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**NOTICE OF APPEAL.**

Filed December 2, 1927.

**CAMDEN COUNTY COMMON PLEAS  
COURT.**

JAMES F. COAN,

*Plaintiff,*

*vs.*

PUBLIC SERVICE ELECTRIC AND  
GAS COMPANY,

*Defendant.*

10

*Action  
at Law.*

To James Mercer Davis, Esq., attorney of plain-  
tiff.

20

SIR:

TAKE NOTICE that the defendant appeals to the  
New Jersey Supreme Court from the whole of  
the judgment entered in favor of the plaintiff  
and against the defendant in the above-entitled  
cause.

Dated, November 21, 1927.

HENRY H. FRYLING,  
Attorney of Defendant.

30

(Endorsed) "Service of a copy of the within  
notice of appeal acknowledged this 23rd day of  
November, 1927.

JAMES MERCER DAVIS,  
Attorney of Plaintiff."

40

*James F. Coan vs. Public Service Elec. & Gas Co.*

STATE OF NEW JERSEY.

COUNTY OF CAMDEN.

10 I, CHARLES F. WISE, Clerk of the County of  
Camden, Do HEREBY CERTIFY, that the foregoing  
is a true copy of notice of appeal in the case of  
James F. Coan

vs.

Action at Law.

Public Service Electric and  
Gas Company,

filed December 2, 1927, in the Clerk's Office of the  
County of Camden.

20 (SEAL) IN TESTIMONY WHEREOF, I have here-  
unto set my hand and affixed my offi-  
cial seal, at Camden, this 13th day of  
December, A. D. 1927.

CHARLES F. WISE,  
Clerk.

30

40

*Judgment.*

**JUDGMENT ON VERDICT.**

CAMDEN COUNTY COMMON PLEAS  
COURT.

JAMES F. COAN,

*Plaintiff,*

*vs.*

PUBLIC SERVICE ELECTRIC AND  
GAS COMPANY,

*Defendant.*

*Action  
at Law.*

10

Witness, Samuel M. Shay, Judge.

James Mercer Davis, attorney.

Charles F. Wise, clerk.

20

Judgment entered on the fifteenth day of No-  
vember, A. N. nineteen hundred and twenty-seven.

Damages .....\$2,500.00

Costs ..... 83.77

—————  
\$2,583.77

30

40

*James F. Coan vs. Public Service Elec. & Gas Co.*

**SUMMONS.**

The defendant was duly summoned.

10

**COMPLAINT.**

CAMDEN COUNTY COMMON PLEAS  
COURT.

20

JAMES F. COAN,

*Plaintiff,*

*vs.*

PUBLIC SERVICE ELECTRIC Co.,  
a corporation,

*Defendant.*

*Action  
at Law.*

The plaintiff, residing at Philadelphia, in the County of Philadelphia and State of Pennsylvania, says:

30

1. That on or about September 5, 1926, the defendant was a corporation, and as such maintained electric light poles over and upon the public streets of the County of Camden, and particularly on Essex street, between Gloucester and Fairview, in the County aforesaid.

40

2. At the time and place of aforesaid, the said plaintiff was upon said Essex street in an automobile at night, riding as a passenger, with one E. Haines Hillard. While the said Hillard was driving the said automobile and in the exercise of reasonable care, the said automobile was driven upon and against an electric light pole carelessly and negligently maintained there by the defend-

*Complaint.*

ant, within the boundaries of that part of the public highway reserved for vehicles.

3. The negligence of which the plaintiff complains and of which the defendant is guilty consists in the fact that said defendant maintained an electric light pole in that part of the public highway designated and set apart for the use of vehicular traffic; that the said defendant carelessly and negligently maintained an obstruction in said highway without giving notice thereof to the traveling public; and without using proper precautions to warn the traveling public; that the said defendant carelessly and negligently maintained and permitted to remain the said electric light pole in a part of the highway not set apart for that purpose.

10

4. The injuries of which the plaintiff complains caused by the negligence of the defendant aforesaid consists of severe bruises, contusions and lacerations of his head, body and limbs, and particularly cuts, bruises and lacerations to his face and head, severe nervous shock.

20

5. And the said plaintiff has been and will be compelled to lay out and expend divers large sums in and about having himself cured of his said injuries, and has and will suffer divers great losses by reason of the fact that he has been and will be unable to follow his usual occupation.

30

Plaintiff, therefore, demands of the defendant the sum of \$20,000, as damages, and brings this his suit.

JAMES MERCER DAVIS,  
Attorney of Plaintiff.

40

*James F. Coan vs. Public Service Elec. & Gas Co.*

**ANSWER.**

Filed December 1, 1926.

CAMDEN COUNTY COURT OF COMMON  
PLEAS.

10

JAMES F. COAN,

*Plaintiff,*

*vs.*

PUBLIC SERVICE ELECTRIC & GAS  
COMPANY,

*Defendant.*

*Action  
at Law.*

20 The defendant, a corporation of New Jersey,  
having its principal office at the City of Newark,  
in the said State of New Jersey, in answer to the  
plaintiff's complaint, says that:

1. In answer to paragraph one of the com-  
plaint, it admits that on the day in question it  
was a corporation. As to the remaining allega-  
tions contained therein, it has no knowledge or  
information thereof sufficient to form a belief,  
and therefore it denies the same.

30 2. It denies the allegations contained in the  
remaining paragraphs of the complaint.

FIRST DEFENSE.

40 1. It avers that the plaintiff was engaged in  
a common enterprise with the operator of the  
automobile in which he was riding, and that the  
negligence of the operator of said automobile con-  
tributed to the happening of the said alleged acci-  
dent, in that he propelled his automobile at a high  
and dangerous rate of speed and without proper

*Answer.*

appliances for the guiding and stopping thereof; that he failed to observe the condition of the highway over which said automobile was being operated and failed to exercise reasonable care in the operation of his said automobile, and was otherwise negligent.

10

#### SECOND DEFENSE.

1. It alleges that the negligence of the plaintiff contributed to the happening of the said alleged accident, in that he failed to warn the operator of said automobile in which he was riding or protest against its speed at the time and place set forth in the complaint.

#### THIRD DEFENSE.

1. It alleges that the plaintiff by reason of being a passenger in the said automobile, exposed himself to the risk of such an accident by failing to warn the operator of the said automobile in which he was riding of the rate of speed that it was being operated and of the manner of its operation by its said driver.

20

#### FOURTH DEFENSE.

1. It avers that its said poles are properly installed and maintained by virtue of the authority given to it and companies engaged in similar business, under various acts of the Legislature of the State of New Jersey and the various municipalities in which its said poles are installed.

30

#### FIFTH DEFENSE.

1. It avers that its said poles are properly installed and maintained.

JOSEPH COULT,  
Attorney of Defendant.

40

*James F. Coan vs. Public Service Elec. & Gas Co.*

**ORDER AMENDING DEFENDANT'S NAME.**

CAMDEN COUNTY COMMON PLEAS  
COURT.

10

JAMES F. COAN,

*Plaintiff,*

*vs.*

PUBLIC SERVICE ELECTRIC Co.,  
a corporation,

*Defendant.*

*Action  
at Law.*

20

This matter being opened to Court by James Mercer Davis, attorney of plaintiff, and it appearing that the defendant was inadvertently named as Public Service Electric Company, when the true corporate name of the defendant is Public Service Electric & Gas Company, and application being made to amend, and upon good cause being shown;

30

IT IS on this 30th day of November, 1926, ORDERED that the name of the defendant in said suit be, and the same is hereby amended by substituting for Public Service Electric Company, the name Public Service Electric & Gas Company.

And it is further ordered that the said suit proceed the same as if defendant had originally been correctly named.

SAMUEL M. SHAY,  
Judge.

I consent to the foregoing.

40

JOSEPH COULT,  
Attorney of Defendant.

*Substitution of Attorney.*

**SUBSTITUTION OF ATTORNEY.**

CAMDEN COUNTY COMMON PLEAS  
COURT.

<p>JAMES F. COAN,  <i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>PUBLIC SERVICE ELECTRIC AND GAS COMPANY,  <i>Defendant.</i></p>	<p>10</p>
---	-----------

I hereby consent that Henry H. Fryling be substituted in my stead as attorney of record for the defendant Public Service Electric & Gas Company in the above-stated cause. 20

Dated May 2, 1927.

JOSEPH COULT,  
Attorney of Defendant.

30

40

*Certificate of Clerk.*

## STATE OF NEW JERSEY.

## COUNTY OF CAMDEN.

10 I, CHARLES F. WISE, Clerk of the County of Camden, Do HEREBY CERTIFY, that the foregoing is a true copy of the proceedings and judgment records with all things touching and concerning the same in the case of

James F. Coan

vs.

Action at Law.

Public Service Electric and  
Gas Company

filed November 15th, 1927, and recorded in the Clerk's Office of the County of Camden, in Book C of Common Pleas Judgments, page 432.

20

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my  
(SEAL) official seal, at Camden, this thirteenth day of December, A. D. 1927.

CHARLES F. WISE,  
Clerk.

30

40

**NOTICE OF APPEAL.**

Filed December 2, 1927.

**CAMDEN COUNTY COURT OF COMMON  
PLEAS.**

E. HAINES HILLIARD,

*Plaintiff,*

*vs.*

PUBLIC SERVICE ELECTRIC AND  
GAS COMPANY,

*Defendant.*

*Action  
at Law.*

10

To James Mercer Davis, Esq., attorney of plain-  
tiff,

20

SIR:

TAKE NOTICE that the defendant appeals to the  
New Jersey Supreme Court from the whole of  
the judgment entered in favor of the plaintiff and  
against the defendant in the above-entitled cause.

Dated November 21, 1927.

HENRY H. FRYLING,  
Attorney of Defendant.

30

(Endorsed) "Service of a copy of the within  
notice of appeal acknowledged this 23rd day of  
November, 1927.

JAMES MERCER DAVIS,  
Attorney of Plaintiff."

40

*Hilliard vs. Public Service Electric & Gas Co.*

## STATE OF NEW JERSEY.

## COUNTY OF CAMDEN.

10 I, CHARLES F. WISE, Clerk of the County of  
Camden, Do HEREBY CERTIFY, that the foregoing  
is a true copy of notice of appeal in the case  
of

E. Haines Hilliard

vs.

Action

Public Service Electric and at Law.  
Gas Company

filed December 2nd, 1927, in the Clerk's Office of  
the County of Camden.

20 IN TESTIMONY WHEREOF, I have hereunto set  
my hand and affixed my official seal at Camden,  
this Thirteenth day of December, A. D. 1927.

CHARLES F. WISE,  
Clerk.

(SEAL)

30

40

*Judgment.*

**JUDGMENT ON VERDICT.**

CAMDEN COUNTY COMMON PLEAS  
COURT.

E. HAINES HILLIARD,

*Plaintiff,*

*vs.*

PUBLIC SERVICE ELECTRIC AND  
GAS COMPANY,

*Defendant.*

*Action  
at Law.*

10

Witness, Samuel M. Shay, Judge.

James Mercer Davis, attorney.

Charles F. Wise, clerk.

20

Judgment entered on the fifteenth day of No-  
vember, A. D. Nineteen hundred and twenty-  
seven.

Damages .....\$1,500.00

Costs ..... 83.72

-----  
\$1,583.72

30

**SUMMONS.**

The defendant was duly summoned.

40

*Hilliard vs. Public Service Electric & Gas Co.*

**COMPLAINT.**

CAMDEN COUNTY COMMON PLEAS  
COURT.

10

E. HAINES HILLIARD,

*Plaintiff,*

*vs.*

PUBLIC SERVICE ELECTRIC Co.,

*Defendant.*

*Action  
at Law.*

The plaintiff, residing at Collingswood, in the County of Camden and State of New Jersey, says:

20

1. That on or about September 5, 1926, the defendant was a corporation, and as such maintained electric light poles over and upon the public streets of the County of Camden, and particularly on Essex street, between Gloucester and Fairview in the County aforesaid.

30

2. At the time and place aforesaid, the said plaintiff was upon said Essex street in an automobile at night, engaged in operating said automobile and drove the same upon and against the electric light pole then and there standing in the public highway with great force and violence, thereby inflicting upon him severe personal injuries, by reason of which he has suffered great pain of mind and body thence hitherto, and completely wrecking his said automobile.

40

3. The negligence of which the plaintiff complains and of which the defendant is guilty consists in the fact that said defendant maintained an electric light pole in that part of the public

*Complaint.*

highway designated and set apart for the use of vehicular traffic; that the said defendant carelessly and negligently maintained an obstruction in said highway without giving notice thereof to the traveling public, and without using proper precautions to warn the traveling public; that the said defendant carelessly and negligently maintained and permitted to remain the said electric light pole in a part of the highway not set apart for that purpose.

10

4. The injuries of which the plaintiff complains caused by the negligence of the defendant aforesaid consists of severe bruises, contusions and lacerations of his head, body and limbs, and particularly of a fracture of three fingers on the left hand, divers cuts and bruises to his head, face and body, severe nervous shock and an injury to his back.

20

5. And the said plaintiff has been and will be compelled to lay out and expend divers large sums in and about having himself cured of his said injuries, and has and will suffer divers great losses by reason of the fact that he has been and will be unable to follow his usual occupation and has further been damaged by the wrecking of said automobile.

30

Plaintiff demands of the defendant the sum of \$20,000.00 as damages, and brings this his suit.

JAMES MERCER DAVIS,  
Attorney for Plaintiff.

40

*Hilliard vs. Public Service Electric & Gas Co.*

**ANSWER.**

Filed December 1, 1926.

CAMDEN COUNTY COURT OF COMMON  
PLEAS.

10	<p>E. HAINES HILLIARD, <i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>PUBLIC SERVICE ELECTRIC &amp; GAS COMPANY, <i>Defendant.</i></p>	<p><i>Action at Law.</i></p>
----	--	----------------------------------

20 The defendant, a corporation of New Jersey, having its principal office at the City of Newark, in the said State of New Jersey, in answer to the plaintiff's complaint, says that:

1. In answer to paragraph one of the complaint, it admits that at the time in question, it was a corporation. As to the remaining allegations contained therein, it has no knowledge or information thereof sufficient to form a belief, and therefore it denies the same.

30 2. As to the allegations contained in paragraph two of the complaint, it has no knowledge or information thereof sufficient to form a belief, and therefore it denies the same.

3. It denies the allegations contained in the remaining paragraphs of the complaint.

**FIRST DEFENSE.**

1. It avers that its said poles are properly installed and maintained.

*Answer.*

### SECOND DEFENSE.

1. It avers that its said poles are properly installed and maintained by virtue of the authority given to it and companies engaged in similar business, under various acts of the Legislature of the State of New Jersey and the various municipalities in which its said poles are installed.

10

### THIRD DEFENSE.

1. It avers that the negligence of the plaintiff contributed to the happening of the said alleged accident, in that he propelled his automobile at a high and dangerous rate of speed and without proper appliances for the guiding and stopping thereof; that he failed to observe the condition of the highway over which said automobile was being operated and failed to exercise reasonable care in the operation of his said automobile, and was otherwise negligent.

20

### FOURTH DEFENSE.

1. It avers that the negligence of the plaintiff contributed to the happening of the said alleged accident, in that he negligently and carelessly exposed himself to the risk of such an accident and neglected to take precaution or to exercise care to guard and protect himself against such an accident; moreover, at the time and place mentioned in the complaint, he was conducting himself in a careless, negligent and reckless manner and was not exercising care or taking proper precaution, and that he negligently, carelessly and recklessly placed himself in a position of danger at the time and place mentioned in the complaint.

30

40

JOSEPH COULT,  
Attorney of Defendant.

*Hilliard vs. Public Service Electric & Gas Co.*

**ORDER AMENDING DEFENDANT'S NAME.**

CAMDEN COUNTY COMMON PLEAS  
COURT.

10

E. HAINES HILLIARD,

*Plaintiff,*

*vs.*

PUBLIC SERVICE ELECTRIC Co.,

*Defendant.*

*Action  
at Law.*

20

This matter being opened to Court by James Mercer Davis, attorney of plaintiff, and it appearing that the defendant was inadvertently named as Public Service Electric Company, when the true corporate name of the defendant is Public Service Electric & Gas Company, and application being made to amend, and upon good cause being shown;

30

IT IS, on this 30th day of November, 1926, ORDERED that the name of the defendant in said suit be, and the same is hereby amended by substituting for Public Service Electric Company the name Public Service Electric & Gas Company.

And IT IS FURTHER ORDERED that the said suit proceed the same as if defendant had originally been correctly named.

SAMUEL M. SHAY,  
Judge.

I consent to the foregoing.

JOSEPH COULT,  
Attorney of Defendant.

40

*Substitution of Attorney.*

**SUBSTITUTION OF ATTORNEY.**

CAMDEN COUNTY COURT OF COMMON  
PLEAS.

E. HAINES HILLIARD,

*Plaintiff,*

10

*vs.*

PUBLIC SERVICE ELECTRIC AND  
GAS COMPANY,

*Defendant.*

I hereby consent that Henry H. Fryling be substituted in my stead as attorney of record for the defendant Public Service Electric & Gas Company in the above-stated cause. 20

Dated, May 2, 1927.

JOSEPH COULT,  
Attorney of Defendant.

30

40

*Certificate of Clerk.*

## STATE OF NEW JERSEY.

## COUNTY OF CAMDEN.

10 I, CHARLES F. WISE, Clerk of the County of Camden, Do HEREBY CERTIFY, that the foregoing is a true copy of the proceedings and judgment records with all things touching and concerning the same in the case of

E. Haines Hilliard

vs.

Action at Law.

Public Service Electric and  
Gas Company,

filed November 15, 1927, and recorded in the Clerk's Office of the County of Camden, in Book C of Common Pleas Judgments, page 430.

20

IN TESTIMONY WHEREOF, I have here-  
unto set my hand and affixed my offi-  
(SEAL) cial seal at Camden, this 13th day of  
December, A. D. 1927.

CHARLES F. WISE,  
Clerk.

30

40

*Dr. Vincent T. McDermott, direct.*

**TESTIMONY.**

(Mr. Atkinson opens the case for the plaintiffs to the jury.)

(Mr. Freggens opens the case for the defendant to the jury.)

Mr. Atkinson: If you have no objection, I would like to call Dr. McDermott out of turn. 10

Mr. Freggens: No.

DR. VINCENT T. McDERMOTT, sworn.

*By Mr. Atkinson.*

Q Dr. McDermott, were you a practicing physician on September 5, 1926? A I was a resident physician at the Cooper Hospital at that time. 20

Q Of what institution were you a graduate? A Jefferson.

Q In what year? A 1926.

Q And as resident physician at the Cooper Hospital, did E. Haines Hilliard, the gentleman sitting on my extreme right, come under your care or observation? Pardon me, the gentleman sitting in the center. A Yes, sir.

Q And what did you find he was suffering from at the time you saw him? A Well, when he came in I treated him and made a report of his injuries, which I have here. 30

Q Pardon me. Is that report in your handwriting? A Yes, sir.

Q And was it made by you at the time of your treatment? A Yes, sir.

Q Then you may refer to it.

Mr. Freggens: I object, unless it is absolutely necessary. 40

*Dr. Vincent T. McDermott, direct.*

The Court: Objection sustained.

10 Q Doctor, you may use it to refresh your memory if you cannot recall in detail the things that you found at that time. A I remember the two of them coming in that right, and, of course, the condition of Mr. Coan made it more im-

The Court: Can you testify accurately without referring to this?

The Witness: As to his injuries?

The Court: Yes.

The Witness: Not to the injuries.

The Court: All right, go ahead; go ahead, use it.

20 The Witness: He had, as I made a note, two lacerations and fracture of the second and third metacarpal bones in his left hand. Of course, I sewed him up, using four sutures, horse hair, and mercuro-chrome, banded up his hand, and permitted him to go home—to the dispensary for further treatment.

Q Mr. Hilliard? A Yes, sir; that is Hilliard.

30 Q How about Mr. Coan? A When he came in he was sort of semi-comatose, semi-conscious, and after sewing him up I made reservations in the ward and sent him upstairs for further treatment. I remember he had quite a cut on both sides—his lower lip here, it was hanging down, and the side of his head was cut.

Q The scars show there now? A Beg pardon?

40 Q Are those scars still visible? A You can see the one on the right side of his head there, but the others, you will have to look closer.

*Dr. Vincent T. McDermott, direct.*

Q I interrupted. Will you go on, please?

A Well, when he came into the accident ward, he was carried in and put immediately on the table there, and I sewed up his mouth, brought it up into place as best I could and put some drainage in there to take care of any pus and sewed up his head and his side. He had a little cut over the eye, the right eye, and put some drainage in the cut on the side of his head, and then committed him to the ward. 10

Q What next was done with Mr. Coan? A Beg pardon?

Q What next was done with Mr. Coan, if anything? A Well, he was taken to the ward, and then treated for his general condition.

Q How long, if you know, how long he remained in the hospital? A No, I don't remember definitely. 20

Q Is that all that you know about these two men, doctor? A I think— Of course, I saw Mr. Coan a few days afterward, and just watched his condition.

Q Mr. Coan didn't suffer any fracture of the head?

Mr. Freggens: I object to that as leading. 30

The Court: Sustained.

Q Do you know whether or not Mr. Coan was X-rayed? A Yes, he was; I believe he was.

Q Do you know of your own knowledge what the X-ray showed? A No.

No cross examination.

*E. Haines Hilliard, direct.*

E. HAINES HILLIARD, sworn.

*By Mr. Atkinson.*

Q Where do you live, Mr. Hilliard? A Merchantville, New Jersey.

10 Q You are one of the plaintiffs in this suit, are you not? A That's correct.

Q How old are you? A Twenty-seven.

Q Married? A Yes, sir.

Q Did you meet with a mishap on September 5, 1926? A I did. I am not positive about the date; it was the 5th or 6th.

Q Well, it was—was it or was it not about September 5th? A It was.

Q And where had you been that evening? A I had been in Gloucester, New Jersey.

20 Q And where were you going? A To my home in Merchantville.

Q Now, in going from Gloucester to Merchantville, what road or street did you use? A Well, I went out—I am not positive of the name of the street in Gloucester, but across the concrete bridge leading into Collings avenue, Fairview.

30 Q Now, with reference to the bridge, did you have any mishap along the road? A Not with reference to the bridge.

Q I mean, with reference to the vicinity of the bridge. A Yes, immediately on the far end of the bridge—that's the Fairview end—I collided with a pole.

Q Yes. A The car in which I was driving hit this pole.

40 Q And what happened to the car? A Why, the car was very badly damaged; there was—the shackles on the spring were broken, the frame was generally bent, the radiator smashed in.

*E. Haines Hilliard, direct.*

Q We will go back to that in just a minute. What happened to you? A Well, I don't recall. I was immediately rendered unconscious and thrown out of the car, and picked up from the road.

Q Do you know who picked you up? A Yes; Mr. Gilmore.

10

Q What was your condition when he picked you up? A Unconscious.

Q Well, after Mr. Gilmore came to you, you regained consciousness, did you not? A Why, yes; I regained consciousness before I got to the hospital.

Q I see. Now, at that time, when you regained consciousness, in what condition did you find yourself? A I found myself pretty well covered with blood and a cut across my eyebrow here, and the bridge of my nose, and my hand was lame; later it turned out to be fractured.

20

Q Yes, and how about Mr. Coan; what was his condition? A He was in very bad condition; the most noticeable thing was that he was completely covered with blood and that his lip was hanging away down, and a severe cut on his temple here, and a number of cuts.

Q Was he conscious or unconscious? A Well, pretty badly shaken up, not unconscious, not strictly speaking, but very well shaken up.

30

Q Now, where did Mr. Gilmore take you? A To the Cooper Hospital, Camden.

Q By whom were you treated there? A Dr. McDermott.

Q How long did you remain in the hospital? A I remained there until they had finished sewing up Mr. Coan and they finished sewing me up; I imagine I was there possibly an hour, an hour and a half.

40

*E. Haines Hilliard, direct.*

Q Then where did you go? A To my home in Merchantville.

Q Did you return to the hospital again? A Yes.

Q When? A The following morning.

10 Q Where were you employed at that time? A In the Franklin Fourth Street National Bank in Philadelphia.

Q And did you go to work the day following the accident? A No, sir.

Q When did you go to work? A Approximately two weeks later.

Q During the two weeks that you were not at work, what was your condition? A Well, the day immediately following the accident, my wife thought I was—

20

Mr. Freggens: I object.

The Court: Strike it out.

Q You mustn't tell what your wife thought. You can only tell of your own feelings, what you said and did. A Well, the next day I considered that I was feeling well enough to return to the hospital, as the doctor had suggested at the time he treated my injuries.

30 Q You went back to the hospital? A So I went back to the hospital; that is correct.

Q I see. Now, how about the following day; did you go to work the following day? A No; the following day I was—the following two days I was confined to bed; the bruises started to stiffen me up.

Q How long did you remain in bed? A Two days.

40 Q After you got out, what did you do? A I just took things easy around the house.

*E. Haines Hilliard, direct.*

Q And did or didn't that continue until you returned to work? A Yes, I returned to work just as soon as I was physically able to.

Q I mean, during the interval, the two weeks that you remained at home, did you go out and chop wood or play football or anything like that?

A No; I made several trips to my personal physician's office, to have this hand treated and bandaged. 10

Q What became of your automobile? A I sold the automobile to the garage which towed it in off the road.

Q How much did you get for it? A \$50.00.

Q What was the car worth immediately before the accident?

Mr. Freggens: I object; this man is not qualified to testify. 20

The Court: I think the objection is well taken.

Mr. Freggens: Sir?

The Court: I say, I think the objection is well taken.

Mr. Atkinson: Exception, if you please, sir?

(Exception noted for plaintiffs.) 30

Q Do you know— Pardon me. What make of machine was it? A Studebaker.

Q Do you know whether or not the Studebaker automobile company at that time had what is known as a standard trade-in value which they placed upon cars? A Yes.

Q And do you know what the trade-in value of your car was immediately before the accident?

Mr. Freggens: I have no objection to a yes or no answer. 40

*E. Haines Hilliard, direct.*

Q You will have to answer that yes or no, if you do know. A Why, no; I don't know what the company—not exactly how much they would allow as a trade-in value for it.

Q How long had you owned the car? A Just about two years.

10 Q Did you buy it new, at the time you bought it? A No; after it had been driven 4,500 miles.

Q What was the condition at the time of the accident, just prior? A Very good.

Q And what style of car was it, touring car or coupe, or what? A Touring car.

Q What condition were the tires in? A The tires?

Q Yes. A Why, it had two new tires on, and two in fair condition.

20 Q Have any spares on it? A One spare tire.

Q In what condition was the engine at that time? A The engine was in exceptionally good condition. I had recently had the engine entirely gone over.

Q Now, what expenses did you suffer because of this accident?

Mr. Freggens: I object; that is very general.

30 The Court: Well, yes, I think perhaps he might be limited better than that.

Q I will shorten it for you. Do you know what your doctor's bills were, Mr. Hilliard? A As I recall, the doctor bill was \$20.

Q And did you expend any money for medicines? A No, nothing for medicines.

Q What was your hospital bill, do you know? A Hospital bill was seven and a half, I think.

40 Q Now, on this particular night, was there any light on this pole?

*E. Haines Hilliard, direct.*

Mr. Freggens: I think it is very leading, if the Court please.

The Court: Was there or was there not a light on the pole?

Q Was there or was there not a light on the pole? A No. 10

Q How far from the center of the road was the pole? A From the center of the road, not from the edge of the road?

Q From the center of the road, I am talking about now. A I should say approximately ten feet, ten or twelve feet.

Q And how much of the road was there improved to the right of the pole, in the direction in which you were going? A Approximately ten feet. 20

Q Do you know to whom this pole belonged?

Mr. Freggens: I object to that, unless he answers yes or no.

Mr. Atkinson: That is all he is going to answer.

Mr. Freggens: I object to the question. I don't think any answer would be binding upon us.

The Court: If he knows he can tell; of course, he would have to know it. 30

Mr. Atkinson: He can tell what he knows, and he can cross examine.

The Court: If he knows whose pole it is, he can testify; if he doesn't, then he cannot.

Q Do you know to whom this pole belonged? A Yes.

Q To whom? A The Public Service Electric Company. 40

*E. Haines Hilliard, direct.*

Q Now, after the accident, did you go to the scene of the accident and take some photographs?

A I did.

Q How many days after the accident? A Four days after the accident.

10 Mr. Atkinson: I have half a dozen photographs here, and the other side agrees they may be offered as exhibits. I will just identify them.

Q I show you six photographs, and ask if they are the photographs or pictures which you took of the pole? A Sure.

Mr. Atkinson: I offer them.

20 (Said photographs are marked Exhibits P. 1, P. 2, P. 3, P. 4, P. 5 and P. 6.)

Q Did you see this pole before you ran into this night? A I did not.

Q Was there any warning of any kind there to notify you that there was a pole at that particular point? A No, there was not.

30 Q Now, where was your automobile, with reference to the traveled part of the road, at the time it came in contact with the pole? A I was— The automobile was being driven on the generally traveled portion of the road.

Q Was there anything along that part of the road to indicate to you that it was the general portion traveled? A Why, the tire tracks of other automobiles.

Mr. Atkinson: I see; that is all.

*E. Haines Hilliard, cross.*

*Cross examination by Mr. Freggens.*

Q You didn't tell us how fast you were going?

A No.

Q How fast were you going? A Approximately 20 or 25 miles an hour.

Q And your car was so demolished that you had to sell it practically for junk? A That is correct. 10

Q Going at that rate of speed? A That's right.

Q It was in such condition that it could not have been repaired, in your estimation, after the accident? A In my estimation, it was in such condition that it wouldn't have been worth while.

Q So it was better to junk it? A That's right. 20

Q Where had you been that day? A What's that?

Q Where had you been that day, prior to the accident? A Gloucester.

Q Where, before that? A Atlantic City.

Q Yes, you had been there for a day, hadn't you? A That's correct.

Q And what time did you leave Atlantic City, do you know? A Why, I think ten o'clock in the evening. 30

Q And Atlantic City is how far from Gloucester, do you know that? A It's about sixty miles.

Q When you got to Gloucester, where did you go there? A Why, stopped in to see friends.

Q Any other place? A No, sir.

Q And what did you do at your friends' house? A Entered into conversation.

Q Anything to drink? A No, sir.

Q Sure about it? A Yes, sir. 40

*E. Haines Hilliard, cross.*

Q Have any wine to drink? A No, sir.

Q Was Coan the only fellow that was with you at that time? A When we got to my friends' house?

Q Yes. A Or when we left?

10 Q When you left? A He was.

Q No other fellow driving the automobile? A No.

Q And this accident happened at what time in the morning? A Sometime after midnight; I am not sure of the exact time.

Q How long had you stayed at your friends' house in Gloucester? A Possibly an hour.

20 Q So you made pretty good time from Atlantic City to Gloucester and from Gloucester over through to Camden, didn't you? A Why, we made pretty good time coming up the White Horse Pike, I should say, yes.

Q And were you familiar with the location where this bridge is situated? A Could I explain something just there?

Q No. Were you familiar with the location? Had you been over that section of the country before? A A considerable time before that, yes.

30 Q How long before that? A At least two years.

Q Hadn't you been there since the improvements were made, and the new bridge put there? A I hadn't; I had been down in Florida.

Q You came back from Florida when? A In August, 1926.

Q Just prior to the accident? A Just prior to the accident.

Q Was that—

40 Mr. Freggens: I withdraw that.

*E. Haines Hilliard, cross.*

Q As you were coming over the bridge, did you have any difficulty in handling your car, so far as control was concerned? A None whatever.

Q By reason of the condition of the road or otherwise, over the bridge? A I slowed down. You come over the railroad track just before you get to the bridge. 10

Q And that reduced your speed to about what? A Twenty miles an hour, when I got to the other end of the bridge.

Q When you first came through, you were going at what rate of speed? A I was possibly driving twenty-five when I got to the bridge.

Q You slowed down as you were going across the bridge? A That's right.

Q Your car was in good condition, I suppose? A Yes. 20

Q And your brakes worked properly? A Yes.

Q Headlights all right? A O. K.

Q And they threw a beam for how great a distance ahead of your car? A Well, they were good lights; I don't know how far they threw a beam; they were in good condition.

Q They went approximately 250 feet, anyway, didn't they? A I don't know. 30

Q Do you happen to know what the standard requirements are in New Jersey? A I will be frank; I don't know the exact measurement.

Q Would you say it was two hundred and fifty feet they would throw, anyway? A On a straight, level road, I would say that the lights would throw a beam approximately two hundred and fifty feet.

Q Yes, and you were watching the road as you were coming across the bridge? A I was. 40

*E. Haines Hilliard, cross.*

Q Didn't you see this pole before you ran into it? A I didn't.

Q Was there anything to obstruct your view of it? A It was a foggy night and the bridge is curved, so that going over the bridge you could not see the other side.

10 Q What sort of fog was it, light fog or heavy fog? A It was one of those fogs that hangs over the marshes, Timber Creek marsh land, dripping rain slightly.

Q Did that interfere with you in any respect in the operation of your automobile? A Made me more careful.

Q So you then attempted to reduce your speed—you were going over a territory which you didn't know, or which had changed? A Yes, I  
20 would drive more carefully on a foggy night than otherwise.

Q Can you go across the bridge about twenty miles an hour? A Approximately at the rate of twenty miles an hour.

Q The condition of the fog—you could see how far ahead of you? A I could see—I am getting all mixed up on distances. I could see two hundred feet ahead.

Q Will you please explain why you didn't see  
30 this pole, situate where it was? A Because it was a dark night.

Q Your lights were not of sufficient power to allow you to see this pole? A I didn't see it; that's all there is to it.

Q Is it not true that you had stopped at a saloon in Gloucester and had a few drinks? A I did not.

Q Do you remember being visited at the hospital by Detective Ward of the Camden Police Department? A I don't know Detective Ward.  
40

*E. Haines Hilliard, cross.*

Q Do you remember being interviewed by a representative of the Department of Police shortly after the accident? A I recall a man being at the hospital who said he was from the Detective Bureau at City Hall. I don't know that he was a detective and I don't know his name.

Q You had a conversation with him about this case? A Yes, he was there at the time I was sewed up and my hand bandaged up. 10

Q Did you tell him that your car was driven by a man by the name of "Bill"? A I don't remember.

Q You don't remember that? A I don't remember that.

Mr. Atkinson: You said "Bill"?

Q Did you say you did or did not? A I don't recall. 20

Q You don't remember saying that to him? A I do not.

Q Did you at the same time tell this gentleman that you had stopped at a saloon in Gloucester and had a few drinks? A I have no recollection of telling anyone that.

Q Well, you know whether you did or not. Did you or did you not? A Did I or did I not what? 30

Q Tell him that you had stopped in a saloon in Gloucester? A I don't recall.

Q Will you please give me a straight answer? You must know whether you said it or not.

Mr. Atkinson: I object. The witness has a right to say whether he don't recall.

The Court: Yes, he has a right to say that, if he cannot say positively yes or no. 40

*E. Haines Hilliard, cross.*

Q Will you say you didn't say it? A My reply was that I didn't recall.

Q Did you say to the gentleman from the Police Department that "Bill ran away from the scene of the accident immediately after the accident"? A I don't recall.

10 Q Will you say that you didn't say it? A My answer was that I didn't recall. I don't recall saying that to anyone.

Q Was there any reason for you having a conversation to that effect with the police officer? A Your question again?

(Question repeated.)

20 The Witness: Why, the people at the hospital, including the police officer, were interested in knowing what had happened when we came in all cut up, so naturally there was some conversation.

Q Were you in any such physical condition because of participating in any intoxicating beverage which would cause you to give such a story as that to the police officer? A I was not.

30 Q You say that you— Now, did you say anything to the gentleman, to the police officer that was present to the effect that your automobile hit a pole in the roadway and that you lost control of it, which caused the auto to run into a pole? A Not that I recall; not to the best of my recollection.

40 Q What was your conversation then, with the police officer of the Camden Police Department? A Well, now, the police officer was there and he said, "What happened to you fellows," or something to that effect, and I said, "We hit a pole," and he said, "Where?" and I told him on the

*E. Haines Hilliard, cross.*

Fairview end of the bridge over Timber Creek, on the edge of Gloucester, and I recall he said, "Well, we had better get the car towed in off the road."

Q Didn't you say to this police officer that all you knew about the accident was that Bill was driving you home, that you were both intoxicated and that he ran away after the accident, referring to Bill? A I don't recall anything to that effect. 10

Q Was this officer uniformed who questioned you, examined you? A He was not.

Q Did you at that time know what the penalty was in this State for driving while under the influence of liquor? A No.

Q You didn't know? A No.

Q You had a driver's license? A What's that? 20

Q Did you hear that question? A Yes, you asked about the penalty for driving under the influence of liquor, and I said "No."

Q You weren't registered to drive in New Jersey, were you, at that time? A At that time, no.

Q Did you ever get a driver's license under the New Jersey law? A Yes. 30

Q Prior to that? A Prior to that time.

Mr. Freggens: That is all.

*By Mr. Atkinson.*

Q Well, Mr. Hilliard, did your automobile strike a hole and you lose control of it this night? A No.

Q Were you under the influence of liquor at the time of the accident? A I was not. 40

*E. Haines Hilliard, cross.*

Q In order that there may be no dispute about it in plain English, were you drunk at that time?

A No, I was not drunk.

Q Did you stop at a hotel in Gloucester? A I did not.

10 *By Mr. Freggens.*

Q Would you mind giving us the name of this friend at whose house you stopped? A Certainly.

Q What is it? A John Goan.

Q And he lives where? A He lives on Chambers avenue in Gloucester; 447, the number on Chambers avenue.

20 Q Just one question I forgot, if the Court will allow me. You said before the Public Service Electric Company owns this pole. Where did you get that information? A The pole bore electric wires, and the Public Service Electric Company is the only electric company in this vicinity.

Q So that is your theory; because of that, they own this—

30 Mr. Atkinson: You are asking that the witness—

Mr. Freggens: I have a right.

Q That is just a supposition on your part?

Mr. Atkinson: I object; it seems to me that becomes entirely a question for the Court and jury.

The Court: I don't know; that is the fact from which he draws his conclusion.

40 Mr. Atkinson: Yes, sir.

*James F. Coan, direct.*

Q You don't know whether or not that pole happens to be owned by the telephone company down here, do you? A The pole belongs to the electric company.

Q Well, how do you know? A Because it had electric light wires on it, and not telephone wires.

10

Q How do you differentiate between the two? A The light wire is a larger wire, heavier wire.

Q And you don't know whether or not the electric light company just has permission to run wires on the telephone company's poles, do you? A There were no other wires on the poles, and that's where the wires stopped.

Q How many wires were on this pole? A I don't know.

Q A number? A I don't know the number, no.

20

Mr. Freggens: That's all.

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JAMES F. COAN, sworn.

*By Mr. Atkinson.*

Q Where do you live, Mr. Coan? A 330 North 52nd street, Philadelphia.

30

Q Were you with Mr. Hilliard on the night of September 5, 1926? A I was.

Q Which side of the automobile were you driving? A I was to the right.

Q Were you sitting? A I was to the right of Mr. Hilliard.

Q On the front seat? A On the front seat, yes, sir.

40

*James F. Coan, direct.*

Q And were you familiar with the street that you were traveling on at the time of this happening? A I had never been there, no, sir.

Q Now, won't you just describe what happened, so far as you can remember? A As I recall, we were going along this particular road and the machine stopped suddenly, and the next thing I knew, Mr. Gilmore came along in another car, I believe, and Mr. Hilliard, I recall, was stretched out on the road in the rear of his car, and I was sort of dazed, semi-conscious, and the next thing I knew, they were stitching me up in the hospital.

Q What hospital? A Cooper Hospital, Camden.

Q What was the name of the doctor? A Dr. McDermott.

Q That is the gentleman who testified here? A Yes, sir, that's right.

Q How long did you remain in the hospital? A About three weeks.

Q Now, what did your injuries consist of, as far as you can tell? A Well, as soon as the accident occurred, I knew that my lip was hanging down, I realized that, and the next day at the hospital, I woke up and I had about ten or twelve stitches here (indicating) and the same number in the back of my neck, and laceration above the eye, the right eye, and both knees were bruised, and I also lost the nerves controlling this eyebrow. In other words, I can't raise this eyebrow, due to this laceration here on the side (indicating).

Q Now, after three weeks at the hospital, where did you go? A I went home right after that.

*James F. Coan, direct.*

Q How long did you remain at home? A I remained at home about two weeks.

Q Where were you employed at the time of the accident? A I was with the Liggett & Myers Tobacco Company.

Q And were you employed on a monthly salary, or how? A Weekly basis, salesman. **10**

Q Did you receive your pay during the time you were laid up? A I did, yes, sir.

Q So that you lost no actual money because of your injuries? A No, not at that time, no.

Q Now, have you fully recovered from your injuries? A No, I have not.

Q What troubles you now, if anything? A Why, I seem to suffer with headaches here in the back of the head, and if I read for any length of time, my eyes bother me. **20**

Q Have you lost any time since the accident? A I lost my position right after that, through the accident.

Q How much were you making at that time? A I was averaging thirty or thirty-two dollars a week.

Q Are you employed now? A Yes, sir.

Q How long were you out of work? A What was that?

Q How long were you out of work? **30**

Mr. Freggens: I object; I don't believe there is any testimony to connect that up with the accident.

Mr. Atkinson: He has already testified that he lost his employment, as I recall it, because of the accident.

Mr. Freggens: After he went back to work.

Mr. Atkinson: What? **40**

*James F. Coan, direct.*

Mr. Freggens: After he went back to work.

The Court: Well, I understand that you want to prove that this man lost time as the result of this accident.

10 Mr. Atkinson: And he said "No," he had gone back to work. Then he volunteered that he had subsequently lost his position because of the accident.

The Court: All right; I will allow it.

Q How long were you out of work at that time? A How long was I out of work at that time? About one month, and then I took a position in the selling business, but it seems that I can't just do my work as I did previous to the  
20 accident; it seems that I am—

Q Has there been any difference in the pay between the two positions? A Yes, sir.

Q Do you get more now or more the other time? A Not as much.

Q How much do you get now? A Well, I would say now that I average about \$20.00 a week.

Q Now, what doctor bills did you pay?

30 Mr. Freggens: I object; that isn't the proper way, if the Court please.

The Court: Yes, you will have—if the objection is taken, you will have to prove it.

Q What expenses were you put to concerning your injuries?

40 Mr. Freggens: If the Court please, that is just another way to attempt to put it through.

*James F. Coan, cross.*

The Court: Yes, objection sustained.

Q Do you know what your hospital bill was?

Mr. Freggens: Same objection.

The Court: Sustained.

Mr. Atkinson: I submit, sir, that that is  
admissible. 10

Q Did you see any light or warning of any kind on the road, advising you that this pole was there? A I did not, no, sir.

*Cross examination by Mr. Freggens.*

Q You said something about losing your position. What did you say was the reason for that?

A My position with this company is calling on the people, talking to people each day. I was bandaged up and I felt sensitive and I just couldn't put my best efforts into my work, and subsequently I lost my position. 20

Q Yes. Now—For the Liggett and Myers Tobacco Company, is that right? A That's right.

Q You worked under Mr. Andesdale and Mr.

A Mr. Stearns was my boss.

Q You weren't discharged because you were late getting to work, were you? A No, sir. 30

Q You are sure of that? A Absolutely.

Q And you had not been habitually late and dilatory in performing your work before you came back and before this accident, is that right?

A What's that?

Q You had not been habitually late for a period before the accident, while working for the company? A No, sir.

*James F. Coan, cross.*

Q You are sure about that? A Sure.

Q That is not the reason why Mr. Stearns discharged you, is it? A No, sir, I won't say that. I felt that right after the accident my work seemed to fall off, I didn't feel right myself, and I left there, I would say, two weeks  
10 after I came back after the accident.

Q Well, did you leave or did they discharge you? A Well, that's it; they discharged me.

Q That concern had been decent enough to pay your salary while you were in the hospital? A Yes, sir, they paid me while I was off those weeks.

Q On this night in question, or this day this accident happened, you had been with Hilliard in Atlantic City? A Hilliard, yes, sir.

Q It was a party you were on, weren't you, had some girls with you? A No, we spent the  
20 day in Atlantic City.

Q Yes. A And we drove a young man and his wife to Gloucester, and then from there we went to Mr. Hilliard's home in Merchantville, alone at that time.

Q Did you stop any other place than his residence in Gloucester? A No, sir.

Q And you were in complete control of your mental faculties prior to the accident? A I  
30 was, yes, sir.

Q Were you awake and observing? A Yes, sir.

Q And did you notice the speed at which Hilliard was driving his automobile just prior to the accident? A Yes, I would say twenty miles an hour.

Q Was there a fog, you say? A There was a fog, as I recall; been raining.

Q Bad fog, or light one? A Well, it was sort  
40 of a heavy fog.

*James F. Coan, cross.*

Q But it didn't interfere with the headlights on your car showing the road for a considerable distance ahead, did it? A The lights seemed to gleam ahead.

Q So that you could see the road and see the roadway in front of you, is that right? A Not to any big extent. 10

Q Well, for how great a distance ahead of the automobile did you see the highway proper? A I would say— Well, I am not sure; fifty feet.

Q Are you sure that is all you could see? A About fifty.

Q He was operating his automobile carefully? A Mr. Hilliard?

Q Yes. A Yes, sir.

Q And from your observations during the day, did the automobile appear to be in good condition? A Yes. 20

Q Mechanically? Do you drive an automobile yourself? A I don't drive, no, sir.

Q What was there to obstruct your view of this pole as you were coming over the bridge? A Well, I would say the curve there at the bridge.

Q What? A The bridge curved there.

Q What part of the highway was your automobile on? A What part of it? 30

Q Of the highway, yes. A In the center.

Q There is a curve there, you say? A There is a curve there on the bridge, before you reach the bridge. I had never been through there; I am not familiar.

Q This pole is on the far side of the bridge in the direction you were going, isn't it? A Yes, sir.

Q So that you had a chance as you were going across the bridge to see at least fifty feet in front of your automobile, in accordance with your 40

*James F. Coan, cross.*

own testimony. Is that right? A About fifty feet.

Q And you didn't see this pole ahead of you?

A No, sir.

Q Why not? A Well, I would say— As I said, I am not familiar with the road, but the  
10 pole was there; that's all, and we didn't see it on account of the fog.

Q It wasn't the excessive speed that the automobile of Hilliard's was going that stopped you from seeing this pole? A No, we were going— say—twenty miles an hour.

Q Twenty miles an hour, and when you first saw the pole, didn't you call out any warning to Hilliard to stop? A I didn't see the pole.

Q You didn't see it at all? A I didn't.

Q But you were looking straight ahead? A  
20 Why, yes, as a rule you do that. I was sitting there beside Mr. Hilliard, to his right, and the first thing I knew there was a sudden stop, and this other gentleman came along and Mr. Hilliard was stretched out, and he takes us to the hospital.

Q You went through the windshield entirely, didn't you? A It happened so quickly I wouldn't say; I don't know. I guess I did; I was all cut up on the right side.

Q At twenty miles an hour? A Going about  
30 twenty.

Mr. Freggens: That is all.

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*Flood Gilmore, direct.*

FLOOD GILMORE, sworn.

*By Mr. Atkinson.*

Q Where do you live? A Gloucester.

Q On September 5, 1926, were you at the scene of this accident? A Yes, right after it happened. 10

Q And can you tell how long the accident had happened before you got there? A No, but I judge it was from three to five minutes.

Q What did you find when you got there? A Just as I got there, Mr. Coan, I believe—he walked around from the front of the machine. He could hardly walk from loss of blood, and as I got close, Mr. Hilliard lay by the right-hand hind wheel—he seemed unconscious. I pulled over with my car and backed it in, so I wouldn't have so far to carry Mr. Hilliard, and lifted him in the machine. After he was in he began to help himself. Then I went around and helped Mr. Coan. 20

Q What did you do? A Took them to the Cooper Hospital.

Q Then after they were taken to the Cooper Hospital, what did you do? A I stayed there and took Mr. Hilliard home. 30

Q Where did Mr. Coan go? A They put him upstairs on a wheeling chair.

Q Are you familiar with this bridge and pole, that has been testified to? A Yes, I am.

Q How frequently would you see the bridge and the pole? A I go across there three to four times a week—two to three times, a week.

Q On this particular night, do you know whether or not there was any electric light burning upon this pole? 40

*Flood Gilmore, cross.*

Mr. Freggens: I object, unless it is as to time.

The Court: Yes, I think that is fair, what time he went through there.

10 Q How long did you remain at the scene of the accident? A Just as soon as I could get them in the car and take them away.

Q Had you been to the scene of the accident before, that evening? A I had gone through there about—well, maybe three-quarters of an hour or an hour before that; I was on my way home.

Q Did you go back over the scene of the accident that night? A No, not that night, but I did about three nights later.

20 Q On this particular night, when you arrived at the scene from three to five minutes, in your judgment, after the accident, did you observe whether or not there was any light burning upon the pole? A There wasn't any light.

Q Where was the automobile left when you took these two men away? A Right under the pole.

*Cross examination by Mr. Freggens.*

30 Q Did you see any wires hanging from the next pole on that same road, down alongside the pole where the automobile was? A No, not that night.

Q Did you look to see if there was any there? A No.

Q Did you examine the pole to see whether it had shifted in its position? A No, I didn't examine that.

40 Q Didn't examine that. You don't know, of course, whether there had been a light burning or

*Motion for a Non-suit.*

not? A I travel a good bit and never noticed any light being there. There used to be some people on the bridge, and you couldn't see them, but three nights after the accident the bridge was well lit up, and the people moved over to the other end of the bridge.

Q By the lights? A From this electric light pole. 10

## PLAINTIFFS REST.

Mr. Freggens: I move for a non-suit on the ground that there is no proof of ownership nor have they proven negligence. The complaint alleges that we maintained an electric light pole on that part of the public highway designated and set apart for the use of vehicular traffic, and carelessly and negligently maintained an obstruction in the highway without giving notice thereof to the public and without giving the proper notice; that we carelessly and negligently maintained said pole in a part of the highway not set apart for that purpose. There has been no proof that this pole was not maintained where it should have been, nor has there been any proof that this defendant owns it. 20

Mr. Atkinson: The testimony of the plaintiff Hilliard was that the pole was in that part of the road which was being traveled. He could tell that because he could see the tire tracks of other automobiles. The pictures are in evidence, and I think they raise a question of fact for the jury. The last witness who was on the stand testified that there was no light upon the pole at that time and that there had not been for some time, but that there was a light some three or four 30 40

*James Harvey Bryan, direct.*

days after the accident. Now, it seems to me that that raises a question.

The Court: I think there is sufficient to take it to the jury, and will deny the motion.

Mr. Freggens: And grant me an exception?

10

The Court: Surely.

(Exception noted for the defendant.)

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THE CASE FOR THE DEFENDANT.

JAMES HARVEY BRYAN, sworn.

*By Mr. Freggens.*

20

Q Mr. Bryan, where do you live? A Fairview.

Q And did you see this accident on the night of September 5th of last year? A I was coming along over the bridge.

Q That is, the bridge near which this pole is located? A Yes, sir.

Q And where had you been that day? A I was living in Fairview.

Q You were living in Fairview? A Yes, sir.

30

Q But where had you been? A On a party, coming home from a party.

Q This party was how far away from where you lived—blocks or squares? A About three squares.

Q Do you remember what time it was? A One-forty in the morning; I was getting home.

Q How did you happen to place that in your mind? A Well, I generally get home about that time.

40

*James Harvey Bryan, direct.*

Q Now, on this particular night, can you just let us know what the weather conditions were at that time? A Well, when I was going over the bridge, the big machine was coming over, and all of a sudden it ran into the pole and knocked the pole a bit, done some damage to it. The lights was all lit, as far as I know of, when I come over. 10

Q With respect to the weather conditions, can you tell us whether it was raining? A Foggy night, drizzling rain.

Q Yes, and were you going in the same direction the automobile was going, or the opposite direction? A The same direction the automobile was going.

Q Did you see the automobile before the accident? A No.

Q What was the first thing that attracted your attention? A When he hit the pole was the first thing that attracted my attention, and knocked the lights out; made a crash against the pole. 20

Q Can you tell us whether it was a heavy machine or a light machine? A I think it was pretty heavy, myself. When he hit the pole—

Q Did you go to the scene of the accident then? A Yes, I helped put one of the fellows in the Ford machine. 30

Q And had you seen the pole against which this automobile was wrecked prior to the accident? A What's that?

Q Had you seen the pole against which this automobile ran prior to the collision?

Mr. Atkinson: I object, until some definite time is fixed as to when he saw it.

The Court: I think the objection is well taken. 40

*James Harvey Bryan, direct.*

Mr. Freggens: The man said he was just crossing over the bridge.

Q As you were coming across the bridge, had you had occasion to notice the first pole, or the pole which the automobile ran into? A The first pole he ran into?

10

Q Had you had occasion to notice it just before the accident? A No.

Q Can you tell us whether or not there was a light burning—

Mr. Atkinson: I object.

The Court: Sustained. He said he didn't see it just before the accident.

Mr. Freggens: I didn't pay any particular attention to it. What is his testimony?

20

The Court: I understand the testimony is that he didn't see it before. Now, if there is anything else there—will you repeat that testimony?

(Questions and answers repeated.)

Q Did you see this pole into which the automobile later collided before the collision occurred?

Mr. Atkinson: I object. Wait a minute.

30

A Yes, before it occurred there was all lights on there; it was all lit.

Q Are you sure about that? A Yes, I am positive that the lights were all lit.

Q Did the collision have any effect upon the light? A Yes, put it out.

Q Were there any other lights on the street at that time, on any of the other poles? A Yes, all the way down to the end.

40

*James Harvey Bryan, cross.*

Q Did anything happen with respect to these lights after the collision? A Yes, a Public Service man come there and repaired the lights again as soon as it happened.

Q Were you there when the repairman came and repaired the lights? A Yes, I was there.

Q Did you look at the pole after the collision, when the automobile was still up against it? A Yes, the automobile was still up against it.

10

Q Did you notice anything with respect to whether or not the pole had been shifted? A Yes; the pole had been shifted.

Q Did you notice how far it had been shifted? A About half a foot.

Q With respect to this pole in question, can you tell us whether or not there was any damage to the wires after the collision? A Why, I think there was one wire busted; the electric light man went and fixed it.

20

*Cross examination by Mr. Atkinson.*

Q By whom were you employed at that time? A Where was I employed at that time? No place, at that time.

Q Where are you employed now? A No-where.

30

Q Is it your habit to get home regularly at 1:40 every morning? A No, not 1:40; I come home different times.

Q Usually about 1:40? A No; there was a party that night, and I was late getting home.

Q How often do you attend these parties? A Sir?

Q How often do you attend these parties? A I think I can go out any time and go to parties, if I wish.

40

*James Harvey Bryan, cross.*

Q Sure, but I am asking you how often you do go to the parties? A Every once in a while.

Q How many times a week? A I couldn't say; about once a week, maybe.

Q Once a week. Of course, there is nothing to drink there, is there, at these parties? A Well—

10 Q You are going to be truthful about that, aren't you?

Mr. Freggens: I object to that.

The Court: Sustained.

Q Was this a large machine? A Sir?

Q Was this a large machine, this automobile?

A Yes, a big machine.

20 Q Yes; it was a great deal larger than the average machine, wasn't it? A Yes, sir.

Q It wasn't quite as large as one of these buses, was it? A I don't know.

Q Huh? A I don't know.

Q Would you think it was as large as one of the buses? A No, of course not.

Q But it was larger than the average machine; that's true, isn't it? A Yes.

30 Q Did you talk to either of the men this night? A No, when I came along there, they was throwed out of the machine.

Q Yes, and there was another machine came along, wasn't there? A Sir?

Q Wasn't there another machine came along?

A Yes, a Ford machine, on top of the hill, going to Gloucester.

Q Did you help put these men in the machine?

A Yes, sir.

40 Q Did you talk to the man who drove the Ford? A No, sir; they was unconscious; I didn't talk to them.

*James Harvey Bryan, cross.*

Q But the man who drove the Ford wasn't, was he? A No; he said he would take them to the hospital.

Q Then you did talk to him? A Well, only—it was done in one minute's time.

Q Did you say anything to this man at all? A No, only helped him; he said he would take them to the hospital. 10

Q And that is all the conversation you had with him? A Yes.

Q What did you do after he drove off? A I stood there for a while watching the machine.

Q What was there to watch for? A Why, coats in there; I stayed there until somebody come and took the machine away.

Q Who came? A The towing car.

Q What time? A Why, I guess about two o'clock. 20

Q About two o'clock. Where did you stay between the time of the accident and the time the towing car came there? A Right there.

Q Did you stand, sit down, or what? A I stood there.

Q What part of the road? A On the side.

Q Which side, the side the machine was on or the other side? A The side the machine was on.

Q How long was it before the towing car came there? A Why, about two o'clock he came along and took it way. 30

Q How long did you stand there before it came? A I stood there from the time of the accident until the time the towing car came and took it away.

Q How long was that? A I couldn't just say.

Q What time did you get there? A When it happened? 40

*James Harvey Bryan, cross.*

Q Yes. A About one-forty.

Q One-forty? A In the morning.

Q And at two o'clock, the towing car had been there and taken the machine away, is that right?

A Yes, sir.

Q So you were there about twenty minutes?

10 A About that.

Q How did you come to examine this pole?

A How did I come to examine this pole? Why, I went over and looked at it.

Q What? A I went over and looked at it. The machine was in front there, banged up pretty bad.

Q The machine was banged up pretty bad?

A Yes.

Q Where was this wire that you were talking about? A Up on top of the pole.

20 Q Oh, yes. Now, was there an electric light bulb in the fixture on this pole? A Yes, sir.

Q There was? A Yes, sir.

Q Was that still there after the accident? A No, it was blowed out.

Q Well, the bulb was still there, wasn't it? A Yes, but the light went out.

Q But the light went out. How frequently do you go across that road? A Cross that road pretty near every night.

30 Q And had you prior to the accident gone across there nearly every night? A Sir?

Q Had you been used to going across that bridge nearly every night before the accident? A Yes, sir.

Q Had you ever seen that light out before?

Mr. Freggens: Just a minute. I object; it is immaterial.

40 Mr. Atkinson: I am testing his recollection.

*James Harvey Bryan, cross.*

The Court: Objection sustained.

Mr. Atkinson: Exception, if you please, sir?

(Exception noted for plaintiffs.)

Q How large a light was in that fixture? A I couldn't say.

10

Q Can you tell me whether it was the same size light put there after the accident as it was at the time of the accident? A I couldn't answer that question, either.

Q What? A I couldn't answer that question, either.

Q Couldn't answer that? A No, sir; I am no electrician.

Q And when did you say the Public Service man came there? A Right after the lights went out.

20

Q That same night? A The same night, in the morning.

Q What time? A About— He got there about five minutes of two, somewhere around there.

Q So this accident happened and the men were taken to the hospital and the tow car came there and the Public Service man came and fixed the lights, all between one-forty and five minutes of two; is that right? A Yes, sir.

30

Q Did you tell me where you live, Mr. Bryan? A Fenwick Road, Fairview.

Q How long have you lived there? A Lived there for over a year now.

Q Where did you live at the time of the accident? A Same place.

40

*Branford E. Harris, direct.*

*By Mr. Freggens.*

Q How long have you lived in Fairview? A I lived there ever since the place has been there, I guess.

10 Q I just want to ask one more question. This morning when this accident happened was Labor Day, wasn't it? A Sir?

Q Labor Day morning? A Late in the morning?

Q Labor Day morning? A I guess it was; September 6th, I believe it was it happened.

Mr. Freggens: That's all.

20 BRANFORD E. HARRIS, sworn.

*By Mr. Freggens.*

Q Mr. Harris, you are employed by the Government sewage disposal plant at Fairview? A United States Government sewage disposal plant at Fairview.

Q You have been working there for how many years? A Going on eight years.

30 Q And with respect to your hours of working— A We work twelve hours a day, see, and every Monday we change around, so that gives us a day off, so we can change the shift.

Q On the night of November—September 5th, 1926, were you working days or nights? A I was on night work.

Q At the plant in Fairview? A Yes, sir; yes, sir.

40 Q And that plant is situated how far from Collings Road, Fairview? A Oh, about five hundred feet from the road.

*Branford E. Harris, direct.*

Q And do you know where this bridge known as Newton Creek bridge is situate? A Yes, sir.

Q How far is the road leads into your plant below that bridge? A From the plant into the road?

Q Yes. A About three good city squares.

Q And on this night in question, at about

10

one-thirty or two o'clock, did you hear any noise? A I heard a noise sounded like an airplane fell in the swamps.

Q Do you know what kind of a night it was?

A Well, it was sort of a misty night.

Q Did you hear anything else? A That's all I heard.

Q Was that a light noise or a heavy noise?

A Pretty heavy noise, sounded just like an airplane motor.

20

Q What did you do? A I run outside to see what the trouble was; I thought maybe I could do somebody some good. There has been a lot of accidents there on the boulevard in Gloucester.

Q Did you go to the scene of the accident? A I got down there, yes, sir; I went down there; they had already loaded them in and gone away.

Q Did you examine this pole in question? A I looked at it, just casually looked at it.

30

Q Did you notice any wires in the vicinity of the pole? A There was a wire between the two poles lying down, sparking in the trees.

Q And were you there when a representative—when a man came to fix those wires? A I was there when the truck come, yes, sir.

Q Now, from the time you heard this crash until the time you went over to the scene of the accident, did you hear any other noise? A No, that's all I heard.

40

*Branford E. Harris, cross.*

Q And with respect to the light on this street, Collings avenue, were they burning when you got there? A No, the lights were out, everything was dark.

10 Q Can you tell us whether or not you noticed they had been burning the early part of the evening? A I couldn't tell you; I was working down below, and I had been working down there about five hours.

*Cross examination by Mr. Atkinson.*

Q You don't know anything about whether there were lights on the pole before the accident or not? A No, sir; I never looked; I don't know.

20 Q Did you get there immediately after the accident? A Well, I will say five minutes, maybe a little bit more; I couldn't say exactly. They had put them in the Ford and the Ford had got out of sight.

Q Who was there at the scene of the accident? A Mr.— I forget his name.

Q The gentleman on the witness stand? A Just got out of the chair.

30 Q How long did you remain there? A Until the tow car come and took it away.

Q Yes, and then where did that former witness go, stay there or go on? A The witness just in the chair?

Q Yes. A I couldn't tell you; I don't know. I don't know which direction he went.

Q He remained there? Do you know who left first, whether you did or he did? A I believe I left first, because I had to get back to the plant, see.

*Walter P. Wolverton, direct.*

WALTER P. WOLVERTON, sworn.

*By Mr. Freggens.*

Q Mr. Wolverton, you are connected with the City of Camden? A Yes, sir.

Q In what capacity? A Assistant Chief Clerk of the Highway Department. 10

Q And you have been employed in that capacity for how long a period? A Thirteen years.

Q As a result of your employment, do you have charge of the various books of your department concerning applications for permission to install poles in various places in the City of Camden? A Yes, sir.

Q And you have had charge of them for how many years? A I would say about ten years. 20

Q And your department has control of what part of the municipal government? A The highways.

Q The highways; and does that include Essex street here in Camden? A Essex street?

Q Or Collings street? A Collings Road.

Q Collings Road? A Yes, sir.

Q Does that control that? A Yes, sir.

Q Have you any record of an application made by the Public Service Electric Company, or Electric and Gas Company, for permission to install poles on that street up to what is known as Newton's Creek? A I do. 30

Q Will you just refer to that, sir? Do you want this big book? Now, will you just state the date that an application was submitted to locate poles? A October 16th, 1918.

Q And will you just read what they applied for and what was approved, so far as the location of poles was concerned? A "Camden, New Jersey, October 16, 1918. Mr. A. L. Sayers, Street Commissioner, Room 18, City Hall, Camden, New 40

*Walter P. Wolverton, direct.*

Jersey. Dear Sir: I am sending you herewith four blue prints, showing eight proposed pole locations along Collings Road east of Newton Creek, Camden, New Jersey. If same meet with your approval, will you kindly signify by signing the attached blue prints? Very truly yours, Public Service Electric Company, George S. Cadwallader, District Superintendent.”

10 Q Can you tell us what was done with respect to approving it or passing it? A Commissioner Sayers presented that to the Street Committee of the City Council for their approval.

Q And you also have charge of the records or minutes of the meeting of that committee? A I do.

20 Q Will you kindly turn to one on that particular location in question? A “On motion of Mr. Mills, the following communication from the Public Service Electric Company was ordered received and filed. Plans approved and permission granted to erect the poles. ‘Camden, New Jersey, October 16, 1918. Mr. A. L. Sayers, Street Commissioner, Room 18, City Hall, Camden, New Jersey. Dear Sir: I am sending you herewith four blue prints, showing eight proposed pole locations along Collings Road east of Newton Creek, Camden, New Jersey. If same meet with your approval, will you kindly signify by signing the attached blue prints. Very truly yours, Public Service Electric Company, George S. Cadwallader, District Superintendent.’ ”

30 Q What action was taken on that application by the department? A Favorable.

Q Favorable? A Yes, sir.

40 Q After it is passed by that committee, is it referred to any other department of the municipal government for action? A City Council, for ratification of the Street Committee’s report.

*Thomas Pope, direct.*

Q Have you a record there of it being referred to City Council? A The Assistant City Clerk is present here; he has that book with him.

Mr. Freggens: I offer that in evidence, by consent.

(Copy of blue print marked Exhibit D. 1.) 10

*Cross examination by Mr. Atkinson.*

Q Mr. Wolverton, can you tell from the record which you have before you whether or not this permit was granted before or after the bidge was widened over Newton Creek? A I couldn't hear the latter part of your question.

Q Whether or not this permit was granted before or after the bridge over Newton Creek was widened? A No, sir, I couldn't answer that. 20

Q You couldn't answer that? A No, sir.

Q Can you tell from your blue print the width of the bridge? A No, sir.

Q Is your blue print drawn to scale? A That I couldn't say; we accept the blue prints submitted by the Public Service.

30

THOMAS POPE, sworn.

*By Mr. Freggens.*

Q Mr. Pope, you are also connected with the City Clerk's office? A Assistant City Clerk, yes, sir.

Q Have you charge of the records of the resolutions of the Council of the City of Camden? A I have. 40

*Martin McNulty, direct.*

Q Have you a record of a resolution passed on the application of the Public Service Electric Company or Public Service Electric and Gas Company for the installation of eight poles on Collings Road near Newton Creek? A I have.

10 Q Will you kindly turn to that resolution? A At the regular meeting of the City Council held October 31, 1918.

Q Kindly read that. A "Plans of the Public Service Electric Company showing eight proposed poles on Collings Road east of Newton avenue was approved and permission granted to erect same."

*Cross examination by Mr. Atkinson.*

20 Q Did you say Newton avenue or Newton Creek, Mr. Pope? A It's here "East of Newton avenue;" east of Newton avenue.

*By Mr. Freggens.*

Q Do you know where Newton avenue is? A Yes, on the other side of town, running from Broadway.

30

MARTIN McNULTY, sworn.

*By Mr. Freggens.*

Q Mr. McNulty, you are an officer of the Police Department of the City of Camden—or Gloucester? A Yes, sir.

40

Q And on the morning of September 5th of last year, did you have occasion to go to the bridge located at Newton Creek? A Yes, sir.

*Martin McNulty, cross.*

Q Between Gloucester and Camden. Did you at that time see this automobile which was in collision with a pole? A Yes, sir.

Q And just where was the automobile? A Why, it was just right the other side of the bridge, right off the bridge there, and it hit a pole and shifted the pole about a foot, and the machine was laying on a forty-five degree angle. 10

Q With respect to the condition of the automobile, could you tell us what it was, at the time you saw it? A The collision, what effects it took?

Q Yes. A The wheel was behind the pole and the radiator the other way, behind the pole.

Q Now, did you examine the pole? A Yes.

Q And can you tell us whether or not there was a light on it? A I couldn't just say that, I didn't take notice. 20

Q Was there any light burning at the time you got there? A No, there was not.

Q Did you notice any broken wires? A I couldn't say; I know the repairman come and put a searchlight in the top, but we went away.

*Cross examination by Mr. Atkinson.*

Q What kind of car was this, officer? A An open car. 30

Q Are you familiar at all with cars? A What?

Q Are you familiar at all with cars? A Not so familiar; only on driving, see them going by.

Q You can recognize what you call a Studebaker little six? A That was no little six.

Q That was no little six? A It was a big touring car; I don't know what make it was.

Q A six-cylinder car, was it? A What? 40

*Cooper Ford, direct.*

Q A six-cylinder car, was it? A I don't know nothing about the cylinders.

Q It was an open touring car? A It was an open touring car.

10

COOPER FORD, sworn.

*By Mr. Freggens.*

Q Officer, you are also connected with the Gloucester City police? A Yes, sir.

Q Were you with Mr. McNulty at the scene of this accident shortly after it occurred? A Yes, sir.

20 Q But you didn't take charge of the matter, because it was in Camden? A That's right.

Q Did you examine this pole, officer? A Yes, sir.

Q What sort of pole was it, so far as the size was concerned? A I should judge about six or seven inches, maybe eight inches, in diameter.

Q Did you notice how tall it was? A It was a light pole, I judge. I couldn't say just how tall it was.

30 Q Can you tell us where the automobile was at the time you got there? A It was standing diagonally across this way, about a forty-five angle, I should judge. One wheel on one side—one wheel on one side and the radiator on the other, just as it jammed up in the pole.

Q Was there any evidence of the pole having been moved from its original site? A I should judge maybe ten inches, something like that.

40 Q With respect to the physical condition of the automobile can you give us a little more detailed information in that respect? A No, we

*Lloyd Mowry, direct.*

didn't stay there so long, examine it so much; it was banged up pretty well.

Q Did you notice whether or not there were any other lights burning in that vicinity? A Not when we got there.

Q They were all out? A They were all out.

10

*Cross examination by Mr. Atkinson.*

Q How long had they been out? A I couldn't say.

Q How frequently did you visit that spot before this accident? A How frequently? Well, maybe sometimes twice a week, sometimes three times, according to how often we go to the—

Q What make of automobile was it? A I am not sure. We didn't stay there; when the people went to the hospital we left.

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LLOYD MOWRY, sworn.

*By Mr. Freggens.*

Q Mr. Mowry, you are employed by the Public Service Electric and Gas Company? A Yes, sir.

30

Q Just what is your connection with that concern? A Night trouble shooter and lamp inspector.

Q Just what do you mean by that? A I go around different parts of Camden, all around, and inspect the lamps.

Q If you find anything the matter, what do you do? A Repair it.

Q All of Camden? A Yes.

Q You take in the territory of Collings Road and Newton Creek? A Yes, sir.

40

*Lloyd Mowry, direct.*

Q On both sides of the creek? A No, sir.

Q What side? A The east side.

Q The Camden side? A Yes, sir.

Q And as a result of your inspections throughout the city, and replacements, did you have to make a report, daily report, where you did the  
10 work and the kind of work? That is done? A Yes, sir.

Q Did you have occasion to go to the light placed on the first pole on the Camden side of Newton Creek? A Yes, sir.

Q Do you remember prior— Around the early part of September, what date you went there? A About the third.

Q And as a result of that trip, did you make a report? A Yes, sir.

Q I call your attention to a paper and ask  
20 whether or not that is your handwriting? A Yes, sir.

Mr. Atkinson: That is a self-serving declaration; it isn't admissible.

Q And was that paper the form that you turned in after each daily inspection? A Yes, sir.

Q Now, did you examine that paper— Do  
30 you know whether you found any trouble on the first pole situated on the Camden side of Newton Creek? A Yes, sir.

Q Without referring to the paper? A Yes.

Q Just what did you find, and when? A Lamp broken out.

Q Broken? A Yes, sir.

Q What time was that replaced, do you know? A Eight forty-five.

Q Those lamps are situated how on the pole?  
40 A Just what do you mean by that?

*Lloyd Mowry, cross.*

Q How far above the ground? A I should judge about fifteen—fourteen feet.

Q Your method of replacing a new lamp is how? A We have what is called a lamp stick, and it's got three prongs on the end and we pull it up and pull the socket and all right out and put a new bulb in. 10

Q Do you know how the lights are arranged on the poles on the Camden side of Collings street there, near that vicinity? A Just what do you mean by that?

Q Is there an electric light on the pole? A Yes, on the first pole and the second pole east of the creek.

Q Yes. A And the fourth pole.

Q Do they alternate? A What is that?

Q Going in that direction, do they alternate? 20  
A Alternate.

*Cross examination by Mr. Atkinson.*

Q You have your entire record here? A Sir?

Q Do you have your entire record, that you turned in? A Just what do you mean by that?

Q How long were you employed with the Public Service? A Four years. 30

Q Do you have your record here for the month of July? A No, sir.

Q Did you go to this particular pole in the month of July? A I couldn't say off hand.

Q Did you go to this pole in the month of August? A During the month, yes, sir.

Q Huh? A Yes, sir, during the month.

Q In August were you there? A Yes, sir.

Q How many times did you go there in August? A On an average of twice a week? 40

*Lloyd Mowry, cross.*

Q What was the purpose of these visits there?

A That's something I could not say, just off-hand.

Q Huh? A That's something I could not say, just offhand.

Q You went there, you say, on August 3rd?

10 A No, sir.

Q September 3rd? A September 3rd; yes, sir.

Q You replaced a light there? A Yes, sir.

Q And when was your next visit there? A My next visit there was a little over a week.

Q What? A Over a week, I know that; I couldn't say practically offhand just what date.

Q You were there on the night of September 5th? A September 5th? No, sir.

20 Q What do you usually do when you go to that light? A Renew it if it's out.

Q Renew it? A Yes, sir.

Q You didn't renew it on the night of September 5th, that was—

Mr. Freggens: I object.

Mr. Atkinson: That's all.

*By Mr. Freggens.*

30 Q What candle power are those lights? A One hundred candle power.

*By Mr. Atkinson.*

Q Pardon me just a moment. I show you two photographs marked Exhibits P. 1 and P. 6, and ask you if that represents that pole, together with the fixture that is on it? A This one does.

Q This one does? A This one.

Q Referring to P. 1? A Yes, sir.

40 Mr. Atkinson: That's all.

*George F. Yerkes, direct.*

GEORGE F. YERKES, sworn.

*By Mr. Freggens.*

Q Mr. Yerkes, you are employed by the Public Service Electric and Gas Company? A I am.

10

Q Were you employed by that concern in the month of September, 1926? A I was.

Q Just what was your connection with the company? A Sub-station operator.

Q Sir? A Sub-station operator.

Q And just explain that in a little more detail, what your duties consist of? A Entire charge of the sub-station from which the distribution lines come out.

Q You were employed between what hours? A I was working that night from midnight until eight o'clock in the morning.

20

Q Will you just tell us how the various departments—the various lighting units in the City of Camden—are connected with your sub-station?

A In reference to the street lighting?

Q In reference to the street lighting, yes. A In the Atlantic avenue sub-station, we have approximately twenty-five street light circuits, each controlled by a switch, and if anything goes wrong on the line, if there's any breakdown in the wires, why, a relay trips a switch and the bell alarm rings, notifying the operator that something is wrong.

30

Q You say a relay trips the switch, the circuit is broken? A Broken, yes.

Q And on this particular night, did you receive any—did you have any wire trouble or receive any—have any of your circuits put out with your trip, as you say? A Yes.

40

*George F. Yerkes, direct.*

Q Do you know just where the location was, as far as your circuit is concerned? A I knew the trouble was in Fairview; that's all that we knew.

Q How do you place that? A We have a list of the numbers of circuits and the approximate  
10 locations.

Q As a result of your employment and this breaking of circuits, and in the course of your employment, does it become necessary to keep records of any trouble on any of the lines? A Keep a record of everything.

Q Do you keep the record in your handwriting? A Not always, no; sometimes the assistant.

Q But it is under your direct supervision? A  
20 Under my direct supervision, yes.

Q Will you just turn to the night of September 5, 1926? Did you receive any report in reference to any line being out of order? A Well, shall I read my report here in the book?

Q Yes, if you will, please. A "One-forty A. M., street light circuit 3028 off by relay."

Q What do you mean by that? A 3028 is the number of the street circuit which tripped open, and it was operated by the relay.

Q Go ahead. A It was tested and found  
30 open.

Q Who was that test made by? A By myself.

Q Go on. A And it was reported to the line department at 17th street, received by Wilvert.

Q And Wilvert is whom? A Wilvert is the night trouble man.

Q Go ahead, just read right on. A One-forty-two, number 3028 was cleared and tagged  
40 for Wilvert.

*George F. Yerkes, cross.*

Q Just explain in plain English what that means. A Cleared means to open the line switches, preventing any electricity from flowing by accidental closing of the switch.

Q During the time that is done, does the person that you talk to stay on the phone? A Yes.

Q They wait until it is verified, and then they hang up? A And then they hang up. 10

Q Just go right on, as far as your report is concerned? A 2:15 A. M., Wilvert's tag off of 3028 and circuit on line O. K.

Q Just explain what that means. A That means that at 2:15 Mr. Wilvert called up and told me to try the circuit out, and after the circuit was put on and found O. K., his tag was released from it.

Q Then that informs you what, with respect to the part that is damaged? A It indicated that he had a complete circuit through some part of the system. 20

Q 3028? A It doesn't prove that the whole system was cut in, because it's possible for a lineman to cut out part of the system.

Q The system was in such condition, as far as your station is concerned— A Yes, some lights were lit.

Q Have you anything else on that report? A "Trouble due to wire down at Collings avenue and Newton Creek." That is just the location that we have to get. 30

*Cross examination by Mr. Atkinson.*

Q The only thing that you can tell by your circuit-breaker and relay is when the circuit is broken, isn't it? A Yes.

Q And if the light goes out, you can't tell us anything about it, and it is only where the com- 40

*Jacob R. Wilvert, direct.*

plete circuit is broken so that there is no flow of electricity that your apparatus warns you? A That's right.

Mr. Atkinson: That's all.

Mr. Freggens: That's all.

10

JACOB R. WILVERT, sworn.

*By Mr. Freggens.*

Q Mr. Wilvert, you are also employed by the Public Service Electric and Gas Company? A I am.

Q And your position is what? A Trouble man at that time, at the time of the accident.

20 Q And in conjunction with that, you had to do what with respect to the maintenance of the lines? A Sir?

Q Just what did you do when there was any trouble found? A Took care of it, repair, and so forth, inspect the lights.

Q On the night of September 5, 1926, did you receive notification of an open circuit? A I did.

30 Q From this last gentleman who was just on the stand? A Yes, sir.

Q And as a result of that, did you go to a certain location near Newton Creek? A Yes, sir.

Q Can you just tell us how you located this trouble? A Well—

Mr. Atkinson: I object to that; it is immaterial, incompetent and irrelevant. I don't see any necessity for taking up so much time.

40

*Jacob R. Wilvert, cross.*

Mr. Freggens: I think I have a right to show the condition of the wires. I have had to connect it up.

The Court: Let's get right down to the issue.

Q Did you go to this pole? A I did. 10

Q Will you just tell us the condition of it when you got there? A There was an automobile with a Florida license jammed up against the pole, had pushed the pole over approximately five or six inches, and the wire was down on the adjacent pole, not on the pole, but on the adjacent pole, due to the jar. It was tore down and I went to the third pole or the second pole adjacent and cut one wire down and throwed it out, shuted it out, you might call it. 20

Q This wire that you say was cut was on the second pole, and was hanging on what pole? A Hanging off the second pole.

Q I see. Can you tell us whether or not—just what pole did that wire feed the light on?

A The light which was hit by the machine.

*Cross examination by Mr. Atkinson.*

Q You cut down between the second and third pole, didn't you? A No, sir. 30

Q Where did you cut? A I cut the wire clear; it was already down.

Q Where did you put your jumper in? A On the third pole.

Q That's what I am trying to get at. So you cut out the second pole and the third pole, didn't you? A Yes, sir.

Q The result was that there was no light placed on the pole next to the bridge, was there?

A No, sir. 40

*Jacob R. Wilvert, cross.*

Q And what make of machine was this? A I do not know.

Q And where did you find the break was, between the second and third pole, wasn't it? A No, sir, on the top of the second pole.

10 Q Was it between the first pole and the second pole? A Right on top of the pole.

Q There were pieces of wire hanging down on the ground, wasn't there? A Yes, sir.

Q Where was the end of that wire fast to? A It was fastened to the pole, to the first pole, which was hit by the automobile, and the third pole; there were two wires down.

20 Q The break was between the first and the second pole? A The break was between the first and the third pole— It was on top of the second pole, right on top of the insulator, or right at the insulator.

Q There are three poles there, aren't there? A Yes, sir.

Q And number one pole was the one the automobile was against? A Yes, sir.

Q And number two pole, you say, was where the wire was broken? A Yes, sir.

Q Then, the break was between the first and second poles, wasn't it? A No, sir.

30

Mr. Atkinson: That's all.

The Witness: Because the wires were down both ways.

Mr. Atkinson: That's all.

40

*George W. Bower, direct.*

GEORGE W. BOWER, sworn.

*By Mr. Freggens.*

Q Mr. Bower, what is your connection with the company? A Assistant district superintendent in charge of electric distribution, Camden District. 10

Q Does that include this bridge over Newton Creek? A Yes, sir.

Q Does your department have charge of the poles situate in the City of Camden and that territory including Newton Creek bridge? A Yes, sir; we have the poles and sub-stations and everything.

Q You have been doing that work for how long a time? A Since I graduated from school in 1914. 20

Q You have had charge of this particular section for how long a time? A I have worked in the Camden district ever since I left school.

Q Are you familiar with the application made to the City of Camden for the location of these poles? A Yes, sir.

Q And are you familiar with the proceedings taken—the procedure by the Board of Freeholders or local authorities for the removal or relocation of poles? A Yes, sir. 30

Q That is all covered by the State law, is it not? A Yes, sir.

Q Now, during the time that you had charge of these poles, did you have any requests to relocate any of the poles near Newton Creek?

Mr. Atkinson: I object that. It is immaterial, irrelevant and incompetent. It doesn't make any difference whether they had any request or didn't have. The whole question 40

*George W. Bower, direct.*

is whether the poles were in a part of the public highway. It is a question of fact.

10 Mr. Freggens: I think it is a question of law. If we locate these poles under the rights conferred to us in our charter and with the consent of the City, as we have here proven, if the Freeholders or the City authorities come along and change the location, under the Statelaw we are entitled to be notified to remove our poles and relocate. In other words, if they come in and put a new bridge in, if they want certain poles removed, they have got to notify us.

The Court: In the event that they didn't, I don't think that that would relieve you of responsibility.

20 Mr. Freggens: I think it does, if the Court please, because we have a vested right in the highway. I admit it's a nuisance, just like street railways, but it is a legislative grant. If I can show this pole—

The Court: I think I will permit your question.

(Exception noted for the plaintiffs.)

(Question repeated.)

30 A Yes, sir.

Q And from whom was that request received?

A The County Engineer's office.

Q And what was done, with reference to removing any poles? A It was investigated and finally turned over to me, on account of the difficulty of the job.

Q Does all correspondence, official correspondence, with respect to poles, come to you? A Yes, sir.

40

*George W. Bower, direct.*

Q And did you receive any official notification to remove or relocate any poles? A Merely a telephone call.

Q From the County Engineer? A Yes, sir.

Q And you went to the bridge in question?  
A Yes, sir.

Q I am getting ahead of my story. When they were putting in the new bridge? A Before it was started.

Q When was that? A In the summer of the same year.

Q 1925-1926? A If I recall correctly.

Q Were you asked to remove any poles? A We weren't asked to remove them. We were told what they were going to do, build a new bridge there, and they just wanted our line relocated. They didn't care whether it was removed, if it was out of the way of the trucks, the trucks and the pile driver to be used in the bridge construction.

Q Were there any rights for the relocation of the original poles waived by you? A No, sir; we merely removed the poles temporarily.

Q And do you know how many were removed?  
A Three poles were removed.

Q Were you acquainted with that roadway prior to the time that the new bridge was put in?

A Yes, sir.

Q Do you know how wide the bridge was there, with respect to the other part of the highway? A The old bridge was a wooden structure; it was not as wide as the roadway on Collings avenue. Our pole line on Collings avenue went outside of the line of the wooden bridge.

Q I see. With respect to the placing of the poles, can you tell us whether they were in line, a straight line or what kind of line, along Col-

*George W. Bower, direct.*

lings avenue there? A It went up on the south side of Collings avenue for about nine poles and then crossed over at a point near the sewage disposal plant, and then the line was on the north side of Collings avenue up to Mount Ephraim pike.

10 Q And as a result of removing those two poles, was anything done with respect to the electric appliances on them, such as lights? A There was a street lamp on the last pole to the old bridge.

Q Yes. A That was one of the poles that was removed.

The Court: Was or was not?

20 The Witness: Was removed; that street lamp was moved to the next pole east.

Q Was that the pole that figured in the accident? A That was the pole that figured in the accident.

Q With respect to that location, do you know where the next lamp is on that side of the road? A On the third pole, I believe.

Q The third pole; and that would be the second pole, according to your count? A Yes, sir.

30 Q Those lamps—

Mr. Freggens: I withdraw that.

Q With respect to that bridge, do you know how much more of the highway was utilized in putting up the bridge than there was when the old bridge was there? A The new bridge is at least fifteen feet wider on each side than the old bridge was.

40 Q How about the construction of the pavement there, do you know what it is? A Yes,

*George W. Bower, cross.*

just ordinary cinders. There is no paving on the sidewalk, or no curb there.

*Cross examination by Mr. Atkinson.*

Q The entire bridge from rail to rail was paved simply as a roadway, was it not? A It isn't paved; it is merely cinders. 10

Q It was simply repaired as a roadway? A It is a cinder road.

Q Yes, no curb, no sidewalk. A There's no curblin there, no, sir.

Q So that the whole bridge deck from rail to rail was merely a cinder road, is that not true? A It's a cinder highway, yes, sir.

Q Cinder highway; these two poles that you have mentioned were a part of the ten poles for which a permit was secured from the City of Camden, were they not? A We didn't secure a permit for ten poles. 20

Q Eight poles. Pardon me. A Yes, sir.

Q And when you mentioned two poles that were removed, you referred to the two poles which we located about the point of the old bridge, did you not? A There weren't two poles removed; there were three removed temporarily.

Q Three removed temporarily? A Yes, sir. 30

Q How many were restored? A None of the three were restored.

Q Then there are five poles left? A Where?

Q Out of the eight. A There should be, yes, sir.

Q And these five poles were along the edge of the old road, were they not? A No, sir.

Q Huh? A No, sir.

Q Where were they? A Two in Gloucester, on the other side of the creek. 40

*George W. Bower, cross.*

Q Two were where? A Shall I repeat? Two were in Gloucester City, on the west side of the creek.

Q And that left six poles remaining? Out of the six you removed three, is that right? A No, sir.

10 Q How many? A We removed three poles altogether, but you have your geography mixed.

Q Very possibly so. Where were the three poles that you removed? A Two were on the east side of Newton Creek, in Gloucester City—Two on the west side and one on the east side of the creek, on the Camden side.

Q Out of the eight poles, how many remain? A All except— Out of which eight poles?

20 Q The original eight poles that you put in there? A We put more than eight poles in there.

The Court: The eight poles we are asking about.

Q You were in Court a few minutes ago and heard the Clerk read about the City of Camden granting permission. How many of those poles remain there? A There was one of those eight poles removed.

30 Q Only one? A Yes, sir.

Q And the other seven are still along the highway? A At this present time?

Q At the time this accident took place? A I wouldn't necessarily say that; I am not sure.

Q You are familiar with that section out there? A Yes, sir.

40 Q I show you Exhibit P. 2, and ask you if you can interpret what that picture shows? A It shows the pole line there, but doesn't show the wire. The picture is indistinct.

*Flood Gilmore, direct.*

Q It does show the pole line? A Yes, sir.

Q Shows the pole line running along the edge or margin of the old road? A Yes, sir.

Q There are seven of those poles on down that road, are there not? A I wouldn't testify on the number at that time.

Q You only removed one of the original eight, didn't you? A Yes, sir. **10**

(At this point, the hearing of the cause was adjourned until Tuesday, November 15, 1927, at 10 o'clock A. M.)

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Camden, N. J., November 15, 1927.

Trial of the cause resumed at 10 o'clock A. M., pursuant to adjournment, in the presence of respective counsel. **20**

FLOOD GILMORE, recalled.

*By Mr. Atkinson.*

Q At the time you took these two men in your automobile after the accident was there anyone present who helped to put them in? A No, not at the time. **30**

Q Did you see anyone there at the time? A Not until after I had them in the machine.

*By Mr. Friggens.*

No questions.

*Motion for Direction of a Verdict.*

JAMES F. COAN, recalled.

*By Mr. Atkinson.*

Q My recollection is you testified you were conscious at the time you were placed in the machine? A Yes, sir.

10 Q Did anyone assist Mr. Gilmore in getting you and Mr. Hilliard in Gilmore's automobile?

A There was no one there except the three of us.

Q Did you see Mr. Bryan the witness who testified here yesterday at the time you mention, when you were getting into this automobile of Gilmore's? A No, sir. No one was there.

*Cross examination by Mr. Freggens.*

20 Q You were dazed, weren't you, at the time?

A I was dazed, yes, sir.

Q You had been unconscious before you went in the automobile? A No, sir.

Q You were in such a condition that you knew who assisted you into Gilmore's automobile, were you? A No one assisted me at all.

Q You walked yourself? A I did.

30 *By Mr. Atkinson: Plaintiff rests.*

*By Mr. Freggens: I want to move for direction of a verdict on two grounds. One, there has been absolutely no negligence proven against the defendants; and two, that the plaintiffs' testimony shows conclusively they were negligent, contributorily negligent.*

Mr. Atkinson replied.

40 *By the Court: I admit it's a very close case, but, of course the upper court is trying to adopt*

*Motion for Direction of a Verdict.*

a policy that will fit in in accordance with our modern travel, and protect the corporations that have got to take care of modern travel, but I am not inclined to grant a direction in this case. I think the facts are different in the case at Bar than the case of Lorenz versus Public Service Railroad Company, and I think they are so different that I will refuse to grant a verdict and let the matter go to the jury whether or not this was a nuisance, because of the changed physical condition as a result of a considerable widening of the road; and because of the further fact that the Public Service, as a result of notice of changed condition, or construction there, had sent a man to the *locus quo*, and naturally had at least that much notice of the physical conditions. So I feel I shall deny the motion for that reason and let the question go to the jury.

By Mr. Freggens: I pray an exception.

By the Court: Surely.

Mr. Freggens summed up for the defendant.

Mr. Atkinson summed up for the plaintiffs.

By Mr. Freggens: I ask for an exception to any reference by counsel for the plaintiffs, to anything being said in his summation with respect to the value of the automobile, on the ground that there is no legal proof in evidence.

By the Court: Exception allowed.

*Charge to Jury.***COURT'S CHARGE TO JURY.**

SHAY, (J): Ladies and Gentlemen of the Jury: This is an action brought for damages accruing out of an accident. It is not disputed that an accident occurred on this particular night, and as  
10 a result of that accident, these plaintiffs are asking at your hands damages. In order for them to prevail, in other words, in order for them to obtain a verdict in their favor, each of them must satisfy you that there was the lack of reasonable care on the part of the company, which is the defendant in this action; and as a result of that absence of reasonable care and as a proximate cause of this accident, they were injured; and as far as the driver of the car is concerned,  
20 you must be satisfied that he was not negligent in the operation of the car. If he was negligent, and his negligence contributed to the accident, even though the company itself was negligent, he cannot recover.

As far as the passenger in the car is concerned, he is not charged with contributory negligence of the driver of the car. In other words, he might recover, if you find as a fact, after careful examination and comparison of the testimony,  
30 that the company itself was negligent, and that even though the driver of the car was contributorily negligent, it would not bar a recovery for him, because he is not charged with contributory negligence, if there is any, on the part of the driver of the car. All that he is required to do is to use that care that a reasonable person would under the circumstances. He might be negligent if he saw an accident was about to occur and didn't say anything to the driver about it, but there is no testimony here to that effect.  
40

*Charge to Jury.*

The burden is, of course, upon the plaintiffs of satisfying you, by a preponderance of testimony, by the greater weight of the credible and legal testimony, that there was negligence on the part of the company; and, as I said before, as far as the driver is concerned, he was not contributorily negligent; and that the negligence of the company was the proximate cause of this accident. If you should find that from the testimony in this case, then the driver of this car would be entitled to be compensated for any pain and suffering you find that he suffered as a result of this accident, and any monies that he was obliged to spend for the treatment of the injuries which you find he suffered as a result of the accident. 10

In determining whether or not this company was negligent, you must consider all the testimony pertaining to the particular place where the accident occurred. It appears, and it's not disputed, that this company had a right to install this pole in the place that it did locate it, and if conditions had not changed there, I would direct a verdict in its favor; but the physical conditions changed at this particular place, and it is not denied that the company had some knowledge of that change, some of the agents, or representatives of the company had knowledge of that physical change. It's a question of fact for you as jurors to determine whether or not, with the knowledge that came to the company of this physical change, they were negligent in having the pole that caused this accident, or the pole that came in contact with the driver, which resulted in this accident, whether they were negligent in allowing that pole to remain there, and for that reason the question of whether or not, even 20 30 40

*Charge to Jury.*

though it was in the proper place for the pole, whether or not it used that care which it reasonably should use to keep it from being negligent, in lighting this pole on this particular night. It's not disputed that a light was on this pole ordinarily, but the plaintiffs contend, and testify

10 that it was not lighted on this particular night. The company, however, from their information, are of the opinion that it was lighted on this particular night. You have heard the testimony of some of these men who had charge of the switches as to just what happened to the switch about the time of this accident, the exact time I don't just recall. You should consider all that testimony of the company as to whether or not the light was on, and consider the testimony of the driver of the

20 car, and determine as a fact whether there was a light, or whether it was not lighted. Then determine as a fact whether or not the driver of the car had good lights and was going at a reasonable rate of speed, or not; and determine whether, even though there was no light, even though you feel the company was negligent, whether you feel he was not also contributorily negligent. On the other hand, you may feel that the physical conditions were such there that with

30 the exercise of reasonable care on the driver's part, this accident was unavoidable; and I might say that greater care is required of a driver on a foggy night than on a clear night. In other words, the care that one must exercise when driving a car on a clear night is not as great as that which he should exercise when the night is foggy. In other words, a person has no right to drive a car at the same rate of speed on a foggy night that he would have on a clear night, because the physical conditions are different. In other words,

40

*Charge to Jury.*

he should deport himself, or should drive the car under those conditions with care in accordance with the physical condition of the night.

Now, as to the other young man who was a passenger in this car, who also claims damages as a result of this accident, you have heard his testimony as to just how he was injured, and if you find that the company was negligent in maintaining this pole there, and as I said before, the light is one element to consider in determining that fact, if there was no negligence on his part in not calling the attention of the driver to the condition which he may have seen—and there appears to be no affirmative evidence of that—then he would be entitled to be compensated for his injuries arising out of this accident.

10

I have been requested to make certain charges to you—

20

By Mr. Freggens: I will withdraw them.

By the Court: With these instructions, you may retire.

By Mr. Freggens: There is the common enterprise charge.

By the Court: I don't think there is sufficient evidence to establish that. I will refuse to charge that.

30

By Mr. Freggens: I ask for an exception.

By the Court: Surely.

40

*Defendant's Exceptions to Charge.*

## DEFENDANT'S EXCEPTIONS.

By Mr. Freggens: Defendant takes exception to that portion of your Honor's charge, wherein your Honor says "and if conditions had not changed there, I would direct a verdict in their favor."

Also to that portion of your Honor's charge wherein your Honor says "In other words, he might recover if you find as a fact after careful examination and comparison of the testimony, that the company itself was negligent, and that even the driver of the car was contributorily negligent, it would not bar a recovery for him, because he is not charged with contributory negligence, if there is any, of the driver of the car."

20

30

40

*Grounds of Appeal (James F. Coan).*

**GROUND OF APPEAL.**

Filed December 17, 1927.

NEW JERSEY SUPREME COURT.

<p>JAMES F. COAN, <i>Plaintiff-Appellee,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>PUBLIC SERVICE ELECTRIC &amp; GAS COMPANY, <i>Defendant-Appellant.</i></p>	}	<p><i>Action at Law.</i></p> <p><i>On Appeal from Camden County Court of Common Pleas.</i></p>	<p>10</p>
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To James Mercer Davis, Esq., attorney of plain- 20  
tiff-appellee.

SIR:

TAKE NOTICE that the following are the grounds of appeal which the defendant-appellant will urge why the judgment heretofore rendered against it in the above-entitled cause should be reversed, set aside and for nothing holden:

1. Because the Court at the close of the plain- 30  
tiff's case, although moved so to do by the attorney of the defendant, on the ground that there had been no proof of negligence on the part of the defendant; and on the further ground that the plaintiff had failed to prove that the pole was not maintained where it should have been, refused to non-suit the plaintiff.

2. Because the Court, at the close of the whole case, although moved so to do by the attorney of the defendant, on the ground that no negligence had been shown on the part of the de- 40

*Grounds of Appeal (James F. Coan).*

fendant, refused to direct a verdict in favor of the defendant.

10 3. Because the Court, at the close of the whole case, although moved so to do by the attorney of the defendant, on the ground that there was contributory negligence on the part of the plaintiff refused to direct a verdict in favor of the defendant.

Dated, December 14, 1927.

Yours truly,

HENRY H. FRYLING,  
Attorney of Defendant-Appellant.

20 (Endorsed) "Service of a copy of the within grounds of appeal is hereby acknowledged this 15th day of December, 1927. James Mercer Davis, atty. of plaintiff-appellee."

30

40

*Grounds of Appeal (E. Haines Hilliard).*

**GROUND OF APPEAL.**

Filed December 17, 1927.

**NEW JERSEY SUPREME COURT.**

<p>E. HAINES HILLIARD, <i>Plaintiff-Appellee,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>PUBLIC SERVICE ELECTRIC &amp; GAS COMPANY, <i>Defendant-Appellant.</i></p>	}	<p><i>Action</i></p> <p><i>at Law.</i></p> <p><i>On Appeal</i></p> <p><i>from Camden</i></p> <p><i>County</i></p> <p><i>Court of</i></p> <p><i>Common</i></p> <p><i>Pleas.</i></p>	<p>10</p>
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To James Mercer Davis, Esq., attorney of plaintiff-appellee. 20

SIR:

TAKE NOTICE that the following are the grounds of appeal which the defendant-appellant will urge why the judgment heretofore rendered against it in the above-entitled cause should be reversed, set aside and for nothing holden:

1. Because the Court at the close of the plaintiff's case, although moved so to do by the attorney of the defendant, on the ground that there had been no proof of negligence on the part of the defendant; and on the further ground that the plaintiff had failed to prove that the pole was not maintained where it should have been, refused to non-suit the plaintiff. 30

2. Because the Court, at the close of the whole case, although moved so to do by the attorney of the defendant, on the ground that no negligence had been shown on the part of the 40

*Grounds of Appeal (E. Haines Hilliard).*

defendant, refused to direct a verdict in favor of the defendant.

10 3. Because the Court, at the close of the whole case, although moved so to do by the attorney of the defendant, on the ground that there was contributory negligence on the part of the plaintiff refused to direct a verdict in favor of the defendant.

Dated, December 14, 1927.

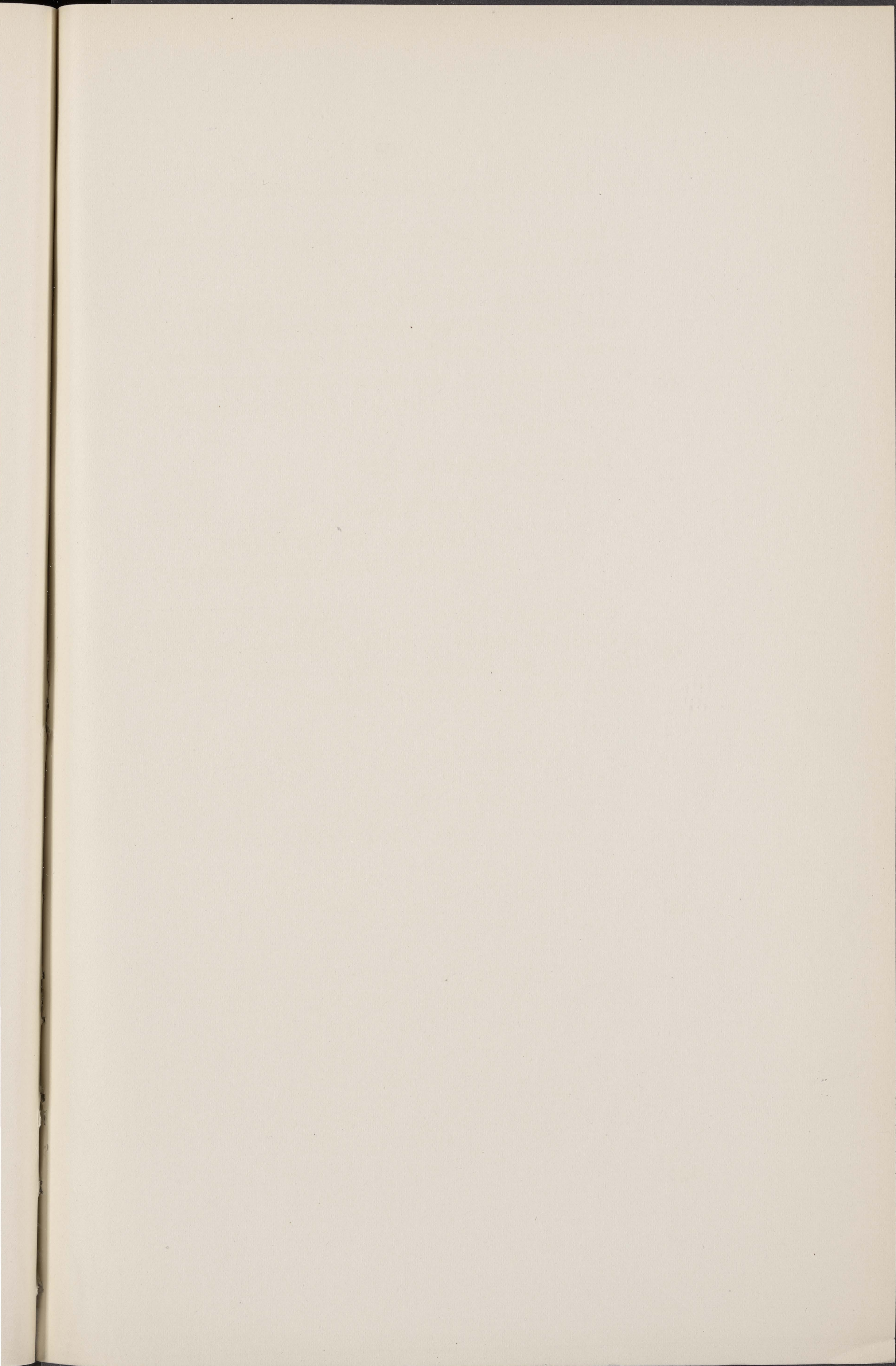
Yours truly,

HENRY H. FRYLING,  
Attorney of Defendant-Appellant.

20 (Endorsed) "Service of a copy of the within grounds of appeal is hereby acknowledged this 15th day of December, 1927. James Mercer Davis, atty. of plaintiff-appellee."

30

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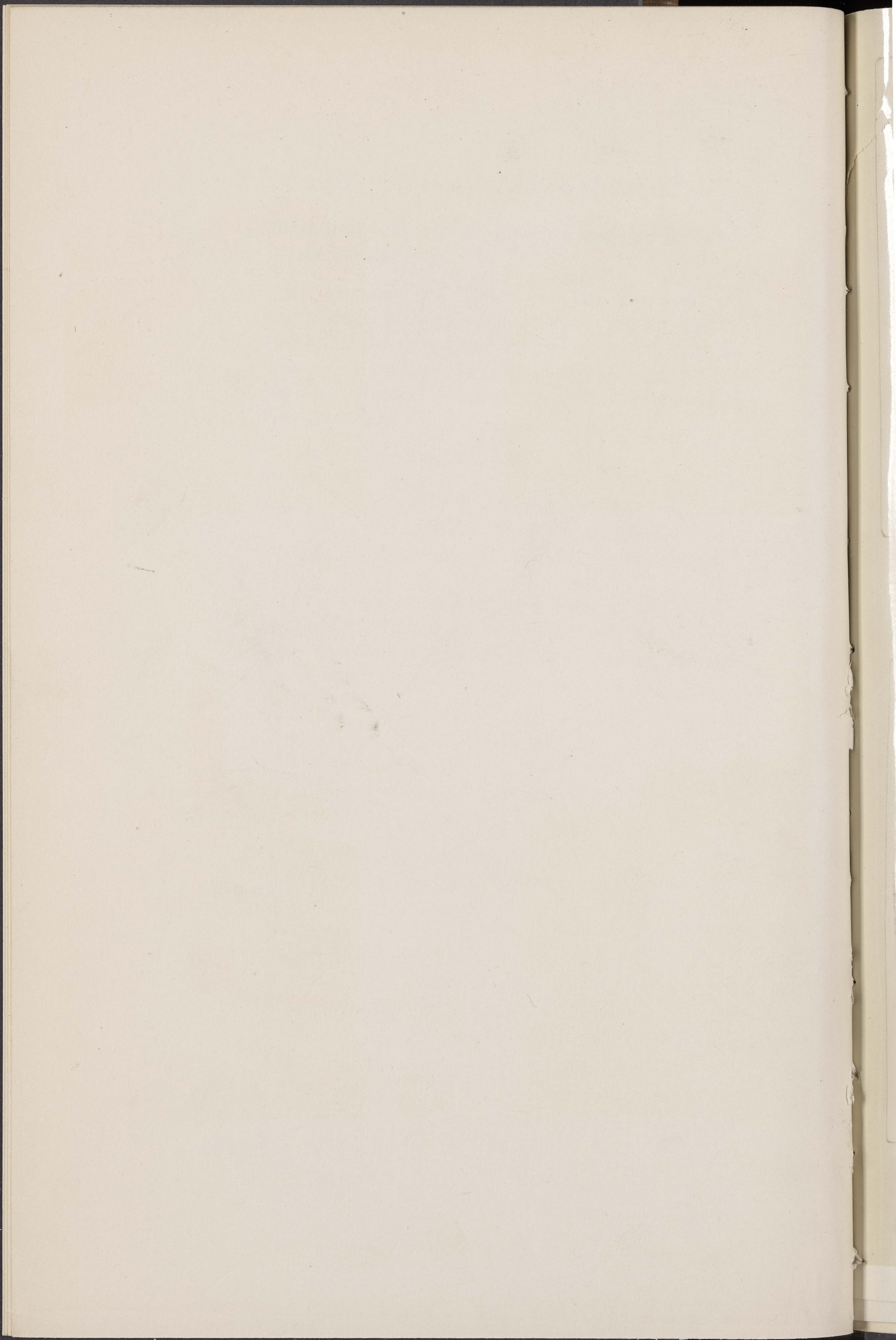




EXHIBIT P-1



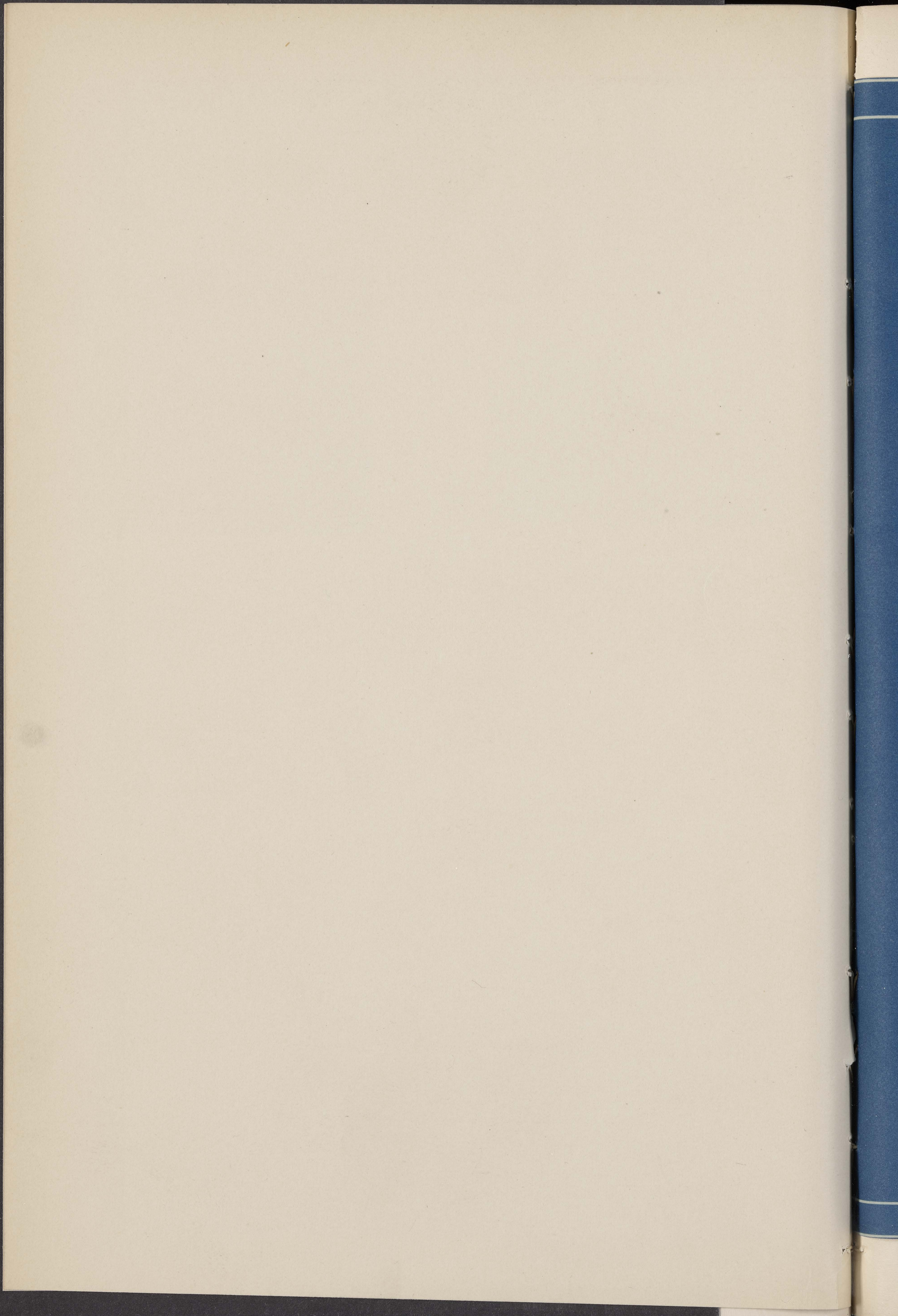
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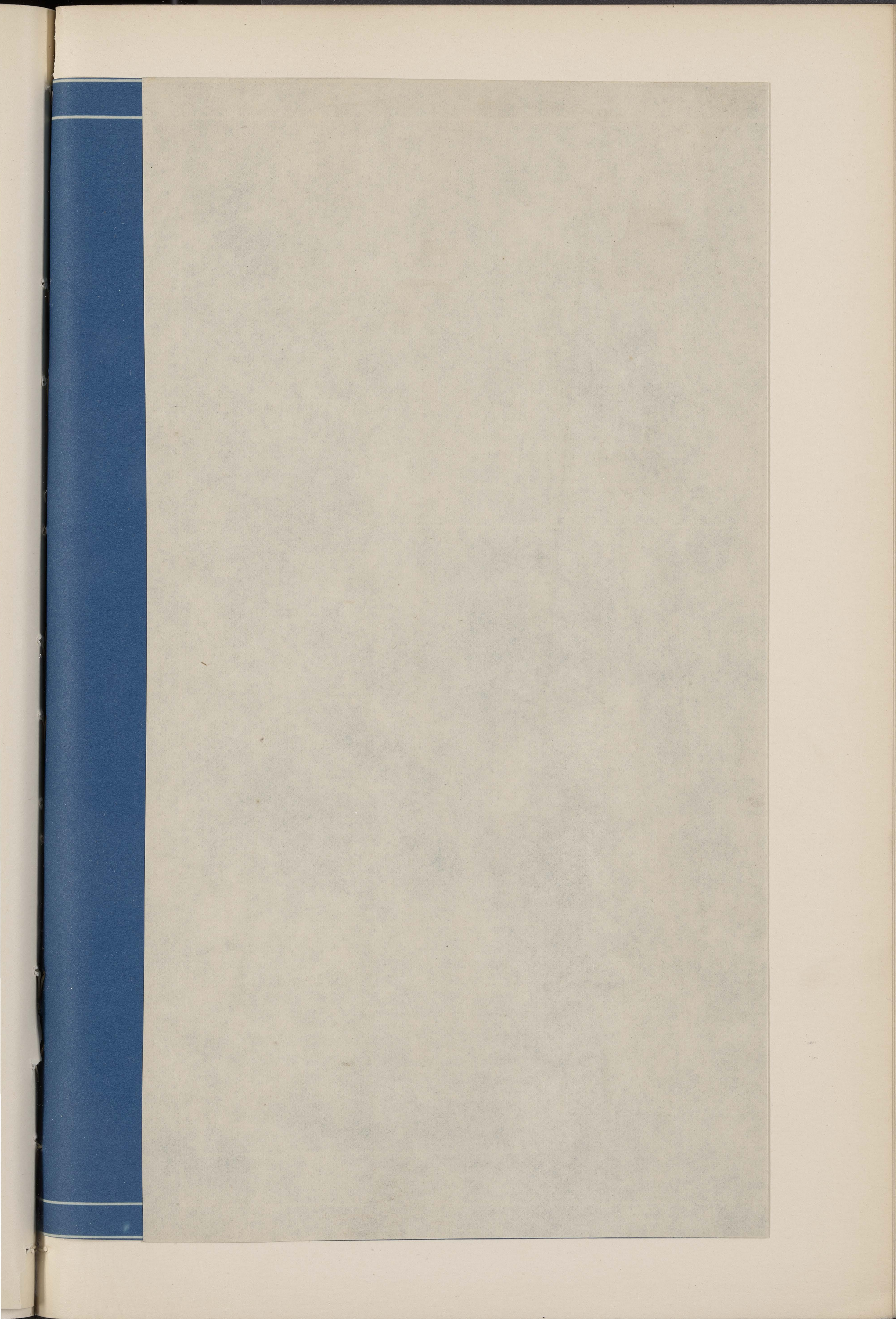


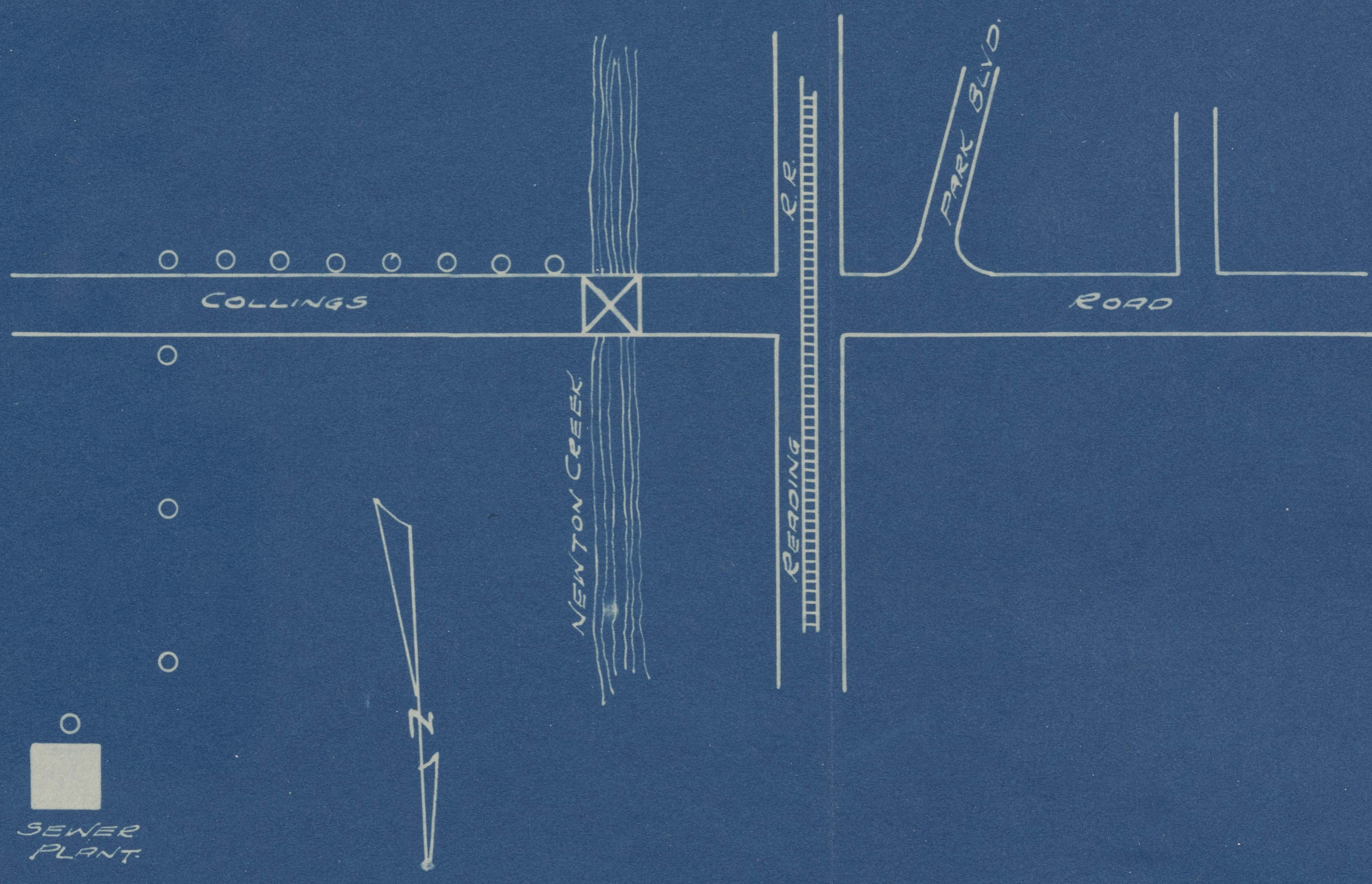
EXHIBIT P-3



EXHIBIT P-4





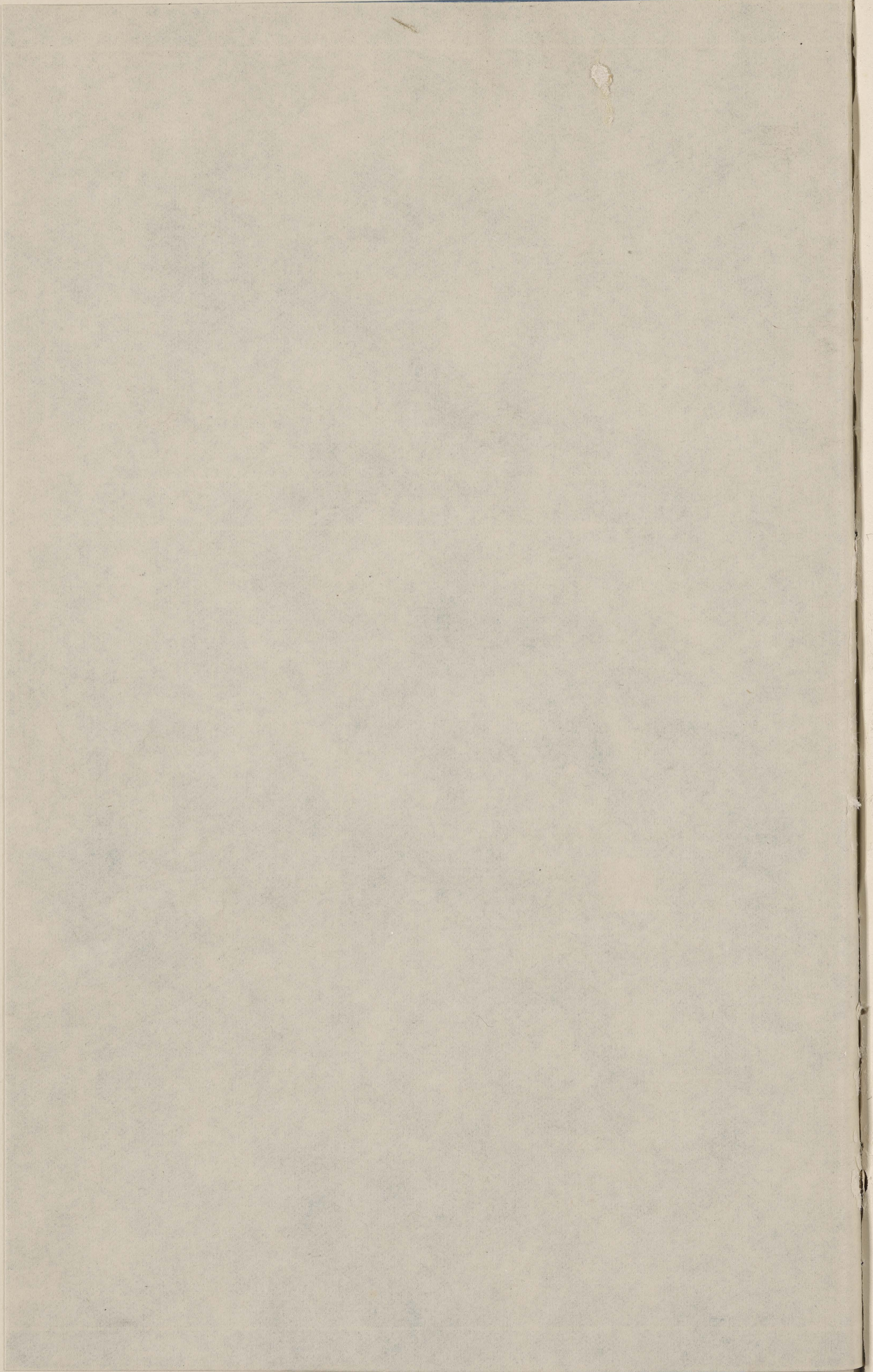


SKETCH SHOWING 12 POLES  
 NECESSARY TO SUPPLY POWER TO  
 SEWERAGE DISPOSAL PLANT  
 YORKSHIP VILLAGE CAMDEN, N.J.

PUBLIC SERVICE ELEC. & GAS CO.  
 ELECTRIC DEP.                      SOUTHERN DIVISION  
 Office Dir. Suen                      Jameson, N. J.

Drawn by *H. KRANS*                      N.S.                      DATE 10-12-18  
 Checked by *[Signature]*

G-19-84                      1-20.



**OPINION.**

Filed July 16, 1928.

**NEW JERSEY SUPREME COURT.**

January Term, 1928.

Nos. 31 &amp; 32 Jany. T., 1928.

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 JAMES F. COAN,
*vs.*
 PUBLIC SERVICE ELECTRIC AND  
 GAS COMPANY.
 

---

E. HAINES HILLIARD,

*vs.*

SAME.

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Appeals from Camden Court of Common Pleas.

Argued before Gummere, Chief Justice and  
 Justices Black and Lloyd.

For the appellant, Henry H. Fryling.

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Contra, James Mercer Davis.

The opinion of the Court was delivered by  
 GUMMERE, C. J.

These two cases were tried together in the  
 court below, and have been argued as one be-  
 fore us.

The following are the undisputed facts in the  
 case: The plaintiff Coan was riding in an auto-  
 mobile driven by the plaintiff Hilliard along  
 Collings avenue, in the City of Camden, on the  
 evening of September 5, 1926. The automobile

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*Opinion of Supreme Court.*

collided with an electric light pole of the defendant company, which was near a bridge crossing Newtown Creek, and both of the plaintiffs were injured. This pole was erected in the roadway; in other words, in that part of the highway which was devoted to vehicular traffic. Both  
10 plaintiffs claimed that the defendant was responsible for the injuries received by them in the collision, basing this claim upon the alleged fact that the pole had been erected in the highway without warrant of law, and brought these suits to recover compensation therefor. The trial resulted in a verdict in favor of each of the plaintiffs, and the defendant seeks to have the judgments entered thereon reversed.

The only grounds for reversal filed by the defendant (the present appellant) are that the trial  
20 court erred in denying a motion to non-suit, and also in refusing to direct a verdict in its favor. The principal argument in support of these contentions is that the pole in question was placed in the position which it occupied with the permission of the governing body of the City of Camden; that, consequently, it was there lawfully; and that its presence in the highway imposed no liability upon the appellant for accidents such  
30 as that which was the basis of the present suits. Assuming that the City of Camden consented to the erection of the pole in the place where it was located, this fact, we consider, does not justify a reversal of the judgments for either of the reasons stated. By the first section of "An Act relating to electric light, heat and power companies" (P. L. 1896, p. 322), such companies have a right to erect their poles in any street of any incorporated city, providing they obtain  
40 municipal authority for doing so, and further

*Opinion of Supreme Court.*

providing "That the same shall be so located as in no way to interfere with the safety or convenience of persons traveling on or over said roads and highways." The grant of the municipality cannot override the statute, and cannot legally authorize the erection of poles in public streets in locations which would interfere with the safety or convenience of travelers thereon. It appeared in the proofs that after the original erection of the pole there had been certain changes made in the bridge already referred to, and that this fact made it desirable, in the opinion of the municipal authorities, that some of the poles of the company should be moved from their original location, and that, pursuant to the request of the municipal officers, the pole which caused the accident had been so moved. The contention is that this action of the company was justified under section 9 of the statute of 1917 (P. L. 1917, p. 407); but the statutory provision appealed to, and which authorizes the change of the location of poles, like that already referred to, declares that the right of the corporation to maintain and operate electric light poles in a new location shall be subject to the same limitation as declared in the earlier statute; that is, that the poles in their new location shall in no way interfere with the safety or convenience of persons traveling over the highway. Whether or not the appellant's pole, in its new location, constituted such a threat, and was, therefore, an illegal structure, was a question of fact, to be determined by the jury; and the refusal of the trial judge to enter a non-suit or direct a verdict for the defendant upon the ground which we have discussed was not erroneous.

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*Opinion of Supreme Court.*

It is further argued that the Court should have directed a verdict for the defendant upon the ground that the collision of the automobile with the electric light pole was the result of the joint negligence of each of these plaintiffs; that Hilliard failed in his duty to observe reasonable care while driving, and that the collision was the result of such failure; and that Coan was negligent in not observing the presence of the pole and calling the driver's attention to it. Whether such negligence existed on the part of the two plaintiffs was clearly a question for the jury. Assuming that the pole was unlawfully in the highway, the plaintiffs had no reason, so far as the proofs show, to suspect any such obstruction to public travel at that place; and, consequently, were not required to use the same degree of care which the law would have imposed upon them if they had had knowledge of the existence of this unlawful structure.

Our conclusions is that each of the judgments under review should be affirmed.

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*Rule of Affirmance and Remittitur*  
(James F. Coan).

**RULE OF AFFIRMANCE AND REMITTITUR.**

NEW JERSEY SUPREME COURT.

<p>JAMES F. COAN, <i>Plaintiff-Appellee,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>PUBLIC SERVICE ELECTRIC AND GAS COMPANY, <i>Defendant-Appellant.</i></p>	}	<p><i>Action at Law.</i>                    <b>10</b></p> <p><i>On Appeal.</i></p> <p><i>Rule of Affirmance and Remittitur.</i></p>
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An appeal having been taken in the above-entitled cause, and the Court having heard and considered the same and finding no error in the record, 20

IT IS ORDERED and adjudged that the appeal heretofore taken in the above-entitled matter be and the same hereby is dismissed with costs and the judgment of the Court of Common Pleas of the County of Camden is hereby in all things affirmed.

AND IT IS FURTHER ORDERED that the record be remitted to the Camden County Court of Common Pleas to be proceeded with in accordance with this judgment and the practice of said court. 30

Entered July 30, 1928.

On motion of

JAMES MERCER DAVIS,  
Attorney for Plaintiff-Appellee.

*Rule of Affirmance and Remittitur*  
(*E. Haines Hilliard*).

**RULE OF AFFIRMANCE AND REMITTITUR.**

NEW JERSEY SUPREME COURT.

10	E. HAINES HILLIARD, <i>Plaintiff-Appellee,</i>  <i>vs.</i>  PUBLIC SERVICE ELECTRIC AND GAS COMPANY, <i>Defendant-Appellant.</i>	}	<i>Action at Law. On Appeal. Rule of Affirmance and Remittitur.</i>
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20 An appeal having been taken in the above-entitled cause, and the Court having heard and considered the same and finding no error in the record,

IT IS ORDERED and adjudged on motion of James Mercer Davis, attorney of the plaintiff, that the appeal heretofore taken in the above-entitled matter be and the same hereby is dismissed with costs and the judgment of the Court of Common Pleas of the County of Camden is hereby in all things affirmed.

30 AND IT IS FURTHER ORDERED that the record be remitted to the Camden County Court of Common Pleas to be proceeded with in accordance with this judgment and the practice of said court.

Entered July 30, 1928.

On motion of

JAMES MERCER DAVIS,  
Attorney for Plaintiff-Appellee.

*Notice and Grounds of Appeal (James F. Coan).*

**NOTICE AND GROUNDS OF APPEAL.**

Filed August 8, 1928.

**NEW JERSEY SUPREME COURT.**

JAMES F. COAN, <i>Plaintiff-Appellee,</i> vs. PUBLIC SERVICE ELECTRIC AND GAS COMPANY, <i>Defendant-Appellant.</i>	}	<i>Action                      at Law.</i>	10
		<i>On Appeal                      from the New                      Jersey                      Supreme                      Court.</i>	
		<i>Notice and                      Grounds of                      Appeal.</i>	20

To James Mercer Davis, Esq., attorney of plaintiff-appellee.

SIR:

TAKE NOTICE that the defendant-appellant appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment of affirmance entered in the New Jersey Supreme Court in the above-entitled cause, on the following ground:

1. Because the New Jersey Supreme Court erred in affirming the judgment of the Camden County Court of Common Pleas in giving judgment of affirmance for the plaintiff-appellee, and against the defendant-appellant, when, because of one or more of the grounds of appeal, filed by the defendant-appellant in the Supreme Court, such court should have reversed the Camden County Court of Common Pleas, and have given

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*Notice and Grounds of Appeal (James F. Coan).*

judgment for the defendant-appellant instead  
of for the plaintiff-appellee.

Your truly,

HENRY H. FRYLING,  
Attorney of Defendant-Appellant.

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(Endorsed) "Service of a copy of the within  
notice and grounds of appeal is hereby acknowl-  
edged this second day of August, 1928. James  
Mercer Davis, Attorney for Plaintiff-Appellee."

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*Notice and Grounds of Appeal*  
(*E. Haines Hilliard*).

**NOTICE AND GROUNDS OF APPEAL.**

Filed August 8, 1928.

**NEW JERSEY SUPREME COURT.**

<p>E. HAINES HILLIARD, <i>Plaintiff-Appellee,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>PUBLIC SERVICE ELECTRIC AND GAS COMPANY, <i>Defendant-Appellant.</i></p>	}	<p><i>Action at Law.</i></p> <p><i>On Appeal from the New Jersey Supreme Court.</i></p> <p><i>Notice and Grounds of Appeal.</i></p>	<p>10</p> <p>20</p>
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To James Mercer Davis, Esq., attorney for plaintiff-appellee.

SIR:

TAKE NOTICE that the defendant-appellant appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment of affirmance entered in the New Jersey Supreme Court in the above-entitled cause, on the following ground: 30

1. Because the New Jersey Supreme Court erred in affirming the judgment of the Camden County Court of Common Pleas in giving judgment of affirmance for the plaintiff-appellee, and against the defendant-appellant, when, because of one or more of the grounds of appeal, filed by the defendant-appellant in the Supreme Court, such court should have reversed the Camden County Court of Common Pleas, and have given 40

*Notice and Grounds of Appeal*  
(*E. Haines Hilliard*).

judgment for the defendant-appellant instead  
of for the plaintiff-appellee.

Yours truly,

HENRY H. FRYLING,  
Attorney of Defendant-Appellant.

10

(Endorsed) "Service of a copy of the within  
notice and grounds of appeal is hereby acknowl-  
edged this second day of August, 1928.

JAMES MERCER DAVIS,  
Attorney for Plaintiff-Appellee."

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## New Jersey Court of Errors and Appeals

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JAMES F. COAN,  
*Plaintiff-Appellee,*  
*vs.*  
PUBLIC SERVICE ELECTRIC AND  
GAS COMPANY,  
*Defendant-Appellant.*

*Action  
at Law  
On Appeal  
from New  
Jersey Su-  
preme Court.*

---

E. HAINES HILLIARD,  
*Plaintiff-Appellee,*  
*vs.*  
PUBLIC SERVICE ELECTRIC AND  
GAS COMPANY,  
*Defendant-Appellant.*

*Action  
at Law  
On Appeal  
from New  
Jersey Su-  
preme Court.*

### BRIEF OF DEFENDANT-APPELLANT.

#### Facts.

The plaintiff, Hilliard, while driving his automobile over Collings avenue or road near a bridge over Newton Creek in Camden County sometime after midnight on September 5th, 1926, came into collision with a wooden pole belonging to the defendant company, and suffered damages to himself and his automobile. The other plaintiff, Coan, a passenger in the Hilliard car, was also injured.

In 1918, the defendant submitted an application to the City of Camden for permission to install eight poles along Collings Road, east of Newton Creek, at the designation specified in the plan submitted with the application (See Exhibit D. 1, blue print at end of State of Case).

The application and plans were passed on favorably by the Street Committee of the City Council of Camden on October 16th, 1918. They were then referred to the City Council of Camden for ratification of the report of the Street Committee, and at a regular meeting of the City Council on October 31st, 1918, the application and plans were approved and permission granted the defendant to erect the poles in the designation approved, which was thereafter done.

At the time the poles were erected, the bridge crossing Newton Creek was a wooden structure, not as wide as Collings Road. The pole line on Collings Road was outside of the line of the wooden bridge.

In 1925 or 1926, the Board of Freeholders of Camden County constructed a new bridge over Newton Creek. This bridge was approximately fifteen feet wider than the old bridge, on each side.

During the course of construction of this bridge, the County Engineer, by telephone, communicated with one of defendant's employees, requesting that one of the eight poles on the Camden side of the bridge and two other poles on the Gloucester side of the bridge be temporarily removed. This was done and the poles removed were never replaced and the light which was on the pole removed from the Camden side of the bridge was transferred to the pole next in line. The pole to which the light was transferred was the pole into which Hilliard drove his automobile, and is the pole in question in this suit, which was never moved (p. 80, l. 20).

At the time the pole was set, it was not in the roadway, and was so located as not to in any way interfere with the safety or convenience of persons travelling over the highway. The pole was never moved from its original location and no act of the defendant caused the pole to be an obstruction in the highway, neither was any notice given to the company by the municipal authorities or any other person or authority to move it to another location.

The opinion of the Supreme Court filed in this case was predicated upon the idea that the pole when set was so set as to interfere with the safety and convenience of persons travelling over the highway and that the municipality in granting the consent had attempted to override the statute and allow the pole to be set in an improper location. And further, that the pole causing the accident had been moved from its original location. Neither fact was true. The pole, when erected, complied with all the requirements of the statute, and as originally placed, was so located as not to interfere with the safety and convenience of persons traveling over the road. Furthermore, the pole was never moved after it was first placed, nor was any request ever made by any municipal authority to the defendant to move it.

The question therefore presented is whether the presence of a pole placed on the side of the street in full compliance with the law, and so as not to interfere with vehicular traffic, will support an action for negligence against the defendant under the circumstances set forth.

The two cases were tried together at the Camden Court of Common Pleas. The appeals were taken together, the grounds being the same, and

were argued together in the Supreme Court as they will be here. The grounds argued in the Supreme Court were:

“1. Because the Court at the close of the plaintiff’s case, although moved so to do by the attorney of the defendant, on the ground that there had been no proof of negligence on the part of the defendant; and on the further ground that the plaintiff had failed to prove that the pole was not maintained where it should have been, refused to non-suit the plaintiff.

“2. Because the Court, at the close of the whole case, although moved so to do by the attorney of the defendant, on the ground that no negligence had been shown on the part of the defendant, refused to direct a verdict in favor of the defendant.”

The ground of appeal in this case is:

“1. Because the New Jersey Supreme Court erred in affirming the judgment of the Camden County Court of Common Pleas in giving judgment of affirmance for the plaintiff-appellee, and against the defendant-appellant, when, because of one or more of the grounds of appeal, filed by the defendant-appellant in the Supreme Court, such court should have reversed the Camden County Court of Common Pleas, and have given judgment for the defendant-appellant instead of for the plaintiff-appellee.”

#### POINT I.

The statute under which the right of the defendant was obtained to erect and maintain the pole in question is Section 1 of the Laws of 1896, p. 322, and is as follows:

“Any corporation organized or to be organized by virtue of the act entitled ‘An Act concerning corporations,’ for the purpose of constructing, maintaining and operating works for the supply and distribution

of electricity for electric lights, heat or power, shall have full power to use the public roads or highway, streets, avenues and alleys in this State for the purpose of erecting posts or poles on the same to sustain the necessary wires and fixtures, upon first obtaining the consent in writing of the owners of the soil; provided, however, no posts or poles shall be erected in any street of any incorporated city or town without first obtaining from the incorporated city or town a designation of the street in which the same shall be placed and the manner of placing the same, and that the same shall be so located as in no way to interfere with the safety or convenience of persons traveling on or over the said roads and highways, and that the public streets in any of the incorporated cities and towns of this State shall be subject to such regulations as may be first imposed by the corporate authorities of such cities and towns." (P. L. 1896, p. 322, 3 Compiled Statutes 1910, p. 3152.)

No attempt was made by the municipality to secure a re-location of this pole. If the action pointed out by the statute, hereafter quoted, had been taken, an entirely different question of law would have been presented. The act just referred to is Section 6 of Article XXII of An Act Concerning Municipalities (P. L. 1917), p. 319. The section in question is found at the top of page 409 of the Laws of 1917. It is as follows:

"6. Whenever any street, highway or public road shall be changed or altered, the governing body may direct all persons or corporations having or maintaining in such street, highway or public road, any tracks, poles, wires, pipes, conduits or other structures, to remove the same therefrom, and to relocate the same in the changed or altered street, highway or public road. Before making any such order or direction,

the person or corporation owning or controlling any such tracks, poles, wires, pipes, conduits or structures shall be accorded a hearing by the governing body, notice of which hearing shall be given to such person or corporation, in writing, a copy of which shall be left with the person in charge of the place of business maintained by such person or corporation in the municipality, or if no such place of business is maintained in the municipality, then a copy of such notice shall be mailed to the residence or principal office of such person or corporation."

"9. Whenever any tracks, poles, wires, pipes, conduits or other structures shall have been relocated under the provisions of this Act, the person or corporation owning the same shall have the same right to maintain and operate the same in the new location for the same length of time and in the same manner as he or it had in their former location at and immediately before such removal."

The proof in this case shows that when the pole was set, that it was outside the line of the wooden bridge, and so located as in no way to interfere with the safety and convenience of persons travelling on or over the highway. (See blue print attached to State of Case.)

Mr. Wolverton, Chief Clerk of the Highway Department of the City of Camden, testified (pp. 61-63) that application was made for eight proposed pole locations along Collings Road east of Newton Creek; that the application was submitted to his department October 16th, 1918, and acted upon formally by that committee, and by it referred to the City Council.

The assistant clerk, Mr. Pope, testified (pp. 63-64) that the City Council passed a resolution approving the plans and granting permission to

the defendant to erect the poles on October 31st, 1918.

No proof was offered by the plaintiff showing that the highway wherein the defendant maintained its pole had ever been changed, widened or altered under any municipal authority.

Mr. Bower (p. 79, ll. 32-37) testified that he was acquainted with the roadway prior to the placing of the new bridge across the creek; that the old bridge was not as wide as the new one, and that the pole line was outside of the line of the wooden bridge.

Attached to the state of case are exhibits showing the position of the pole and the designation approved by the City of Camden. All the poles are there except the pole nearest the bridge which was removed at the request of the county engineer, and never replaced.

No action was taken to cause the defendant to remove or re-locate the pole in question under the statute hereinbefore quoted. And the pole could not be legally moved by the defendant from one position to another position on the highway without some action on the part of the municipality.

The defendant company had a vested property right in the pole, and the location which it occupied.

The only theory upon which these verdicts can be sustained is that the pole, as set, constituted a nuisance. It is impossible to maintain such a theory in view of the decided cases in this State because it has been repeatedly held by our courts that "A business authorized by the legislature is not a public nuisance unless the powers granted are negligently exercised." *State v. Riggs*, 81 N. J. Law 456.

The case of *Opdycke v. Public Service Railway Co.*, 78 N. J. Law, 576, is very much in accord with the case last cited, the Court holding in that case "That the statute does not permit the construction and maintenance by the Traction Company in the highway, of a bridge, that in design and construction is dangerous to ordinary travel and calculated to entrap and kill horses and other animals that may attempt to pass over it," which is another way of saying that the powers granted by the legislature are not to be negligently exercised.

"A municipality may set apart a portion of its streets between the travelway for vehicles, and the sidewalk, for the erection of poles, for electric light wires, telephone or trolley wires and for similar purposes. It need not give the whole street to drivers of vehicles. The street may be used for procuring conveniences as well as for drivers \* \* \* the user of vehicles is not entitled to the entire street from property line to property line."

*Gueffort v. Miss. Coast Tr. Co. & City of Biloxi*, 85 So., 308 (Miss.).

That the above statement of the law, while it is taken from a reported case outside the State of New Jersey, is unquestionably the law of this State and has been so held by our courts in a number of cases, some of which are very recent.

*Lorentz v. Public Service Railway Co.*, 4 N. J. Adv. Rep., p. 1661, 134 Atl. Rep. 818, is a case where an elevated structure had been placed on the street by legislative sanction and the plaintiff was injured by reason of his automobile

coming in contact with one of the supporting columns, the Court said:

“Structures of this kind, authorized by law and used to facilitate public travel, although they are physical obstructions to drivers of ordinary vehicles and perhaps to pedestrians, are nevertheless not nuisances, and the public must take notice of them.”

In the case just cited, the Court also held that the defendant was under no duty to light or keep clean the column supporting the structure. “The right to erect and maintain the structure was conferred without any such qualification, and it seems reasonable to say that where neither the statute nor ordinance mentions the matter it must be assumed that the ordinary public lighting of the street was considered sufficient in the premises.”

This case was followed in *Denzer v. D., L. & W. R. R. Co.*, 4 N. J. Adv. Rep., 1707, 134 Atl. 820. In this case the Board of Public Utilities Commissioners had ordered the defendant to abolish a grade crossing and a structure was built in conformity to a contract with the city and the Board's orders. The plaintiff was injured as she came out onto the street from one of the openings. The Court held that:

“—when, under legislative authority, a railroad company, in the abolition of grade crossing perils, is permitted and required to support its tracks across a street by columns or similar erections within the street lines, its duty to the travelling public on the street ends with the construction and maintenance of such permanent structure in the manner laid down and specified by the public authority.”

The defendant had the right by legislative authority to locate its pole in the place where it was maintained. It was located at the side of

the road and in such a position as in nowise to interfere with the safety or convenience of persons travelling on or over the road. The original location was never changed. No act of the defendant made the location such as to interfere with the safety or convenience of persons travelling on or over the road. Any change brought about, was the act of the municipality, and any danger created was created by the municipality. If the city or county proposed to construct a wider bridge or construct a wider road, it was the duty of such municipality to take into consideration the rights that this defendant had to maintain its pole to carry its electric wires.

If the City of Camden had the right by virtue of Section 6 of Article XXII of the "Act concerning municipalities," *supra*, to cause the pole to be relocated, it never attempted to exercise that right.

The Supreme Court is in error when it says (p. 96):

"This pole was erected in the roadway; in other words, in that part of the highway which was devoted to vehicular traffic."

The evidence in the case is entirely to the contrary. The pole was erected to the side of the highway, as is clearly shown by the blue print which is attached to the printed State of the Case. As the highway was then maintained the pole in question was placed in a safe position which it occupied with permission of the governing body of the City of Camden under legislative authority and consequently it was there lawfully.

The grant of the municipality in nowise attempted to override the statute because as located, and as the roadway was then maintained,

the pole in no way interfered with the safety of travellers thereon.

The Supreme Court is again in error when it says in its opinion (p. 97):

“It appeared in the proofs that after the original erection of the pole, there had been certain changes made in the bridge already referred to, and that this fact made it desirable, in the opinion of the municipal authorities, that some of the poles of the company should be moved from their original location, and that, pursuant to the request of the municipal officers, *the pole which caused the accident had been so moved.*”

The error committed is that the Court erroneously assumed that “the pole which caused the accident had been so moved.” The proof was to the contrary.

Mr. Bower testified (p. 79, l. 34), that the old bridge was a wooden structure, not as wide as the roadway on Collings Road or avenue, and that our pole line on that road or avenue went outside the line of the wooden bridge, and on page 83, line 2, on cross examination, he testified that Exhibit P. 2 showed the pole line running along the edge or margin of the road. In addition to this testimony, the blue print, which was an exhibit in this case and is attached to the State of Case, shows the original pole line to be outside the travelled way of Collings Road or avenue.

The Supreme Court thus erroneously assumes that the pole involved in the accident was relocated and that in its new location it interfered with the safety and convenience of persons travelling over the highway, and says (p. 97):

“Whether or not the appellant’s pole in the new location constituted such a threat, and was, therefore, an illegal structure, was

a question of fact, to be determined by the jury.”

There was no such question of fact to be determined by the jury, as there was no relocation of the particular pole with which the plaintiff collided. There were some poles that were temporarily removed and never replaced, but the pole involved in this accident was never changed from its original location.

It is perfectly clear that the pole in question, having been originally placed where it stood at the time of the accident, was there legally, and that whether the pole was under the jurisdiction of the city or of any other municipal body, its removal and relocation could not be compelled and the defendant company was under no obligation to remove or relocate the same unless and until it had had notice and an opportunity to be heard upon the subject.

If the pole were on a city highway, then by the express provision of the statute hereinbefore quoted notice must be given before removal and relocation could be compelled. If the pole were under the jurisdiction of any other body, where the statute concerning cities would be inapplicable, then it is still perfectly clear that the pole's having been lawfully placed there constituted a franchise and a property right, and its removal as against the company could not be compelled without appropriate notice and hearing.

These principles are so firmly imbedded in our jurisprudence that it is unnecessary to cite further cases in support thereof, and it consequently follows that inasmuch as neither notice nor hearing under the statute nor under the common law with respect to the removal and

relocation of this pole was given to the defendant company, the judgment against it has no substantial basis upon which it can rest and must therefore be reversed.

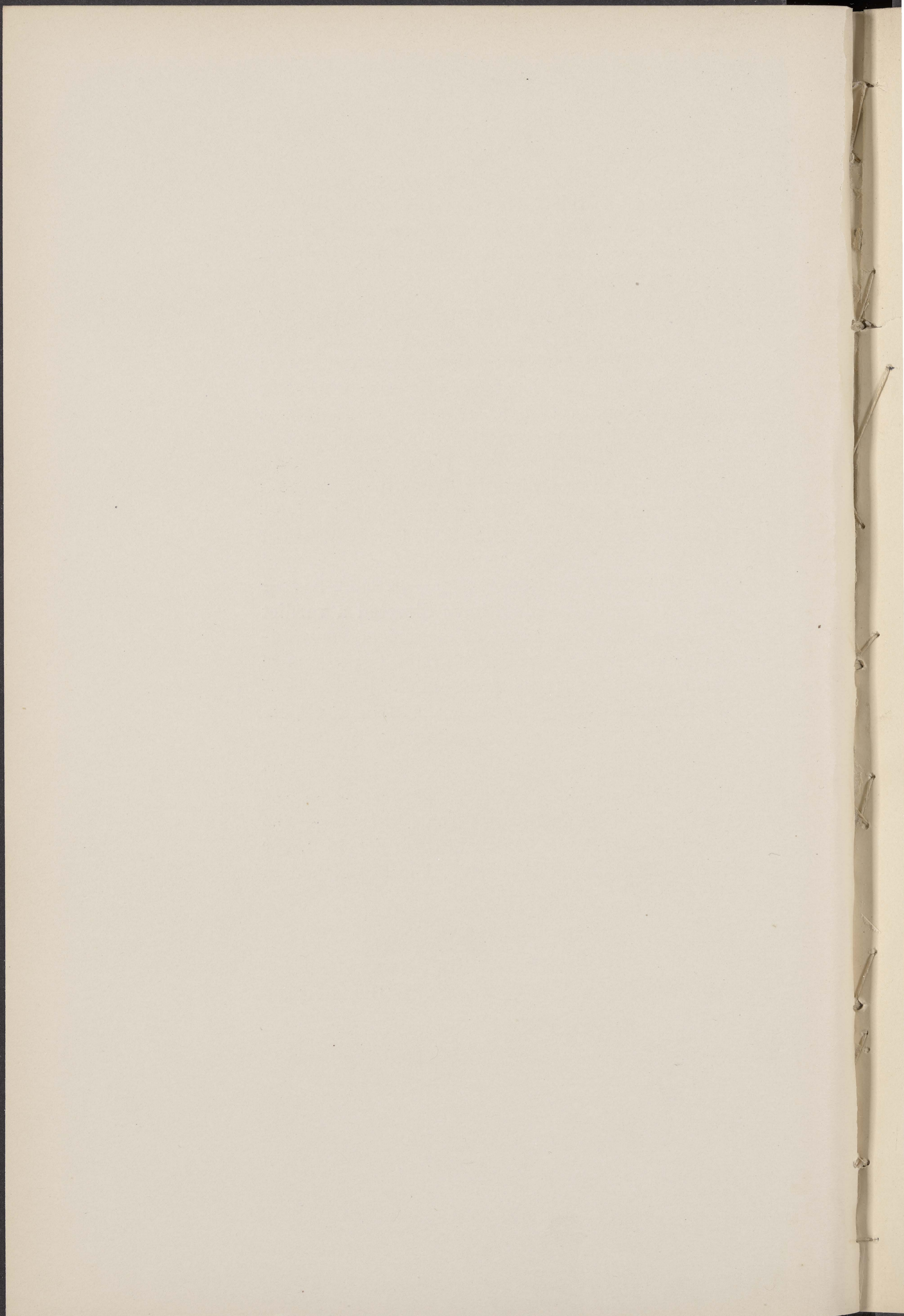
It is submitted that the defendant was under no duty to maintain a light on the pole (although there is evidence that there was one); that the pole was located under due authority of the legislature and of municipal sanction; that it could not be moved without some municipal action, and, therefore, there was no legal duty owing to the plaintiff from the defendant which was violated so as to give a right of action to the plaintiff, and that the trial court should have granted the motion for a non-suit at the end of the plaintiff's case, and having failed to so do it should have directed a verdict in favor of the defendant at the end of the whole case, and further that the Supreme Court was in error because of its affirmance of the judgment of the Camden County Court of Common Pleas, instead of reversing the judgment of said court.

The defendant argued in the Supreme Court that there was contributory negligence on the part of the plaintiff and that, therefore, the Court should have directed a verdict in favor of the defendant. That ground is abandoned in this court.

Respectfully submitted,

HENRY H. FRYLING,  
Attorney for and of Counsel with Defendant.

WILLIAM H. SPEER,  
of Counsel.



NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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JAMES F. COAN,  
*Plaintiff-Appellee,*

v.

PUBLIC SERVICE ELECTRIC and GAS COMPANY,  
*Defendant-Appellant.*

---

ACTION AT LAW.

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ON APPEAL.

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E. HAINES HILLIARD,  
*Plaintiff-Appellee,*

v.

PUBLIC SERVICE ELECTRIC and GAS COMPANY,  
*Defendant-Appellant.*

---

ACTION AT LAW.

---

ON APPEAL.

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BRIEF OF PLAINTIFFS-APPELLEES.

The contention of the defendant-appellant is that the Supreme Court misconceived the testimony in the present case in concluding that this pole was erected in the roadway, in other words, in that part of the highway, which was devoted to vehicular traffic. The Court had before it Exhibits P 1, 2, 3, 4, 5 and 6. How it is possible in view of the photographs to arrive at any conclusion other than that the pole was erected within the traveled portion of the highway is more than I can understand. The fact is made plain in the photographs themselves.

The evidence is and the testimony of Mr. Brower (S. Cl. 77 and following) was that this particular pole against which the plaintiff's, E. Haines Hilliard's automobile collided had not been moved; that it is in the traveled portion of the highway is perfectly plain and that is all that the testimony shows.

The blue-prints attached to the State of the Case (pages 94 and 95), merely show the location of some poles outside of some light lines printed on blue paper, but do not at all show the real condition upon the ground. The photographs attached offered in evidence disclosed that. As I read the State of the Case, no one testified as to the condition of the road prior to the building of the bridge, but merely as to the conditions of the bridge.

It is upon this question of fact and the conclusions to be drawn therefrom that the appellant bases his appeal.

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#### ARGUMENT.

1. Now, it seems to me that it is perfectly plain that it matters not whether or not the Court made

the alleged mistake of fact or did not, the legal conclusions remained the same as set forth in the opinion of the Supreme Court. The opinion of the Supreme Court, while not citing the case of *Opdycke v. Public Service Railway Company*, 78 N. J. L. 576, was undoubtedly based upon the principle of that case. It is clearly manifest from the law as stated by this learned Court in that case that the municipal authorities have no power to authorize the construction and maintenance of any structure in the highway that is a nuisance, or, as expressed in the language of this Court in the case of *Opdycke v. Public Service Railway Company, supra*, "But in our opinion, the statute does not permit the construction and maintenance by the traction company in the highway of a bridge that in design and construction is dangerous to ordinary travel and calculated to entrap and kill horses and other animals that may attempt to pass over it."

And this learned Court again said in this same case, "The grant to the street railway company is necessarily subject to the condition (implied, if not expressed), that its tracks shall be so laid, constructed and maintained as not to materially interfere with any other lawful use of the highway." In other words, the municipality had no authority or power to permit the erection of a telephone pole in the middle of a public highway. The erection of such a pole would constitute a nuisance and would entitle a person injured thereby to damages. So that it is perfectly plain on the authority of *Opdycke v. Public Service Railway Company, supra*, that the defendant can obtain no immunity for the creation of a nuisance by relying upon a municipal authority, acting under the statute in question in this case. In other words, while the Legislature has given the municipality the power to permit the erection of

telephone and electric light poles in the streets of municipalities, it is expressly provided that "the same shall be so located as in no way to interfere with the safety or convenience of persons traveling on or over said roads or highways." So the mere fact that the municipality gave the consent for the location of the pole affords no comfort to the appellant in this case, notwithstanding, the municipality may have given its consent the appellant placed the poles in the position which they were at its own peril with respect to persons traveling upon the highway.

2. But, assuming that the poles at some time stood at the side of the traveled highway, and not within the traveled portion of the highway, although there is no testimony to support such an assumption. Nevertheless, as this learned Court pointed out in *Opdycke v. Public Service Railway Company, supra*, the highway extends the entire width that it is laid out irrespective of the width to which it may have been improved. And if a pole is placed in some part of the highway not within the traveled portion, but afterwards it becomes, by improvement, a part of the traveled highway, certainly it could not be argued that a private corporation could maintain such a pole in the traveled portion of the highway, even though erected in a portion which was not formerly traveled. If not a nuisance at the time that the pole was erected, it became a nuisance with the improvement of the highway, and the appellant could not then hide itself behind the municipal authority originally granted for the erection of such poles and claim that that was its authority for maintaining such a pole in a place where it became a nuisance. As a member of the traveling public, the traveler was not concerned

with the difficulty that the appellant may encounter in removing his poles from any position to another, nor whether the municipality would give its consent for the removal of the poles to some other place. His grievance is that the pole in the middle of the public highway, especially in that part which is open to travel, is a nuisance. Even though the appellant had the formal approval of the municipality to place such a nuisance in the highway, it would not relieve him of liability to respond in damages for one especially injured, because of the proviso in the statute requiring poles to be placed in such a manner as not to interfere with the safety or convenience of the traveling public. That was a limitation on the power of the municipality. The appellant exercised its franchise with that proviso and limitation in its permit, so that it appears to me that these are the conclusions:

First. There is no evidence that this pole was not within the traveled portion of the highway, but the evidence clearly discloses that it was. The only evidence was that the pole was not moved. This shows that it was in the traveled portion of the highway.

Second. That if it were in the traveled portion of the highway it was a nuisance so found by the jury.

Third. That if it were not in the traveled portion of the highway at the time that the pole was erected, but by reason of public improvements became within the traveled portion of the highway, its maintenance under those conditions and in such a place would constitute a nuisance, which would

entitle the plaintiffs to recover. So that under any assumption of this case, whether the appellant is right or wrong in its statement of facts, still it remains liable under the law.

It is, therefore, respectfully submitted that the appeal should be dismissed and the judgment of the Supreme Court affirmed.

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