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Notice of Appeal.

Paterson District Court

ARTHUR COLLIER REALTY Co.,
Plaintiff,
v.
HENRY GOTTLIEB,
Defendant.

10

To

Stein & Stein,
Attorneys of Plaintiff.

20

Take notice that the defendant, Henry Gottlieb hereby appeals to the New Jersey Supreme Court from the judgment of the Paterson District Court rendered in the above stated action on the 17th day of March, 1925.

Dated March 20th, 1925.

FRANK G. TURNER,
Attorney of Defendant.

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State of Demand.

PATERSON DISTRICT COURT.

10	ARTHUR COLLIER REALTY Co., a corporation, Plaintiff, <i>v.</i> HENRY GOTTLIEB, Defendant.	}	In Tort.
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Plaintiff demands of the defendant, the sum of Five hundred (\$500.00) dollars in an action in tort, for that:

1. On September 17, 1924, plaintiff was the owner of a certain automobile which was being driven in a lawful manner along a certain public street or highway known as Park Street in the Town of Montclair, County of Essex and State of New Jersey, in a southerly direction.

2. While the automobile of the said plaintiff was being driven as aforesaid, a certain automobile belonging to the defendant, and operated by the defendant, by himself, his agent or servant in that behalf, was being driven along said public street or highway known as Park Street, Montclair, New Jersey, in a southerly direction, and was so negligently, carelessly and improperly operated and propelled by the said defendant, by himself, his agent or servant in that behalf, that by reason thereof, the automobile of the said defendant ran into and collided with the automobile of the said plaintiff.

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Specification of Points.

3. By reason thereof, the automobile of the said plaintiff became disabled and unfit for use, and the plaintiff was obliged to lay out and expend, and did lay out and expend, the sum of Five hundred (\$500.00) dollars to repair said damage to his said automobile.

Plaintiff demands as damages, the sum of Five hundred (\$500.00) dollars, with costs of suit.

STEIN & STEIN,
Attorneys of Plaintiff.

Specification of Points.

NEW JERSEY SUPREME COURT.

20	ARTHUR COLLIER REALTY Co., a corporation, Plaintiff, <i>v.</i> HENRY GOTTLIEB, Defendant.	}	20
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To the Plaintiff and Stein & Stein, his Attorneys:

Take Notice that the following is a specification of the points on appeal with which the defendant is dissatisfied in point of law:

1. The Trial Court erroneously refused to order a judgment of nonsuit on the ground that no negligence had been shown on the part of defendant.

2. The Trial Court erroneously refused to order a judgment of nonsuit on the ground that the plaintiff was guilty of contributory negligence.

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Reply to Specification of Points.

3. The Trial Court erroneously refused to find judgment for defendant on one or more of the following grounds:

A. No negligence shown on the part of defendant.

10 B. Plaintiff was guilty of contributory negligence.

4. The Trial Court admitted illegal evidence on behalf of plaintiff.

5. The Trial Court refused to admit legal evidence offered by plaintiff.

6. No legal evidence was offered to prove plaintiff's damages.

FRANK G. TURNER,
Attorney of Defendant.

20

Reply to Specification of Points.

NEW JERSEY SUPREME COURT.

ARTHUR COLLIER REALTY Co.,
a corporation,
Plaintiff,

v.

HENRY GOTTLIEB,
Defendant.

30

To Henry Gottlieb, or Frank G. Turner, his Attorney:

TAKE NOTICE, that the following is a reply to the Specification of Points on the appeal in the above stated cause:

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Case.

1. The Trial Court properly refused to order a nonsuit on the ground that no negligence had been shown on the part of the defendant.

2. The Trial Court properly refused to order a judgment of nonsuit on the ground that the plaintiff was guilty of contributory negligence.

10

3. The Trial Court properly refused to find judgment for defendant on any or all of the grounds set forth in the Specification of Points filed.

STEIN & STEIN,
Attorneys of Plaintiff-Appellee.

PATERSON DISTRICT COURT.

Before—Hon. ROBERT McDERMOTT, J.

20

A. COLLIER REALTY COMPANY,
Plaintiff,

v.

HENRY GOTTLIEB,
Defendant.

Paterson, N. J., March 5th, 1925.

30

APPEARANCES:

BENJAMIN L. STEIN, Esq., for the Plaintiff.
FRANK G. TURNER, Esq., for the Defendant.

Mr. Stein: This is a suit brought to recover damages received out of an automobile accident which occurred on September seventeenth last year in Montclair, New Jersey, and I may say it will be necessary to amend the complaint in this respect. I was under the impression the plaintiff had laid out

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George J. Collier, direct.

the sum of five hundred dollars to repair the automobile when as a matter of fact it was taken in exchange in its damaged condition for five hundred dollars less than we could have obtained for it. I ask permission to amend the complaint which alleged that the plaintiff was obliged to spend an amount to repair his car, and amend the complaint to state that his loss was five hundred dollars.

10

The Court: There is no objection to that.

GEORGE J. COLLIER, sworn for the plaintiff.

Direct examination by Mr. Stein:

Q. Are you connected with the plaintiff in this case? A. I am.

Q. What position do you hold? A. Secretary.

20

Q. Do you remember in nineteen hundred and twenty-four whether the plaintiff owned an automobile? A. Yes, sir.

Q. What kind? A. An Earl touring.

Q. What year? A. Nineteen hundred and twenty-two.

Q. Where was that automobile purchased? A. In Paterson.

Q. Who from? A. A. Minuskin & Son.

Q. How much did they pay for it? A. Over twelve hundred and fifty dollars with accessories.

30

Q. Were you driving this automobile last September? A. I was.

Q. Where? A. I was going to Newark through Montclair and I was struck by a truck and the car skidded and the car was smashed.

Q. What was the condition of the weather that day? A. Rainy. Wet.

Q. Was anyone with you? A. Not with me.

Q. Where were you driving this car? A. On the right hand side of the road.

40

George J. Collier, direct.

Q. On what street? A. Park Street.

Q. The automobile which struck you was coming in which direction? A. The opposite direction.

Q. When did you first know you were struck? A. I felt a slight jar after the truck passed me and then I started to skid around—

Mr. Turner: In that event I move to strike out his testimony that he was struck by this automobile.

10

Q. Did you see this truck coming? A. I did.

Q. Did you know the owner and the driver of the truck before it struck you? A. No, I did not.

Q. Did you recognize the truck? A. No, I did not.

Q. When this automobile struck you I understood you to say the front part of that automobile had passed your front part? A. That is right.

20

Q. Where did the truck strike you? A. On the left rear.

Q. What happened to your automobile? A. My automobile skidded.

Q. What happened to it? A. It was totally wrecked.

Q. After it was struck where was it taken? A. It was taken to a garage in Montclair for storage purposes and then towed into Paterson.

30

Q. Who towed it into Paterson? A. A. Minuskin & Sons.

Q. At the time this accident happened did you stop? A. I did after I hit a tree.

Q. Who did you talk to? A. When I first came out of the car I didn't know actually what happened and then I saw the driver of the truck coming over toward me.

Q. Is the driver here? A. Yes, sir.

40

George J. Collier, cross.

Q. What is his name? A. Sol Gottlieb.

Q. How is he related to the defendant? A. He is a son of the defendant.

Q. When this automobile was moved to Paterson what became of it?

Question withdrawn.

10

Q. Did you have any estimate given as to the cost of repairing your auto? A. I did.

Q. By whom? A. One estimate by the garage it was first stored in, there was an estimate given me by them and an estimate given by A. Minuskin & Son.

Q. That is a Paterson concern? A. That is right.

20

Q. What happened to the automobile eventually? A. The estimate was a little too large to repair the car, we thought it was worthless and turned it in for a new car.

Q. What kind of a car did you buy? A. An Auburn.

Q. How much were you allowed for the old car?

Mr. Turner: I object to it as incompetent, he is not qualified.

Q. You say an exchange was made by you with Mr. Minuskin of Paterson? A. That is right.

30

Cross examination by Mr. Turner:

Q. Is Sol Gottlieb, the driver of the truck, related to you? A. He is not.

Q. By marriage? A. No, sir.

Q. Is his father related to you by marriage? A. No, sir.

Q. Are either of them related to your father, by marriage or otherwise? A. No, sir.

Q. You knew him? A. I knew him through soliciting his insurance.

40

George J. Collier, cross.

Q. Didn't you recognize him on the day in question? A. I did not.

Q. He was coming towards you and you were going towards him? Right? A. That is right.

Q. That is the general direction. Did you see any part of the truck collide with your car? A. The truck came very close to me but the actual striking I did not see, my eyes were faced front.

10

Q. You signed a statement, did you not, concerning the facts as to this accident? Mr. Collier, did you sign a statement?

Mr. Stein: For whom?

Mr. Turner: A statement.

Mr. Stein: I object to that question unless he says to whom the statement was made.

Mr. Turner: It is a statement as to the accident.

20

Mr. Stein: It might be to a lawyer, it might be confidential.

Q. Is this your signature? A. It is.

Q. This is the statement you signed, is it? A. That is a copy of my signature.

Q. That is your signature? A. Yes, sir.

Mr. Turner: I ask it be marked for identification.

30

(Statement marked Exhibit D-1 for identification for the defendant.)

Q. That statement was true when you made it? A. Yes, to the best of my knowledge.

Q. Your knowledge then was as good as it is now? A. I can't say.

Q. Your knowledge can't be any better? A. At the time that statement was taken, it was taken a day or two after the accident—

40

George J. Collier, cross.

Q. It was taken five days after the accident?
A. I can't say.

Q. This was taken September twenty-second and the accident was September seventeenth? A. That is right.

10 Q. How close in feet was the truck when it passed you? A. I can't say.

Q. About how close? A. What do you mean?

Q. You say you met this truck and it passed you, how many feet apart were the two cars? A. They must have been two feet, two or three feet.

Q. This had been a rainy day and the pavement was wet? A. It was still raining.

Q. Did you have any chains on? A. I did not.

20 Q. When you first saw the truck where was it?
A. When it was up to me, his front was just past my front.

Q. So you did not see this truck until the two cars were past each other? A. I saw him perhaps ten feet away from me but didn't see him down the street for quite a distance on account of the rain.

Q. Is it a perfectly straight road? A. It is somewhat, but I had just made a turn here.

Q. How is the pavement, how is the roadway?
A. Wide.

30 Q. Wide enough for how many cars? A. I can't say, I am no judge.

Q. Three or four cars? A. Perhaps.

Q. Perfectly smooth? A. Very smooth.

Q. Did you put on your brakes? A. No, I did not.

Q. You never put on your brakes at any time?
A. No.

Q. When you started to skid, did you put your brakes on after you started to skid? A. No, sir.

George J. Collier, cross.

Q. How many times did you skid clear around?
A. I should judge about three times.

Q. After you skidded around three times where did you go? A. I went to the left, I was going to the left side of the road and faced the other way and went up on the sidewalk and curb.

10 Q. How fast were you going just before you started to skid? A. I must have been going ten or twelve miles an hour.

Q. Where had you come from? A. Paterson.

Q. Where were you going to? A. I was going to Newark.

Q. How far was your car from the right hand side of the road? A. I can't say, perhaps ten feet.

20 Q. Just before this accident had you been closer to the right hand curb than that? A. I was, yes, sir.

Q. How did you get out ten feet from the curb?
A. I passed two boys on bicycles and I turned out a little to give them leeway in case they turned out and I passed them twenty-five or thirty feet.

Q. How close were you before you swerved out and passed them? A. About six feet.

Q. Had you gone back? A. I had not, I was going in a straight line.

30 Q. You were not trying to get back, you had gone out further from the curb and was staying there? A. That is right.

Q. Were there any cross streets in front of you nearby? A. No, sir.

Q. This truck had been coming quite some distance on a straight road? A. That is right.

Q. How do you account for the fact you didn't see it until it was alongside of you? A. On account of the foggy weather and the windshield wet on account of the rain.

George J. Collier, cross.

Q. Was it raining very hard, was the windshield clouded? A. Yes, sir.

Q. How far could you see with the windshield clouded as it was? A. About twenty feet.

10 Q. When you turned out for the boys you couldn't see any vehicles coming because you couldn't see any further than twenty feet? A. At the time I couldn't.

Q. When you came up behind the boys on the bicycles how far were they when you first saw them? A. Perhaps ten or fifteen feet, there was plenty of room for me to pass them at the time I came up to them but I turned out to make sure.

Q. What kind of a truck was this, a closed truck or a rack body? A. The cab was closed and the rear wasn't closed.

20 Q. An open body? A. Yes, sir.

Q. About how wide was it? A. I don't know.

Q. Could you see with that clouded windshield; could you see through your windshield and tell what kind of a body was on the back of the truck? A. No, I couldn't.

Q. You said you felt a jar, how much of a jar was it? A. It was quite a jar that pushed me to the side and as soon as I felt that jar, I started turning and couldn't stop.

30 Q. You have skidded before and when you skid you feel sort of a jar? A. Why I usually skid straight along.

Q. Did you ever swing around? A. No.

Q. You don't know how that feels? A. No, I didn't, I do now.

Q. Were your tires smooth or non-skid? A. They must have been smooth, they were pretty well worn.

40 Q. Everything was favorable to your sliding around? A. I guess it was.

George J. Collier, redirect.

Q. You said finally after turning around three times you came up against a tree? A. I came up the curb first, then up a terrace and then backed into it.

Q. Then the back part of your car hit the tree? A. Yes, sir.

10 Q. You backed down the terrace? A. I jumped the curb and went over the sidewalk and the momentum carried me up the terrace a little and then I came back.

Q. Was it the front or rear that jumped the curb? A. The rear wheel hit the curb and passed over it and the front wheels went up a driveway over the sidewalk.

Q. Then you really didn't go over the curb? A. The rear went over the curb.

20 Q. Did you apply your brakes at any time during this whole transaction? A. No, I did not.

Q. Don't you think you were going a little faster than twelve miles an hour? A. That is what I judge I was going. I cannot say for sure, because I was not watching my speedometer.

Q. It might have been twenty? A. No, I don't think so.

Q. Were you alone in the car? A. Yes, sir.

Q. It was a touring car? A. Yes, sir.

30 Q. Did you have the curtains up? A. No, sir.

Q. Neither the front or back curtains were up? A. No, sir.

Redirect examination by Mr. Stein:

Q. Are you sure about your tires, whether they were non-skid tires or not? A. No, I am not sure. I can't remember every particular.

Leo Minuskin, direct.

LEO MINUSKIN, sworn for the plaintiff:

Direct examination by Mr. Stein:

Q. Where do you live? A. Four hundred and eleven East Twenty-eighth Street.

10 Q. What is your business? A. Automobile business.

Q. What is the nature of the automobile business? A. Selling new cars and used cars and doing repairing for the models we sell.

Q. Did you sell this automobile to the plaintiff? A. Yes, sir.

Q. What kind was it? A. An Earl touring car.

Q. When did you sell it to them? A. In the Spring of Nineteen hundred and twenty-two.

20 Q. How much did they pay for it? A. Twelve hundred and thirty-five dollars without extras.

Q. Did you see this car after it was damaged last year? A. Yes, sir.

Q. Where? A. In my garage.

Q. Where did it come from? A. Our man took it from Montclair.

Q. Did you make an examination of it? A. Yes, sir.

30 Q. What did you find? A. I found the entire rear car was caved in, the body smashed in completely, the rear wheels smashed and the complete rear smashed.

Q. Did you give them an estimate how much it would cost to repair that car? A. Yes, sir; I believe we did.

Q. Did you see that car before the accident? A. Yes, sir, quite frequently.

40 Q. How soon before the accident? A. I can't say, maybe a week or so he came in for repairs some wire work or something like that.

Leo Minuskin, cross.

Q. Can you tell us how much this car was worth before the accident? A. I believe it was worth from five hundred and fifty to six hundred dollars.

Q. What was your estimate of the cost to replace it in the same condition?

Objected to by Mr. Turner.

The Court: It must be immediately before and immediately after. 10

Q. What was it worth after the accident? A. It was worth about fifty dollars after the accident.

Q. What became of the damaged car? A. We disassembled it and used the good parts and threw the rest away.

Q. Did you take that in exchange for a new car? A. An Auburn sedan.

Q. What is the price of that? A. Nineteen hundred and ninety-five dollars. 20

Q. How much did you allow him for the old car? A. Two hundred dollars.

Q. Why was such a big allowance made? A. It is the custom among dealers, supposing where they have desirable customers they take a little out of their own and give it to the customer just so long as there is enough profit to make a little myself.

Q. Had they bought cars from you before? This was the third car. 30

Q. The car as you saw it brought from Montclair, how did it look? A. As if something heavy rammed it squarely in the rear.

The Court: It was damaged on the side, wasn't it? A. No; practically squarely in the rear.

Cross examination by Mr. Turner:

Q. How much allowance did you say you made? A. Two hundred dollars. 40

Leo Minuskin, cross.

Q. Was that the same price or a higher priced car? A. A higher priced car.

Q. What makes you say this car was worth five hundred and fifty to six hundred dollars before the accident? A. Based on a sales standpoint of view.

10 Q. You didn't examine it? A. No, I wouldn't say I gave it an expert examination. When I see a car I can tell in a very short time, and I see it from time to time doing what repair work has to be done and we can usually tell. If one of our customers called us on the phone and asked what it is worth and if he tells me nothing has happened and in addition what repairs he has done from time to time I can tell him approximately the value of it over the phone.

20 Q. What is a car like that worth today? A. In good condition we could sell it for five hundred dollars.

Q. Nineteen hundred and twenty-two car? A. I believe my records will show I have sold some before that.

Mr. Stein: If the defendant does not admit ownership of the car, we will call the defendant.

30 Mr. Turner: We admit ownership.

Mr. Stein: Plaintiff rests.

Mr. Turner: I move for a nonsuit in this case on the ground that no negligence has been shown on the part of the defendant, and on the ground that it has been shown plaintiff was guilty of contributory negligence.

(Counsel argues motion.)

40 Mr. Stein: I asked counsel if they admit-

Sol Gottlieb, direct.

ted ownership and he said they did. I can prove by the defendant how this happened. I will call the defendant.

SOL GOTTLIEB, sworn for the plaintiff:

Q. What is your name? A. Sol Gottlieb.

Q. Are you related to the defendant Henry Gottlieb? A. Yes, that is my father. 10

Q. Were you driving a truck on the 17th of September, 1924? A. Yes, sir.

Q. What kind of a truck? A. A Reo Speed wagon.

Q. Who was that owned by? A. Henry Gottlieb, my father.

Q. The defendant in this case? A. Yes, sir.

Q. Where were you driving this truck? A. Coming toward Paterson. 20

Q. Did you have an accident? A. I had an accident.

Q. What happened? A. While going up toward Paterson, it was raining and I had a load of steel on the truck and the first thing I happened to see something black and I turned out and while I turned out I struck his rear fender.

Q. Did you turn out suddenly? A. Yes, sir.

Q. You struck the rear fender? A. Yes, sir.

Q. What happened to his car? A. It caused him to skid. 30

Q. What happened? A. By that time I stopped my car and turned around and I seen him up on the lawn.

Q. As a result of your striking him did he go up on the lawn? A. He skidded.

Q. Did anything else strike him except your car? A. Yes, sir, that is all. 40

Sol Gottlieb, cross.

Q. Nothing else struck him? A. No, sir.

Cross examination by Mr. Turner:

Q. Did you see your car come in contact with the plaintiff's car? A. I seen it.

10 Q. What did you see? A. No more than I turned out I heard a knock.

Q. I asked you what you saw, don't tell me what you heard. Did you see your car come in contact with the plaintiff's car? A. I didn't see it, I heard a knock.

Q. You said you saw a truck with a load of steel on it? A. That was my truck.

Q. What happened to your load of steel? A. Nothing, it was on the truck.

20 Q. What did you turn out for? A. I thought something was in front of me.

Q. What did you see in front of you? A. Something black.

Q. What was it? A. I can't tell you my glass was not clear.

Q. What do you mean? A. The rain was on it and with the fog I couldn't see anything.

Q. Was there any fog the day of the accident? A. Yes, sir.

30 Q. It was a foggy day? A. Yes, sir.

Q. When you say you saw something black in front of you, what was it you saw in front of you? A. I can't tell you.

Q. You heard a knock? A. Yes, sir.

Q. Where was your car when you heard the knock? A. On the right hand side of the road.

Q. How close to your right hand curb were you? A. About I should judge about four or five feet.

40 Q. When you were four or five feet from the

Sol Gottlieb, cross.

right hand curb you heard a knock? A. That is after I turned out.

Q. Were you still four or five feet from the right hand curb? A. Yes sir.

Q. This knock you heard was it a low knock or a loud knock? A. Well, it was loud enough for me to hear. 10

Q. You just heard it, it wasn't loud though? A. It was kind of loud, I might as well say medium.

Q. This knock is all you know about the accident, you didn't see any accident? A. No.

Q. Are you related to Mr. Collier? A. Not at all.

Q. Do you visit back and forth? A. No.

Q. Right after this accident you made a statement about it, didn't you? Right? A. Yes, sir.

Q. This is the statement you made isn't it. That is what you said in your statement? A. Yes, sir. 20

Q. When you made that statement it was true? A. It wasn't exact.

Q. Didn't you say in that statement you heard a click? Now you say you heard a knock? A. A click is like a knock.

Q. A click is a little knock? Right? (witness nods head.)

Q. You knew Mr. Collier before this time? A. No, sir. 30

Q. Didn't you? A. No, sir.

Q. Hadn't you done business with Mr. Collier before? A. Not I.

Q. Didn't you know him before? A. No, sir.

Q. Your father had been insured by him? A. He must have been, I didn't know it.

(Plaintiff rests.)

Mr. Turner: Now if the Court please, I

Motion for Nonsuit.

renew my motion for nonsuit on the ground no negligence has been proven on the part of the defendant and that there is contributory negligence on the part of the plaintiff.

(Counsel argue motion).

10

The Court: I will deny the motion.

Defendant excepts. Exception allowed and signed and sealed accordingly.

Judge.

Mr. Turner: I offer in evidence the statements of Mr. Collier and Mr. Gottlieb, and rest.

20

Mr. Stein: We have no objection and we rest.

(Statements admitted in evidence and marked Exhibits D-1 and D-2 respectively for the defendant.)

Mr. Turner: I ask for judgment for the defendant.

Mr. Stein: We have a right to show that the defendant is in court and has not denied what the plaintiff has testified to.

30

The Court: I would like to hear you on it.

(Counsel argue motion.)

The Court: I will reserve decision in this case. I would like to read the case referred to.

40

Certification.

A. COLLIER REALTY CO.

v.

HENRY GOTTLIEB.

State of New Jersey, }
County of Passaic, } ss.:

10

I, Robert J. McDermott, Judge of the Paterson District Court and the Judge who presided over the aforesaid cause, certify that this is the entire record of the proceedings had upon the trial of the said cause.

Dated April 21, 1925.

ROBERT J. McDERMOTT,
Judge,
Paterson District Court.

20

A. COLLIER REALTY CO.

v.

HENRY GOTTLIEB.

State of New Jersey, }
County of Passaic, } ss.:

30

I, JOHN F. LEE, Jr., stenographer, do hereby certify that the foregoing transcript contains the entire record of the proceedings and testimony taken by me at the trial of the above entitled case, which trial was held before the Hon. Robert J. McDermott, Judge of the Paterson District Court in the City of Paterson on Thursday, March fifth, 1925, at Paterson, New Jersey.

JOHN F. LEE, JR.,

40

Certification.

10

A. COLLIER REALTY Co., Plaintiff, <i>v.</i> HENRY GOTTLIEB, Defendant.	}
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State of New Jersey, }
 County of Passaic, } ss.:

I, JOHN F. LEE, Jr., stenographer, do hereby certify that the following entry appears in the records of the Paterson District Court in reference to the above case:

20 "March 17, 1925. The evidence being closed and submitted to the Court, determination was rendered by the Court and is hereby entered in favor of the plaintiff and against the defendant in the sum of \$250.00 debt and \$15.10 costs of the suit."

JOHN F. LEE, JR.,

Sworn and subscribed to before me }
 this 25th day of April, 1925. }

30 Raymond J. Lee,
 Notary Public of N. J.

Judgment of Record.

IN THE DISTRICT COURT OF THE CITY OF
 PATERSON.

ARTHUR COLLIER REALTY Co., a corporation, Plaintiff, <i>v.</i> HENRY GOTTLIEB, Defendant.	}	In an Action on Contract. Demand \$500.00.	10
--	---	---	----

State of New Jersey, }
 County of Passaic, } ss.:

Street.

STEIN & STEIN,
 Plaintiff's Attorneys. 20

PLAINTIFF'S COSTS

Summons	\$2.10	
Additional Deft		
Mileage		
Listing Fee	1.50	
Witness Fee		
Warrant		
Attorney's Fee	12.50	
	\$16.10	30
Total Cost		
Execution		
Statement		
Feb. 5-10 Mar. 5.		

Jan. 19 A. D. 1925 a summons was issued in the above stated cause, returnable Jan. 29, A. D. 1925 at ten o'clock in the forenoon and was returned as follows:

Judgment Record.

Served this summons Jan. 21, 1925 by reading the same to the defendant and delivering to him a copy thereof.

MELLOR J. NEWMAN,
Serg't-at-Arms.

10 The within named defendant not being found. I served this summons 192 by leaving a copy thereof at place of abode, in presence of of the defendant, a person of the family, of the age of fourteen years, who was informed of the contents thereof

Serg't-at-Arms.

The plaintiff filed the state of demand 192

20 Mar. 5, 1925, the plaintiff appeared ready for trial. The defendant appearing and it further appearing by the return endorsed that the summons was duly served, the Court proceeded to hear and determine the cause in the presence of the defendant. John F. Lee, Jr., was sworn as stenographer.

Plaintiff offered testimony of George Collier and Leo Minuskin.

Defendant offered testimony of Sol Gottlieb. Two statements offered in evidence.

Decision reserved.

30 Mar. 17, 1925. The evidence being closed and submitted to the Court, judgment was rendered by the Court and is here entered in favor of the plaintiff and against the defendant for the sum of Two Hundred fifty 00/100 dollars debt, and sixteen 10/100 dollars cost of suit.

192 Execution issued Judgment
192 Execution returned Costs

Satisfied. Execution
Mileage

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Serg't-at-Arms.
5% Mileage

Judgment Record.

Mar. 30, 1925. Notice of Appeal filed with acknowledgment of service.

April 2, 1925. Defendant filed appeal bond.

May 2, 1925. Order extending time for state of case to May 1, 1925, filed.

State of New Jersey, }
County of Passaic, } ss.:

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I, GEORGE MILLS, Clerk of the District Court of the City of Paterson, do hereby certify that the foregoing is a true and correct copy of the record in the above case as the same appears in Docket No. 115 on page 377.

IN TESTIMONY WHEREOF, I have here-
unto set my hand and seal of office
this second day of May, 1925.

GEO. MILLS,
Clerk.

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Notice of Appeal to Court of Errors and Appeals.

NEW JERSEY SUPREME COURT.

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<p>ARTHUR COLLIER REALTY Co., Plaintiff,</p> <p><i>v.</i></p> <p>HENRY GOTTLIEB, Defendant.</p>

To

Stein & Stein,
Attorneys of Plaintiff:

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TAKE NOTICE that the defendant hereby appeals to the New Jersey Court of Errors and Appeals from all of the judgment entered herein by the New Jersey Supreme Court affirming the judgment of the Paterson District Court.

Yours respectfully,

FRANK G. TURNER,
Attorney of Defendant-Appellant.

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Grounds of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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<p>ARTHUR COLLIER REALTY Co., a corporation, Plaintiff,</p> <p><i>v.</i></p> <p>HENRY GOTTLIEB, Defendant-Appellant.</p>	10
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To the Plaintiff and Stein & Stein, its Attorneys:

TAKE NOTICE that the following are the Grounds of Appeal of the defendant-appellant in the above case:

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1. The Supreme Court erroneously affirmed the judgment of the Trial Court, wherein it refused to order a judgment of nonsuit, on the ground that no negligence had been shown on the part of the defendant.

2. The Supreme Court erroneously affirmed the judgment of the Trial Court, wherein it refused to order a judgment of nonsuit, on the ground that the plaintiff was guilty of contributory negligence.

3. The Supreme Court erroneously affirmed the judgment of the Trial Court, wherein it refused to find judgment for defendant on one or more of the following grounds:

(a) No negligence was shown on the part of the defendant.

(b) Plaintiff was guilty of contributory negligence.

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Opinion of Supreme Court.

4. The Supreme Court erroneously affirmed the judgment of the Trial Court, when there was no legal evidence before the Trial Court to prove the plaintiff's damages.

5. The Supreme Court erroneously affirmed the judgment of the Paterson District Court.

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FRANK G. TURNER,
Attorney for Defendant-Appellant.

Opinion of Supreme Court.

NEW JERSEY SUPREME COURT.

No. 405.

May Term, 1925.

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ARTHUR COLLIER REALTY Co.,
Plaintiff-Appellee,

v.

HENRY GOTTLIEB,
Defendant-Appellant.

Appeal from Paterson District Court.

Argued May Term, 1925.

Decided October Term, 1925.

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FRANK G. TURNER, for Defendant-Appel-
lant.

STEIN & STEIN, for Plaintiff-Appellee.

Argued Before PARKER, MINTURN and BLACK, JJ.

Per Curiam:

This action was tried in the District Court of Paterson, without a jury, and judgment was for the plaintiff for \$250.00. The action grew out of

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Opinion of Supreme Court.

a collision between two cars going in opposite directions on Park Street, in Montclair.

The plaintiff's driver testified that he was proceeding in the road, six feet from the curb, when in order to pass some boys on bicycles, he swerved out so that he was about ten feet from the curb; that he continued going along straight ahead for about thirty feet, at a speed of from ten to twelve miles an hour to the point of collision; that it was rainy and foggy; that his vision carried twenty feet through his clouded wind shield; that he saw defendant approaching the truck about ten feet ahead; that the front of defendant's truck passed him in close proximity; that defendant's truck hit his car in the left rear end, and thereby caused him to skid, turn around in a circle several times, go over the sidewalk, up a terrace and back down into a tree. He admitted that he did not see the cars collide, but testified that he felt a jar and heard a knock just before skidding.

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The driver of defendant's car testified, as plaintiff's witness, that he was proceeding along the road with his wind shield clouded with rain; that something black loomed before him; that he then turned out abruptly and struck the plaintiff's car. He admitted that he did not see the cars collide, but testified that he heard a knock and saw the plaintiff's car begin to skid.

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The defendant's contentions are that no negligence was shown, and that the plaintiff was contributorily negligent. Hearing the knock and feeling the jar, under the above circumstances, is direct and positive evidence of fact that the defendant's car struck the plaintiff's car. Its probative force was for the jury, and their verdict being supportable by the testimony, cannot be disturbed.

The judgment will therefore be affirmed.

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Order of Affirmance.

NEW JERSEY SUPREME COURT.

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ARTHUR COLLIER REALTY CO.,
a corporation,
Plaintiff-Appellee,

v.

HENRY GOTTLIEB,
Defendant-Appellant.

On Appeal from
Paterson District
Court.

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This cause having been duly argued at the May Term, 1925, of this Court by Benjamin L. Stein, of counsel for the plaintiff-appellee, and Frank G. Turner, of counsel for the defendant-appellant, and the Court having considered the same and being of the opinion that the judgment for the plaintiff entered in the Paterson District Court should be affirmed:

It is, thereupon, ORDERED and ADJUDGED that the judgment of the Paterson District Court, from which an appeal was taken in this cause, be and the same is hereby affirmed with costs to the plaintiff-appellee and said record is hereby remitted to the Court below.

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Entered Dec. 9th, 1925.

On motion of

STEIN & STEIN,
Attorneys of Plaintiff-Appellee.

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91 FEB. 1. 1926

New Jersey COURT OF ERRORS & APPEALS

ARTHUR COLLIER REALTY Co.,
Plaintiff-Appellee,

v.

HENRY GOTTLIEB,
Defendant-Appellant.

On Appeal.

BRIEF OF DEFENDANT-APPELLANT.

Facts.

On September 17, 1924, plaintiff was the owner of an automobile which was being driven on Park Street, Monclair. It was a rainy day and George J. Collier was driving the car. No witnesses saw the cars collide. The testimony concerning the accident is on page 7 of the printed case:

"Q. When did you first know you were struck? A. I felt a slight jar after the truck passed me and then I started to skid around—

"Mr. Turner: In that event I move to strike out his testimony that he was struck by this automobile.

"Q. Did you see this truck coming? A. I did."

And page 9:

"Q. He was coming towards you and you were going towards him? Right? A. That is right.

"Q. That is the general direction. Did you see any part of the truck collide with your car? A. The truck came very close to me but the actual striking I did not see, my eyes were faced front."

And page 10:

"Q. How close in feet was the truck when it passed you? A. I can't say.

"Q. About how close? A. What do you mean?

"Q. You say you met this truck and it passed you, how many feet apart were the two cars? A. They must have been two feet, two or three feet.

"Q. This had been a rainy day and the pavement was wet? A. It was still raining.

"Q. Did you have any chains on? A. I did not.

"Q. When you first saw the truck where was it? A. When it was up to me, his front was just past my front.

"Q. So you did not see this truck until the two cars were past each other? A. I saw him perhaps ten feet away from me but didn't see him down the street for quite a distance on account of the rain."

And page 11:

"Q. How fast were you going just before you started to skid? A. I must have been going ten or twelve miles an hour.

"Q. Where had you come from? A. Paterson.

"Q. Where were you going to? A. I was going to Newark.

"Q. How far was your car from the right-hand side of the road? A. I can't say, perhaps ten feet.

"Q. Just before this accident had you been closer to the right-hand curb than that? A. I was, yes, sir.

"Q. How did you get out ten feet from the curb? A. I passed two boys on bicycles and I turned out a little to give them leeway in case they turned out and I passed them twenty-five or thirty feet.

"Q. How close were you before you swerved out and passed them? A. About six feet.

"Q. Had you gone back? A. I had not, I was going in a straight line.

"Q. You were not trying to get back, you had gone out further from the curb and was staying there? A. That is right.

"Q. Were there any cross streets in front of you nearby? A. No, sir.

"Q. This truck had been coming quite some distance on a straight road? A. That is right.

"Q. How do you account for the fact you didn't see it until was alongside of you? A. On account of the foggy weather and the windshield wet on account of the rain."

Sol Gottlieb testifies on page 18:

"Q. What did you see? A. No more than I turned out I heard a knock.

"Q. I asked you what you saw, don't tell me what you heard. Did you see your car come in contact with the plaintiff's car? A. I didn't see it, I heard a knock.

"Q. When you say you saw something black in front of you, what was it you saw in front of you? A. I can't tell you.

"Q. You heard a knock? A. Yes, sir.

"Q. Where was your car when you heard the knock? A. On the right-hand side of the road.

"Q. How close to your right-hand curb were you? A. About I should judge about four or five feet."

And page 19:

"Q. Didn't you say in that statement you heard a click? Now you say you heard a knock? A. A click is like a knock.

"Q. A click is a little knock? Right? (Witness nods head.)"

POINT I.

No negligence was shown on the part of the defendant.

The plaintiff's case shows that each automobile was on its right-hand side of the road. Neither driver saw one car strike the other. It was a foggy, rainy day. The plaintiff had turned out towards the center of the road just before the accident. The defendant kept on the right-hand side of the road. There is no presumption of negligence on the part of the defendant. Negligence will not be presumed because two automobiles collide.

Ferdon v. McConnell, 122 Atl., 730. 99 L. 180
Flanigan vs. McLean, 110 Atl. 370

POINT II.

Plaintiff was guilty of contributory negligence.

The plaintiff was driving on a wet slippery pavement with smooth tires on his automobile. Just before he heard the click and started to skid, he had swung out to the center of the road to pass boys on bicycles. On account of the rain and fog, he could see only a few feet in front of them. In view of this situation it was contributory negligence on his part to swing over towards the center of the road when he could not see vehicles that were coming towards him. He did not see his automobile strike the automobile of the defendant and no one else saw them strike. If they had struck, there would have been more than a click, because defendant's truck had a load of steel on it. The facts clearly show that the plaintiff's driver when he swung out to pass the boys on bicycles started to skid. There are dozens of parts

on an automobile that will click, while it is skidding, and there is no proof that the two cars did collide.

The damage to the plaintiff's automobile was to the rear of his body where he had backed into a tree after he had skidded around (Case, p. 15).

It is respectfully urged that the judgment of the Supreme Court should be set aside and a new trial granted.

Frank G. Turner
 FRANK G. TURNER,

Attorney and of Counsel
 with Defendant-Appellant.

New Jersey Court of Errors and Appeals

ARTHUR COLLIER REALTY Co.,
Plaintiff-Appellee.

vs.

HENRY GOTTLIEB,
Defendant-Appellant

On Appeal from
Supreme Court.

BRIEF OF
PLAINTIFF-
APPELLEE.

This appeal is brought to review a judgment of the Supreme Court affirming a judgment of the Paterson District Court entered in favor of the plaintiff in the sum of Two hundred and fifty (\$250.00) dollars and costs against the defendant, arising out of an automobile accident. Various grounds are offered by the appellant for the setting aside of the judgment, and they will be considered in the order in which they are named in the specification of points filed.

I.

The Trial Court properly refused to order a judgment of non-suit upon the ground that no negligence had been shown on the part of the defendant.

George J. Collier, one of the witnesses for the plaintiff, testified, "I felt a slight jar after the truck passed me and then I started to skid around." (State

of Case, page 7, line 10,) and further on, (line 23,) "Q: Where did the truck strike you? A: On the left rear." (On page 12, line 26,) "Q: You said you felt a jar, how much of a jar was it? A: It was quite a jar that pushed me to the side, and as soon as I felt that jar, I started turning and couldn't stop."

Sol Gottlieb, a witness for the plaintiff, testifies that he was driving the car for the defendant, (State of Case, page 17, line 15.) and that "while going up towards Paterson, it was raining and I had a load of steel on the truck and the first thing I happened to see something black and I turned out and while I turned out, I struck his rear fender." (Line 28,) "Q: Did you turn out suddenly? A: Yes, sir." (Line 29,) "Q: You struck the rear fender? A: "Yes, sir." "Q: What happened to his car? A: It caused him to skid. (Line 32.)"

This testimony in the case is uncontradicted and is ample evidence of the negligence on the part of the defendant.

II.

The Trial Court properly refused to non-suit the plaintiff on the ground of contributory negligence.

There is no proof whatever in the record of this case, indicating that the plaintiff was guilty of contributory negligence.

The testimony of George J. Collier, (State of Case, page 6, line 40) is that he was driving on the right hand side of the road and that the automobile was coming in the opposite direction, (page 7, line 5) and that the automobile of the defendant struck the rear end of the plaintiff's automobile. There is no proof of contributory negligence on the part of the plaintiff.

III.

The Trial Court properly refused to find judgment for the defendant on one or more of the following grounds.

- A. No negligence shown on the part of defendant.
- B. Plaintiff was guilty of contributory negligence.

These points are covered in the argument on the first two specification of points.

IV.

The Trial Court admitted no illegal evidence on behalf of the plaintiff.

In examining the record of the case, there appears to be no exception whatsoever taken by the defendant to the admission of evidence on the part of the plaintiff.

V.

There is nothing suggested in specification five, that needs discussion or argument of any kind.

VI.

Legal evidence was offered to prove the plaintiff's damages.

On page 6, line 30, witness, George J. Collier, testifies that the automobile cost over Twelve hundred and fifty (\$1250.00) dollars with accessories, and that it was purchased in 1922. (Line 23.)

There is further evidence (page 8, line 21,) that the car was worthless and turned in for a new car.

Leo Minuskin, a witness for the plaintiff, testifies on page 14, that he is in the automobile business, and that he sold the automobile belonging to the plaintiff, in the Spring of 1922 (line 18,) and that he saw the car after it was damaged (line 21,) that he made an examination of it, (line 26) and he found the entire rear was caved in, the body smashed in completely, the rear and that he saw the car before the accident quite frequently (line 32) and that he saw the car before the accident quite frequently (line 35). He also testifies (page 15, line 1) that the car was worth between Five hundred and fifty (\$550.00) to Six hundred (\$600.00) dollars before the accident, and that it was worth about Fifty (\$50.00) dollars after the accident. (Page 15, line 15). He testifies further, on line 22, that he allowed the plaintiff Two hundred (\$200.00) dollars for the old car, and so the damage to the plaintiff was at least Three hundred and fifty (\$350.00) dollars. He testifies further on, (line 34,) that a big allowance was made because of the fact that the plaintiff bought a new car from him.

It appears from the foregoing, that there were no errors of any kind committed by the Trial Court, and, therefore, the judgment should be affirmed.

STEIN & STEIN,
Attorneys of Plaintiff-Appellee.

BENJ. L. STEIN,
Of Counsel.

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