

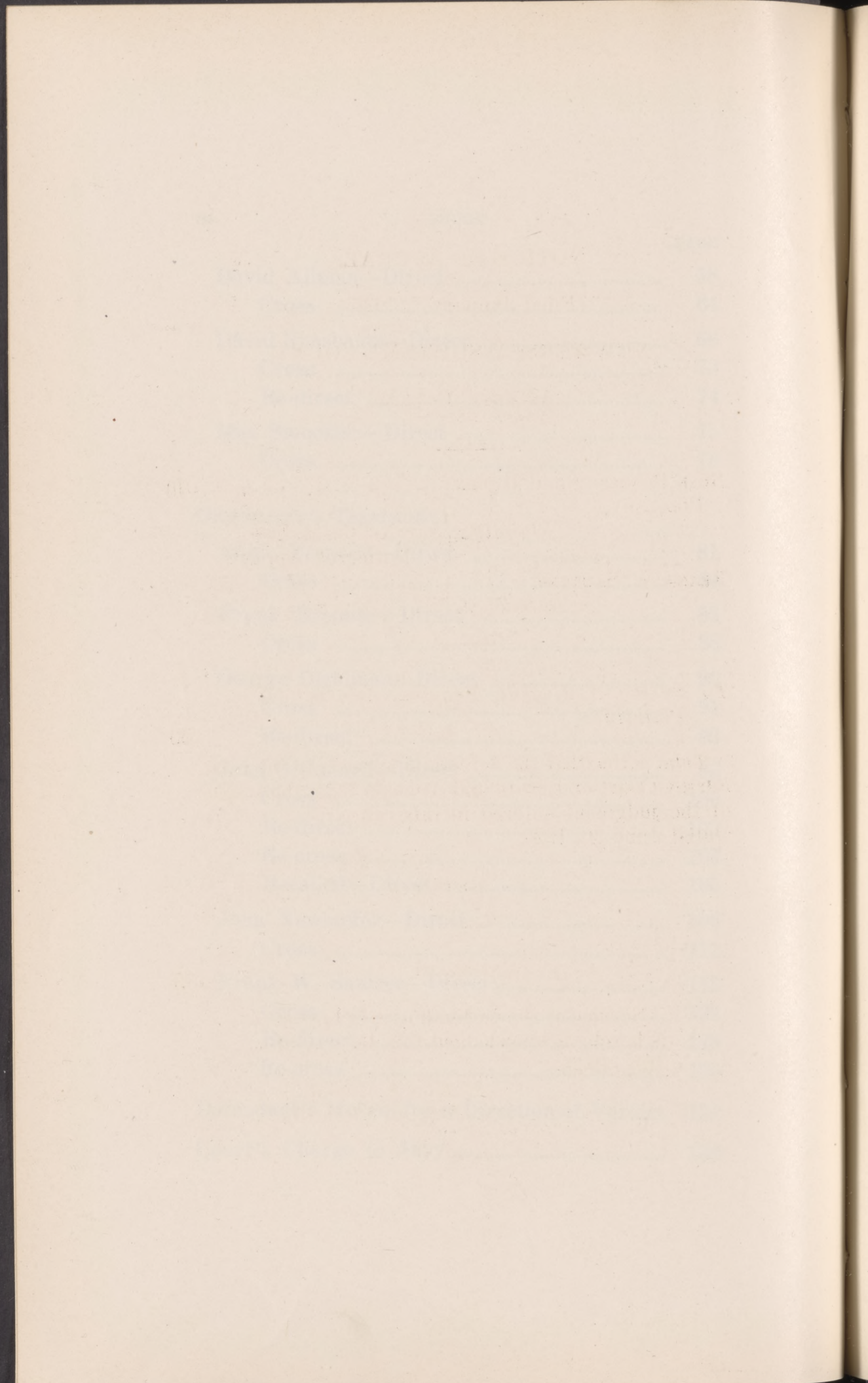
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GROUNDS OF APPEAL.

(Filed January 7, 1926.)

NEW JERSEY COURT OF ERRORS
AND APPEALS.

10	ROSE PODOLSKY and RUBEN PODOLSKY, <i>Plaintiffs-Appellees,</i>	}	Action at Law. Grounds of Appeal.
	v.		
	FRANK W. SAUTTER, <i>Defendant-Appellant.</i>		

The following are the grounds of appeal under the appeal in the foregoing cause:

- 20 1. Because at the conclusion of the case the defendant's motion for a directed verdict in favor of the defendant was overruled and exception noted (page 135).
2. Because there was no evidence to sustain the verdict.

CARR & CARROLL,
Counsel for Frank W. Sautter,
Defendant-Appellant.

30

[ENDORSED]

Service of the within grounds of appeal is hereby acknowledged this 7th day of January, 1926.

Burton A. Gaskill,
Counsel for Plaintiffs-Appellees.

COMPLAINT.

Plaintiff, Rose Podolsky, residing in the City of Philadelphia, County of Philadelphia and State of Pennsylvania, says that:

FIRST COUNT:

1. On or about August 16, 1924, in the Township of Galloway, County of Atlantic and State of New Jersey, the plaintiff, Rose Podolsky, was riding by invitation with one Ralph Podolsky in his automobile in an easterly direction on the White Horse Pike, a public highway in the township, county and state aforesaid. The said Ralph Podolsky was operating his automobile in a careful and lawful manner along the said White Horse Pike. 10
2. The defendant on the day hereinbefore mentioned was the owner of a certain automobile truck, which was operated by the agents, servants and employees of the said defendant and about his business. 20
3. On said day and at the location aforesaid, the agents, servants and employees of defendant left the said automobile truck of defendant standing on the White Horse Pike and they negligently and carelessly left said automobile truck in the night time standing on the said road without any lights or any other device of any sort to warn persons approaching said automobile of its presence. 30
4. The automobile owned and driven by Ralph Podolsky, which was being operated in a lawful and

careful manner, by reason of the negligence of defendant's agents, servants and employees, collided with the automobile truck of said defendant, and by force of the collision, the plaintiff was hurled about the automobile and was severely and painfully injured, and sustained injuries of a serious and permanent character.

5. Plaintiff was not guilty of any negligence that
10 in any way contributed to the aforementioned collision.

Plaintiff, Rose Podolsky, therefore demands from the defendant \$10,000.00.

SECOND COUNT:

20 Plaintiff, Ruben Podolsky, residing in the City of Philadelphia, County of Philadelphia and State of Pennsylvania, says that:

1. On or about August 16, 1924, in the Township of Galloway, County of Atlantic and State of New Jersey, the plaintiff, Ruben Podolsky, was riding by invitation with one Ralph Podolsky in his automobile in an easterly direction on the White Horse Pike, in the township, county and state aforesaid. The said Ralph Podolsky was operating his automobile in a careful and lawful manner along the said
30 White Horse Pike.

2. The defendant, on the day hereinbefore mentioned, was the owner of a certain automobile truck, which was operated by the agents, servants and employees of the said defendant and about his business.

3. On said day and at the location aforesaid, the agents, servants and employees of defendant left the said automobile truck of defendant standing on the White Horse Pike and they negligently and carelessly left said automobile truck in the night time standing on the said road without any lights or any other device of any sort to warn persons approaching said automobile of its presence.

4. The automobile owned and driven by Ruben Podolsky, which was being operated in a lawful and careful manner, by reason of the negligence of defendant's agents, servants and employees, collided with the automobile truck of said defendant, and by force of the collision, the plaintiff was hurled about the automobile and was severely and painfully injured, and sustained injuries of a serious and permanent character.

5. By reason of said injuries, the said Ruben Podolsky was prevented for a long time from attending to his business and thereby lost his earnings for a long time and incurred large expenses for nursing and medical attendance and suffered great pain and damage in addition.

6. Plaintiff was not guilty of any negligence that in any way contributed to the aforementioned collision.

Plaintiff, Ruben Podolsky, therefore demands from the defendant on this count, \$40,000.00.

THIRD COUNT:

1. Plaintiff, Ruben Podolsky, says that on August 1, 1924, at the Township of Galloway, in the County of Atlantic and State of New Jersey, he, together

with Rose Podolsky, were riding by invitation with one Ralph Podolsky in an automobile owned and driven by the said Ralph Podolsky in an easterly direction on the White Horse Pike in the township, county and state aforesaid. The said automobile so owned and driven by Ralph Podolsky was operated in a lawful and careful manner.

10 2. On the hereinbefore mentioned date, the defendant was the owner of a certain automobile, which was operated by the agents, servants and employees of the said defendant and about his business.

3. On the said date the said agents, servants and employees of the said defendant left the said automobile truck standing on the White Horse Pike at the place hereinbefore mentioned in the night time of said day without attaching any lights or any other signal to apprise passing cars of its presence.

20

4. By reason of the negligence of the servants, agents and employees of the defendant, the automobile of Ralph Podolsky collided with the automobile truck of the said defendant, and by force of the collision Rose Podolsky was hurled about the automobile and severely and painfully injured, sustaining injuries of a serious and permanent character.

30 5. On the date hereinbefore mentioned Rose Podolsky was and still is the wife of Ruben Podolsky.

6. By reason of the negligence of defendant's servants, agents and employees as hereinbefore set out, plaintiff, Ruben Podolsky, has been compelled to lay out and expend large sums of money endeavoring to have his wife healed and cured of her injuries

aforesaid, and has been deprived of the services and consortium of his said wife.

7. Plaintiff was not guilty of any negligence that in any way contributed to the aforementioned collision.

Plaintiff, Ruben Podolsky, therefore demands from the defendant \$10,000.00 on this count.

Plaintiff, Rose Podolsky, demands of the defendant the sum of \$10,000.00 on the first count, and plaintiff, Ruben Podolsky, demands of the defendant \$40,000.00 on the second count and \$10,000.00 on the third count. 10

BURTON A. GASKILL,
Attorney for Plaintiffs.

ANSWER.

20

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

2. Defendant denies the second paragraph of the first count.

3. Defendant denies the third paragraph of the first count. 30

4. Defendant denies the fourth paragraph of the first count.

5. Defendant denies the fifth paragraph of the first count.

FIRST DEFENSE TO FIRST COUNT:

Plaintiff, Rose Podolsky, was in joint control with the said Ralph Podolsky of the automobile driven by the latter; and the collision mentioned and referred to in plaintiffs' complaint was caused entirely by the negligence of the said Ralph Podolsky in that he drove said automobile in a careless and
 10 reckless manner and at an excessive rate of speed and permitted the same to escape from his control by the careless and negligent manner in which he drove and operated the same.

SECOND DEFENSE TO FIRST COUNT:

The negligence of Ralph Podolsky is imputable to the plaintiff, Rose Podolsky.
 20

THIRD DEFENSE TO FIRST COUNT:

Plaintiff, Rose Podolsky, was guilty of contributory negligence.

ANSWER TO SECOND COUNT:

- 30 1. Defendant denies the first paragraph of the second count.
2. Defendant denies the second paragraph of the second count.
3. Defendant denies the third paragraph of the second count.

4. Defendant denies the fourth paragraph of the second count.

5. Defendant denies the fifth paragraph of the second count.

6. Defendant denies the sixth paragraph of the second count.

10

FIRST DEFENSE TO SECOND COUNT:

Plaintiff, Ruben Podolsky, was in joint control with the said Ralph Podolsky of the automobile driven by the latter; and the collision mentioned and referred to in plaintiffs' complaint was caused entirely by the negligence of the said Ralph Podolsky in that he drove said automobile in a careless and reckless manner and at an excessive rate of speed and permitted the same to escape from his control by the careless and negligent manner in which he drove and operated the same. 20

SECOND DEFENSE TO SECOND COUNT:

The negligence of Ralph Podolsky is imputable to the plaintiff, Ruben Podolsky. 30

THIRD DEFENSE TO SECOND COUNT:

Plaintiff, Ruben Podolsky, was guilty of contributory negligence.

ANSWER TO THIRD COUNT:

1. Defendant denies the first paragraph of the third count.
2. Defendant denies the second paragraph of the third count.
- 10 3. Defendant denies the third paragraph of the third count.
4. Defendant denies the fourth paragraph of the fourth count.
5. Defendant is without knowledge of the facts set forth in the fifth paragraph of the third count, and neither admits nor denies the same.
- 20 6. Defendant denies the sixth paragraph of the third count.
7. Defendant denies the seventh paragraph of the third count.

FIRST DEFENSE TO THIRD COUNT:

- 30 Plaintiff, Ruben Podolsky, was in joint control with the said Ralph Podolsky of the automobile driven by the latter; and the collision mentioned and referred to in plaintiffs' complaint was caused entirely by the negligence of the said Ralph Podolsky in that he drove said automobile in a careless and reckless manner and at an excessive rate of speed and permitted the same to escape from his control by the careless and negligent manner in which he drove and operated the same.

SECOND DEFENSE TO THIRD COUNT:

The negligence of Ralph Podolsky is imputable to the plaintiff, Ruben Podolsky.

THIRD DEFENSE TO THIRD COUNT:

10

Plaintiff, Ruben Podolsky, was guilty of contributory negligence.

CARR & CARROLL,
Attorneys for Defendant.

REPLY.

20

1. Plaintiffs, Rose Podolsky, denies the first, second and third defenses to first count.

2. Plaintiff, Ruben Podolsky, denies the first, second and third defenses to second count.

3. Plaintiff, Ruben Podolsky, denies the first, second and third defenses to the third count.

30

BURTON A. GASKILL,
Attorney for Plaintiffs.

JUDGMENT.

NEW JERSEY SUPREME COURT.

10	ROSE PODOLSKY and RUBEN PODOLSKY,	} Plaintiffs,	Action at Law. On Postea.
	v.		BURTON A. GASKILL,
	FRANK W. SAUTTER,	} Defendant.	<i>Attorney.</i>

20	\$ 500.00 Rose P. 3,500.00 R. P.	Judgment entered this twenty-seventh day of June, A. D. nineteen hundred and twenty-five against the defendant and in favor of Rose Podolsky, plaintiff, for the sum of five hundred dollars damages, and in favor of Ruben Podolsky, plaintiff, for the sum of three thousand five hundred dollars damages and fifty-one dollars and twenty-four cents costs.
	4,000.00	
	51.24	
	\$4,051.24	

30

WM. S. GUMMERE,
C. J.

A true copy.
EDWARD J. KELLEHER,
Clerk.

Mr. Gaskill: If your Honor pleases, Mr. Carr has consented that I make an amendment to my complaint in the first count, the fourth paragraph, by changing the name Ruben to Ralph. It was a stenographic error, and the same thing in the fourth paragraph of the second count, from Ruben to Ralph.

Mr. Carr: No objection.

10

SOLOMON LILIENFELD WAS SWORN AS INTERPRETER.

RUBEN PODOLSKY, the plaintiff, called as a witness on behalf of the plaintiffs, being duly sworn, through the interpreter, was examined through the interpreter and testified as follows:

20

Direct examination.

By Mr. Gaskill:

Q. What is your name?

A. Ruben Podolsky.

Q. Where do you live?

A. 2253 North Reed Street.

Q. Philadelphia?

30

A. Philadelphia.

Q. How old are you?

A. Sixty years.

Q. Are you married?

A. Yes, sir.

Q. Your wife's name?

A. Rosie Podolsky.

Q. Is she also a plaintiff in this suit?

A. Yes.

Q. And were you married to her on the sixteenth of August, 1924?

A. I am married 40 years.

Q. Mr. Podolsky, do you remember an automobile trip on August 16, 1924?

A. Yes.

Q. With whom were you riding?

A. With Ralph Podolsky.

10

Q. Who is Ralph Podolsky?

A. My son.

Q. Where did the automobile ride start?

A. From Philadelphia.

Q. Tell me how you came to go on the automobile trip.

A. Saturday afternoon at five o'clock my son came to me and asked me to go to Atlantic City. He asked me to go to Atlantic City.

Q. Did he ask anyone else to go with him?

20

A. No; just came for me.

Q. I mean did he invite anybody else besides you?

A. My wife.

Q. Who owned the automobile?

A. Ralph Podolsky.

Q. Did you have any interest in it at all?

A. No.

Q. Now, what time did you leave Philadelphia?

A. Quarter to six.

Q. In the evening?

30

A. Yes.

Q. And where did you go?

A. To Atlantic City.

Q. Did any thing happen on the way down?

A. An accident.

Q. Tell me about the accident.

A. I got hurt; I got hurt in the accident.

Q. Did you become unconscious?

A. Yes.

Q. Now, just before you became unconscious what were you doing?

A. I was sitting in the automobile with my wife in the back.

Q. What were you doing, if anything?

A. I talked to my wife.

Q. How fast was Ralph driving the automobile
10 the last you remember?

A. Fifteen miles an hour.

Q. Do you remember the accident itself?

A. He ran into a truck.

Q. Did you see the truck?

A. No.

Q. You did not? Now, where were you the next time that you remember?

A. In the Philadelphia hospital—in Atlantic City Hospital.

20 Q. Atlantic City Hospital, and how long did you remain in there?

A. Twelve days.

Q. Do you remember the name of your doctor in the Atlantic City Hospital?

A. No.

Q. What was the matter with you?

A. My nose was broken and I hurt my chest; it hurts my chest, and the ear and the cheek.

Q. What?

30 A. And the cheek, ear, nose. I have no feeling in it at all; (indicating the left side of his face).

Q. Now, after you left Atlantic City, where did you go?

A. I went home. I went to a hotel and I went home.

Q. To Philadelphia?

A. To Philadelphia.

Q. How long—well, what did you do when you got to Philadelphia?

A. I went to bed.

Q. And how long did you stay in bed in Philadelphia?

A. Two weeks.

Q. Did you have a doctor there?

A. Yes.

Q. The doctor's name, please?

A. Dr. Nussbaum.

10

Q. How long did Dr. Nussbaum—how long did you have Dr. Nussbaum since that time?

A. I am still under his care.

Q. You are still what?

A. Still under his care.

Q. Still under his care?

A. Yes.

Q. Did you have another doctor besides Dr. Nussbaum?

A. For my eyes; Dr. Smuckler.

20

Q. And they are both present in court today?

A. Yes.

Q. Now, what has been your physical condition since the accident?

A. I got terrific headaches at night time.

Q. Terrific headaches at night time. Anything else?

A. My chest.

Q. Anything else?

A. I only hear in the left ear and I have no feeling in the cheek.

30

Q. No feeling in the cheek. Is there anything else the trouble?

A. My nose.

Q. Your nose. Have you had any trouble with your eyes?

A. Yes; I am going to the doctor that attends to that.

Q. Before the accident did you wear glasses?

A. No.

Q. What is the matter with your eyes, do you know?

A. It rains from my eyes; it rains from my eyes, water.

Q. Now, since the accident has anything else
10 occurred almost continuously that you didn't have before the accident?

A. No.

Q. Now, Mr. Podolsky, what were your expenses in the Atlantic City Hospital?

Mr. Carr: I object to it being proved that way. Of course, it is the reasonable value of the hospital services. The amount he actually paid is not evidence unless it is proved it was a reasonable amount
20 for such services.

The Court: Well, I think if he knows what he paid I will permit him to say so.

Mr. Carr: I ask an exception.

The Court: What he paid directly to the hospital itself.

30 Q. How much did you pay the hospital?

A. Seventy-five dollars.

Q. Seven-five dollars. Now, when you got home was your wife able to do her housework?

A. She couldn't work, but she had a woman come to the house for eleven weeks.

Q. Who paid for the woman who took care of the house?

A. My son, Ralph Podolsky.

Q. How much did that amount to?

A. Ten dollars a week and her eats.

Q. Now, what business were you in just before this accident?

A. Grocery business.

Q. How much did you make per week net in the grocery business?

Mr. Carr: I object to that, how much he made. If he was in business it is a question of profit. That, of course is dependent upon many circumstances. He can show what his profit was in that line but that may be dependent upon many factors. 10

The Court: Well, I think he may average it over a period of time. I do not know, however, that it has been shown how long he was in the grocery business. 20

Mr. Gaskill: Then I will withdraw that.

Q. How long were you in the grocery business?

A. Five years.

Q. We will say a year or two—we will say two years before the accident happened in August, what were your average monthly earnings or profits?

Mr. Carr: I make the same objection, if your Honor pleases; that that is not the measure of damage in this case. What he made or lost in profits in his business. He is entitled to the value of his time, whatever it may be, but his profit may depend upon many things other than his personal average. 30

The Court: Yes; but still if a man is in business and his time is devoted to that business then I do

not know just how he would prove what he lost except by being permitted to show what he earned in the business and what he lost by reason of his injury. He may not have lost anything.

Mr. Carr: Exception.

Q. How much did you make on an average for the two weeks prior, per month—two years prior
10 to the accident?

A. An average from forty to forty-five dollars per week; around forty to forty-five dollars a week.

Q. Now, since the accident have you been able to work?

A. No; I have not, since.

Q. Why can't you work?

A. I am sick and cannot attend to it, all my wife.

Mr. Gaskill: Cross examine.

20

Cross-examination.

By Mr. Carr:

Q. Had you ever ridden in an automobile before?

A. No.

Q. Did you at any time from the time you left Camden until the accident run at more than fifteen miles an hour?

30

A. No.

Q. No?

A. No.

Q. And did you run at exactly fifteen miles an hour all the way down?

A. I cannot tell.

Q. How do you know you were running at fifteen miles an hour?

A. It was on the machine, on the speedometer.

Q. Were you looking at it all the way down?

A. I looked at it, and it made different times. I always looked at it, from time to time.

Q. How many times did you look at the speedometer and observed the speed?

A. I don't remember how many times, but at the time I looked it was showing.

Q. Did you look more than once?

A. Several times; three or four times.

10

Q. And where was the car each time you looked at the speedometer?

A. I don't know the road; I don't know the road.

Q. Well, as to time, how long before the accident was it that you first looked at the speedometer? As to time; how long was it before the accident when you first looked at the speedometer?

A. I don't know.

Q. Did you look at the speedometer as you went through Camden?

20

A. Yes.

Q. And was it registering fifteen miles an hour then?

A. Yes.

Q. And each time you looked at it it was registering exactly fifteen miles an hour; was it?

A. Not all the time; not all the time.

Q. Well, did it show each time you looked at it? What did it show each time you looked at it?

A. I saw two or three times at fifteen, and the 30 other times I don't exactly recollect how many.

Q. And how did you come to remember the fifteen miles an hour and not recollect the three or four other times?

A. I don't exactly recollect.

Q. Each time you looked at the speedometer it

registered exactly fifteen miles an hour; is that right?

Mr. Gaskill: I object. That is half a dozen times that question has been asked and answered.

The Court: Well, he has never gotten an answer to it.

10 Mr. Gaskill: I thought it had been answered.

(Repeated by the stenographer.)

Q. Each time you looked at the speedometer it registered exactly fifteen miles an hour; is that right?

A. Yes. Every time I took particular notice to fifteen miles an hour.

20 Q. When did you last look at the speedometer before the accident occurred?

A. I don't remember.

Q. How long before the accident happened did you last look at the speedometer?

A. I don't remember; I don't remember even what happened yesterday, now.

Q. Well, was it half an hour before the accident?

A. I don't remember.

30 Q. You have no idea where you were or how long before the accident it was when you last looked at the speedometer; is that correct?

A. No.

Q. You say this was your son's automobile?

A. Yes.

Q. Which son?

A. Ralph Podolsky.

Q. How do you know it was his car?

A. He bought it.

Q. How do you know he bought it?

A. He told me.

Q. Is that the only way you know that it is your son's car?

A. That is the only way.

Q. How long had your son Ralph owned the car before the accident?

A. If I remember, two years, in the neighborhood.

Q. What was your answer? 10

A. Two years; in the neighborhood of two years.

Q. That is, your son had owned this car two years before the accident; is that what you mean?

A. Yes.

Q. You mean that your son owned this car two years and this was the first time you ever had a ride in it?

A. First time.

Redirect-examination. 20

By Mr. Gaskill:

Q. On August sixteenth, or since then has Ralph lived at your home or did he have a separate home in Philadelphia?

A. No; no; he lives in Fairmount Avenue and I live Poplar.

Q. Does Ralph have a family of his own?

A. Wife and child. 30

Q. By the way, are you a citizen?

A. Yes; I am.

Q. Are you a citizen of the United States?

A. Yes.

(Witness excused.)

N. ROBERT WOODWARD, called as a witness on behalf of the plaintiffs, being duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Gaskill:

- 10 Q. Mr. Woodward, where did you live now?
A. The home address or the station?
Q. The station?
A. Absecon.
Q. What is your business?
A. Trooper, New Jersey State Police.
Q. Were you a trooper of the New Jersey State Police on August sixteenth, 1924?
A. I was.
Q. Were you then stationed at Absecon?
20 A. Yes, sir.
Q. Where did you patrol?
A. My patrol extended from Absecon west on the White Horse Pike to Egg Harbor.
Q. To Egg Harbor City?
A. Yes, sir.
Q. That is in Atlantic County?
A. Yes, sir.
Q. Now, directing your attention to August sixteenth, trooper, about nine or nine fifteen o'clock, do you remember where you were?
30 Mr. Carr: I object to the statement of time. That may be important or not.
Mr. Gaskill: I withdraw the question.
Q. In the evening, trooper, do you remember seeing an Autocar standing on the White Horse Pike?
A. I remember seeing a truck. I won't swear that

it was an Autocar—at the time standing on the White Horse Pike.

Q. Now, won't you just explain to the jury the condition in which that truck was as you remember it?

A. You mean how I came to see it?

Q. Yes.

A. Well, while in Egg Harbor I should judge it was in the vicinity of nine o'clock—it may have been a little before—I received a call from our sub-station 10 at Absecon that there was an accident around the vicinity of Absecon. So I was motorcycle man at that time. On the way down my white lights picked up the rear end of this truck which was parked on the side of the White Horse Pike facing Atlantic City. So I slowed down. I was in an emergency call. I didn't have time to stop just then. I slowed down, noticed no tail light on this truck. The way I came to pick up this truck was I was heading 20 somewhere in the vicinity of forty-five miles an hour answering this other call, and the outer rays of my headlights picked up the left rear of this truck. It was just a slight glimpse and as I slowed up I started to look around looking for tail lights and it had none, and I went by and casually looked it over to see if there was anybody standing around to kind of watch the traffic going by and let them know. So knowing that the garage was half a mile above, and going up I returned down there and got in touch with Mr. Louis Filling and notified him— 30

Mr Carr: I object to what you told him.

Q. After you saw the truck without a light on it you stopped at a garage?

A. Yes, sir.

Q. After that what did you do?

A. After I stopped at the garage?

Q. Yes.

A. I proceeded to answer a call on my way to Absecon.

Q. What happened then?

A. Well, it seems to me I just barely struck our station at Absecon when the phone rang and I received a call from the Pomona garage that there was
10 an accident.

Q. As a result of that call what did you do?

A. I immediately jumped on the bike and went back to the scene of the accident.

Q. What did you find?

A. At the scene of the accident I found an Autocar truck and an Overland touring car had collided.

Q. And the truck that had been run into by the Overland car was the same truck that you observed without lights on it; isn't that a fact?

20

Mr. Carr: I object to that. That is awfully leading.

The Court: Objection sustained.

Q. Have you ever seen the truck that was in the collision before?

A. Had I ever seen it?

Q. Yes.

30

A. I cannot truthfully say as to that, I can say that this truck was identically in the same position as the truck that I noticed as I went by.

Q. And with no lights?

A. With no tail light.

Q. What part of the truck had been struck?

A. As far as I can remember the accident which happened last August, it was the left rear.

Q. It was the left rear. What part of the Overland car had struck the truck?

A. Practically the right front.

Q. Whom did you find at the accident—at the scene of the accident?

A. You mean in regard to principals?

Q. Yes.

A. Well, as far as I remember, there was Ralph Podolsky, the driver of the Overland, and his father and mother—beg pardon—his father and 10 mother and the truck driver and his helper.

Q. Do you see them in the court room today, the truck driver and his helper?

A. No.

Q. Have you seen them since the accident?

A. No, sir; I have not.

Mr Gaskill: Are they in court?

A Voice: Yes.

20

The Witness: I don't believe I could really identify them just at present.

Q. But you say you found men?

A. The driver and the helper.

Q. The driver and the helper on the truck?

A. Yes.

Q. And you accompanied them somewhere after 30 that; didn't you?

A. Yes, sir.

Q. Trooper, is there any doubt at all about whether or not there was a light on that truck?

Mr Carr: I object to that.

Q. Was there a light on the truck?

A. No, sir.

Q. Of any kind?

A. That is before the accident?

Q. Yes?

A. No, sir.

Mr. Gaskill: Cross examine.

10 Cross-examination.

By Mr. Carr:

Q. What were you riding, a motorcycle?

A. Yes, sir.

Q. And running about forty-five or fifty miles an hour?

A. I should judge that is about what I was going; I could not see the speedometer.

20 Q. You had an emergency call at Absecon?

A. Yes, sir.

Q. You were hurrying to get there?

A. Yes, sir.

Q. You didn't stop when you came to the truck; did you?

A. I didn't come to a distinct stop; no, sir.

Q. Beg pardon?

A. Not to a distinct stop; no, sir.

Q. You slowed down?

30 A. Yes, sir.

Q. You didn't get off?

A. No, sir.

Q. To what speed did you slow down, do you know?

A. That is hard to tell; I should judge between fifteen and twenty miles.

Q. Then went on to the garage?

A. To the garage.

Q. Below. Were you riding along the right hand side of the paved road or hard road?

A. No, sir. I was—well, I can give an estimate of about three feet from the right-hand side of the—right-hand edge of the road going toward Atlantic City.

Q. Did the machine have a side car?

A. No, sir.

10

Q. What time had you passed that same point going northward earlier in the day?

A. That was in the afternoon; I cannot really say as to the time.

Q. Have you any idea how late in the afternoon?

A. I should judge somewhere around between three and four.

Q. What time?

A. Between three and four o'clock, I should judge.

Q. Are you speaking now of standard time or daylight time? 20

A. I am speaking of the time that we were going by just then, at that time of the year. I forget whether it was standard or daylight.

Q. I don't know what time it was up there.

A. Neither do I.

The Court: Well, if it was August in this county, it was daylight saving time.

30

The Witness: Well, I was going by that.

Q. You say you saw no one standing about the truck?

A. No sir; no one standing.

Q. Would you have been able to see if a man had

been standing or sitting in the cab of the truck in the dark?

A. No, sir; I could not; because it was very dark.

Q. You could not tell that?

A. No, sir.

Q. And you didn't stop to find out whether there was; did you?

A. No, sir.

Q. And you didn't make any call to the truck in
10 case there should be a driver on it in the seat; did you?

A. No, sir.

Q. Why didn't you do that if you noticed the light was out?

A. Well, it is possibly just a slip of—slight mistake on my part.

Q. A slight mistake on your own part?

A. Yes, sir.

Q. This truck was entirely over on the gravel;
20 wasn't it?

A. The four wheels were off the concrete; yes, sir.

Q. And it didn't overlap the main road at all; did it?

A. As to that I cannot say.

Q. You didn't notice any overlaps?

A. No.

Q. Wouldn't you have noticed if it had overlapped on the hard surface road?

A. If it had been overlapping to any great extent I probably would; yes, sir.
30

Q. You were within two or three feet of the edge of the road; you certainly would have noticed it, wouldn't you, if it had overlapped at all on the hard surface?

The Court: Do you mean the wheels or the body?

Mr. Carr: I mean the body or any portion of the car.

A. Now, that is hard to state; because my headlight—the only thing I could see by was the headlight of the motorcycle. Understand, it was very dark—very dark.

Q. Well, at any rate you observed no part of the truck overlapping or overhung the hard surface road; did you? 10

A. No, sir; I did not.

Q. You regarded that truck as being an element of danger there; didn't you?

A. I regarded that truck if anyone was to go off the road as a danger, yes, sir.

Q. And isn't it usual for the state police when they find an unguarded danger on the road to protect it in some way if they can?

A. I do; yes, sir.

Q. Couldn't you have stopped and lit that lamp? 20

Mr. Gaskill: I object to that. I object to this line of questioning. It does not seem to be any duty of this state trooper, and the testimony is that they did go to a garage within half a mile and notify them to do something, and this gentleman is not on trial to prove his conduct.

Mr. Carr: The cross-examination deals with the probability and improbability of his testimony. He said there was no lighted lamps. 30

Mr. Gaskill: I withdraw the objection.

Q. (Repeated by the stenographer.) Couldn't you have stopped and lit that lamp?

A. I could possibly have stopped if I was just on a patrol; but on an emergency we very seldom stop.

Q. Well, wasn't this an apparent danger on the road, this car standing there without any tail light burning? Wasn't that a danger as you saw it?

A. Yes, but it was off of the concrete.

Q. Didn't you regard it as a danger?

A. If any one was riding off the gravel, yes, sir.

Q. Answer my question. Didn't you regard it as a danger?

A. Yes, sir.

10 Q. You thought it sufficient of a danger to notify the garage people to remove it; didn't you?

A. Yes, sir.

Q. Did you think it sufficient of a danger for you to stop and light the tail light yourself?

A. That is where the slight mistake probably came in on my part.

Q. You think that was a mistake too; do you?

A. Yes, sir.

20 Q. As well as a mistake not to see whether anybody was on the car, that would give it immediate attention; is that right?

A. Yes, sir.

Q. You arrested some of these people; didn't you?

A. I believe I placed the truck driver and helper under arrest; yes, sir.

Q. Asked to see their license card?

A. Yes, sir.

Q. Did you ask to see Podolsky's card?

A. I believe I did; yes, sir.

30 Q. Didn't have any; did he?

A. Well, now, that happened last August. I will have to look up my arrest reports.

Q. He didn't have any?

A. I don't know as to that.

Q. You know he didn't have any?

A. How do I know? I cannot say as to that.

A. How do you—the other fellow had a card. If Podolsky hadn't any driver's license he would have been placed under arrest for driving without a driver's license.

Q. You don't know whether you asked him whether he had a card or not?

A. Right at present, no, sir.

Q. But you do know you asked the driver of the truck for his card; sure of that; aren't you?

A. That is the usual procedure.

10

Q. Why is it you are uncertain, if that is the usual procedure, as to Podolsky's license card?

A. You asked me did I ask him for the driver's license.

(Repeated by the stenographer.)

Q. Why is it you are uncertain, if that is the usual procedure, as to Podolsky's license card?

A. That is rather hard to explain.

20

Q. You mean you cannot answer that?

A. No, sir.

Q. Well, as a matter of fact, you did ask him for his card; didn't you?

A. I must have asked him or else he would have been placed under arrest.

Q. That is the only reason you say you knew?

A. Yes, sir.

Q. Do you have any recollection whether you did or not?

30

A. No, sir.

Q. Is that right?

A. Yes, sir.

Q. You took him up before the magistrate?

A. Yes, sir.

Mr. Gaskill: Took whom before a magistrate?

22 *N. Robert Woodward—Re-direct*
 Rose Podolsky—Direct

Mr. Carr: The trooper and Podolsky.

Q. Did Podolsky go to the magistrate with you?

A. Podolsky went to the magistrate with me; yes, sir.

Mr. Carr: That is all.

10 Re-direct examination.

By Mr. Gaskill:

Q. When you first saw this truck, trooper, was it day light or dark?

A. It was dark.

Q. Very dark night?

A. Very dark; yes, sir.

20 Mr. Gaskill: That is all.

(Witness excused.)

ROSE PODOLSKY, called as a witness on behalf of the plaintiffs, being duly sworn through the interpreter, was examined through the interpreter and testified as follows:

30 Direct examination.

By Mr. Gaskill:

Q. What is your name?

A. Rose Podolsky.

Q. Are you the wife of Ruben Podolsky?

A. Yes.

Q. And one of the plaintiffs in this case?

A. Yes.

Q. Now, on the sixteenth of August, 1924, did you take an automobile ride with anyone?

A. Yes.

Q. Where did you start to go?

A. Philadelphia.

Q. Where were you going?

A. Atlantic City. 10

Q. With whom were you riding?

A. My son and my husband.

Q. Now, how did you come to go on this automobile ride?

A. My son invited us to go for a ride to Atlantic City.

Q. Now, do you remember what time you left Philadelphia?

A. Before six o'clock.

Q. Did any thing happen on the ride down to Atlantic City? 20

A. They were driving; they drove slow.

Q. Did any thing happen on that ride down to Atlantic City?

A. (No answer.)

Mr. Gaskill: I withdraw that question.

Q. Did you get hurt on the way to Atlantic City?

A. I was talking to my husband and all I remember was they took me to the hospital.

Q. How long were you in the hospital? 30

A. Five days.

Q. After you were in the hospital—what was the matter with you in the hospital? Why were you there?

A. All I remember was I was in the hospital and I was dizzy and that is all I remember.

Q. Did you have any pain?

A. My side and my head; my eye was bloodshot.

Q. After you went from the hospital where did you go?

A. From the hospital they took me to a hotel.

Q. And from there where?

A. Home.

Q. What did you do after you got home?

A. Two weeks I was laying; two weeks.

Q. In bed?

10 A. Yes.

Q. Were you able to do your housework after those two weeks were up?

A. Can't even do it today.

Q. Can't do it today? What physical hurts have you now that you didn't have before the accident happened?

A. My head; I have dizziness, and my chest hurts me, and my side hurts me.

20 Q. You didn't see how the accident happened; did you?

A. It was dark. I did not.

Mr. Gaskill: Cross examine.

Mr. Carr: Just ask her her age and I won't ask her any questions.

By Mr. Gaskill:

Q. How old are you?

30 A. Sixty-one.

Q. And you are the wife of Ruben Podolsky?

A. Yes.

Mr. Gaskill: That is all.

Mr. Carr: That is all.

(Witness excused.)

RALPH PODOLSKY, called as a witness on behalf of the plaintiffs, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gaskill:

Q. What is your full name? 10

A. Ralph Podolsky.

Q. Where do you live?

A. 632 North Sixth Street.

Q. Where did you live on the sixteenth of August, 1924?

A. Same place.

Q. Does your father and mother live with you there?

A. No, sir.

Q. Are you the son of Ruben and Rose Podolsky? 20

A. Yes, sir.

Q. On the sixteenth of August last year did you see them?

A. Yes, sir.

Q. Where did you see them?

A. I saw them at 829 Market—Market and Poplar.

Q. Philadelphia?

A. Yes, sir.

Q. Did you have a conversation with them about 30 Atlantic City?

A. Yes, sir.

Q. What did you do? What did you ask them to do? Just talk to the jury.

A. I pulled over the car 829 Market Street and I said to Pop and Mother: "How about taking a

ride to Atlantic City? Katie is down there with the child. I want to take her home tomorrow night." So they came along—

Mr. Carr: Can't we boil that down?

Q. You invited them to go to Atlantic City?

A. That is what I did.

Q. And you started on your way about what
10 time?

A. Around six o'clock.

Q. Six o'clock in the evening?

A. Yes, sir.

Q. Where did you go?

A. Toward Atlantic City.

Q. Down what road?

A. White Horse Pike.

Q. White Horse Pike. Now, did anything out of the ordinary happen on that ride?

20 A. Yes, sir.

Q. Well, what was it?

A. Why, there was a truck standing on the road, no lights on it; it was 9.15 when I hit it; it was around 9.15 when I hit it.

Q. What is that?

A. Truck standing on the road.

Q. What kind of truck was it?

A. Autocar.

Q. Autocar?

30 A. Yes, sir.

Q. Large truck or small one?

A. Yes, sir; large truck.

Q. Now, what rate of speed were you going down the pike generally?

A. Well, I was going from twelve to twenty.

Q. What is that?

A. From twelve to twenty.

Q. From twelve to twenty miles per hour?

A. Yes, sir.

Q. Had you been keeping that speed up on the way down?

A. Going as fast as twenty and as slow as twelve.

Q. Did you have any headlights on your car?

A. Yes, sir.

Q. Explain to the jury how far away you were and what you saw when you saw this truck, and all that sort of thing. Just describe the accident. 10

A. As I was coming down on the White Horse Pike the road is clear; the road was hard and clear and no trucks or any automobiles in front of me, and as I reached about twenty or twenty-five foot from that truck the first thing I saw was the wheels of the back of the truck, and I tried—I put my brakes on and I tried to stop but I was too close to it to stop. I was going to stop in back of the truck and I turned around and just hit with my right front—I hit the left rear of the truck. 20

Q. Did that truck have a light on it, a red light?

A. No lights at all.

Q. Were there any illumination around there of any kind, any lights around where the truck was?

A. No, no lights at all.

Q. Was the night a clear night or a dark night? Was it light or dark?

A. Yes; it was dark.

Q. About what time did it happen? 30

A. About 9.15 to 9.30.

Q. Was there any part of the truck—describe the position of the truck on the road.

A. Why the wheels of the truck were just off of the concrete; just about the line, and there was about a foot—a foot and a half, probably two foot of the truck standing out on the concrete.

Q. Now, had you ever had your headlights inspected?

A. Yes, sir.

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

The Court: Well, it is answered. I will let it stand.

10

Mr. Carr: I pray an exception.

Q. Describe to the jury your headlights.

A. My headlights were about three feet off the ground; throwing the lights on the ground.

Q. Ahead of you or to the side of you?

A. Ahead of me.

Q. Ahead of you?

A. Yes, sir.

20

Q. And this truck as you say was to the right of the road, off the concrete, the wheels were, but the body extended on to the concrete?

A. The wheels, about a foot and a half.

Q. Did you see anything ahead of you on the road until this truck about twenty-five feet away?

A. Why, the nearest I saw anything on the road was Egg Harbor—from Egg Harbor there was nothing on the road whatever, once in a while a car come towards me; it come going down towards Atlantic

30 City.

Q. Now, what is your judgment about the rate of speed when you collided with the automobile or the truck?

A. Well, I judge from fifteen to twenty.

Q. You are not sure about that, but you imagine fifteen to twenty miles per hour?

A. Yes, sir.

Q. Were you racing?

A. No, sir.

Mr. Gaskill: Cross examine.

(Recess to 1.30 P. M.)

RALPH PODOLSKY, recalled.

10

Cross-examination.

By Mr. Carr:

Q. What did you say the speed was you made from Camden to the point of the accident?

A. From twelve to twenty miles per hour.

Q. Twelve to twenty miles?

20

A. Yes, sir.

Q. You never got above twenty miles all the way down?

A. No, sir.

Q. You are an experienced driver?

A. Yes, sir.

Q. How long have you driven a car?

A. Around three years.

Q. Three years?

A. Three to four years; yes, sir.

30

Q. Did you own this car?

A. Yes, sir.

Q. When did you buy this car?

A. I can't exactly tell you the date.

Q. And from whom did you buy it?

A. I don't know the man's name. I have his re-

ceipt home but I don't know his name; I never paid any attention to that.

Q. Where did you buy it?

A. Why, I bought it from a brother-in-law of mine—a fellow came around and said: "Will you buy that car?" and I bought it from the man, but I never knew the man before.

Q. Who is he?

A. He is a private, a private man.

10 Q. He had a name; didn't he? He was not that private?

A. He had a name.

Q. What was the name of the private man?

A. I forget about it.

Q. As private as that, was he?

A. What?

Q. Was he as private as that, that you cannot keep his name?

20 A. I didn't know the man; he just came over and sold me the car, and I heard that name once. I wouldn't remember that name three years later.

Q. Where did you meet him on the street somewhere?

A. What?

Q. Where did you meet him, on the street somewhere?

A. No, brother-in-law of mine came over with this man to my store and he said: "Ralph, there is a pretty good buy for you. Buy that car."

30 Q. Bought it off the bat, right out in front; is that it?

A. Yes, sir.

Q. Don't know the man's name?

A. No, sir.

Q. Have any bill of sale for it?

A. Yes, sir.

Q. From the man?

A. Yes, sir.

Q. Don't you even remember the name of the man who made the bill of sale?

A. No, sir.

Q. Was the car registered in your name?

A. Yes, sir.

Q. In Pennsylvania?

A. Yes, sir.

Q. In the year 1924?

A. Yes, sir.

10

Q. Sure?

A. Yes, sir.

Q. When was it registered?

A. I cannot tell you the day.

Q. Where did you have it registered?

A. Harrisburg.

Q. Where did you file your application? to have it registered?

Mr. Gaskill: I object to this line of questioning. 20
It is not cross-examination, I think, and it is taking up some time. If there is any doubt about him owning the car—I object to it now as not being proper cross-examination and not relevant, anyway.

The Court: I will permit it.

Q. Where did you file your application to have it registered?

A. Why, between five and six on Sinotti Avenue. 30

Q. Philadelphia?

A. Yes, sir.

Q. Did you have a driver's license?

A. Yes, sir.

Q. For the year 1924?

A. Yes, sir.

Q. Issued by whom?

A. Department of Highways.

Q. State of Pennsylvania?

A. Yes, sir.

Q. That came from Harrisburg?

A. Yes, sir.

Q. Did you have that license with you on the day you were driving over here?

A. Yes, sir.

10 Q. Did you show it to the trooper?

A. No, sir. The trooper took me to the magistrate and he asked me for the license and I told him my owner's license or driver's license you can get from under my seat, and I asked him to do me a favor and send it back to me, and he sent it back to me a couple of weeks later, I guess.

Q. He sent it back to you; did he?

A. Yes, sir.

Q. In a wallet?

20 A. By mail.

Q. Regular pocketbook?

A. No; just had them in a wallet.

Q. You mean like a card case?

A. No, sir; just plain envelope.

Q. Oh, plain envelope. Now, when you were coming down the White Horse Pike from the time you passed Egg Harbor to the time of the accident were there any cars ahead of you on the road that you saw?

30 A. No cars; only the truck.

Q. That is, it was entirely clear way ahead of you from Egg Harbor down to where the accident happened; that is right, isn't it?

A. Yes, sir.

Q. And the accident happened near Pomona; is that right?

Q. Some three or four miles from Egg Harbor?

A. I couldn't tell you how many miles because I am not very much acquainted with the road to know every little town.

Q. Well, several miles below Egg Harbor?

A. Several miles below Egg Harbor; yes, sir.

Q. Did you pass any cars? Did you overtake and pass any cars going in the same direction?

A. No cars, except I guess a little truck; it must have been a Ford truck, small truck, going very 10 slow.

Q. Did you or did you not pass the Ford car?

A. (No answer.)

Q. Do you know?

A. Yes, I did; I did.

Q. Now, which is it, which is it? Did you?

A. I did.

Q. Where did you pass the truck with regard to where this accident happened?

A. Why, several miles above.

20

Q. How fast was the truck going?

A. Very slow; very slow.

Q. What sort of truck was it that you passed?

A. It looked to me like a Ford truck.

Q. Did you notice what kind of a body it had on it? Did you take notice what kind of a body it had on it?

A. No.

Q. No?

A. No, sir.

30

Q. Did you notice whether there were any children in the Ford truck that you passed?

A. Yes, sir.

Q. What is your answer?

A. Yes, sir.

Q. Have you children?

A. Yes, sir.

Q. There were people in the truck and some children?

A. I judge about two or three people were in the machine—in the truck.

Q. And in addition some children; is that right?

A. Just one child.

Q. One child. Did you have your lamps lighted?

A. Yes, sir.

10 Q. How far ahead of you can you see with your lamps lighted?

A. About one hundred feet; about one hundred and fifty, maybe.

Q. Is that all you could see, one hundred or one hundred and fifty?

A. I think so. I never measured it; I don't know how many feet.

Q. Are they good lights?

A. Yes, sir.

20 Q. Good working order?

A. Yes, sir.

Q. Now, within what distance can you stop that car running at twelve miles an hour?

A. Four or five foot.

Q. And at fifteen?

A. I guess about the same; five or six foot.

Q. Five or six feet. At twenty miles an hour?

30 A. Well, if the brakes were working good; I could stop about as good as anybody else.

Q. Just answer my question, if you know. Within how many feet can you stop that car when it is running at twenty miles an hour?

A. Around six foot.

Q. About six foot. Now, how far away was this truck when you first saw it?

A. Well, I judge about twenty to twenty-five feet.

Q. Twenty to twenty five feet away?

A. Yes, sir.

Q. Had you started to slow down at all when you saw the truck?

A. Yes, sir.

Q. Put on your emergency brake?

A. No, sir; put the foot brake.

A. Why not put the emergency on, too?

A. Well, I didn't know it was a truck. I thought maybe it was a touring car and that I had plenty of 10 room to pass by. I only saw the wheels of the truck; just saw the wheels.

Q. Now, wait a minute. Didn't you see all the wheels that were off the gravel, as you say, when you saw the body overhanging?

A. No, sir.

Q. Now, didn't you say that the body of the truck overhung the hard road a foot and a half or two feet?

A. Yes, sir. 20

Q. Your lights were powerful enough to pick up an object like a truck; were they not?

A. Yes; my lights were showing toward the ground. I couldn't see the top of the truck until I was pretty near on top of the truck.

Q. Well, you could see some part of the truck, couldn't you with your lights?

A. When I was about two or three foot away from the truck; so I turned around.

Q. Didn't you say that you saw the truck when 30 you were twenty or twenty-five feet away?

A. I said I saw the wheels but I didn't see the truck.

Q. Just a moment. You know the wheels were part of the truck; didn't you?

A. I didn't know it was a truck.

Q. You saw the wheels?

A. That is it.

Q. You didn't know what the wheels were on?

A. I didn't know whether it was a touring car. I thought maybe it was a touring car.

Q. Well, would you slow down or stop for a touring car or just for trucks?

A. I would slow down.

Q. Well, supposing it would be, then, a touring
10 car—that had very large wheels; didn't it?

A. Large wheels? I don't remember.

Q. Do they have the same kind of wheels on trucks
s they do on touring cars?

A. When it was so far away you can't tell what
difference.

Q. You saw the wheels?

A. I just saw the tire.

Q. You just saw the tire?

A. Yes, sir.

20 Q. Now, was the only thing you saw in front of
you just the tires, no wheels, no car?

A. Exactly.

Q. Didn't you see the wheels?

A. Well, when you see the tire you can see the
wheels.

Q. You just saw a wheel standing out in the road
alone; did you?

A. That is it.

Q. Nothing else but wheels; is that right?

30 A. That is right exactly.

Q. Now, how many of these wheels did you see
standing out on the road alone?

A. Well, the light showed me—me the back of the
wheel; that is what I saw plain enough.

Q. Well, did you see more than one wheel?

A. Back wheels, I said I saw; and the front left.

Q. And that you saw about when you were twenty or twenty-five feet away?

A. About twenty.

Q. Is that right?

A. Yes.

Q. And you made no effort to stop; did you?

A. Yes, sir; I did make an effort.

Q. Make an effort to stop immediately?

A. Yes, sir.

Q. And you could stop in six feet going at that 10 speed; isn't that right?

A. Why, I made an effort to slow down, but not to stop.

Q. Now, pardon me. But you could stop as a matter of fact at six feet; couldn't you?

A. Yes, sir.

Q. And you saw this thing twenty or twenty-five feet away; is that right?

A. Yes, sir.

Q. But you couldn't stop in time to avoid hitting 20 it; isn't that right?

A. Yes, sir.

Q. Isn't that right?

A. Yes, sir; that is right.

Q. Weren't you running partly on the gravel, too?

A. No, sir.

Q. Hadn't you just shortly before passed this truck, just a little before the accident?

A. No, sir.

Q. No? You have not mentioned whether or not 30 the truck came along and hit your car in the rear. Did that happen?

A. Yes, sir, after I hit the truck.

Q. That is, it was a three-way smash-up; wasn't it?

A. Yes, sir; the truck standing—

Q. Did you hit the truck?

Mr. Gaskill: Just a minute. Let him answer the question.

Mr. Carr: I am doing the questioning.

Mr. Gaskill: I object, your honor. He did not finish the answer to his question and I ask that he be given that right.

10 Q. The car you were driving was an Overland; wasn't it?

A. Yes, sir.

Q. Your Overland hit the truck; didn't it?

A. Yes, sir.

Q. Almost at the same moment a Ford truck hit you in the rear; didn't it?

A. Yes, sir.

Q. It almost happened at the same time; didn't it?

20 A. Yes, sir.

Q. And that was the Ford truck that you had passed; wasn't it?

A. Yes, sir.

Q. Two or three miles back?

A. Yes, sir.

Q. Isn't that right?

A. Yes, sir.

Q. Running very slowly?

A. Yes, sir.

30 Q. And it got to the point so quickly behind you that it ran into your rear; is that right?

A. Yes, sir.

Q. Did you have a speedometer on this car?

A. Yes, sir.

Q. Was it working?

A. Yes, sir.

Q. Were you watching it?

A. Once in a great while.

Q. When was the last time you observed it?

A. Why, around eighteen or twenty miles—not eighteen miles.

Q. Where were you on the road?

A. Why, Egg Harbor.

Q. Egg Harbor?

A. Past Egg Harbor.

Q. Some two or three minutes before the accident?

A. No, sir; about ten minutes or fifteen minutes. 10

Q. What was she showing then, about?

A. Around twenty, this side of twenty; about eighteen miles.

Q. And your speedometer was in working order; wasn't it?

A. Yes, sir.

Q. At the time of the accident?

A. Yes, sir.

Q. Were you rendered unconscious by the accident? Were you rendered unconscious by the accident? 20

A. No, sir.

Q. Were you thrown out of the car?

A. No, sir.

Q. As you were driving down, say, from Egg Harbor where were you driving with reference to the center of the road?

A. As close as I could get to my right.

Q. Close as you could get to your right, and you held that course? 30

A. Yes, sir.

Q. From there down; is that right?

A. Yes, sir.

Q. Did not get out on the gravel at all; is that right?

A. No, sir.

Q. Now, when you saw that truck was—

Mr. Carr: Strike that out.

Q. How far do you say the truck or any part of it hung over the road, the hard surface road?

A. A foot to a foot and a half.

Q. Did you measure it at that time?

A. No, sir; just what I judge.

Q. Just as you judge it?

A. Yes, sir.

10 Q. You were pretty well upset by the accident; weren't you?

A. Yes, sir—no, sir.

Q. Pretty well shaken up?

A. I wasn't hurt.

Q. Didn't it make you nervous?

A. Well, I held myself in good condition on account of Pop and Mamma. Pop was pretty near killed, so I thought I ought to brace up.

Q. Might it have been two feet over?

20 A. Well, probably, but I doubt it.

Q. You say probably, but you doubt it. Now, which do you mean?

A. That means I didn't measure it; I don't know whether it was or not, but I judge around a foot or a foot and a half.

Q. But if it was probable would you still doubt it?

A. Well, I didn't measure it; I couldn't tell exactly.

30 Q. You don't know whether it was a foot or two feet; do you?

A. Well, it was not over a foot and I know it was not quite two feet.

Q. And was it lying parallel with the road, I mean the parked truck?

A. Part of the truck was on the road.

Q. Beg pardon?

Q. The tail-gate and the top of the truck was on the road.

Q. But the truck was headed straight down the road; wasn't it? But off on the gravel?

A. (No answer.)

Q. Or didn't you notice?

A. No, sir; the truck was like a little slanty, off of the road like; the front of the truck.

Q. Was the tail gate up or down?

10

A. It was down.

Q. You mean straight out or—

A. Straight out.

Q. Was it straight out with—forming a projection? Is that what you mean?

A. Yes, sir.

Q. You say it was at some angle with regard to the road?

A. Yes, sir.

Q. And yet all four wheels were on the gravel; 20 weren't they?

A. Well, the fact, too, was closer to the—

Q. Beg pardon?

A. The back two wheels, the back left wheel was closer on the concrete than the front.

Q. But all four wheels were on the gravel; is that right?

A. Yes, except the back wheel was just touching the—

Q. Of, course you made this examination after the 30 collision, didn't you? Isn't that right?

A. Yes, sir.

Q. Of course, before you actually struck you didn't know that the truck was a foot or a foot and a half or two feet over on the road; did you?

A. Yes, sir; I knew it.

Q. I mean did you know with the exactness that you are testifying to now?

A. Not exactly. I knew that the body and the tail gate was on the road, on the concrete.

Q. When did you first learn that?

A. When I was just on top of it; just about a foot away.

Q. Just about a foot away?

A. Couple of feet away, I judge.

10 Q. And the accident happened just in an instant; didn't it?

A. Yes, sir.

Q. And it was while you were in that two foot—from the time that you saw it to the time of the impact—that you made these observations about the distance the truck was from the paved road?

A. No, sir; the time I stopped the car.

Q. You mean after the—

A. Accident.

20 Q. —collision then you made the observation; is that right?

A. Yes, sir.

Q. You didn't know before the impact what these distances were that you testified to now; did you?

A. Well, the only thing I knew was I saw when I was right on top of the truck—

A. No—

Mr. Gaskill: I object. Let him answer the ques-
30 tion.

Mr. Carr: I just asked him a question and I think he can answer it "yes" or "no".

Q. (Repeated by the stenographer.) You didn't know before the impact what these distances were that you testified to now; did you?

The Court: That can be answered “yes” or “no.”

A. Yes.

Q. You knew before the impact? And your observation began at the time when you were two feet away, and just at the instant of the impact; that is right, isn't it?

A. Yes, sir.

10

Mr Carr: I think that is all.

(Witness excused.)

Mr. Gaskill: Now, if your Honor please, I think counsel for the defense has agreed that defendant is the owner of the truck that was in collision with the Overland car of Ralph Podolsky, and they also admit that the car was under the control of his agents and servants at the time of the accident.

Mr. Carr: Yes; we admit that.

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

30

Direct examination.

By Mr. Gaskill:

Q. You live at Pomona, New Jersey?

A. Pomona, New Jersey.

Q. Pomona, New Jersey?

A. Yes, sir.

Q. On August the 16, 1924 were you at the garage with your sons in Pomona?

A. Yes, sir; I was.

Q. In the afternoon of that day?

A. Yes, sir.

Q. Did anyone here in the court room that you saw come into the garage that afternoon?

10 A. During which?

Q. Is there any man in this room that you saw come into that garage that afternoon?

A. Yes, sir.

Q. Won't you point them out?

A. The young gentleman sitting right over there. The first one with his straw hat in his hand.

Mr Gaskill: Won't you just stand up, please.

20 Q. This gentleman?

A. Yes.

Mr. Carr: There is nothing mysterious on our part.

Mr. Gaskill: I don't mean that.

Mr. Carr: What is the idea?

30 Mr. Gaskill: Do you want me to tell you what I want to prove by this witness?

Mr. Carr: Yes. I shall object.

Q. Did he come to the garage?

A. Yes, sir.

Q. About what time?

A. Well, it was somewhere around between half past six or seven o'clock I should judge. I had ate my supper and I went down to relieve the boys for their supper.

Q. And was it light then?

A. Yes, sir.

Q. Did he have a conversation over the telephone?

Mr. Carr: I object to that. We cannot be bound 10
by the conversations of our agent. It does not bind
us. He is not our agent for the purpose of making
admissions.

The Court: No.

Mr. Gaskill: Your Honor, isn't he the agent so
far as it comes to the operation of the automobile
and its condition?

The Court: Well, anything that he said about 20
this condition would not necessarily bind the defen-
dant.

Mr. Gaskill: And when he was talking with the—
well, all right, that is all.

(Witness excused.)

LOUIS FILLING, called as a witness on behalf of the plaintiffs, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Gaskill:

10 Q. Mr. Filling, where do you live?

A. Pomona.

Q. What is your business?

A. Garage.

Q. What is the name of your garage?

A. Pomona Garage.

Q. On August sixteenth, 1924, did trooper Woodward stop at your garage in the evening about nine o'clock?

A. Yes, sir; he did.

20 Q. As a result of his stop what did you do?

A. He stopped and told me to go up—

Mr. Carr: I object.

Q. No, not what he told you. What did you do after he had talked to you?

A. I went up to get the truck off the road and pull it into the garage and hold it for headlights.

30 Q. You went up to get a truck toward Egg Harbor?

A. Yes, sir.

Q. When you got there what did you find?

A. I find an accident already occurred.

Q. What?

A. I found there was an accident. The truck I was supposed to get was hit by a car coming down.

Mr. Carr: I object to "the truck he was supposed to get" and ask that it be stricken out.

The Court: I will strike that.

Mr. Gaskill: Yes.

Q. You found a truck?

A. Yes, sir.

Q. Now, tell the court and jury the location of 10 the truck on the White Horse Pike.

A. The truck was standing with the four wheels just off the edge of the concrete, with part of the body probably about a foot over the wheel.

Q. Over the wheel?

A. Yes, over the concrete.

Q. But over the concrete?

A. And the other Overland that was wrecked, was lying right back of it on the cement, where it had dropped. 20

Q. Was the tail board of the truck down?

A. Yes, sir.

Q. Who was in charge of the truck, if you know?

A. I really don't know the names of the men who were in charge.

Q. Do you see them in court today?

A. Yes, sir.

Q. Won't you point them out?

A. Two gentlemen sitting over there on the left.

Q. First men on that side? 30

A. Yes, sir.

Q. Now, at the time you got there—well, at the time trooper Woodward stopped at your garage was it light or dark?

A. Dark.

Q. And about what time?

A. Around 9.15 or 9.30; somewheres in that neighborhood.

Q. How soon did you go to get the truck after you had seen trooper Woodward?

A. Well, from there I walked right over to the service car and went right up the pike.

Q. How far did you go?

A. About half a mile.

10 Q. About half a mile from your garage, and when you arrived you found the truck and an Overland car that had run into it?

A. Yes, sir.

Q. And what did you do with the truck after that?

A. Why, I left it there until I took it afterward and pushed it into the garage.

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

20 Mr. Gaskill: All right; cross examine.

Cross-examination.

By Mr. Carr:

Q. Did you make any measurement of how close this truck was to the hard road?

A. Not no measurements, no; I was just right up alongside of it—

30 Q. Just a moment, please. Did anybody ask you to observe the distance?

A. No, sir.

Q. Did you tell anybody how far it was before you came on the witness stand?

A. No, sir; I didn't.

Q. Didn't talk to anybody?

A. I spoke—the only one I have ever spoke to was Mr. Gaskill here just before.

Q. He didn't know what you were going to testify to until today?

A. No, sir; he did not.

Q. Were you subpoenaed as a witness?

A. Yes, sir.

Q. You didn't tell anybody what you were going to testify to?

A. No, sir.

10

Q. Now, there were three cars involved in this wreck; weren't there?

A. Yes, sir; there was.

Q. There was a Ford behind it?

A. Yes, sir.

Q. Was that Mr. Brenner's truck, do you know?

A. Yes, sir; it was.

Q. The three cars were in this collision; is that right?

A. Yes, sir.

20

Q. And you didn't see the position of the truck until after the collision; did you?

A. No, sir; I did not.

Mr Carr: I think that is all.

Re-direct examination.

By Mr. Gaskill:

30

Q. Now, Mr. Filling, do you know the width of the White Horse Pike?

A. The White Horse Pike is thirty feet wide; the cement is twenty.

Q. Twenty. And on either side of the cement there is a five foot shoulder?

A. Yes, sir. Now it is more on that side, but at that time it was only twenty feet; three feet dirt and two feet sand.

Q. And they have extended it further?

A. Yes, sir.

Q. What was the width of this truck, would you say?

A. Close to seven foot.

Q. Close to seven foot?

10 A. Yes; the truck is close to seven foot, outside measurements.

Q. Is the chassis a high or low chassis?

A. Fairly high chassis.

Q. Would you say three and a half to four feet high from the ground?

A. Around three and a half foot, is what they usually are.

Q. That is up to the bottom of the truck?

A. Yes.

20 Q. Have you any interest in this case, Mr. Filling?

A. No, sir; none whatever.

Q. Have you ever seen Ralph Podolsky since the accident?

A. Yes; he was down—

Mr. Carr: Just say "yes" or "no".

The Witness: Yes; I have, about a year ago.

30 Q. About a year ago?

A. Yes.

Re-cross examination.

By Mr. Carr:

Q. Do you know what kind of a truck it was that you were talking about?

A. Yes, sir.

Q. What kind was it?

A. Autocar.

Q. What size?

10

A. What size?

Q. Yes.

A. I imagine around a two ton truck; I would not swear to the size of it.

Q. Do you know the specifications for a two ton auto truck?

A. No, sir, I do not.

Q. Do you know the specifications for a one and a half ton auto truck?

A. What do you mean?

20

Q. As to width?

A. No, I do not.

Q. So you are simply guessing at the width of that car without knowing what the type and size of it are?

A. Taking it from the center of the wheel, five foot five inches; and it was over the center of the wheels.

Q. I say are you simply guessing without knowing what the particular type of the truck was; isn't that true? You don't know of your own knowledge; do you?

30

A. The width of the truck?

Q. The width of a two ton and a one and a half ton?

A. The width of a one and a half ton from the

center of the wheel is either five foot five or five foot six inches; that is to the center of each wheel.

Q. You don't know, though, do you, which it is?

A. It is either five foot five or five foot six inches. It ain't over an inch from center to center, there.

The Court: You mean the tread?

The Witness: The tread.

10

The Court: Is five feet five or five feet six?

The Witness: Yes.

The Court: That would bring it either sixty-five or sixty-six inches; isn't that so?

The Witness: That is the tread of the wheel, of an ordinary tread.

20 The Court: I was always under the impression that the standard width was fifty-six inches. That is about a foot shorter than you say it is.

Q. Do you know what the standard tread really is?

A. I think you are right, your Honor. Instead of five foot six inches it is fifty-six inches.

Q. That is the standard?

A. That is the standard; yes, sir.

30 Q. Do you say now it is fifty-six inches?

A. Yes, sir.

Q. Instead of six-seven?

A. I said it was five foot six, but it is fifty-six inches.

Q. Didn't you say at one time that it was seven foot wide?

A. No, sir; that was the body.

The Court: He said that was over all.

Mr. Carr: That is all.

Mr. Gaskill: That is all, Mr. Filling.

By Mr. Carr:

Q. Did you notice whether this auto truck was
as far over to the right as it could get? 10

A. Yes, sir; it was.

Q. He couldn't get any further?

A. Not without going through the weeds.

Q. It was at the extreme right edge of the gravel
road?

A. Yes, sir.

By Mr. Gaskill:

Q. Which wheels were? 20

A. The right hand wheels.

(Witness excused.)

THOMAS TURNER, called as a witness on behalf of
the plaintiffs, being duly sworn and examined, tes-
tified as follows:

30

Direct examination.

By Mr. Gaskill:

Q. Mr. Turner, where do you live?

A. Pomona, New Jersey.

Q. On the sixteenth of August, 1924, where were you employed?

A. By Louis Filling.

Q. In what capacity?

A. Mechanic.

Q. In his garage?

A. Yes, sir.

Q. On the evening of that day did you see or hear trooper Woodward stop at the garage about
10 nine or nine fifteen?

A. I did.

Q. As a result of the trooper stopping what did Mr. Filling do?

A. You mean Louis?

Q. Just tell me what he did.

A. He went up after the car that he was supposed to bring in.

Q. Did he bring it in right away?

A. Not until after the accident.

20 Q. Now, what did you do then when you heard there was an accident?

A. Well, I got word to call the troopers up that there was an accident, and in the meanwhile, of course, I did so; and it was a long time in getting them. I judge—if you want me to tell the time.

A. No, what did you do?

A. I called the troopers up.

Q. Then what did you do after that?

A. I went to the wreck.

30 Q. You went to the wreck?

A. I went to the wreck.

Q. Won't you describe to the jury just precisely the condition that you found the cars in when you arrived there?

A. Well, as much as I know, yes. As I say, after I got word to call the trooper up I just jumped in

my machine and went to where the wreck was supposed to be—well, where the wreck was; and there I found an Autocar truck to the right of the road facing Atlantic City with a little—what they call baby four Overland rammed up in the back of it, I believe, if I am not mistaken, in the back of that was a Ford truck.

Mr. Carr: I object to that.

10

Q. Just tell what you know, Mr. Turner.

A. The Ford truck in the back of the Overland. That was off the road. Now, I don't know myself if the thing was from an accident then or not, until after I got back to the shop, see?

Q. What was the position of the truck, the Autocar truck on the road?

A. Facing Atlantic City.

Q. How was it placed in relation to the concrete road?

20

A. Why, it was just off the concrete, both wheels were off the concrete.

Q. How about the body of the truck?

A. Well, there was a little overhang to it.

Q. How much would you say?

A. Well, I judge—or I will say a foot and a half.

Q. Now, was that the tail board on the side?

A. Well, the tail board and the side I would say.

Q. Were hanging over the concrete road?

30

A. Yes, sir.

Q. And you know the width of the White Horse Pike?

A. Yes, sir.

Q. How much is it?

A. Twenty foot of concrete and five foot of gravel on each side—there was at that time.

Q. How far from the Filling garage was the truck located?

A. Why, half of a mile.

Q. About half of a mile? Cross examine.

Cross-examination.

By Mr. Carr:

10

Q. Was the auto truck as far over to the right as it could get?

A. To my information it was.

Q. All the way over as far as it could get?

A. Yes, sir.

Mr. Carr: That is all.

20

Re-direct examination.

By Mr. Gaskill:

Q. Did you make an examination of the auto truck that night for light?

A. Not that night, but the next morning I did.

Q. Did the truck have—

30 A. That is not right, not of the truck; because the truck went away that night, I believe, late that night,—or was it early the next morning? I am not positive, so I won't say nothing.

Q. Did you inspect the truck to see whether or not there was a light on it after the accident?

Mr. Carr: I object to that—after the accident. The accident itself would probably extinguish it.

Q. I mean the lamp itself?

A. I myself didn't see no light, no, but there was—

Mr. Carr: I think the answer is not responsive and I ask it be stricken out for that reason.

The Court: It may be stricken out.

Q. Did you go up the next morning?

A. I did. I usually made a trip up the White Horse Pike— 10

Mr. Carr: You have answered it.

Q. Did you make a search at the scene of the accident?

A. I did, yes.

Q. Did you find any lamp there?

A. I did not. 20

Mr. Carr: I object if your Honor, please. The question is whether he found a lamp there the next day.

The Court: I do not think that is relevant. I will sustain the objection.

Mr. Gaskill: Cross examine.

Mr. Carr: That is all, Mr. Turner. 30

(Witness excused.)

DAVID ALLMAN, called as a witness on behalf of the plaintiffs, being duly sworn and examined, testified as follows:

Direct examination.

By Mr. Gaskill:

10 Q. Doctor, are you a licensed and practicing physician of the State of New Jersey?

A. I am.

Q. And you practice in Atlantic City?

A. Yes, sir.

Q. Are you connected with any hospital there, doctor?

A. Yes, sir.

Q. In what capacity?

20 Mr. Carr: I will admit the doctor's qualifications.

Q. On or about August sixteenth, 1924, doctor, did Ruben Podolsky become a patient of yours?

A. Yes, sir.

Q. What was the physical ailment that he had at that time, doctor?

A. Do you want me to refer to the records?

Mr. Carr: Did you make those records yourself?

30

The Witness: No, sir; not all of them; made under my direction at the hospital.

Mr. Carr: How under your direction, doctor?

A. Well, they are made by pen and ink, by me

telling the resident to write down that I want the man to have such and such a thing or that the man can have a back rest.

Mr. Carr: Directions for treatment?

The Witness: Yes, the temperature and so forth is kept by the nurse. The diagnosis is made by me.

Mr. Carr: You, of course, don't know about the nurses' end. You know what you directed to be done. 10

The Witness: That is right.

Mr Carr: Is that the way it was?

The Witness: Yes, sir.

Mr. Carr: I have no objection to its use so far as it is within the doctor's own knowledge. So far as it shows conditions reported by nurses and so on, I shall object to the use of it. 20

The Court: Well, if the doctor was in direct supervision of the case and the nurse was under his supervision, and he used the nurse's charts in his diagnosis and treatment, I think I would admit even the nurse's record.

Mr. Carr: I may not feel so mean a little later on. 30

The Witness: Well, I can get along without that. I can be more accurate with them; that is all. The man was admitted with a very severely crushed face. The whole front of his face was smashed in. I thought he was going to die.

Mr. Carr: I object to what he thought and ask that that be stricken out.

The Witness: His appearance.

The Court: That may be stricken out.

10 The Witness: —was that of a man who was about to die.

The Court: Go ahead.

The Witness: He had a bad cut on his forehead, cut right through his nose, extending from one eye to the other, with the bone of the nose broken. The bones of his forehead were broken. He was in a state of shock and bleeding from his nose and from the various cuts that he had.

20

Q. Were there any other fractures, or breaks?

A. Yes; there were.

Q. Won't you tell the jury what they were?

A. He had a fracture of his right eye bone, his right orbital bone, and either a fracture or dislocation of the right side of his lower jaw where it articulates or joins with the upper jaw.

Q. Now, doctor, the fracture of the forehead, what is the medical term for that?

30 A. A multiple fracture. Well, this happened to be a multiple fracture.

Q. This happened to be a multiple fracture of the forehead. Now, doctor, Mr. Podolsky has testified today that he suffers from almost continual headaches. What in your opinion causes those headaches?

Mr. Carr: I object unless the doctor has recently seen him. He bases it upon the mere statement that Mr. Podolsky testified that he is suffering from headaches. The question is what causes the headaches?

Mr. Gaskill: I will withdraw that question.

The Court: Yes; I think that is too remote from the time the doctor testified to.

10

Q. Doctor, assuming that before an accident a man is not troubled with headaches and that he receives a multiple fracture of the forehead and after the accident complains of almost continual headaches, what would be your opinion as to the cause of it?

A. The fracture of the forehead.

Q. The fracture of the forehead. Now, doctor, how can that condition be relieved, if at all?

20

A. Well, if it has extended over a long period of time without relief I do not think there is any way to relieve it.

Q. Well, assuming that it extended from the sixteenth of August, 1924 to the present time without relief, what is your opinion of the possibilities of that relief?

A. Well, if during that time the man has had proper treatment I don't think he can be relieved.

Q. But assuming that today he has had those headaches, what is your opinion as to the duration, or the chance to relieve them?

30

A. I think they are permanent.

Q. Permanent. Now, doctor, about the fracture of the base of the nose, would that cause this man a permanent injury or not?

A. Well, there would be a permanent deformity there because the bone has not been gotten into proper shape, could not be; it was so badly broken; and, as I say, it was a compound fracture. There would be a deformity there.

Q. I say assuming that a person having a fracture at the base of the nose and after that had continual or almost continual tearing, a discharge of pus from the eyes—

10

Mr. Carr: There is no testimony about the discharge of pus.

Q. Almost constant tearing from the eyes, having had a fracture at the base of the nose, what in your opinion is the cause of the tearing?

A. Well, the duct that leads to and from the eyes to the nose, called the lachrymal duct must be closed.

Q. In other words, the duct that carries the tears to the nose from the eyes ordinarily is closed in your judgment?

A. If the man's eyes continually waters and tears.

Q. Now, doctor what is the probability of a recovery from that condition, that being so?

A. In this particular man's case I don't think he will recover. The duct has probably been permanently destroyed at the time of the accident.

Q. So then in your opinion is a permanent condition?

30

A. Yes; I think so.

Q. Now, doctor assuming that Podolsky complains now of a deafness and a loss of the feeling on the left side of his face, what in your opinion caused that?

A. An injury to the nerve.

Q. An injury to the nerve? Where?

A. Well, somewhere between the rise and the part they supply.

Q. Would that come from the fracture of the right orbit?

A. No.

Q. Would it come from the injury to the jaw?

A. Yes; that is where it could come from.

Q. It could come from?

A. Yes.

Q. Now, doctor, he complains about dizziness, 10
being dizzy. What in your opinion causes that?

A. Well, it could be caused by his accident, of course, by the fracture of the skull that he had.

Q. Fracture of the skull. Doctor, we will assume that Podolsky having received a fracture of the skull and after that had headaches and dizziness, and that he had a fracture at the base of the nose and as a consequence of that he has a constant tearing, what is your judgment about the man's ability to perform work as a grocery man? 20

A. Well, if he has all these things I don't think he can do much work.

Q. And you examined Mrs. Podolsky; didn't you, doctor? Wasn't she under your care, too?

A. Yes, sir.

Q. What was her condition?

A. Shock and severe general bruises, especially the outside of the chest. I have forgotten which.

Q. And how long was she in the hospital, do you remember? 30

A. A few days.

Q. A few days. Mr. Podolsky was there longer than she was. Do you remember how long he was there?

A. He was there about ten or twelve days.

Q. Ten or twelve days. Cross examine.

Cross-examination.

By Mr. Carr:

Q. Doctor, when did Mr. Podolsky last come under your care?

A. About ten or twelve days after the date of the accident.

10 Q. That would mean some time the latter part of October last year, if the accident was the—I mean August of last year. Have you examined Mr. Podolsky since?

A. Only once superficial, yes.

Q. Only once, superficial. You didn't make a thorough, complete examination?

A. Only for the purpose of testifying; I did not.

20 Q. Such an examination would have enabled you to state more accurately and more satisfactorily, would it not, as to the present conditions and prognosis?

A. No; because his injuries—the permanent injuries are those which pertain to specialties. For instance, the eye condition is distinctly that under the realm of an eye man; the nose condition comes under the jurisdiction of a nose and throat man.

Q. Is it your idea, then, that a physical examination by a physician at this time would not be at all helpful for the purpose of informing the physician as to the condition of the patient?

30 A. The general medical man's examination would not be; but a nose and throat man's opinion would be very valuable, and an eye man's opinion would be very valuable.

Q. Would an examination by you be valuable for the purpose mentioned?

A. No; I don't think so.

Q. You say you did make an examination, though, did you?

A. No; just looked him over, asked him how he felt; felt his nose to see how crooked I had left it.

Q. But you are basing your answers on the statement of the witnesses, are you not, very largely?

A. No; I didn't hear the witness. I have been asked hypothetical questions.

Q. Based upon the testimony of the witness?

A. I don't know. I didn't hear the witness. 10

Q. Well, your answers have been with regard to hypothetical questions?

A. Yes.

Q. Assuming the truth of the statements in the hypothetical question; isn't that right?

A. Yes; that is true.

Q. And have not been made up by you upon your personal knowledge as a physician?

A. No, sir.

Q. Isn't that the truth? 20

A. Yes, sir.

Q. And many of the questions put to you were necessarily based upon the patient's statement as to pain and suffering; were they not?

A. No; I don't think so.

Q. The statement with reference to headaches; isn't that based upon the patient's statement as to his suffering?

A. Not the question Mr. Gaskill asked me, I don't think. 30

Q. Well, the questions asked you by Mr. Gaskill based upon the statement of headaches, pain and suffering, must necessarily proceed from the patient himself; must they not, the expression and his sufferings, and so on?

A. Pain and suffering must always come from the patient, yes.

Q. And your answers have been based very largely upon the statement made with regard to pain and suffering; haven't they?

A. Only in some cases.

Q. I mean your testimony today?

A. No, sir.

Q. You disregard altogether his statement about
10 the headaches?

A. That is just one question.

Q. Beg pardon?

A. That is just one question. You said "largely". The questions largely concerned what I found on examination.

Q. But your testimony as to his present disability and its probable continuance is based in part upon the testimony that he was suffering from headaches; is it not?

20 A. In part, yes; and in part on what I found.

Q. And if that statement were eliminated that he was suffering from headaches, could you reach precisely the same conclusion that you did or would you reach a different conclusion?

A. Well, I would be surprised if I heard that he was not.

Q. No; I say if that were eliminated altogether and you had no statement as to whether he was suffering from headaches, would that effect your view

30 of the situation?

A. No.

Q. That is, you would think just the same whether he had headaches or not; would you?

A. I would in regarding his injuries just the same, absolutely. I would think regarding his injuries just the same, absolutely.

Q. But as to the prognosis of the case would you think just the same whether he had headaches or whether he did not?

A. Of course, no. If he had headaches that makes it stil worse.

Q. Now, are injuries of that kind always followed by permanent headaches?

A. No.

Q. Very often there are no headaches after a given period of time; isn't that so? 10

A. Sometimes there are no headaches. I would not say very often. This man had some very serious injuries.

Q. Without his telling you that and without a physical examination you could not tell whether those headaches still persisted or not; could you?

A. No, sir.

Q. And if they persisted it would indicate a more serious condition; isn't that true?

A. Yes. 20

Mr. Carr: I think that is all, doctor.

Mr. Gaskill: That is all, doctor.

(Witness excused.)

DAVID NUSSBAUM, called as witness on behalf of plaintiffs, being duly sworn and examined, testified as follows:

Direct examination.

By Mr. Gaskill:

- 10 Q. Doctor Nussbaum, where do you live?
A. 1024 Spruce Street, Philadelphia.
Q. Are you a licensed and practicing physician in the State of Pennsylvania?
A. Yes, sir.
Q. For how long have you practiced medicine in the State of Pennsylvania?
A. Seventeen years.
Q. Doctor, where did you graduate?
A. In Vienna, Austria; University of Vienna,
20 Austria.
Q. In medicine?
A. In medicine and surgery.
Q. At the present time, doctor, do you hold any official position in any hospital in Philadelphia?
A. I am an instructor in the post-graduate school of the University of Pennsylvania, in the ear, nose and throat diseases, and I am chief of nose and throat in the northern Liberties Hospital, Philadelphia. I am assistant in the Under-Graduate in Philadelphia,
30 also nose and throat department.
Q. Are you a member of the Philadelphia County Medical Society?
A. Yes, sir.
Q. Did you know the plaintiffs, Ruben Podolsky and Rose Podolsky?
A. I do.

Q. Did you see them sometime during August of 1924?

A. I did.

Q. Won't you turn around to the jury, please? What was the physical condition of Ruben Podolsky when you first saw him?

A. He was very depressed and complained of dizziness and headaches, and upon an examination that I made I found that the bones that make the bridge of the nose were fractured and dislocated; that means pushed to one side. I tried to correct these. His face was full of a bloody extravasation due to the injury. His eye was swollen and pus was dripping down, mostly of the left side. 10

Q. From his eye?

A. From his eye. I immediately sent him the next day to see an eye man and I continued to treat his nose condition.

Q. Now, doctor, what in your opinion—what caused the tearing and the pus condition from his eyes? 20

A. A little back of the bones that constitute the bridge of the nose is a bone that contains the sac where the tears are stored and these tears are finding their way into the nose by a little pipe called the tear duct. Now, the bones being out of position press upon that bone that contains the sac and does not allow the drainage of the tears to go in the nose, which would be the way in a normal person. Now, the tears have to find their way over the cheek, and that is a constant irritation. 30

Q. Where do the tears go when they cannot go out this duct?

A. Over the face.

Q. Out of the eye—

A. And over the face.

Q. You said that—you spoke about a pus condition from his eye. What is that?

A. In the corner where that lachrymal sac lies there was pus from the patient going all the time, being present there, and a person probably rubbing his eyes, the dust coming in, that infects.

Q. Doctor, what would be the probable result of an operation to correct this condition?

A. It is a very serious operation in a young person; mostly in men of his age I think it would be a very serious operation; mostly in men of his age I think it would be a very risky operation.

Q. Very risky operation?

A. Very risky operation.

Q. And what percentage would you say of such operations would be successful?

A. Very few are.

Q. Very few?

A. In a patient of his age.

Q. Then, doctor, what is your opinion about this condition, this tearing and this pus condition? Is that a permanent or temporary condition?

A. The duct I think—I don't think, I am sure it is a permanent condition. That cannot be remedied without an operation which I said is very risky itself at his age.

Q. Now, doctor, what else has troubled Mr. Podolsky if you know, from this condition in the nose?

A. He has a discharge of pus from his nose.

Q. Where does that come from?

A. That would come from the two boxes that are above the bridge of the nose, called the frontal sinuses.

Q. And those are the bones that were fractured?

A. Yes; that would be exactly the outside plate which was fractured.

Q. What is caused by that condition in his nose?

A. Well, that would give him pus. He would have to use an enormous amount of handkerchiefs during the day, more than any ordinary person, and that gives him the headaches.

Q. And the dizziness?

A. And the dizziness he complains of.

Q. What other condition is brought about by this closing of the duct, doctor?

A. Well, it could affect his eye.

10

Q. His eye?

A. Yes.

Q. Isn't there anything else that would come from this closing of the duct, any chronic condition?

A. Well, that in itself is a chronic condition, the closing of the duct, which is always dangerous; because if it becomes pussy it may infect all the tissues in the surroundings and mostly the eyes.

Q. Mostly the eyes?

A. Yes, sir; and that produces, by the way, the drooping of his face all the time, and leaves him that weary look that he has.

20

Mr. Carr: I did not get that last.

The Witness: I said produced a drooping of the lower lids and gives him that appearance.

Q. Does that injury to his nose subject Podolsky to colds more than he was subject to before?

30

Mr. Carr: I object to that as a conclusion. Let the doctor testify.

Mr. Gaskill: I will withdraw the question.

Q. Does he have any other condition caused by the closing of the duct?

A. He also complain of a lack of feeling on the —around the fold of the left lip; he feels no heat, cold, food or anything, which interferes, of course, with his partaking—

Q. What is the cause of that?

A. That would be because the nerves that come from underneath the ridge of the eye were probably
10 injured, that provide the face with sensitiveness; and probably they were injured.

Q. Now, doctor, he complains of deafness and a numb feeling in the side of his head. What in your opinion could cause that?

A. The numb feeling would probably be due to the injury of these nerve fibres, nerve plexus. The deafness I would not trace to the injury.

Q. You could not trace the deafness?

A. No.

20 Q. Now, doctor, I will ask you again was there anything in connection with the injury to his nose that you haven't told the jury about?

A. As much as I remember I told everything.

Q. Now, doctor did you also treat Mrs. Podolsky?

A. I did. While I came in to see the old man Podolsky I also saw her in the house.

Q. What condition did you find her in?

A. She was what you call neurasthenic or shocked; had no ambition to work. But physically
30 she complained of pain in the left side of the chest.

Q. Do you think that the headaches and dizziness are a permanent or temporary condition?

A. They could be relieved, but more or less they will remain a permanent condition.

Q. And the fracture of the base of the nose is a permanent condition?

A. That is a permanent condition.

Cross-examination.

By Mr. Carr:

Q. Doctor, you spoke of the occlusion of the tear duct, a constriction or tightening. Is that a matter which would be treated by an oculist?

A. I didn't hear, counsellor.

Q. Is that a matter that would be treated by an oculist? Does that fall within that specialty? 10

A. Today the oculists send those cases over to the nose and throat man, and an operation is being done by the inside of the nose to drain this tear duct into the nose.

Q. What does the nose and throat man do, send them over to the oculist?

A. No; the oculist will establish the diagnosis and the nose and throat man will do the work.

Q. That is a job for two of you, then?

20

A. (No answer.)

Q. Now, these conditions of headaches may improve or may get worse; is that the real situation?

A. Yes; they improve under conservative treatment, but they will remain with him permanently. He will always complain.

Q. And it is pretty hard to tell how much better or worse he will get; isn't that true, a man of his age? 30

A. Generally they don't yield so very readily to treatment, these headaches.

Q. Nature itself sometimes helps out in rather unexpected ways?

A. Well, I don't know. The unexpected happens.

Mr Carr: I think that is all.

Re-direct examination.

By Mr. Gaskill:

Q. Since August sixteenth, 1924 have you treated Mr. Podolsky for colds?

A. I treated all along for his condition in the nose.

Q. For colds?

10 A. For colds, and pus that comes from his nose, I treated.

Q. What I mean is, is there any condition about that nose that will produce colds and sneezing?

Mr. Carr: Now, I object to that. That is absolutely leading.

The Court: Yes.

20 Q. Doctor, how much is your bill?

A. My bill was \$350.

Q. \$350 for your treatment?

A. Mr. Podolsky.

Q. Have you a bill of Mrs. Podolsky?

A. \$50.

Q. \$50. That is all.

(Witness excused.)

MAX SMUCKLER, called as a witness on behalf of the plaintiffs, being duly sworn and examined, testified as follows:

Direct examination.

By Mr. Gaskill:

Q. Doctor, where do you live? 10

A. Philadelphia.

Q. Are you a licensed and practicing physician in the State of Pennsylvania?

A. Yes, sir.

Q. How long have you practiced medicine?

A. Fifteen years.

Q. Fifteen years. Now, doctor, what college are you a graduate of?

Mr. Carr: I will admit the witness' qualifications. 20

Q. Doctor, do you hold any official position in Philadelphia, no?

A. Yes, sir.

Q. What is that?

A. I have charge of the eye department in the Northern Liberties Hospital and the assistant ophthalmologist of the City of Philadelphia, and I was formerly on the Wills Eye Hospital Staff for ten years. 30

Q. Do you know the plaintiff?

A. One of the plaintiffs, Ruben Podolsky, yes, sir.

Q. Have you treated him?

A. Yes, sir.

Q. For what, doctor?

A. Injuries to his eyes.

Q. Won't you explain to the jury what the injuries to his eyes were?

A. Last August I was called in to see Mr. Podolsky, to examine his eyes, I found that he had contusions and lacerations to the tissues of his eyes and had hemorrhages into the conjunctive, which is the white part of the eye. He had a profuse discharge of pus from both eyes, and an inside examination of the right eye revealed that he had
10 some exudate from the lining membrane of the inner part of the eye. I treated Mr. Podolsky until the present time. He is under my care. And now he has persistent tearing with acute exacerbations of pus. He may tear for a couple of weeks or a month, then he will have a discharge of pus. I tried to pass some probes down from his tear duct into his nose to open up the passage, but as soon as I got down half way it stopped. He has now a drooping or an eversion of the eyelids; that is, you can see
20 the red of the eyelids from that point. That is due to the narrowness of the tear ducts, the result of the injury to the nose restricted the opening. As regards the condition of pus there which occurs every now and then in his eyes, in a man of his age it may result in a cornean ulcer; that is, the seeing part of the eye may ulcerate and he may lose the sight of his eye. I talked the matter over about operating—

30 Mr. Carr: I object to that.

Q. Did you consider operation?

A. I considered an operation in his case.

Q. What was your judgment about an operation?

A. Well, he could not with his age and general physical condition—on account of his age and gen-

eral physical condition I decided it would be better that he be not operated on. From my experience in these cases, some of them very sad—

Q. Now, doctor do you think there is a possibility that the closing of this tear duct and the collection of pus in there—. That it is possible and probable that he will—

Mr. Carr: Just a moment. You are leading very much and you are adding “probable” to the “possible”. I object to the question as being entirely leading. 10

Mr. Gaskill: Well, the doctor has answered it anyway, and I will let it go.

Q. Now, doctor, Mr. Podolsky complains about headaches. Has his eye condition anything to do with his headaches?

A. I hardly think so. From the fundus examination I do not believe that his headaches are due to his eye condition. 20

Q. Now, doctor, assuming that Mr. Podolsky was —

Mr. Gaskill: Withdraw that.

Q. How much was your bill, doctor, or how much is it today?

A. My bill is \$124 for Mr. Podolsky.

30

Q. And how much for Mrs. Podolsky?

A. \$25.

Q. Now, is the condition, in your judgment, that Mr. Podolsky is in today temporary or permanent condition?

A. Well, he has a permanent condition with an

added liability that he may at any time lose his sight.

Q. And, doctor, will or will he not require medical attention?

A. Oh, he will always have to have medical attention, medical attention concerning his eyes and the nose.

10 Mr. Gaskill: Cross examine.

Cross-examination.

By Mr. Carr:

Q. Doctor, is the principal trouble the closing of the tear duct? Is that the principal difficulty with the eye?

A. Yes; that is the principal difficulty with the eye?

20 Q. So that the tears are unable to drain in the normal way; isn't that the difficulty?

A. Yes, sir; that is the difficulty.

Q. And instead of running through the tear duct they have to roll out over the cheeks; isn't that the real trouble?

A. That is the real trouble.

Q. That is not an unusual thing, is it?

A. It is very—well—

Q. Lots of people have that; don't they?

30 A. No, not this particular condition.

Q. Don't lots of people have that?

A. They have tearing, but it is always a cause of the tearing—

Q. Is it unusual for the tear duct to become closed?

A. Very unusual to become closed suddenly as in this case.

Q. Omitting "suddenly," it is not unusual, is it in your practice to find closed tear ducts?

A. Well, they are never closed; they are never closed.

Q. I mean closed sufficiently so that they don't function?

A. Well, you would not call it common. It is singular. Of course, we see it a good deal but you would not call it a common condition.

Q. Have you seen many cases where the tear duct does not perform its function properly? 10

A. Yes.

Q. And where that happens the tear drains out over the cheek; doesn't it?

A. Yes.

Q. Is that necessarily a serious thing?

A. Yes; it is sometimes and very serious to me recently. I had an unfortunate experience in one of these cases.

Q. You say it is necessarily serious that the tears drain out one way instead of another? 20

A. No; that is not the point. If the tears don't come out in a normal way he may at any time form pus on his lower lid.

Q. Now, is that more or less a remote possibility?

A. No, no; that is the usual condition where the tear duct is obstructed. The formation of pus or chronic conjunctivitis—and in old people you usually find their lids turned out along with it; that goes hand in hand. 30

Q. Is that pus caused by some foreign matter such as dust or something that gets into the eye?

A. No; when the normal physiological condition of the tear duct does not function then you have the formation of pus.

Q. Of course, pus is a result; isn't it?

A. Is a result of the stoppage of the normal function.

Q. Now, pus itself is the result of something, isn't it?

A. Yes.

Q. It is or is—pus is not a disease?

A. Well, pus is the result of the disease.

Q. What is it that causes the pus by the mere obstruction of the tear duct?

10 A. Well, when the tear duct does not function the lining becomes catarrhal; then it forms an exudate, and that exudate stays there and forms into pus. It is just a normal sequence of affairs.

Mr. Carr: I think that is all, doctor.

Mr. Gaskill: That is all, doctor.

(Witness excused.)

20

PLAINTIFF RESTS.

(Recess to 9.30 o'clock A. M. Monday, June 22, 1925.)

30

(June 22, 1925. Trial resumed pursuant to adjournment.)

DEFENDANT'S CASE.

ANNIE BRENNER, called as a witness on behalf of the defendants, being duly sworn, was examined and testified as follows: 10

Direct examination.

By Mr. Carr:

Q. Mrs. Brenner, where do you live?

A. Pomona.

Q. Do you remember on the evening of August sixteenth last year, being in a Ford truck along the White Horse Pike? 20

A. I do.

Q. Where did you start from that evening?

A. Well, we started from Pomona up to Egg Harbor and went to the store to get some groceries.

Q. What time did you come back, please?

A. Well, it was just dark; just before it got dark.

Q. Just before it got dark?

A. It was not quite dark yet.

Q. And who was driving the truck? 30

A. What, the Ford truck?

Q. The Ford truck, yes.

A. My husband was, Mr. Brenner.

Q. Who was in that Ford truck?

A. It was George Steelman and it was my baby going on five years old, and Edna and Dorothy and myself.

Q. Your children. Do you remember an accident occurring on the White Horse Pike a short distance above Pomona that evening?

A. Well, I want to tell you, as I was going up I saw a big truck on the side—

The Court: Just say "yes" or "no".

Q. Do you remember an accident happening that evening, that night?

A. Yes, sir; I do.

10 Q. Do you remember an Overland car passing you on the way down?

A. Yes.

Mr. Gaskill: Your Honor, I object to these questions. They are all leading.

Mr. Carr: I do not think they are harmful. They are getting in to the point of where the testimony becomes informative.

20

Q. Won't you tell the jury about the Overland car passing you and what happened shortly afterwards?

A. Well the Overland was coming down towards Atlantic City way and it passed us, cut right in and passed our machine and almost hit the front wheel, and I said to my husband: "The state trooper ought to be along to see him—"

30 Mr. Gaskill: I object.

The Court: You cannot tell what you told anybody. You may tell what you saw.

Q. Just tell what the Overland car did, what you saw.

A. Oh, then he was going in off the road like, the Overland car was.

Q. Was doing what?

A. Going in off the road like, off the pike, the Overland car after he had passed us.

Q. Was he going straight or zig-zagging or what was he doing?

A. He was going in and out of the road like, you know, from the pike on the gravel, and then the gravel from his hind wheels hit our machine. 10

Q. Yes.

A. It did.

Q. Then what happened shortly after that?

A. Well, then, I saw the Overland car crash into the truck and I said to my husband: "Quick put your brakes on."

Mr. Gaskill: I object.

Q. Where was the truck standing with reference 20 to the paved part of the road?

A. Why, the truck was standing on the gravel, the big truck.

Q. Were all the wheels on the gravel?

A. Yes, and it was that way when I went up, too; because I noticed it myself; because I said—

Mr. Gaskill: No.

Q. Now, was your car involved in this collision 30 at all?

A. The glass was broke.

Q. Did your car come in contact with either of the other two cars?

A. The Overland when it hit, why, it came back on our car like.

Q. Did your car then collide with the Overland car? Did your car then run into the Overland car?

A. No. Our car we stopped quick and just with that that car came back on us.

Q. And it was forced back on your car?

A. Yes, forced back on our car.

Q. How far away from the truck were you when the Overland car passed you?

A. How far?

10 Q. Yes.

A. I don't remember now how far; it has been so long ago.

Q. How long from the time the Overland passed you until the collision occurred?

A. I couldn't tell you that part, either.

Q. Well, was it a long time or short time or what?

A. No; it was not a long time, I don't believe; because we were almost near there; There were other machines going down the pike ahead of us,
20 too.

Q. How fast was the Overland going, do you know?

A. Well, it went pretty fast; then he slowed down, you know, when the gravel started to hit our machine.

Mr Carr: Cross examine.

Cross-examination.

30

By Mr. Gaskill:

Q. What time did you go to Egg Harbor in the afternoon?

A. Why, it was after supper time.

Q. Well, that does not mean anything.

A. I don't know what time it was.

Q. Around seven o'clock?

A. We went up to Morgan's store and got out.
It closed—

Q. What time does it close?

A. I guess it closes about nine o'clock.

Q. Did you leave home around seven or eight
o'clock?

A. No; we left home before that, because it was
delayed when we went up. 10

Q. It was absolutely daylight and you saw the
truck when you went up?

A. Yes; I saw the truck when we went up.

Mr. Gaskill: That is all.

(Witness excused.)

20

FRANK BRENNER, called as a witness on behalf of
the defendant, being duly sworn, was examined
and testified as follows:

Direct examination.

By Mr. Carr:

Q. Mr. Brenner, where do you live?

A. Pomona. 30

Q. What is your business?

A. Bridge worker at the present.

Q. And are you the husband of the lady who was
just on the stand?

A. Yes, sir.

Q. Do you remember leaving Pomona for Egg
Harbor on the evening of August sixteenth last?

A. I do.

Q. Where did you go, Egg harbor?

A. Egg Harbor.

Q. Who was driving the truck?

A. I was.

Q. What sort of truck was it?

A. Four and a half ton.

Q. Who else was in the truck with you?

A. Mr. Diehlman, my wife and I and the two
10 children.

Q. After you left Egg Harbor coming toward
Atlantic City do you remember being passed by
an Overland car?

A. I do.

Q. Won't you tell the jury about the Overland
car passing you and what you saw after that?

A. Yes, sir. We were coming down the pike;
I guess we were about a quarter to nine when we
left Egg Harbor, and the traffic was very heavy;
it was Saturday night, and going to Atlantic City
20 I know the traffic was heavy, and we were going at
a moderate speed on the pike, one machine after
another, these keeping in line; I don't know where
it was, but I believe it was right below Egg Har-
bor or on the outskirts, the state trooper who testi-
fied last week—or the other day—he came by us.

Q. Which way?

A. Toward Atlantic City.

Q. Towards Atlantic City?

A. Towards Atlantic City, and shortly after he
30 came by, it just looked as though—

Mr. Gaskill: I object to what it looked like. Let
him testify to facts.

Mr. Carr: He can testify to what he saw.

Q. What did you see?

A. Well, as the state trooper went by this Mr. Podolsky whoever he is, he did the same as a good many others would do—

Mr. Gaskill: I object to comments.

Q. Well, what did he do?

A. He went by me at a very lively clip, more than the speed limit, I believe, and as he went by me there were other cars coming up. 10

Q. Well, did he pass far from you or close to you, or how, when he passed there?

A. Very close to me. Not in the rear, but he had to turn in. As I say, there were cars coming up and he had to turn in very quick, and as he did he nearly hit me in the front, or on the side, and as he came in he got in traffic, in the line of traffic again. He only went a few feet and went off the hard surface road on the gravel; that would be the front right or the rear right wheels, and he done that three or four, possibly a half dozen times. I made the remark to Mr.— 20

Mr. Gaskill: I object to the remark.

The Court: Never mind that.

Q. Was he going straight or was he zig-zagging or what was he doing? 30

A. He was zig-zagging.

Q. Then what happened?

A. And then there were stones from his rear wheels that started to catch me on the radiator and I said to Mr.—

Q. Never mind what you said.

A. All right.

Q. Just tell what happened.

A. As these stones started hitting me on the radiator my wife gave a yell "look out." The first thing I done I applied my brakes as hard as I could, which raised Mr. Diehlman up through my wind shield and the crash came at the same time, and he rebounded right back at me, he was so close.

Q. Were you standing still or moving when his car
10 crashed back against you?

A. We were just about at a standstill. If he had given me about five more feet we would have been at a standstill.

Q. What was it that the Overland car ran into?

A. The truck.

Q. Where was the truck?

A. On the gravel road.

Q. Were all of its wheels on the gravel road?

A. Yes, sir.

20

Mr. Carr: Cross examine.

Cross-examination.

By Mr. Gaskill:

Q. How far below Egg Harbor did the Overland truck first pass you?

A. The Overland touring car?

30 Q. Yes; that is what I mean, the Overland car?

A. When he first passed me he was coming in to Pomona.

Q. I thought you said just a little below Egg Harbor.

A. Well, that is where it happened, yes.

Q. Didn't he pass you as you were coming out of Egg Harbor?

A. No; I didn't say that he passed me at Egg Harbor. I said the trooper passed me at Egg Harbor and you wouldn't let me answer the rest of the question. See?

Q. Well, he just passed you shortly before the accident happened?

A. Yes; very shortly.

Q. How fast were you going?

A. Twenty to twenty five; not more than twenty-five because that is my limit.

10

Q. And this man was not drawing away from you at all?

A. He was in line.

Q. He was in line, wasn't he? I mean he was not outdistancing you very much?

A. After he got by me?

Q. Yes.

A. No, because he couldn't; there were other machines ahead of him.

Q. Then, as you thought, he was driving the car 20 when the accident happened about twenty or twenty-five miles an hour?

A. That I was going?

Q. That he was going probably that?

A. Well, he was going faster than that until he hit into the line and he had to slow down to our taste.

Q. But at the time of the accident when he was in line he was not going more than twenty or twenty-five miles an hour in your judgment?

30

A. Well, he couldn't have been going any faster, I don't believe.

Q. On account of the crowd there. Then at the time the accident happened he was going in your judgment the legal limit, the rate of speed?

A. Well, that is a question, too.

Q. Well, he was just ahead of you?

A. Yes; Just as he was ahead of me that is when he saw this accident, and he slowed down within my pace.

Q. He slowed down, did he?

A. That is when the stones come flying at me.

Mr. Gaskill: That is all.

Mr. Carr: That is all.

10

(Witness excused.)

GEORGE DIEHLMAN, called as a witness on behalf of the defendant, being duly sworn was examined and testified as follows:

Direct examination.

20

By Mr. Carr:

Q. Mr. Diehlman, where do you live?

A. Woodbury, New Jersey.

Q. Were you visiting the Brenners on August sixteenth last year?

A. Yes, sir.

Q. Were you in a Ford truck driven by Mr. Brenner on that evening?

30

A. Yes, sir.

Q. Do you remember going up to Egg Harbor?

A. Yes, sir.

Q. Coming back again?

A. Yes, sir.

Q. Now, on the way down did an Overland touring overtake and pass you?

A. Yes, sir.

Q. Won't you tell the jury all about that car passing you and what happened shortly afterwards?

A. He was riding on down. I noticed this here car—it was an Overland car—had passed and I was sitting there and talking as usual; couldn't hear no horn or any noise at all. Just as he came past us he shot towards the left, went off the road, and just as he got slightly past us the gravel, stones, etc, shot up in front of our radiator, and I says to the fellow alongside of me—

10

Q. You cannot say what you said, only what you saw. Now, after he passed will you state whether or not he drove in a straight line, or how did he drive?

A. Why, sort of wobbling his car; his car was wobbling when he drove past us.

Q. Then what happened shortly after he passed you and you saw him driving in this wobbly way?

A. Then the accident happened. He ran into this big car, ran into this big—I don't know what you call it; touring car. 20

Q. Truck, you mean?

A. Big truck, yes; ran into the big truck.

Q. Where was the big truck with relation to the paved road?

A. Off the side of the road on the gravel.

Q. Were all the wheels on the gravel?

A. Yes.

Mr. Carr: Cross-examine.

30

Cross-examination.

By Mr. Gaskill:

Q. When the accident happened, though, this man was actually on the concrete road; wasn't he? His

car was on the concrete road after the accident had happened?

A. Yes.

Mr. Gaskill: That is all.

Re-direct examination.

10 By Mr. Carr:

Q. After the Overland car struck the truck did your car become involved in the mixup?

A. Yes, sir.

Q. And how did that happen?

A. As soon as we seen this danger,—we heard the noise before the accident happened and I says to my brother-in-law—

20 Mr. Gaskill: No.

Q. Not what you said but what you saw.

A. Well, then, he brought the car to a standstill as near as he could. Then the Overland car kind of backed up and bumped into our car. We didn't bump into them but the force of them bumping into the truck and into our car, why, stopped it.

Mr. Carr: That is all.

30 (Witness excused.)

JOHN O'CONNELL, called as a witness on behalf of the defendant, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Carr:

- Q. Mr. O'Connell, where do you live? 10
A. Somers Point.
Q. Whom do you work for?
A. Mr. Sautter.
Q. The defendant in this case?
A. Sir?
Q. The man who is being sued?
A. Yes, sir.
Q. What do you do?
A. Mechanic for him.
Q. Chauffeur? 20
A. Chauffeur.
Q. How long have you been a chauffeur employed
by Mr. Sautter?
A. Three years.
Q. How long have you been a chauffeur?
A. Three years; about three years.
Q. On August the sixteenth what were you doing?
A. I was on my way to Somers Point.
Q. Driving a car?
A. Yes, sir. 30
Q. What sort of a car was it?
A. An Autocar truck.
Q. Where did you start from?
A. Philadelphia.
Q. What sort of a truck was it with relation to
the body, open or closed?

A. Open body.

Q. What was in the body of the truck?

A. There was an organ, a few pieces of furniture and some coal.

Q. Was the coal in any box or container or was it loose?

A. Loose on the bottom.

Q. And where was the coal in the body of the car, what part, front, back or where?

10 A. In the back.

Q. Did this car have a tail board?

A. Yes, sir.

Q. Was the tail board up or down?

A. The tail board was up.

Q. Closed, was it?

A. Closed, yes, sir.

Q. Could you have carried your coal with the tail board down?

A. No, sir.

20 Q. Do you remember stopping somewhere near Pomona?

A. Yes, sir.

Q. Where did you stop the truck?

A. I stopped—I had burnt out bearings, and pulled over on the gravel, over as far as I could get, for help.

Q. Did any part of your car overhang the hard road?

A. No, sir.

30 Q. That is, any part of the side of the car overhang?

A. No, sir.

Q. Does any part of that car overhang?

A. No, sir.

Q. What time of the day was it you pulled in there and stopped?

A. It was around half past six.

Q. Are you talking now of daylight saving time?

A. Daylight saving time, yes, sir.

Q. After you brought your car to a stop on the gravel some distance above Pomona what did you then do?

A. I went and called up Mr. Sautter.

Q. And after calling him up—where did you go to call him up?

A. I went to a garage that was on the—Filling's garage, I think it was.

10

Q. How far away was that?

A. About a half mile.

Q. About a half mile?

A. Yes, sir.

Q. Did you walk down?

A. Yes, sir.

Q. What time of the day was that?

A. That was around half past six.

Q. Daylight saving time?

A. Yes, sir.

20

Q. Anybody with you in the car?

A. Yes, sir.

Q. Who was with you?

A. John Neuhoffer.

Q. Was he your helper?

A. Yes, sir.

Q. He walked down with you, too?

A. Yes, sir.

Q. After you walked down to the garage, what did you do then, after you had telephoned?

30

A. I walked back to the car, lit my lights, and sat up on the seat and smoked a cigarette.

Q. Where was Neuhoffer?

A. He was right alongside of me; he was smoking his pipe and I was smoking a cigarette.

Q. What time did you get back to the car?

A. I judge it was around quarter to seven.

Q. Was it light or dark?

A. It was light.

Q. Who furnished the match for lighting—

A. Mr. Neuoffer.

Q. What sort of a light was it?

A. The front lights were Presto lights and the tail light was an oil light.

Q. Standard equipment?

A. Yes, sir.

10 Q. Now, after you lit the lamp what did you and Neuoffer do?

A. After we lit the lamp we sat up on the seat. John smoked a pipe and I smoked a cigarette.

Q. Waiting for Mr. Sautter?

A. Waiting for Mr. Sautter to come up after us.

Q. Was there much traffic on the White Horse Pike that Saturday afternoon and evening?

A. Well, yes; there was.

Q. A lot of cars going by?

20 A. Yes, sir.

Q. Were you far enough off the road to clear the cars that were going towards Atlantic City?

A. Yes.

Mr. Gaskill: I object to that as calling for a conclusion.

The Court: Yes; I suppose you would better ask him where he was.

30

Q. Where you stood on the gravel did any part of your car overhang or rest upon the cement road?

A. No, sir.

Q. Was there a clear passageway for cars going to Atlantic City on the cement road?

A. Yes, sir.

- Q. What—did many cars pass you?
A. Several of them.
Q. Beg pardon?
A. Several of them.
Q. Was that due to Saturday travel to Atlantic City?
A. Yes, sir.
Q. Cars going both ways?
A. Both ways; yes, sir.
Q. Now after you had been sitting there some- 10
time did an accident happen?
A. Yes, sir.
Q. What time was it when the accident happened?
A. I judge around nine o'clock.
Q. What was the accident?
A. Why, an Overland car smashed in back of me.
Q. What part of your car did it come in contact
with?
A. The left rear.
Q. And what part of the Overland was in the 20
smash-up?
A. Right front.
Q. Do you know whether the right front lamp was
affected or not?
A. No, sir; I do not.
Q. You do not know?
A. No, sir.
Q. Were the brakes set on your car?
A. Yes, sir.
Q. Will you state whether or not your car was 30
moved by the impact of the collision?
A. It was moved about two foot.
Q. What was the weight of your car with a load
on it?
A. About six thousand, I guess.
Q. How much?
A. About six thousand.

Q. Six thousand pounds. Do you know what the weight of the car is?

A. The width of it?

Q. No, the weight?

A. Oh, the weight?

Q. Yes.

A. Not exactly.

Q. Do you know what the width of the car is?

A. Five foot. The body and all?

10 Q. Yes, over all?

A. Five foot.

Q. Now, was there another car involved in this collision?

A. Yes, sir.

Q. What was that?

A. A Ford truck.

Q. Where was that?

A. That was in back of the Overland.

20 Q. And after the Overland came in contact with your car what did the Overland do? Did it go forward or backward or what?

A. Why, it was right at the front of it.

Q. Well, did the Overland stop still or did it move backward or what did it do?

A. I don't know what it did afterwards.

Q. Did you feel the force of the collision where you were sitting?

30 A. Yes, sir; knocked me up against the steering column and knocked my helper out through the windshield.

Q. He went through the windshield?

A. Yes, sir.

Q. That was Neuoffer, was it?

A. Yes, sir.

Q. Now, after the collision occurred, did Mr. Sauter come there?

A. Yes, sir.

Q. How long after the accident?

A. He just got there.

Q. Just got there?

A. Just got there.

Q. Did the Overland blow—give any signal of its coming?

A. I didn't hear no horns at all. All I heard was a crash.

Q. That was the first thing you heard?

A. Yes, sir.

10

Q. Did you remember the state trooper passing you?

A. Yes, sir.

Q. Where were you at that time?

A. Sitting on the seat.

Q. Neuhofter there too?

A. Yes, sir.

Q. Which way was the trooper going?

A. The trooper was going towards—when we seen him we seen him coming up towards Egg Harbor; 20
yes, sir.

Q. Saw him coming toward Egg Harbor?

A. Yes, sir.

Q. Did you see him returning going toward Pomona or Absecon?

A. Yes, sir.

Q. How fast was he going?

A. He was going at a pretty good gait.

Q. Did he holler or anything to you?

A. No, sir.

30

Q. Didn't stop?

A. No, sir.

Q. Did he slow down?

A. No, sir.

Mr. Carr: Cross examine.

Cross-examination.

By Mr. Gaskill:

Q. You are not sure you saw him going down; are you?

A. Yes, sir.

Q. What time did he pass by?

A. Going towards Atlantic or towards—

10 Q. Yes.

A. That was around eight o'clock; quarter after eight I should judge.

Q. You didn't see him around at quarter after nine; did you?

A. Quarter after nine? He was right there when the accident heppened.

Q. I say did you see him pass by your machine at a quarter after nine in the evening?

A. No.

20 Q. Or did you see him pass by at nine o'clock?

A. No, sir.

Q. Then if he did pass at that time you don't remember?

A. No.

Q. You didn't see him. Now, you say you returned to this truck at a quarter of seven; is that right?

A. From the garage at a quarter of seven; yes, sir.

30 Q. And you lighted your light?

A. Lighted the light.

Q. And from a quarter of seven until this accident happened, which was around 9.15, you didn't look at your light again; did you?

A. No, sir.

Q. For a period of nearly two hours and a half?

A. Yes, sir.

Q. You and your helper sat on the front seat of that car; is that right?

A. Yes.

Q. And you paid no attention to the condition of the light?

A. No.

Q. Although you knew that there were hundreds of cars coming and going up the White Horse Pike?

A. I could—

Q. Just a minute. And you were on the White Horse Pike; weren't you? 10

A. Yes, sir—off.

Q. On the gravel; that was the White Horse Pike; wasn't it?

A. Yes.

Q. And cars frequently run along there, don't they?

A. Yes.

Q. And it never occurred to you that it was necessary during those two hours and a half to three hours that you were there to look at your light? 20

A. I could always depend upon it because I was not running; I was standing still.

Q. When you were running it would go out?

A. I always generally looked at it then.

Q. It would go out when you were running?

A. Well, maybe from the vibration it would go out.

Q. What time had you left Somers Point on this trip? 30

A. What time did I leave Somers Point?

Q. Yes, Somers Point.

A. Saturday morning.

Q. Saturday morning, what time?

A. Around six o'clock.

Q. Six o'clock, and you made a round trip to Philadelphia?

A. Yes, sir.

Q. As a matter of fact you were asleep when this accident happened; weren't you?

A. Asleep?

Q. Yes.

A. No, sir.

Q. Had you been asleep?

10 A. No.

Q. Do you mean to tell me you sat on the front of that truck for two hours and a half and never moved?

A. I wasn't asleep.

Q. Well, you sat there and never moved?

A. I was sitting there smoking a cigarette.

Q. How many cigarettes did you smoke?

A. About one or two.

20 Q. During those two hours and a half to three hours, and you didn't do anything else? Now, how far is it—how far is it from where your truck was parked to Somers Point approximately?

A. About fifteen miles, I guess.

30 Q. About fifteen miles. And from the time that you reported your trouble until Mr. Sautter got there, fifteen miles, it was three hours; wasn't it, about? From around six thirty until nine thirty; you were allowed to sit on the White Horse Pike with a disabled truck for three hours; isn't that a fact?

Mr. Carr: I object to "you were allowed to sit"—

Mr. Gaskill: Withdraw it.

Q. You did sit on the White Horse Pike after you informed your employer that you were broken down

and he had fifteen miles to come; you stayed there for about three hours; isn't that right?

A. Something like that, yes.

Q. Now, had you come over any gravel road or dusty road that day? Was the road dusty?

A. No, sir; it was a moonlight night.

Q. I mean during the daytime—dusty?

A. No, sir.

Re-direct examination.

10

By Mr. Carr:

Q. You were asked if you examined the light or the lamp after you lit it. Why didn't you examine it? What was the reason?

A. I could always depend on that lamp. I never had any trouble with it whatsoever.

Q. Was it filled with oil?

A. Yes, sir.

20

Q. You had examined it?

A. Yes, sir.

Q. And it was dependable, was it?

A. Yes, sir.

Mr. Carr: That is all.

Re-cross examination.

By Mr. Gaskill:

30

Q. It did go out occasionally; didn't it?

A. I never seen it go out.

Q. Didn't you just tell me a minute ago it went out on the road?

A. I said it might from the vibration of the motor

drive. I said it might go out but I never noticed it go out yet.

Q. What time did it get dark this night?

A. What time did it get dark that night?

Q. Yes.

A. Well, it was not dark when the accident happened.

Q. And it was not dark when the accident happened?

10 A. That is, you could see; it was a moonlight night.

Q. It was not dark then?

A. It was getting dark and the moon was bright; the light from the moon.

Q. Then you lighted your lamps?

A. Then?

Q. Then you lighted your lamps about three hours before it became dark; is that right?

A. That is right.

20 Q. You anticipated your employer being there, coming about fifteen miles, and yet you lighted your lamp three hours before darkness; is that right?

A. Yes, sir.

Mr. Gaskill: All right; that is all.

Mr. Carr: That is all.

(Witness excused.)

30 Mr. Carr: Mr. Gaskill, I overlooked one question I wanted to ask Mr. O'Connell.

JOHN O'CONNELL, recalled.

By Mr. Carr:

Q. Mr. O'Connell, did you look at the speedometer on the Overland car?

A. Yes, sir.

Q. Did you notice what it recorded?

A. When the accident happened the dial,—the 10 hand busted at fifty.

Q. The dial was at fifty?

A. Yes, sir.

Q. The hands at fifty on the dial?

A. Yes, sir.

By Mr. Gaskill:

Q. How do you know that?

A. Why, I looked at it.

20

Q. What was the make of the speedometer?

A. I believe it was a Stewart; I am not sure.

Q. You are not sure about that?

A. No, sir.

Q. Do speedometers when they break—do they break at the point they are registering?

A. This one did.

Q. How do you know it did?

A. Because I seen it.

Q. It was registered at fifty, you say?

30

A. It was registered at fifty.

Q. How fast was this man going prior to the accident?

A. The man that met the accident?

Q. The man who was in the accident?

A. According to that he was going fifty.

Q. That is the only way you determine it?

A. From the speedometer; yes, sir.

Q. Did you ever see a speedometer that would register nothing but fifty?

A. Nothing but fifty?

Q. Yes, be registering no mileage at fifty miles an hour? Did you ever see a speedometer that would register nothing at fifty?

A. Nothing at fifty?

10 Q. Yes, be registering no mileage at fifty miles an hour?

A. Yes, when they are not in condition.

Q. Have you ever seen a speedometer that would register fifty when they were going fifteen?

A. No, sir.

Q. Never did?

A. No, sir.

(Witness excused.)

20

JOHN NEWHOFFER, called as a witness on behalf of the defendant, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Carr:

30

Q. Where do you live?

A. Somers Point.

Q. How long have you lived there?

A. Couple of years.

Q. Whom did you work for?

A. Mr. Sautter.

- Q. How long have you worked for him?
A. About five or six years altogether.
- Q. Were you working for him on the sixteenth of August last year?
A. Yes, sir.
- Q. What were you doing?
A. Helper.
- Q. On a truck?
A. On a truck.
- Q. Whom were you helping? 10
A. I was helping Jack O'Connell.
- Q. The witness who was just ahead of you on the stand?
A. Yes, sir.
- Q. Now, on the morning of the sixteenth of August where had you gone with the truck?
A. Philadelphia.
- Q. And in the afternoon were you returning?
A. Yes, sir.
- Q. Now, did something happen to your truck when 20 you got near Pomona coming toward Atlantic City?
A. Yes, sir.
- Q. What happened?
A. One of the bearings burned out.
- Q. Then what was done with the truck?
A. Pulled it up on one side, on the gravel.
- Q. And where? Where were you in relation to Pomona?
A. What?
- Q. How near were you to Pomona? 30
A. About half a mile.
- Q. What part of the gravel were you on with relation to the right hand side of the road?
A. As far over as we could go.
- Q. Were you entirely clear of the cement?
A. Yes, sir.
- Q. All wheels on the gravel?

- A. All four off the ground; yes, sir.
Q. What sort of car was this?
A. Autocar truck.
Q. What sort of body?
A. Open body.
Q. Do you know how wide that body was over all?
A. I don't know exactly about that.
Q. Do you know approximately?
A. Maybe five feet.
10 Q. About five feet?
A. Yes, sir.
Q. Did it overhang, the sides?
A. No, sir.
Q. What sort of a load did you have on?
A. Furniture and coal.
Q. Where was the coal?
A. On the bottom of the truck.
Q. Loose?
A. Yes, sir.
20 Q. What about your tail board?
A. The tail board was up and the chain pulled through the rings?
Q. Where did you say the coal was in the body?
A. In the back part of the truck, in the bottom.
Q. And about what time of day was it that you came to a stop about a quarter mile north of Pomona?
A. I guess it was after six o'clock.
Q. In daylight time?
30 A. Yes, sir.
Q. Then what did you do?
A. Why, Jack went down and phoned.
Q. Did you go with him?
A. Yes, sir; I went along with him.
Q. And after he had telephoned what did you and he do?

A. We walked up the road again and I said to Jack—

Q. Never mind what you said. What did you do?

A. Walked back again to the truck.

Q. Walked back again to the truck?

A. Yes, sir.

Q. And after you got there what did you and Jack do?

A. Why, I lit my pipe and he lit a cigarette and sat there talking.

Q. Now, did his car have a lamp on it, a tail light on it?

A. The truck?

Q. Yes.

A. Yes, sir.

Q. Do you know whether or not it was lit?

A. It was lit.

Q. Who lit it?

A. Jack O'Connell.

Q. Who gave him the match to light it with?

A. I did.

Q. What time of day was it lit?

A. Well, before it got dark.

Q. And after it was lit what did you and Jack do?

A. Got up on the front seat and sat there and smoked.

Q. Did you see the state trooper go by?

A. Yes, sir.

Q. Did you see a state trooper going south toward Absecon?

A. No, sir; at the time of the accident I saw one there.

Q. Did any state trooper call to you at all?

A. No, sir.

Q. Before the accident?

A. No, sir.

Q. Now, about what time was it the accident happened?

A. I guess it was after eight o'clock.

Q. Where were you when the accident did happen?

A. Sitting on the left side of the seat.

Q. Do you know whether the brakes were set on your car?

A. They were; yes, sir.

10 Q. Did you feel the impact of the accident?

A. Yes, sir.

Q. What, if anything, did it do to the car?

A. Shoved us about two foot.

Q. What did it do to you, if anything?

A. Threw me out.

Q. Threw you out?

A. Yes, sir.

Q. Then did you turn around to see what happened?

20 A. Yes, sir.

Q. What did you find had happened?

A. Found there was an Overland car had hit the rear.

Q. Had run into your rear?

A. Yes, sir.

Q. Then after the Overland hit do you know what happened to the Overland?

A. There was another truck in back of the Overland got hit, too.

30 Q. Was that the Ford truck?

A. Ford; yes, sir; Ford truck.

Q. And did that mix up with the Overland?

A. Yes, sir.

Q. Did you examine the speedometer on the Overland car?

A. No, sir; I don't know anything about that.

Q. You don't know anything about the speedometer on the Overland?

A. No, sir.

Mr. Carr: Cross-examine.

Cross-examination.

By Mr. Gaskill:

10

Q. When you lighted that match you went there—he borrowed a match from you, as I understand it?

A. Yes, sir.

Q. And he went there and struck the match in and he slammed the thing to and went and sat on the front seat; didn't he?

A. Yes; he lit it and walked away.

Q. Walked right away; didn't pay any attention to it after he struck the match there?

A. He closed the front of it.

20

Q. And sat there for three hours?

A. Yes, sir.

Mr. Gaskill: That is all.

(Witness excused.)

30

FRANK W. SAUTTER, called as a witness for the defendant, being duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Carr:

- 10 Q. Mr. Sautter, where do you live?
A. Somers Point.
Q. What is your business?
A. Moving picture.
Q. Beg pardon?
A. Moving picture.
Q. Moving picture. What was your business in August of last year?
A. I was a mechanic.
Q. Mechanic?
20 A. Motor truck repairman.
Q. Motor truck repairman?
A. Yes, sir.
Q. Were you the owner of a motor truck at that time?
A. Yes, sir.
Q. Who drove that truck for you?
A. John O'Connell.
Q. Did he have a helper?
A. Yes, sir.
30 Q. Who was the helper?
A. John Newhoffer.
Q. Do you remember sending that truck to Philadelphia on August sixteenth last year?
A. I do; yes, sir.
Q. And in charge of O'Connell and Newhoffer?
A. In charge of O'Connell and Newhoffer; yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Do you know what they went up there to get?

A. I donated an organ to Somers Point Church and told them to go up there and get that organ and a few little things, and I said: "While you are up there bring back the coal I had left in Philadelphia." That is what they brought down—the organ and coal and a few other little things I gave away at the Point.

10

Q. Tell me what cort of truck that was?

A. Open body Autocar truck; cab in front.

Q. What capacity truck?

A. Ten and a half.

Q. Do you know how wide the body is over all?

A. Five feet six inches.

Q. Five feet six inches?

A. That is, not the body, but counting the little step that is on the side.

Q. But take the body itself.

20

A. Five feet.

Q. Five feet. Then you say there is a little step on the side?

A. We call it a step; a little side piece, to keep the mud from flying up on the body.

Q. How wide is that little side piece?

A. No more than five inches.

Q. Now did you go up to near Pomona shortly after the accident?

A. Not right shortly afterwards. This accident just happened about three minutes when I got there. I was out in the bay. They had to hunt me up.

Q. They—you had been out in the bay?

A. That is, a lady told me I was wanted on the phone, yes.

Q. And you were on your way to Pomona; is that the idea?

30

A. I was; yes, sir.

Q. Then you say the accident happened in Absecon before you got there?

A. I heard the crash.

Q. You were that close, were you?

A. I was that close I heard the crash. I didn't know it was my truck.

Q. When you got up there you saw it was your truck; is that right?

10 A. Yes, sir.

Q. And where was the truck?

A. On the gravel.

Q. All wheels on the gravel?

A. All four wheels on the gravel; yes, sir.

Q. Any part of it on the cement, overhanging the cement?

A. None at all; no, sir.

Q. Could you tell from the truck whether or not it had been moved by the force of the collision?

20 A. I could; yes, sir.

Q. Had it been moved?

A. Yes, sir.

Q. How far had it been moved?

A. Between three and three and a half feet.

Q. Do you know whether the brakes were on at the time?

A. Yes, sir.

Mr. Gaskill: I object. He could not possibly
30 know whether the brakes were on at the time of the accident. I object.

The Witness: You cannot stop an Autocar unless you put the brakes on.

Mr. Gaskill: I object.

Mr. Carr: Well he answered before the objection. I presume he can tell.

Q. What sort of a tail lamp had this car ?

A. A Autocar standard lamp, comes with the Autocar.

Q. That is oil?

A. Yes, sir.

Q. Do you know whether or not that was a dependable lamp? 10

A. It was; yes, sir.

Q. Did you observe the condition of the lamp when you got up there and found it was your car?

A. Yes, sir.

Q. What did you find?

A. I found it all flattened out. It was warm yet when I picked it up. I showed it to the state trooper and showed it to the garage fellows, that the lamp was there.

Q. And was warm; was it? 20

A. It was warm; yes, sir.

Q. Waas it warm from the heat of the light or warm from the atmosphere?

A. From the light.

Q. And where was the lamp?

A. About two foot from the truck; towards the woods.

Q. Had it been broken off by the collision?

A. Had just been mashed flat that way.

Q. Was it broken off the car or was it still on the 30 car?

A. Broke off of the hanger.

Q. Beg pardon?

A. It had a hanger to hold the lamp; that was broken off it.

Q. When you saw it was it then attached or detached from the car?

A. It was off the car.

Q. Where was the Overland car?

A. The Overland car, the front wheel was underneath the cross springs.

Q. Underneath the cross what?

A. There is a spring goes across the back and one this way; that was completely cut in half; both big springs cut in half, with the body down.

Q. Where was that with relation to your car considering the width of the car—where was the point of impact between the Overland car and the truck?

A. This Overland car was underneath our body.

Q. Yes.

A. That is, where the two cross springs are, right at the end, was—it cut the two springs right in half; he struck the spring, not the body.

Q. What I want to find out, if you can tell me, is considering that the body of your car as being five feet wide, taking the left side of the body, facing
20 toward Atlantic City, how far away from the left side of it was the point of impact? Do you understand my question?

A. I didn't quite get that.

Q. I will try to restate it. I will try to illustrate it. Assuming this book is the body of that Overland car, taking the left side of the Overland car, as I have indicated here, how far from the left side of that car in feet or inches was the point of impact? This is the Autocar. The collision occurs somewhere
30 in the rear of it. I want to know whether it was the extreme left or extreme right or the center or what point in between, where the point of impact was, as indicated by the broken springs?

A. I guess I can tell you better in my own way. Here is the Autocar truck. It is on the gravel—

Q. Yes.

A. Here is the rear crossing. Here is the long spring. Here is the body here—

Q. Yes.

A. Here is where the Overland car hit and cut that in half; never touched the body.

Q. What I want to know is with reference to the width of the body of your car, was it one foot, two feet, three feet inside of the left side of the line of that body? In other words, was it here, was it there, was it there or was it there? Now, do you get the 10
idea?

A. Now, his Overland car was right there.

Q. You mean it was at the extreme left. Did it come under your body at all?

A. His front wheel—

Q. Came under your body?

A. Never touched the body; it hit the spring first.

Q. Now, where your left wheel was, how far did the body overhang that left wheel toward the left, if at all? 20

A. It didn't overhang at all.

Q. Well, he ran in under your body; didn't he?

A. Yes.

Q. Some part of your body must have been over his wheel, wasn't it?

A. Yes.

Q. Now, looking toward Atlantic City, how far was his wheel from the left side of the body of your truck?

A. I don't know that exactly. 30

Q. Well, do you know what I mean?

A. I don't quite get that.

The Court: I think you have one thing in mind and he has another. I do not quite understand it, either.

Mr. Carr: Then I know it is bad.

Q. The left wheel of the Overland car came in contact with some part of your car; didn't it?

A. No, the right wheel.

Q. What part of your car did the right wheel of the Overland come in contact with?

A. With these two cross springs.

Q. And those cross springs extended between the
10 two wheels, the two rear wheels; didn't they?

A. They are right at the edge of the body. The body is only about an inch or two overhang over these two springs that he cut in half.

Q. Taking the center line of your car pointing toward Atlantic City, the point where the wheel was locked under your car, how far from the center line of your car would that be and toward the left?

A. About two and a half feet.

Q. About two and a half feet?

20 A. You mean from the center of the chassis?

Q. No, I don't mean how wide was your car; but I am trying to find out, if I can, with relation to the width of your car where this impact occurred, and where his wheel was when you first saw it. Can you tell me?

A. It was behind my Autocar wheel.

Q. Yes, that tells me north or south. I want it cross-wise. Now, can you tell me, looking at your car cross-wise, where he struck with relation to the
30 body of your car, the breadth of your car?

A. I don't quite get that.

The Court: What kind of springs did you have on that car? A platform spring?

The Witness: Regular Autocar springs.

The Court: Is it a platform spring? Do you know what I mean by a platform spring? The spring runs parallel with each side of the body, and then also, across the back of the body.

The Witness: Yes; there is one runs this way and one this way.

The Court: Then you had a bow spring in the back? 10

The Witness: Well, the ordinary bow spring.

The Court: The ordinary bow spring, inverted, and also—

The Witness: The other couples up on the side.

The Court: Now, take this for the body of your truck here. You had a bow spring like that in the back; is that it? 20

The Witness: Yes, sir.

The Court: Then you had another bow spring inverted?

The Witness: Oh, no.

The Court: Just the one? 30

The Witness: Just the one single spring.

The Court: And that came down in this fashion; didn't it? More or less? And here are your wheels here?

The Witness: Yes, sir.

The Court: And your axle ran right under that spring; is that it?

The Witness: Yes.

The Court: Now, did you have a platform spring? That is another bow spring going parallel with the body on the other—each side?

10 The Witness: Spring same as the other.

The Court: Well, the platform spring is made up of four springs, two parallel and two cross springs.

The Witness: We only had a single spring. They used to make them that way but they don't any more.

20 The Court: Well, you had a bow spring on the left side of your body and a bow spring on the right side of your body?

The Witness: Yes.

The Court: And a bow spring going across the back?

The Witness: And a bow spring going across the back.

30 The Court: Now, that is what Mr. Carr is trying to find out. You say this spring was cut?

The Witness: Right here is the shackle.

The Court: Yes. there is a shackle right here.

The Witness: Yes; that is what was cut in half.

The Court: That shackle?

The Witness: Yes, sir.

The Court: The shackle in this spring, to the left hand spring?

The Witness: The shackle in this spring.

The Court: The shackle on the end of this spring 10 which coupled it to the other spring?

The Witness: Yes.

The Court: That was cut?

The Witness: Yes, sir.

The Court: And was it cut off the left or right wheel of the car?

20

The Witness: The right wheel.

The Court: Now, as you indicated with the book, you indicated that the Overland car did not show in a straight line behind you, but showed in an oblique line; is that what you mean?

The Witness: This is the truck.

The Court: In other words, that was his direction, 30 was it?

The Witness: Yes. He cut the eye completely off this spring and the shackle off the other one.

Q. Can you indicate where the wheel of the Overland was locked under your car?

A. Right here.

Q. Will you make an X right there?

A. (Witness does so.)

Q. Do you say your business was automobile repairs?

A. Yes, sir, till I got sick, and I had to give it up.

Q. How long had you been engaged in that line of work?

A. Fifteen years.

10 Q. Did you examine the speedometer of the Overland car?

A. I did; yes, sir.

Q. What did you find with relation to it?

A. It struck about two notches from fifty.

Q. About two notches from fifty? Well, what would that mean? That is, as a speed indication?

A. That would mean he was going almost fifty miles an hour.

20 Mr. Carr: Cross-examine.

Cross-examination.

By Mr. Gaskill:

Q. There are certain cars that are equipped with speedometers that indicate the highest point of speed that they attain; isn't that a fact?

A. Up to seventy-five mile an hour; yes, sir.

30 Q. I don't mean that, but it leaves the indicator on the speedometer at the highest speed that they attain; isn't that a fact?

A. They used to make them that way.

Q. Well, they did at one time; didn't they?

A. They did at one time.

Q. Well, was this that kind of speedometer?

A. No; it was a Steward.

Q. This was just an ordinary speedometer that they use on Overland cars?

A. Just an ordinary speedometer that they use on Overland cars, same as they use on other cars now.

Q. They don't put as good a speedometer on Overlands as they do on Cadillacs?

A. All Cadillacs use their own. All the other cars use the Steward.

Q. They do?

A. Most of them.

10

Q. Isn't it a fact that when you arrived there at this car, this Overland car was lying in that location under your truck?

A. I didn't get that.

Q. Isn't it a fact that when you arrived at the scene of this accident the Overland car was lying parallel to your truck along the road? Do you know what parallel means?

A. I do, yes.

Q. Well, was it lying parallel with your truck?

20

A. Right straight under the truck.

Q. Straight under the truck?

A. Yes, sir; it had to come in this way to do that, on a slant.

Q. And the wheels of the Overland had broken?

A. What is that?

Q. And the wheels of the Overland had broken; they had broken down?

A. I won't say for sure.

Q. Oh, you didn't observe that, whether the wheels were broken?

A. No; because I almost killed myself right at that minute. I had to jump out of the road.

Q. You hadn't presence of mind enough to go and look at the speedometer?

A. But I will tell you why.

A. No, I don't want to know why.

A. I had reason for that.

Q. Then another thing you did, when your driver was—Oh, before you stated about your light being warm.

A. What did you say?

Q. Whom did you ever tell before today that your light was warm?

Mr. Carr: I object to that. It assumes that he
10 did tell someone.

Q. Did you ever tell someone before today?

A. I did. I showed it to the state police, when they held me for manslaughter. That is when I showed that lamp.

Q. You showed it to the state officer; did you?

A. I did; yes, sir.

Q. And you accompanied the state officer somewhere; didn't you?

20 A. I did not; no, sir.

Mr. Carr: I object to that.

The Witness: My men did; I didn't.

Mr. Carr: Please do not answer when there is an objection pending. I object to that as incompetent, immaterial and irrelevant and not proper cross-examination.

30

The Court: Objection sustained.

Mr. Gaskill: It is about his conversation to the state trooper, showing it to him.

Mr. Carr: You brought it out yourself.

Mr. Gaskill: I beg your pardon. You brought it out and he said he showed it on direct examination to the state trooper.

Mr. Carr: He voluteered it. I didn't ask him any such thing.

The Court: I think it was brought out on direct examination but not in response to a question. I think it was a voluntary statement, and you have a right to cross-examine him about it, but you are 10 asking him now where he went with the state trooper.

Mr. Gaskill: I see.

Q. Now, did you show it to Mr. Woodward?

A. I did; yes, sir.

Q. Then what did Mr. Woodward do?

A. Took our two men and locked them up.

Mr. Carr: I move that that be stricken out. 20

The Court: Yes, strike it out. It has nothing to do with this case.

Mr. Gaskill: Well, it was his answer to my question.

The Court: Well, you asked him what the state trooper did and he tells you; but it has not any relation to this case.

Mr. Gaskill: All right; no more questions. 30

Re-direct examination.

By Mr. Carr:

Q. You were asked to explain why you had presence of mind enough to look at the speedometer and you were stopped from explaining. You may explain now.

A. That was my business for a good many years, on accidents for big adjusters, insurance companies. Every accident that we would pull in that place we would have to examine all this stuff at once.

Q. Now, when the car was stopped by an accident—when a car is stopped by an accident does the speedometer record the last speed or what happens?

A. They generally stay at the last speed. If the glass breaks the cracking holds the hand there. In
10 this case the glass broke and held that hand; was about two inches from fifty, about forty-eight. That was my first move, to look at that to see whether this man had been speeding or was drunk or what.

Q. You found from experience that the speedometers often did show that?

A. They often did that; yes, sir.

Mr. Carr: That is all.

20

Mr Gaskill: No question.

(Witness excused.)

Mr. Carr: If your Honor pleases, we have a witness on the way here from Ocean City. He ought
30 to be here by this time. I wonder if we might recess now?

The Court: Yes; we will recess to 1.30.

(Recess to 1.30 P. M.)

AFTER RECESS.

Mr. Carr: I would like to recall Mr. Sautter.

FRANK W. SAUTTER, recalled.

Further examination.

By Mr. Carr:

10

Q. Mr. Sautter, have you at my request produced the truck involved in this collision?

A. Yes, sir.

Q. And it is outside?

A. Outside; yes, sir.

Q. And have you at my request measured the overhang, if any, as compared with the hub cap?

A. Yes, sir.

Q. How did you measure it?

20

A. Not quite a quarter of an inch, with a plumb.

Q. With a plumb. So the overhang is about a quarter inch beyond the hub cap?

A. Not quite a quarter of an inch.

Q. Did you measure the width of the body over all?

A. I didn't do that.

Q. You didn't do that?

A. I can do it right now.

30

Mr. Carr: If your Honor pleases, we have the truck outside here and I think it would be helpful for the jury to see the truck, because there has been conflicting testimony as to the amount of the overhang. May we do so?

The Court: Yes.

Q. Will you come outside and point out to the jury the truck involved in this collision?

(Counsel for the plaintiffs and counsel for the defendant, the witness, and the jury retire from the court room to inspect the truck in question.)

Juror: Where was the lamp hanging, and what part had been repaired that was broken?

10

Mr. Carr: Are you willing the witness should answer?

Mr. Gaskill: Yes.

The Witness: The back part of this big spring off here, broke this hanger and tore the lamp bracket, and that is all this is for, (indicating) the steel lamp, and this was smashed flat as a nickel.

20

Juror: Where was the truck hit?

The Witness: Right in here.

Juror: And your lamp was here?

The Witness: That is the lamp where it goes down and hooks up; had a hook on it, extension hook. They come already made with the car.

30

Juror: You haven't got the smashed lamp, have you? I heard some discussion among the jurymen. It was not brought out plain. You asked Mr. Sautter where the Overland car was when he came up, whether it was fastened under here and rebound back. There has been conflicting testimony in this case.

Mr. Carr: Mr. Sautter may answer. I won't ask any questions.

The Witness: I didn't quite understand it.

Juror: The thing I want to know, and I heard some of the other jurymen speak, is whether this Overland car when Mr. Sautter came up, when it was fastened under here, whether it broke off and rebounded back.

10

The Witness: I didn't quite understand it in there; but the car hit under there and then came back and struck the other man.

Juror: It was not stuck?

The Witness: No.

Juror: The car was not fastened under here when you came up?

20

The Witness: No. I mean it broke this here and bounced back.

(The jury, counsel for the plaintiff and counsel for the defendant and the witness returned to the court room.)

By Mr. Carr:

30

Q. Is there any lamp on the truck at the present time, any tail light?

A. No; I didn't notice. The truck does not belong to me now.

Q. When did you dispose of the truck?

A. September first.

Q. Last year?

A. Yes, sir.

Q. You have not owned it since?

A. What did you say?

Q. You have not owned it since?

A. No; I had no further use for it. I gave up the Philadelphia business, and that was the last thing I had there.

Q. Have you any control over it?

10 A. No control.

Q. Nothing whatever to do with putting a lamp on or taking it off now?

A. Not a thing, now.

Re-cross examination.

By Mr. Gaskill:

20 Q. You testified this morning when you arrived at the scene of the accident this Overland car was in that position up against the truck; didn't you?

A. It bounced back.

Q. Didn't you testify this morning that the Overland car was underneath the truck? I mean when it struck?

A. When she struck it was.

Q. How could you tell, arriving there afterwards, where the truck struck?

A. By the broken parts of the truck.

30 Q. Aren't any parts broken except at the point of contact in a truck accident? You were guessing about this; weren't you?

A. No; I was not guessing.

Q. You knew absolutely that is the way it happened?

A. I know absolutely when it hit that truck it bounced back.

Q. You did know he bounced back?

A. Yes, sir.

Q. How did you know that?

A. By the position of the car.

Q. You didn't know but what the truck had pushed forward? Do you know whether the truck had been moved or not with the accident?

A. What did you say?

Q. Do you know whether the truck was moved after the accident before you got there? 10

A. The truck was moved at the time of the accident.

Q. I mean after that, before you got there, was the truck moved, do you know?

A. It might have been moved.

Q. Mightn't it?

A. It could not be moved any further; he was up against a tree.

Q. Up against a tree?

A. Yes. 20

Q. The fact that the Overland car was right along with it, lying parallel with that truck, and the wheels were up—the Overland car was opposite the front side of that truck and right parallel with it—wasn't it lying right alongside of it, right alongside of the truck?

A. That is after it hit the other Ford car—

Q. Now, please, you cannot testify to that. Here are the wheels of your truck. Here are the rear wheels. Now, when you got there the Overland was 30 lying up in that position, right alongside of your truck; wasn't it?

Mr. Carr: This is hardly cross-examination. I only put him back to explain the absence of the lamp. That was all my question dealt with; because he is not the present owner of the truck. Perhaps it

would be misleading to see the truck without the lamp now. It might be charged against him. He was put on the stand solely to cover that one point. I object to any examination beyond that point.

Mr. Gaskill: All right; I will pass it.

10 Q. Now, you have a plumb line on the truck, haven't you, out there now? Now, what is the distance between the point of the plumb line from the left hand tire—from the left hand tire? Is there any distance at all? I mean the extreme left hand part of the tire, and then continue out to where your plumb line falls. What is that distance?

Mr. Carr: I do not think that is cross-examination; because they simply looked at it and I think a jury can tell the distance as well as anyone.

20 Mr. Gaskill: All right; I will withdraw that.

(Witness excused.)

DEFENDANT RESTS.

30 Mr. Gaskill: As I understand, you have no objection to my putting this in? (Referring to a paper.)

Mr. Carr: No.

Mr. Gaskill: Mr. Carr consents that I put in evidence a bill of Dr. Allman for the treatment of Mr. Podolsky amounting to \$50; and treatment of Mrs. Podolsky amounting to \$25.

(The paper referred is received in evidence and marked as an exhibit for the plaintiff P1.)

The Court: There is one question I would like to ask counsel about before you argue the case, and that is with respect to the right of Ruben Podolsky to recover for loss of earnings. Was there any testimony upon which that question could properly be submitted to the jury?

10

Mr. Carr: It seems to me not. There was testimony that he had been engaged in the grocery business and that his profits in that business had been, I think fifty or sixty dollars a week. That is all the testimony I recall. It seems to me that is not the basis of his losses.

Mr. Gaskill: Your Honor, I do not know how to arrive at it in any other way. He was working before this accident making forty or forty-five dollars 20 a week for a period of over two years. Since the accident he has been unable to work, and the doctors testify that he will never be able to work.

The Court: Well, I know; but business is very largely a matter of brains and skill rather than labor. I do not recall any testimony as to what, if any, of his business is being operated or whether it is still being operated under his supervision, or whether or not he may not be earning just as much 30 supervising it as he formerly did laboring at it. That is what I had in mind.

Mr. Gaskill: I did not cover that.

The Court: I do not recall any testimony that shows what happened to the business.

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Verdict*

Mr. Gaskill: No; I do not remember that testimony.

The Court: What?

Mr. Gaskill: I do not remember that testimony.

The Court: Well, I will have to deal with it. I
10 wanted to speak to counsel about it before the case
was argued.

DEFENDANT'S MOTION FOR A DIRECTION
OF VERDICT.

Mr. Carr: I move for a direction of verdict for
the defendant upon this ground: the testimony of the
20 driver of the Overland car, Ralph Podolsky, was
that he was running at a speed of twenty miles an
hour; that he saw this truck ahead of him at a dis-
tance of between twenty and twenty-five feet; that
running at the speed which he said he was running
then, to wit, twenty miles an hour, he could stop the
car in six feet. I am not basing this, if your Honor
please, upon any theory of contributory negligence,
but upon this theory: the office of the tail light on
the automobile was simply to apprise the following
30 cars of the presence of the car ahead on the road.
That is all it could do. It was not intended to il-
luminate the rear of the truck in this case, nor to
serve as a flood light. It was simply there as a warn-
ing to following cars so that they might be apprised
in time to either stop or change their course if that
should be necessary. So we have here a situation
where the plaintiff—the driver for the plaintiff;

Ralph Podolsky—saw this car when he was twenty to twenty-five feet away; had the ability to stop within six feet and knew the car was there. That being so, the absence of the light was not the proximate cause of the resulting accident. That is the basis of my application, if your Honor pleases.

The Court: I will deny the motion. I think the only theory upon which the case can be submitted to the jury is as to whether or not the absence of the light was the proximate cause of the injury. 10

Mr. Carr: But in this case, if your Honor pleases, this man says: "I saw the car."

The Court: Yes. If this action were by the driver of that car I should grant your motion.

Mr. Carr: Well, if the absence of the light was not the proximate cause, then, of course, there could be no recovery. By the testimony of the driver, Ralph Podolsky, it was not the proximate cause; because he said: "I saw that car and saw it in time to stop or in time to divert my course and I did not do so." The light could not have told him any more than that. He knew it. So the absence of a light in that case was no more the proximate cause than if it were broad daylight. 20

The Court: I think so far as the passengers were concerned there is a sufficient conflict in the testimony to leave the matter to the jury. I will deny the motion. 30

Mr. Carr: Exeception, please.

The Court: Yes.

(Mr. Gaskill opened to the jury for the plaintiff.)

(Mr. Carr summed up for the defendant.)

(Mr. Gaskill summed up for the plaintiff.)

COURT'S CHARGE TO JURY.

Ladies and gentlemen of the jury: This action is founded upon an allegation of negligence on the part of the defendant by his servants, agents and employees, and the allegation of the plaintiffs in the complaint with respect to that negligence is that the
10 servants and employees of the defendant left the automobile truck of defendant standing on the White Horse Pike and they negligently and carelessly left said automobile truck in the night time standing on the said road without any lights or any other device of any sort to warn persons approaching said automobile of its presence.

The testimony of the plaintiffs tends to show that in addition to the absence of a light the body of the truck extended over the paved roadway. The de-
20 fendant in this case can only be liable to the plaintiffs in the event that you find that through his servants, agents and employees he was negligent. So the first question that you will consider in this case in arriving at your verdict is whether or not the defendant in this case was negligent.

The facts and circumstances upon which he relies in his testimony—or they rely in their testimony; because there are two plaintiffs—are, first, that the lantern on the rear end of the truck was not lighted,
30 and, therefore, the truck was not visible to the driver approaching. The next is that it extended over the roadway in such fashion that if he kept to the paved portion of the road and near the right side of it he would strike it. I expect to comment to some extent upon the testimony and I want to say to you now that if in my comments upon the testimony my recollection of the testimony is different from yours,

you will take your own recollection and not mine in reaching your verdict.

There is testimony in the case to show, first, that the truck having burnt out its bearings and become totally disabled, had under its momentum been moved over off the paved portion of the roadway and entirely over to the right hand side of the gravel part of the roadway, and that the driver and helper had lighted the lantern on the rear end of the truck, and that that was a reliable lantern, being the standard lantern provided by the Autocar Company for that make of truck, and having gone to telephone for assistance they had come back and stayed with the truck until the time of the accident; that it was a moonlight night and that the truck was visible because of the moonlight even though the lantern behind at the time of the accident had not been lighted; that the truck did not extend over the paved portion of the roadway, but was entirely clear of it, on the gravel, and that the truck had no overhang in any event; that is, that the body did not extend beyond the wheel cap hubs except a fraction of an inch. There is also testimony that the truck did overhang; that its body protruded a considerable distance beyond the wheels. So that by the testimony of the witnesses you have the character of the night, with respect to its visibility; you have a conflict in the testimony as to the location of the truck; you have a conflict in the testimony as to whether or not the lantern was lighted at the time of the accident and you have a conflict in the testimony as to whether there was an overhang to the body which might catch an automobile undertaking to pass.

In addition to that you have the testimony of the plaintiff's driver that he saw the truck when he was about twenty-five feet away from it and that at the

time, I think he said, he was going only about fifteen miles an hour.

So that the first question that you will have to determine is whether or not under the circumstances the owner of the truck through his driver was in any respect negligent; because if he was not negligent, having due regard to all of the circumstances, then the plaintiffs cannot recover from him.

10 Negligence is defined in the law to be the failure to observe for the protection of the interests of another person that degree of care, vigilance and precaution which the circumstances justly demand whereby such other person is injured.

So that to find the defendant liable in this case and to render a verdict against him you would first have to find that he was negligent.

20 The next question that arises in the case is as to the conduct of the driver of the automobile in which the plaintiffs were riding. He was their son. He was bringing them to Atlantic City, and they were under the circumstances of this case what the law regards as passengers. The testimony does not disclose that they had any control over the driver or that they were engaged in a common enterprise with him. So that they would have been passengers, and his negligence would not be imputable to them. So that in the case I think there is no question of contributory negligence as having entered into and having been the cause of the accident on the part of
30 the two plaintiffs. But there is testimony in the case from which you might find that the driver of the automobile in which they were riding was negligent. While it is true his negligence would not be imputable to them, nevertheless, if his negligence was the the accident, then you could not find the defendant cause of this accident, was the proximate cause of liable.

With respect to negligence the law goes a step further and says that the negligence of a person sued must have been, in order to hold him liable, the proximate cause of the injury. The word 'proximate' is defined to mean immediate, nearest; the proximate cause is the efficient cause, the one that necessarily sets the other causes in operation. So that in this case under the testimony you might find either that the defendant through the driver was negligent, or you might find that the driver of the plaintiffs' car was negligent and if you should find that both were negligent, it would then be your duty and function to find out whether or not the negligence of the defendant was the proximate, that is, the efficient cause of the accident, or whether the negligence of the driver of the car in which the plaintiffs were riding was the proximate or efficient cause of the accident and the injury to the plaintiffs. So that the first question you ought to deal with is whether or not the defendant was negligent. If you find that he was, then whether or not his negligence was the proximate or efficient cause of this accident and the injury to the plaintiffs.

The testimony is undisputed on all matters of fact in the case. You have had an opportunity to examine the truck itself. You have heard the testimony of all the witnesses. The plaintiffs in order to recover must convince you of the justness of their claim by the fair preponderance of the believable testimony, and if you should find that the defendant was not negligent your verdict would be for no cause of action. If you should find that even though the defendant was negligent, his negligence was not the proximate or efficient cause of the injury to the plaintiffs, your verdict would be for the defendant for no cause of action.

If, on the other hand, you should find that the defendant's negligence existed and that it was the proximate cause of the injuries to the plaintiffs, then your verdict would be for the plaintiffs.

10 With respect to the question of contributory negligence upon which I have spoken to you very briefly, the law provides that if anyone injured by the negligence of a third party had no authority over the driver with whom he was riding and was not
10 negligent himself, and the relation of master and servant, or principal and agent, or mutual responsibility in a common enterprise, did not exist, then the negligence of the driver cannot be imputed to him.

If you should find in this case for the plaintiffs then you would allow to each plaintiff, both Rose Podolsky and Ruben Podolsky, such sum as in your judgment would compensate each of them for the pain and suffering undergone, for the bodily injuries sustained, for the effect upon their respective
20 healths according to its degree as likely to be permanent or temporary, and in addition to rendering to each an award of such compensation you would also allow to Ruben Podolsky such moneys as he has expended in the care and cure of his own injuries and in the care and cure of his wife's injuries, and such sum as you might allow him for the loss of his services and society of his wife.

You may retire and consider your verdict.

30 (The jury retired.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

ROSE PODOLSKY and REUBEN PODOLSKY,
Plaintiffs-Appellees,

v.

FRANK W. SAUTTER,
Defendant-Appellant.

ACTION AT LAW.

APPELLANT'S BRIEF.

This appeal challenges the correctness of the Court's ruling in denying the defendant's motion for a directed verdict in favor of the defendant. No other questions are involved.

This case involves a rear-end collision between a standing truck and a following touring car along the White Horse Pike a few miles north of Egg Harbor. The suit is brought by passengers or "guests" in the touring car against the owner of the truck. The accident occurred on the evening of August 16, 1924, after dark. The negligence charged against the defendant was the failure to have the rear lamp or "tail light" lighted. The truck was disabled, and was parked on the extreme

right side of the road standing on the gravel shoulder of a paved highway. There is a conflict of testimony as to whether or not the rear lamp was lighted, and the issue thus raised was, of course, for the jury *if the absence of such light was the proximate cause of the injury* and is not reviewable in this court.

It appeared affirmatively by the testimony of Ralph Podolsky, the driver of the car, and a son of the two plaintiffs, that immediately preceding the collision he was driving the car at the rate of twenty miles an hour; that his car was equipped with good lights so that he could see 100 to 150 feet ahead of him; that when running at a speed of twenty miles an hour he could stop his car within six feet (pages 34, 37); that he saw the standing truck when it was at a distance of from twenty to twenty-five feet away; that he "saw the wheels" but was unable to tell whether it was a truck or a touring car. Why he did not see the truck sooner does not appear.

The appellant does not rely upon the doctrine of contributory negligence, or its imputability to the plaintiffs as passengers or guests, but bases his claim entirely upon the theory that under the facts as disclosed the failure to exhibit a rear light was not the proximate cause of the accident.

We realize that most collision cases involve a jury question. In no case that we have examined, however, have we found a situation where the driver of a following car acknowledges that he saw the forward car in time to have stopped.

The only purpose of a rear light, as applied to the facts in this case, was to apprise the driver of a following car of the presence of the parked car in time to have stopped. Since the driver of the following car saw the truck ahead (or at least so much of it

as a rear light would have disclosed), in ample time to have stopped, and he did not choose to stop, there was no causal connection between the absence of the tail light and the driver's conduct.

This presents, so far as the facts are concerned, the reverse of the situation referred to in *Osburn v. De Young* (E. & A.), 99 N. J. L. 204, 209; 122 Atl. 811. In that case the Court said:

“Moreover, in view of the driver's testimony that he was blinded by the arc light so that he could not see more than 8 or 10 feet, it becomes impossible to conceive how there could be any causal connection between the absence of a tail light or an obscuration of it with the driver's negligent conduct in failing to stop his car until his vision was improved, or at least to reduce the speed of the car so that it could be stopped in time to avoid a collision with an obstacle in the way 8 or 10 feet ahead.”

The driver, Ralph Podolsky (page 34), said that he could stop his car running at twenty miles an hour “around” six feet and that the object he saw ahead of him was twenty to twenty-five feet distant. On page 34, and again at p. 37, he twice states that he could stop his car at that speed within six feet, and then later, on page 37, says:

“Q. And you saw this thing 20 to 25 feet away, is that right?

A. Yes, sir.

Q. But you could not stop in time to avoid hitting it, isn't that right?

A. Yes, sir.”

Taken in connection with the fact that Ralph Podolsky had repeatedly stated that he could stop

his car within six feet, going at the speed at which he had been driving at the time of the accident, his conclusion that he could not stop in time to avoid hitting the object, is not contradictory of his previous statements, but is merely declaratory of unexplained inaction on his part. In other words, while he had the ability to stop the car at six feet under the described conditions, in this particular case he could not do it. He does not explain why, nor did he explain why, in any event, he did not at least change the course of his car to have avoided the parked truck. This highway, the White Horse Pike, was one of the most heavily travelled roads in the state and presumably, many cars had safely passed the standing truck in the several hours it had been parked there. Whether or not it was due to fright, lack of ordinary judgment or what, does not appear.

If the driver of the car was apprised in ample time to stop his car or to change its course so as to avoid the collision, and failed to do so, there would be no causal connection between the absent rear light and the driver's conduct. The purpose of a rear light is, of course, not to throw a flood light or spot light upon the rear of a vehicle so as to disclose its presence and outlines with the clearness of noonday, but this small, dull, red light is only intended to apprise the drivers of following vehicles of the presence of a vehicle on the road ahead of such following vehicles.

The case *sub judice* is in some important aspects similar to that of *Jacobson v. N. Y., S. & W. R. R. Co.*, 87 N. J. L. 378 (N. J. Sup. Ct.), where the Court says, at page 379:

“The plaintiff, on a clear, dark night, was driving his Ford touring car on a public highway towards the defendant's railroad crossing

at a speed of from twelve to fifteen miles an hour. He was familiar with the road and knew that the tracks were there. His automobile was equipped with electric headlights of ordinary brilliancy, and they were lighted. When he was twenty feet away he observed something on the crossing. He could have stopped his automobile in from twelve to fifteen feet, but thinking that it was a van or wagon, he did not slacken speed or stop, but attempted to go around the obstruction. When he had gone five or six feet farther he put on the brakes, but nevertheless hit a freight car of the defendant's train which was momentarily standing on the crossing. * * *

"The plaintiff saw the car when he was twenty feet away. Why he did not see it sooner does not appear. He was travelling at from twelve to fifteen miles an hour and could have stopped within fifteen feet. *The only reasonable inference from the testimony is that the proximate cause of the collision was either the inattention of the plaintiff, or the failure of the brakes to work, or his failure to apply them quickly, or a combination of two or more such causes.*"
(Italics ours.)

Jacobson v. N. Y., S. & W. R. R. Co., was followed by *Nadasky v. Public Service Railroad Co.*, 97 N. J. L. 400, where an automobile collided with a standing "work car" at a grade crossing between a public highway and defendant's railroad crossing, at night. The crossing bell and crossing flash light were not in service. The Court held that the purpose of the signals above mentioned was to warn travellers of an approaching car or train, and of

their liability to be struck if they attempted to cross, and that the failure or absence of such signals had no causal relationship to the accident.

The two cases last mentioned are cited with approval by the Court of Errors and Appeals in *Morris v. Atlantic City Railroad Co.*, 126 Atl. Rep. 295.

In *Powers v. Standard Oil Co.*, 98 N. J. L., 730, it was held:

“The efficient, proximate or intervening cause is the force or operating factor without which the accident could not have happened, and must have been the active, operative and carrying and containing within itself the possibility and potentiality for harm, and an auto truck, stationary on a street, although illegally parked on the wrong side thereof, could not have been the efficient, proximate cause of an accident to a child who ran from behind it in front of another automobile, since its presence simply created an added visible obstruction, and imposed upon the child and driver of the automobile the necessity for additional care in the use of the highway.”

In conclusion, we wish to make it clear that *we are not relying upon any doctrine of contributory negligence, or any imputability thereof to a guest, but that we are relying solely upon the doctrine of proximate cause. Even though the defendant was negligent in failing to exhibit a rear light upon the truck, such failure was not the proximate cause of the injury, since the function of the rear light under the circumstances was merely to give the plaintiffs' driver timely notice of the presence of the defendant's truck. The plaintiffs' driver, being already apprised*

in ample time to stop or to change the course of his car, was not influenced or affected by the presence or absence of the rear light.

Respectfully submitted,

CARR & CARROLL,
Counsel for Defendant-Appellant.

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NEW JERSEY COURT OF ERRORS AND APPEALS

ROSE PODOLSKY AND REUBEN PODOLSKY,
Plaintiffs-Appellees,

vs.

FRANK W. SAUTTER,
Defendant-Appellant.

ACTION AT LAW

APPELLEE'S BRIEF

FACTS

Rose and Reuben Podolsky, plaintiffs below, were 10
passengers in an automobile being driven in an easterly
direction along the White Horse Pike on the way from
Philadelphia to Atlantic City on the night of August 16,
1924; the car was being driven by Ralph Podolsky. About
9.30 that night, at which time it was very dark, the car
reached a point in Galloway Township, in Atlantic County,
and at that time the driver was proceeding on his right side
of said highway at a speed of twenty miles per hour. The
paved highway at the point where the collision occurred was
twenty feet in width. Suddenly, in the darkness, from 20
twenty to twenty-five feet ahead of the driver, as appears
by undisputed testimony, there appeared to the vision of the
driver the wheels of a truck standing on his side of the
roadway. He applied his brakes and attempted, but without
success, to avoid striking this object. The right side of the
automobile in which plaintiffs were riding struck, what
proved to be, the left side of a truck which was standing on
the right side of the road, with a portion of the body ex-
tending over the paved surface. The truck had no rear
light to apprise the approaching driver of its presence.

Plaintiffs below were severely injured and recovered a judgment, which the appellant seeks to have reversed. At the close of the case, defendant below moved for a direction of the verdict in his favor on the ground that the absence of a light on the truck was not the proximate cause of the resulting accident, which motion was denied by the court, and defendant below bases his appeal for a reversal of the verdict solely on the refusal of the court to direct a verdict in his favor for that reason.

ARGUMENT

10 Defendant below bases his claim on the fact, not that there was contributory negligence on the part of the driver, nor on the fact that there was absence of negligence on the part of the defendant below, but that even if there were negligence on the part of the defendant below, it had nothing to do with, and was not the proximate cause of, the accident. He reaches this conclusion based entirely on the cross examination by him of the driver of the car in which plaintiffs below were riding, particularly the testimony of Ralph Podolsky, wherein witness said he saw the
20 object twenty or twenty-five feet away and couldn't stop in time to avoid hitting it (page 37), and the further testimony of the same witness found on page 34, wherein witness said he could stop his car within six feet when going at twenty miles per hour. From this, defendant argues that irrespective of the fact that the truck was parked on the road at night without any rear light, as required by statute, the driver of the car could have stopped his car before hitting the object ahead of him.

30 Counsel for appellant loses sight of the fact that the same witness had testified on page 27 as follows:

"Q. Explain to the jury how far away you were and what you saw when you saw this truck, and all that sort of thing. Just described the accident.

"A. As I was coming down on the White Horse Pike the road is clear; the road was hard and clear and

no trucks or any automobiles in front of me, and as I reached about twenty or twenty-five foot from that truck the first thing I saw was the wheels of the back of the truck, and I tried—I put my brakes on and I tried to stop but I was too close to it to stop, I was going to stop in back of the truck and I turned around and just hit with my right front—I hit the left rear of the truck.

“Q. Did that truck have a light on it, a red light?

“A. No lights at all.

10

“Q. Were there any illumination around there of any kind, any lights around where the truck was?

“A. No, no lights at all.

“Q. Was the night a clear night or a dark night? Was it light or dark?

“A. Yes; it was dark.

“Q. About what time did it happen?

“A. About 9.15 to 9.30.

“Q. Was there any part of the truck—describe the position of the truck on the road.

20

“A. Why the wheels of the truck were just off of the concrete; just about the line, and there was about a foot—a foot and a half, probably two foot, of the truck standing out on the concrete.”

Thus it appears that the driver of the car did everything in his power to avoid the collision. When, however, he was cross examined as to the distance in which he could stop his car at various speeds he testified on cross examination as follows (page 34):

"Q. Now, within what distance can you stop that car running at twelve miles an hour?

"A. Four or five foot.

"Q. And at fifteen?

"A. Well, if the brakes were working good, I could stop about as good as anybody else.

"Q. Just answer my question, if you know. Within how many feet can you stop that car when it is running at twenty miles an hour?

10 "A. Around six foot.

"Q. About six foot. Now, how far away was this truck when you first saw it?

"A. Well, I judge about twenty to twenty-five feet."

20 Of course, it is apparent from this testimony that the driver was mistaken in saying that he could stop his car within six feet when going twenty miles per hour. Even if it were possible to stop within four or five feet when going at twelve miles per hour, it is a matter of common knowledge that he could not stop his car in approximately the same space when going twenty miles per hour, and it is also apparent that he was testifying on cross examination as to the distance in which he could stop his car, from his belief, rather than from practical experience, and that he was wrong in his conclusions, on his cross examination, as shown by the fact that although he did apply his brakes and attempt to avoid striking the truck, yet he could not stop before striking it.

30 It is also common knowledge that an automobile going at twenty miles an hour on a paved surface could not be stopped within six feet on the application of its brakes.

We then had the following situation presented: An automobile truck standing on a public highway with at least part of its body extending over same on a dark night without a red light attached to the rear of sufficient brilliancy to show the numerals on the license plate so that same could be seen at a distance of at least fifty feet in the direction from which the truck was traveling as required by the Motor Vehicle Act. A car proceeding in the same direction at a reasonable and legal rate of speed which, had the truck had such a red light in the rear, it would have enabled the driver to have seen the truck at a sufficient distance ahead of him to have safely avoided collision with same.

10

We contend that the cases quoted in appellant's brief, as applied to the facts in this case, not only would not warrant the relief sought for by appellant, but on the contrary are authority for submitting this case to the jury for its determination.

In *Jacobson vs. N. Y., S. & W. R. R. Co.*, 87 N. J. L. 378, quoted by appellant, the facts show that the plaintiff on a clear dark night was driving his car toward defendant's railroad crossing, with which he was thoroughly familiar, at a speed of twelve to fifteen miles an hour. He had headlights and when twenty feet away observed something at the crossing. He could have stopped his car, but thinking it was a van or wagon, did not slacken speed or stop, but attempted to go around the obstruction. When he had gone five or six feet further he put on his brakes, but nevertheless hit the freight car. In this case there was no statutory duty on the railroad to light its freight cars and the plaintiff knew that there might be cars on this crossing, and it was his duty to exercise due care on approaching the crossing. In our case, however, there was a statutory duty on the part of the defendant below to have a red light on the rear of his truck to apprise the driver of the automobile of its presence, so that such a collision as did occur could be avoided.

20

30

The case of *Nadasky vs. Public Service Railroad Co.*, 97 N. J. L. 400, also relied on by appellant, is almost the

same in facts as quoted above and is not at all analogous to the case now before the court.

Neither do the facts in the case of *Powers vs. Standard Oil Company*, 98 N. J. L. 730, in any way parallel those of the case here presented.

Nor does the case of *Osburn vs. DeYoung*, 99 N. J. L. 204, aid the appellant in having the court reach the conclusion that he seeks to establish.

10 In the case now before the court it is quite apparent that if the red light as required by statute had been on the rear of the truck that the driver of the car in which plaintiffs were riding would have seen same and easily have avoided the collision.

20 In the words of *Seibert vs. Goldstein Co.*, 99 N. J. L. 200, quoting from page 203 of that case: "If this warning light prescribed by the act had been carried, it may fairly be presumed that the plaintiff proceeding cautiously and maintaining a continuous vigil (as did our driver) would have observed it in time sufficient to have brought his truck (car) to a halt, and thus have obviated the collision."

We have in this case this situation presented by the evidence. The defendant's truck, standing on the side of a public road on a dark night without a light or other warning device to apprise approaching vehicles of its presence, the defendant being thus guilty of negligence which would arise generally from obstructing a public highway in the darkness without any warning device, and, therefore, violated his statutory duty to maintain a light on his truck for this purpose.

30 The driver of the car in which plaintiffs were riding at a reasonable rate of speed, seeing this object when approximately within twenty or twenty-five feet from it, and the driver testifying that he applied his brakes and did all that he could to avoid the collision, but without success, thus

actually doing all that he could to avoid the accident, as opposed to his testimony on cross examination based apparently on the theory or his belief that he could stop his car when going at twenty miles per hour within six feet, which is a manifest impossibility. This certainly left a question of fact for the jury as to whether the negligence of the defendant was the proximate cause of the accident and was properly left to the jury by the court.

“In passing upon motions to non-suit and for the direction of a verdict, the court cannot weigh the evidence, but must take as true all evidence which supports the view of the party against whom the motions are made, and must give him the benefit of all legitimate inferences which are to be drawn therefrom in his favor.”

10

Andre vs. Mertens, et al, 88 N. J. L. 626.

Hoff vs. Public Service Railway, 90 N. J. L. 386.

Sefler vs. Vanderbeek & Son, 88 N. J. L. 636.

It is respectfully submitted that the judgment should be affirmed.

BURTON A. GASKILL,

Attorney of Plaintiff-Appellees.

