishes that he did not then make the observation which duty required of him, because, if he had done so, he would undoubtedly have discovered the approaching car, and have been able to avoid the collision.”

In *Mahnken v. Freeholders of Monmouth*, 62 N. J. L. 404, also cited as authority in the

plaintiff's brief, the facts were that the plaintiff was riding a bicycle over a public drawbridge in the daytime, that as she approached the draw, she found it open with a carriage in front of her waiting to cross and another coming behind her and concluding to dismount, she wheeled to her left to a timber guard dividing the wagonways, the guard being one foot square and alighted on it. In doing so she stepped on the timber guard with one foot, and in her effort to step upon the floor of the bridge with her other foot she stepped into an opening alongside the timber guard and was injured. She did not see the opening, but might have seen it if she had looked at the floor when she alighted. There was a non-suit and the Court of Errors reversed the Court below. *Hendrickson, J.*, at page 409:

"There are several circumstances to be considered in the present case in reaching a conclusion upon the question of whether the plaintiff was negligent in failing to see the place of danger.

There was the presumption of law that the bridge was in a safe condition. There was a carriage in front of the plaintiff and one coming behind her, as she was about to dismount, which might justly require a share of her attention. Upon the principle just referred to, it seems clear that these are matters to be submitted to the jury, and to be considered by them, upon a question of contributory negligence."

In *Pennsylvania Railroad Co. v. Righter*, 42 N. J. L. 180, Errors and Appeals, 1880, a man driving a horse and wagon was struck by a railroad train. *Reed, J.*, said at page 187:

"I am unable to see any reason why, if he had used his eyes with any degree of care, he could not have seen the approaching train in time to arrest the progress of his carriage and avoid the collision. It was his duty to approach the track with caution, and to have

his horses at such a gait and under such control as would allow him to arrest their movements at once. Deany himself does not say that he looked at that point. There is, however, the testimony of three witnesses, who say that they saw him look. But such testimony cannot aid the plaintiffs where it is clear that, if he looked with care, he must have seen the train. If a traveler, says *Dr. Wharton*, by looking along the road, could have seen an approaching train in time to escape, it would be presumed, in case of collision, that he did not look, or, looking, did not heed what he saw. *Whart. on Neg., Sec. 382.*"

Mis-statements appear in the plaintiff's brief on pages 7 and 8. A reading of the record will show that no inference, as suggested on page 7 of the plaintiff's brief, can be drawn to the effect that the defendants' truck "approached plaintiff on defendants' left-hand side of the road, which was the wrong side." The defendants' truck came from the plaintiff's right and as between the two, it had the right of way.

It is also incorrect for the plaintiff to say, on page 7 of his brief, "The Court, however, did not permit the jury to determine that question"—of contributory negligence. The part of the charge objected to was on that very question.

On page 8 of his brief, the plaintiff again mis-states by saying:

"We maintain that because of the Court's mis-direction, the jury brought in a verdict for the defendant. They were not permitted to determine whether the plaintiff was guilty of contributory negligence, in failing to look in the direction from whence the danger finally came."

From the charge, the jury were permitted to determine that question; in fact, it was left to them for their determination.

Page 10 of the brief is also incorrect where it says:

“It is to be remembered that the collision in this case did not occur at the intersection, but according to the evidence referred to above, about fifteen feet above the intersection and that further it took place on defendant’s wrong side of Bloomfield avenue.”

It is not so to be remembered at all, for that was only the plaintiff’s own story and it was contradicted by the defendants’ witnesses, as the record will show, who said the plaintiff’s car struck their truck on its left side.

We believe the appeal is without merit and that the judgment appealed from should be affirmed.

Respectfully submitted,

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Of Counsel.